



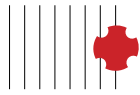
Outlook 2023

Finnius Outlook 2023

DISCLAIMER

In this Outlook we identify certain developments for 2023. This Outlook does not contain a complete overview of all relevant supervisory regulations for the financial undertakings mentioned herein. This Outlook is therefore not intended as legal advice. For information on the processing of your personal data, please see our Privacy Policy on www.finnius.com.

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Introduction

outlook 2023

Outlook 2023

Financial regulatory law is complex. It is comprehensive, it is complicated, sometimes incomprehensible, and it can also be frustrating. Fortunately, regulatory law is also interesting and dynamic. And it is socially relevant. The combination of all these facets drives us to provide a very thorough overview of financial regulatory law once a year. Making the rules accessible and practical is our goal, in our daily services and also in this annual Outlook.

We can safely speak of a tradition. This is the eighth edition. The practiced Finnius Outlook reader will notice that nothing essential has changed in the format:

- The breakdown in parts is by type of market party or service, so you quickly get to where you need to be.
- The Integrity and Sustainability specials, have been among the most comprehensive sections for several years now.
- Each development is represented by briefly explaining what it concerns, to whom it is specifically relevant, and when exactly it comes into play.
- Very important or noteworthy developments are discussed in a little more detail. In the table of contents under each individual section, a * indicates which topic is highlighted.

Every year this is a huge job, but it also goes more smoothly every year because of our accumulated experience in publishing this comprehensive magazine. Of course there is attention for the Twin Transition in this Outlook. No one can ignore digitalization and sustainability. Right now, legislators are still in the design phase and regulators are mostly informally pushing for action. But it is easy to predict that in some time digitalization and sustainability will lead to just as much conflict between regulators and the sector, as has been the case with the AML/CFT laws for years. So the need for compliance is by no means optional for the sector. Although the highest court taught regulators last year that they should leave some room for market parties' own reasonable interpretation of the rules.

Risk management is also a common thread in all developments. In a society in which there seems to be a need to leave hardly anything to chance, attention to managing risks is taking on ever greater proportions. Risks of outsourcing, climate risks, cyber risks, inflation risks, continuity risks, integrity risks, risks of too much

remuneration. Not only banks and insurers are subject to high demands in this area; we see that a lot is expected of every player in the financial markets in this area. Also from the asset management sector, lenders and exempt parties, such as registered payment service providers or managers under the so-called light regime.

As always, we applied January 1 as the cut-off date. This means that developments after that date are not included in this Outlook. For example, the [AFM Agenda 2023](#) has now been published. We will keep you informed of such events through news releases and blogs throughout this year.

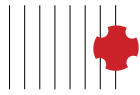
Ensuring less regulation is beyond our control, but we can provide oversight. This Outlook on all foreseeable developments in 2023 will at least get you off to a good start in the new year.



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GENERAL DEVELOPMENTS

This section deals with subjects that cannot be specifically linked to one or certain players in the financial market, but are applicable in a broad sense to everyone who operates in the Dutch financial market. In addition, this section focuses on audit firms.

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

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- EC new proposals Capital Markets Union

MONITORING, ENFORCEMENT & PROCEDURES

AFM Trend Monitor 2023

As in previous years, the AFM once again provided its views on the trends and associated risks with respect to the supervision of the financial markets for 2023 at the end of 2022, namely in [Trend Monitor 2023](#), published on November 3, 2022. The concrete implications of the trends and risks for the AFM's supervisory activities are elaborated in its Agenda 2023, which is traditionally published by the AFM in early 2023. The specific sections of this Finnius Outlook 2023 highlight topics from Trend View 2023 for a particular sector. This General section discusses the report in a more general sense.

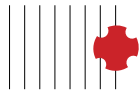
First, the AFM notes that the geopolitical and macroeconomic picture has changed considerably over the past year. Whereas at the beginning of 2022 cautious optimism about the approaching end of the corona pandemic and associated lockdowns still prevailed, by the end of 2022, according to the AFM, a sense of continuing crisis prevails. It then discusses the following six trends:

- **Macroeconomic environment:** the AFM notes that the economic outlook has deteriorated due to rising inflation and increasing pressure on economic growth. High inflation is leading to a decline in household purchasing power, while consumer confidence in the economy is falling sharply as a result of geopolitical tensions, among other things. The direct effects of rising interest rates seem limited for the time being, according to the AFM. The AFM mentions that the end of very low interest rates leads to a revaluation of risks, resulting in declining equity and crypto valuations. Another (positive) consequence of rising interest rates is that the pressure on the earning models of banks and life insurers is decreasing, and the coverage ratio of pension funds is increasing.
- **Sustainability:** the AFM points out that the supply uncertainty of gas and high energy prices affect the sustainability transition. In this regard, the AFM supports efforts to make homes more sustainable, but the debt taken on by households to this end must be responsible. The AFM also points to the risks of the changing climate for financial institutions and the important role the financial sector plays in financing sustainability. The provision of information on sustainability risks and sustainability performance by companies must improve; this is a key area of attention for the AFM.

- **Digitization:** the ever-increasing digitization provides low-threshold access to advice and products, but also involves risks. Here the AFM thinks, among other things, of exclusion of vulnerable groups, such as the elderly, and discrimination of groups of people by algorithms when deploying artificial intelligence. The AFM refers to upcoming European legislation to get a better grip on digitalization, such as the AI Regulation, Digital Markets Act, Digital Services Act, Data Governance Act and Digital Operational Resilience Act (DORA).
- **Internationalization:** a fourth trend highlighted by the AFM is the increasing international nature of financial services. According to the AFM, this is due to growing internal market forces on the one hand and digitalization that makes it easier to offer services in different countries on the other. The number of foreign parties operating in the Netherlands is steadily increasing. The shadow side of this development is formed by rogue providers who engage in aggressive and fraudulent (investment) practices. International cooperation between regulators is becoming increasingly important given the internationalization of financial services, according to the AFM.
- **Money laundering:** the AFM continues to emphasize that financial firms play an important function in preventing money laundering, terrorist financing and other criminal behavior. It points to the evaluation of the Financial Action Task Force (FATF), which shows that the Netherlands has made significant progress in its approach to money laundering and terrorist financing in recent years. Nevertheless, the AFM is further committed to improving its information position and cooperation with chain partners.
- **Supervisory landscape:** finally, the AFM mentions that the supervision of the AFM is also evolving. The AFM signals that the priorities of national regulators are increasingly influenced by Europe. The AFM also points to (i) the expansion of its supervisory tasks when the new pension system comes into effect, (ii) its new role as supervisor of all licensed audit firms and (iii) a number of major European legislative processes that will impact the AFM's supervisory tasks, including DORA, MiCA, the amendment of MiFID II/MiFIR, SFDR, the amendment of AIFMD, the AML Regulation and the AI Regulation.

DNB Supervision in focus

- **What?** In November 2022, DNB published its annual [Supervision in focus](#). In this publication, DNB looks back on its supervisory activities over the past year and looks ahead to its priorities for 2023. The challenges that DNB identifies are (i) high inflation and rising interest rates, (ii) continued digitalization increasing cyber risks,



(iii) exposure to sustainability risks and (iv) additional strength needed against financial economic crime. DNB describes two main spearheads for supervision in 2023. The first spearhead is responding to technological innovations. In 2023, DNB will continue to monitor that institutions have and keep their cyber resilience in order. In addition, also given the increasing number of attacks on chain partners, it will pay more attention to risks associated with outsourcing. Furthermore, DNB will prepare for new legislation, including DORA and MiCA. The second spearhead is steering for sustainability. In 2023, DNB will engage with financial institutions on managing climate risks. In addition, DNB will continue to embed sustainability risks in supervisory methodology in 2023.

- **Who?** All parties supervised by DNB.
- **When?** Ongoing in 2023.

AFM and DNB Consultation on data mobility.

- **What?** On September 15 and 16, 2022, the [AFM](#) and [DNB](#) published for consultation a discussion paper containing their preliminary policy vision on data mobility in the financial sector. In short, this preliminary vision holds that an increase in data sharing opportunities can bring benefits, but these increasing opportunities must keep pace with greater attention to consumer privacy and interests.
- **Who?** This topic is relevant to all parties operating in the financial sector.
- **When?** The consultation ran until November 11, 2022.

DNB on increasing cyber threats

- **What?** On November 30, 2022, DNB published the [results](#) of cyber risk surveys conducted in 2022. DNB is increasingly concerned about the resilience of financial institutions to cyber threats. The surveys conducted by DNB show that not all basic measures at institutions are effectively designed and functioning. Basic measures that, according to DNB, require attention are (i) active monitoring for cyber risks within the IT environment, (ii) necessary maintenance on the security of IT systems involving the outsourcing chain, and (iii) cyber-attack testing and practice.
- **Who?** All parties supervised by DNB.
- **When?** DNB announces that it will supervise whether institutions have and maintain their cyber resilience in 2023.

Proposed Act on streamlining administrative fine limits and time limits

- **What?** On May 28, 2022, the Ministry of Security & Justice published the [Proposed Act on streamlining administrative fine limits and time limits](#) for consultation. The proposed amendments to streamline fine ceilings in administrative law more with the fine ceilings from criminal law, do not concern the fine ceilings in supervisory laws such as the Wft and the Wwft, but do concern, for example, the fine ceiling in the Consumer Protection Enforcement Act (Whc). In addition, it is proposed to extend the period of limitation (as laid down in Section 5:45 of the General Administrative Law Act) to impose a fine from five years to six years after the violation has occurred, in the case of offenses for which a heavy fine can be imposed.
- **Who?** Parties facing enforcement by AFM or DNB.
- **When?** The consultation period closed on August 1, 2022.

Outcomes overlap in AFM and DNB queries

- **What?** In July 2022, the AFM and DNB [asked](#) supervised institutions to report specific examples of overlap in the queries of the AFM and DNB. The purpose of this survey was to minimize duplications in the future and thus reduce the reporting burden for the industry. On December 22, 2022, AFM and DNB [announced](#) that they had received 15 reports.
- **Who?** All companies facing both AFM and DNB queries in ongoing supervision.
- **When?** The AFM and DNB say they have prepared specific work instructions on how to avoid duplicate queries. Furthermore, DNB will discuss intended queries with institutions more often in advance via sector panels. A [hotline](#) has also been set up to report duplicate questions to the regulator.

Legislative wishes AFM

- **What?** The AFM's annual [legislative letter](#) to the Minister of Finance sets out the AFM's legislative wishes. These include (i) the request for a legal basis for awarding tip money for reporters of violations in the field of market abuse, (ii) the possibility of opening an account under a fictitious identity so that the AFM can make use of the power to make test purchases and thus conduct consumer protection investigations, and (iii) the request to investigate the possibility for a process whereby the AFM can submit relevant files to an independent party and share its substantive expertise, in order to ensure expert and objective interpretation

for collective arrangements in this way. The Minister has [responded](#) to the AFM's legislative wishes and indicated that she is in discussion with the AFM about its wishes.

- **Who?** Financial companies supervised by the AFM.
- **When?** The ministry may follow up on the AFM's legislative wishes in 2023.

FINANCIAL SUPERVISION ACT

Financial Markets Amendment Act 2022-II

- **What?** The proposed [Financial Markets Amendment Act 2022-II](#) was published in the summer of 2022. The bill seeks to amend several laws and, among other things, provides a legal basis for the Financial Stability Committee (FSC). The FSC brings together representatives of DNB, AFM, the Ministry of Finance and the Netherlands Bureau for Economic Policy Analysis (as an external expert). The proposal institutionalizes the FSC as a consultation under the responsibility and chairmanship of DNB.
- **Who?** The proposal is relevant to supervised financial companies. Sector-specific components of this law are discussed in more detail with the relevant individual players.
- **When?** The Financial Markets Amendment Act 2022-II was passed by the Senate and House of Representatives late last year. The bill is intended to take effect in early 2023.

Financial Markets Amendment Decree 2021

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets Amendment Decree 2021](#) to the Senate and the House of Representatives. The proposal contains, among other things, amendments to the Bpr, the BGfo, the Decree on Scope Provisions Wft and the Decree on Regulated Markets Wft to extend the period for DNB and the AFM from four to six weeks for taking a decision - for example, with respect to an application for approval of a new policymaker - in the situation where AFM/DNB has requested the company to provide further data.
- **Who?** The proposal is relevant to supervised financial companies. Sector-specific parts of this Decree are discussed in more detail with the relevant individual players.
- **When?** This amendment Decree is related to the proposed Financial Markets Amendment Act 2022-II, which is expected to take effect in early 2023.

Financial Markets Amendment Act 2022

- **What?** On May 27, 2022, the [Financial Markets Amendment Act 2022](#) was published in the Dutch Gazette. One of the aims of this Act is to make it possible for DNB and the AFM to maintain a reserve within the supervisory funding system for incidental costs.
- **Who?** The Act is relevant to supervised financial companies. In the sections of the relevant individual players, the various parts of the Act are discussed in more detail.
- **When?** The Act provides for different times of entry into force. Some parts have already taken effect and some will take effect when the Financial Markets Amendment Decree 2022 is ready (see next development). The amendment to the supervisory funding system came [into force](#) on January 1, 2023.

Financial Markets Amendment Decree 2022

- **What?** On July 15, 2022, the Ministry of Finance published the [Financial Markets Amendment Decree 2022](#) for consultation. Among other things, it proposes to bring consistency to the penalty categories set out in the Decree on Administrative Fines in the Financial Sector (Bbbfs) regarding the violation of the obligation to report the prospective appointment of a new policymaker. Such reporting obligations had varying fine categories, namely both the first category (basic fine amount EUR 10,000) and the second category (basic fine amount EUR 500,000). The proposed Decree equalizes this on the second fine category. According to the minister, this equalization contributes to the effective enforcement of the main requirements on suitability and integrity, the violation of which can be punished with a fine in the third category (basic fine amount EUR 2.5 million). The consultation period ended on August 26, 2022.
- **Who?** The proposal is relevant to supervised financial companies. Sector-specific parts of this decision are discussed in more detail with the relevant individual players.
- **When?** Not yet known, but expected during 2023. On November 23, 2022, the Council of State issued its opinion and recommended adoption of the Decree.

Financial Markets Amendment Act 2024

- **What?** Last spring, the Ministry of Finance published the [Financial Markets \(Amendment\) Act 2024](#) for consultation. The proposed Act provides for various amendments to the Wft and other laws. One of the



proposed adjustments is aimed to make explicit that a profit-related fine under the Wft, Wwft and Wtt 2018 can also be imposed if the turnover-dependent fine ceiling applies.

- **Who?** The proposal is relevant to supervised financial companies. Sector-specific components of this bill are discussed in more detail with the relevant individual players.
- **When?** The Act was submitted to the Advisory Division of the Council of State for advice on November 25, 2022. It is expected to enter into force on January 1, 2024.

Consultation Amendment to Financial Supervision Funding Decree 2019

- **What?** Last year, the Ministry of Finance consulted on the Decree amending the Financial Supervision Funding Decree 2019. On September 28, 2022, it [sent](#) the draft Decree to the Senate and House of Representatives. On December 15, 2022, the Council of State issued its [opinion](#). The Council of State has no comments and recommends the decree. Among other things, the Decree fleshes out the levy reserve, which can be used to dampen fluctuations in the supervisory costs charged by DNB and the AFM. It also adjusts the percentage distribution of supervision costs at the AFM in connection with changes in AFM supervision of audit firms.
- **Who?** Supervised financial companies.
- **When?** The changes are expected to take effect in early 2023.

EUROPEAN COMMISSION

Work Program 2023

- **What?** On October 18, 2022, the European Commission (EC) published its [Work Programme 2023](#). In it, the EC formulates its main ambitions for the coming period. The two most prominent ambitions are the further implementation of (i) the European Green Deal and (ii) the digital transformation of European society, also known as the 'Twin Transition'. The EC also remains committed to good and proportionate European legislation and its timely and correct implementation. In an attached [action list](#), the EC lists the concrete legislative initiatives on the agenda for 2023.
- **Who?** All financial companies.
- **When?** The Work Program 2023 describes the EC's priorities for 2023.

Proposals Capital Markets Union Action Plan 2021

- **What?** Some time ago now, on Nov. 25, 2021, the EC released a [package of concrete legislative proposals](#) to further develop the 2020 Capital Markets Union (CMU) Action Plan. These include a number of proposals related to the European Single Access Point (ESAP). The ESAP is to become a common source of free financial and sustainability-related information on and published by financial firms, regardless of where they are based or incorporated in the EU. ESMA is designated to develop the ESAP.
The EC's other CMU proposals include the AIFMD and MiFID II/MiFIR, and are being discussed in the relevant players' sections. In addition to these concrete legislative proposals, the EC has announced the adoption of a Retail Investment Strategy and the acceleration of its work to establish an "open finance framework." On the latter topic, the EC [consulted](#) the market between May and July 2022. The Capital Markets Union Action Plan 2021 should not be confused with the EC's [new proposals](#) aimed at further developing the CMU. The new proposals consist of three pillars, namely (i) clearing, (ii) corporate insolvency and (iii) companies seeking listing. Where relevant, specific parts of the new proposals will be discussed in this Outlook. In this general section, they will be addressed in the EMIR and MAR sections.
- **Who?** The ESAP is a relevant development for virtually all players. The EC's other proposals are relevant to fund managers and investment firms, among others, and are addressed in those sections.
- **When?** The EC's concrete legislative proposals must first be approved by the Council and the European Parliament. This process is currently ongoing and we expect more clarity on this in 2023.

CONSUMER PROTECTION

EC review of distance selling directive on consumer financial services

- **What?** On May 11, 2022, the European Commission published a [proposal](#) for a revised Distance Marketing of Consumer Financial Services Directive. Since the directive came into force in 2002, the retail financial sector has become increasingly digitized. New products, providers and sales channels have been added. Meanwhile, other EU legislation relevant to financial services has also been introduced or updated. In short: the Directive is outdated. The proposal aims to create a future-proof framework for the distance marketing of financial services, protecting consumers in a digital

environment and reducing unnecessary burdens on financial service providers. The directive acts as a safety net. Consumer financial services, which are covered by specific Union legislation, are (only) subject to the provisions of that legislation, to the extent that it addresses the same issues as the EC proposal. On December 19, 2022, the Minister of Finance [published](#) her answers to questions from the House of Representatives on the revision of the Directive, in which she also indicated that the Directive should function as a safety net.

- **Who?** Financial companies offering financial services at a distance to consumers.
- **When?** The Commission's proposal is now before the European Parliament and the Council. The European Parliament and Council must first agree to the proposal. The goal is for the proposed changes to be implemented in the legislation of each member state 24 months after they come into force.

DORA

Regulation on digital operational resilience

- **What?** On December 27, 2022, the [Regulation](#) on digital operational resilience for the financial sector (DORA) and its accompanying [Directive](#) were published in the Official Journal of the EU. DORA roughly consists of the following six pillars:
 1. Solid ICT risk management;
 2. Adequate ICT incident management, including reporting ICT incidents to the supervisor;
 3. Prudent management of risks when using third-party ICT providers;
 4. Periodic testing of own ICT resilience;
 5. Direct oversight of critical ICT service providers; and
 6. Cooperation and supervision/enforcement by supervisors.
- **Who?** DORA is an important development for all financial companies that fall within the scope of DORA. Mapping out the exact scope and content of all DORA obligations is a difficult task. We are happy to help you with this analysis and with translating the requirements into concrete action points.
- **When?** DORA is directly applicable in all Member States, including the Netherlands, as of January 17, 2025. This means that institutions will have to comply with the obligations in DORA from that date.

EUROPEAN REGULATORS

✚ ESA's Joint Committee Work Program 2023

The [Work Program](#) of the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA, collectively the ESAs) was published on September 5, 2022. The 2023 Work Programme shows that also in 2023

the focus will (continue to) be on consumer and investor protection, financial services and products offered to retail investors, prudential analysis of cross-sector developments (including with respect to PRIIPs, SFDR and the Securitization Regulation). It also focuses on risks and weaknesses in the context of financial stability, digital operational resilience, financial conglomerates and prudential consolidation, as well as accounting and auditing.

More specifically, the Joint Committee will focus on the following:

- under the Green Deal and Sustainable Finance strategy, the Joint Committee will develop draft technical standards under the SFDR. This will focus on mandates for targeted adjustments and expansion of the technical standards. The Joint Committee will also focus on climate risk stress testing;
- further increasing its involvement in the European Commission's Digital Finance Package (including legislative proposals on Digital Operational Resilience (DORA) and the Joint Committee Sub-Committee on Digital Operational Resilience (JC SC DOR));
- financial innovation (including through coordination and cooperation among national innovation facilitators in line with the European Commission's Digital Finance Strategy);
- the cross-sectoral impact on investor protection, EU market integrity and financial stability (due to Brexit);
- further mapping and monitoring of external credit assessment institutions (ECAIs) under the Capital Requirements Regulation and Solvency II Directive.

Through the Joint Committee, the ESAs coordinate their activities to ensure consistency of EU rules and their supervision by local supervisors. Given the areas of work of the ESAs and the nature of the issues mentioned, the Work Program is relevant to a large part of the Dutch financial sector.

ESMA Strategy 2023–2028

- **What?** On October 10, 2022, ESMA released its [2023-2028 Strategy](#). This document sets out ESMA's



priorities for its activities over the next five years. The multi-year strategy is composed of three strategic priorities and two thematic drivers. The strategic priorities for the period 2023-2028 are: (i) fostering effective markets and financial stability, by ensuring fair, orderly and effective markets, increased transparency (e.g. through implementing the European Single Access Point) and enhancing financial stability, (ii) strengthening supervision of European financial markets at both national and European level, by establishing a common EU supervisory culture, risk prioritisation and convergence of supervisory approaches and outcomes, and (iii) enhancing the protection of retail investors.

The thematic drivers for the period 2023-2028 are: (i) enabling Sustainable Finance based on the priorities set out in ESMA's Sustainable Finance Roadmap 2022-2024 (such as effectiveness and integrity of ESG information, improved ESG regulatory framework and supervision, and recognizing the role of retail investors in financing the transition to a greener economy), and (ii) facilitating technological innovation and effective use of data, with a focus on assessing the impact of technologies used in financial markets on the existing regulatory framework and the implementation of upcoming EU legislation in this area.

- **Who?** Given the nature of ESMA's supervisory activities, ESMA Strategy 2023-2028 is particularly relevant to banks, investment firms, managers of investment funds, UCITS, benchmark users, crowdfunding service providers and fintechs, and Tier 2 central counterparties (CCPs).
- **When?** The ESMA Strategy 2023-2028 describes ESMA's strategic goals for the period 2023-2028.

ESMA Work Programme 2023

- **What?** ESMA published its [2023 Annual Work Program](#) on Oct. 10, 2022. In it, ESMA describes its supervisory priorities for 2023. Also in 2023, ESMA will continue to focus on its objectives of enhancing investor protection and promoting stable and orderly financial markets. Two main priorities of ESMA in 2023 correspond to the thematic drivers identified by ESMA in its Strategy 2023-2028: (i) enabling Sustainable Finance and (ii) facilitating technological innovation and effective use of data. The rest of the work program is presented in line with ESMA's activities, divided into the themes: (i) investors and issuers, (ii) markets and infrastructures, (iii) risk assessment, and (iv) supervision and convergence. In specific sections of this Outlook, ESMA's 2023 Annual Work Programme is discussed in more detail where relevant.
- **Who?** Given the nature of ESMA's supervisory activities, the 2023 Annual Work Program is particularly relevant to banks, investment firms, managers of investment

funds, UCITS, benchmark users, crowdfunding service providers and fintechs, and Tier 2 central counterparties (CCPs).

- **When?** The 2023 Annual Work Program describes ESMA's focus areas in 2023.

EBA 2023 Work Program

- **What?** On September 29, 2022, EBA published its [Annual Work Program](#) for 2023. In this Work Program EBA describes its key priorities for 2023. In 2023, EBA's priorities are in line with EBA's Single Programming Document (SPD) for the years 2023-2025 as presented by EBA in 2022. The focus will be on: i) finalizing the implementation of Basel in the EU, ii) running an enhanced EU-wide stress test, iii) providing data to all stakeholders, iv) addressing the new challenges arising from the digitization of finance and from DORA and MiCA, and v) further contributing to the build-up of the capacity to combat money laundering and terrorist financing and protect consumers in the EU. Moreover, EBA will continue to pay particular attention to the European ESG agenda, both in its regulatory and risk assessment mandates and in its own organization, building on its recent EU Eco-Management and Audit Scheme (EMAS) registration.
- **Who?** Given the nature of EBA's supervisory activities, the Annual Work Program is particularly relevant to banks and investment firms.
- **When?** The 2023 Work Program describes EBA's 2023 focus areas.

EBA European Supervisory Examination Program (ESEP) 2023

- **What?** EBA published the [European Supervisory Examination Program \(ESEP\)](#) for 2023 on October 27, 2022. ESEP identifies the key topics that need to attract supervisor attention across Europe. The ESEP intends to provide input into the planning processes of prudential supervisors and to shape their supervisory practices. For 2023, four key topics have been identified that require supervisory attention: (i) macroeconomic and geopolitical risks, (ii) operational and financial resilience, (iii) transition towards sustainability and digitalization, and (iv) money laundering and terrorist financing risks in the supervisory review and evaluation process (SREP) and in internal control/governance.
- **Who?** The ESEP is relevant not only to supervisors but also to colleges of supervision, since convergent practices and methods are indispensable in the context of cross-border banking groups.
- **When?** The EBA will consider how the key issues put forward by the ESEP are (i) embedded in the competent



authorities' priorities for 2023, and (ii) reflected in their respective activities throughout the year. We expect that the focus of national regulators in 2023 will therefore be more directed on the above four key issues.

EIOPA Single programming document 2023-2025

- **What?** On September 30, 2022, EIOPA published its [Single programming document 2023-2025](#), which includes the annual work plan for 2023. In the Single programming document 2023-2025, EIOPA describes its focus areas for the years 2023-2025 and its priorities for 2023. In formulating its priorities for 2023, EIOPA based its work on six areas of focus: (i) integrating sustainable finance into all areas of work, (ii) supporting the market and supervisory community through digital transformation, (iii) enhancing the quality and effectiveness of supervision, (iv) ensuring technically sound prudential and conduct of business policies, (v) identifying, assessing, monitoring and reporting risks to financial stability and conduct of business and promoting preventive policies and mitigating measures, and (iv) ensuring good governance, agile organization, cost-effective management of resources and a strong corporate culture. Specific sections of this Outlook discuss EIOPA's Work Program in more detail.
- **Who?** Given the nature of EIOPA's supervisory activities, the Single Programming Document 2023-2025 is particularly relevant to the insurance and pension industry.
- **When?** The Single programming document describes EIOPA's focus areas for the years 2023-2025.

ACCOUNTING FIRMS

Act on the future of the accountancy sector

- **What?** On August 9, 2022, the Ministry of Finance published the proposal for an [Act on the future of the accountancy sector](#). The bill seeks to amend a number of accountancy laws, including the Audit Firms Supervision Act (Wta). The amendments relate, among other things, to the establishment, reporting and publication of "audit quality indicators," the strengthening of the internal governance of the largest audit firms, the simplification and strengthening of the AFM's supervision of non-oob audit firms, and the lowering of the threshold for reporting to the AFM any deficiencies found in a statutory audit. The bill also includes a power for the NBA to designate an audit firm in cases where an audit client does not find an audit firm willing to conduct the statutory audit.

Furthermore, the proposal aims to make it possible for the AFM to impose a measure on audit firms in case of serious deficiencies in individual statutory audits conducted by auditors. The Dutch Trade and Industry Appeals Tribunal (CBB) had put a stop to this under the current Wta in its [rulings of June 18, 2019](#). It is now proposed to introduce a (result) obligation that the quality control system of an audit firm ensures that serious deficiencies in statutory audits are prevented. The aim is that the AFM can supervise compliance with this new requirement on the basis of examination of a selection of audit files.

- **Who?** Accountants and accounting firms.
- **When?** On December 5, 2022, the Council of State published its [opinion](#) (critical in parts). The Act must now pass through the Dutch House of Representatives. The intended effective date of the bill is not clear at this time; the bill provides for a differentiated effective date because, according to the minister, some provisions require longer preparation time than others.

AFM clarifies expectation regarding incidents

- **What?** On November 24, 2022, the AFM published a [revised interpretation](#) of the term 'incident' under the Wta and the Decree on the Supervision of Accountants Organizations (Bta). In this document, the AFM sets out its interpretation of the notion of 'incident' and explains what responsibilities an audit firm has if an incident occurs. The AFM gives some examples of events in which, in its opinion, there will usually be an incident and the AFM thus expects an incident report.
- **Who?** Accounting firms.
- **When?** We expect that in 2023 the AFM will pay additional attention to the compliance of audit firms with the incident reporting requirement.

AFM investigation into client acceptance process

- **What?** On December 15, 2022, the AFM [published](#) the results of its first investigation into audit firms with a regular license. These are audit firms that perform statutory audits but are not licensed to conduct PIE audits, and have been under direct supervision of the AFM since 2022. The AFM has examined the client and engagement acceptance policy (CEAC) and its implementation in 83 statutory audits at 30 of these audit firms. The AFM concludes that improvements in CEAC are necessary and that the industry should start working on them immediately.
- **Who?** Accounting firms with regular (non-oob) licenses.
- **When?** Ongoing. The AFM states that it will actively



monitor quality improvement for CEAC in 2023 and beyond and, if necessary, adjust its supervisory activities accordingly.

EMIR

Extension of temporary exemption regime for intra-group contracts

- **What?** On June 13, 2022, the ESAs [published](#) a final report with draft technical standards (RTS) proposing to extend the regime of temporary exemptions for intra-group contracts (that were in force until June 30, 2022) by three years. This will accommodate the ongoing assessment of third country equivalence and allow for a review of the intra-group exemptions framework under the EMIR review. The previous regime of temporary exemptions for intra-group contracts expired on June 30, 2022. Because the adoption of the technical standards is expected to take time, the ESAs expect that until the end of the adoption process of the RTS, national regulators will not prioritize supervision on the related requirements for intra-group transactions and will apply their risk-based supervisory powers.
- **Who?** The technical standards are relevant to Trade Repositories, counterparties and CCPs.
- **When?** The draft technical standards have been submitted to the European Commission for approval. This approval is expected to take time.

ESMA proposal to increase clearing threshold for commodity derivatives

- **What?** ESMA [proposes](#) to increase the clearing threshold for commodity derivatives as included in EMIR by 1 billion. The proposal comes in response to the discussion paper on the review of clearing thresholds as included in EMIR, which ran from November 21, 2021 to January 19, 2022. ESMA submitted the proposal to amend the technical standards (RTS) related to clearing thresholds for commodity derivatives as included in EMIR to the European Commission.
- **Who?** Counterparties and CCPs.
- **When?** The technical standards have been submitted to the European Commission for approval.

Proposal Regulation limiting exposure of third country central counterparties

- **What?** The European Commission published on December 7, 2022, as part of the European Commission's [new proposals](#) to further develop

the Capital Markets Union (CMU), a [proposal](#) for a Regulation with measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of the Union's clearing markets. The proposal aims to make the equivalence framework in EMIR more proportionate and to better align cooperation with foreign supervisors with the risks of CCPs established in third countries. Also proposed is to simplify the equivalence procedure when the risks of central clearing in a third country are low. Moreover, this proposal aims to build EU central clearing capacity and thereby increase liquidity of EU CCPs, with the aim of reducing risks to EU financial stability from excessive exposures to third-country CCPs. Therefore, the proposal requires all market participants subject to a clearing obligation to maintain active accounts with CCPs in the EU for clearing products identified by ESMA as having substantial systemic importance for the financial stability of the EU. This European Commission proposal will be [consulted](#) until the first half of 2023.

- **Who?** Counterparties, CCPs and market participants using CCPs.
- **When?** The proposal is still in the EU legislative process, which will continue in 2023.

ESMA technical standards reporting requirements to Trade Repositories under EMIR

- **What?** On October 7, 2022, three technical standards were published in the Official Journal of the European Union regarding counterparty reporting requirements to Trade Repositories under EMIR:
 - [ITS](#) regarding the standards, formats, frequency and methods and arrangements for reporting;
 - [RTS](#) detailing the reconciliation of data between trade repositories and the procedures to be applied by the trade repository to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported; and
 - [RTS](#) specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used.
- **Who?** The technical standards are relevant to CCPs, counterparties and Trade Repositories.
- **When?** The technical standards came into force at the end of October 2022 and are applicable from April 29, 2024.

BENCHMARKS

ESMA consultation on application for recognition under Benchmark Regulation

- **What?** On November 28, 2022, ESMA published a [final report](#) with proposed amendments to Delegated Regulation 2018/1645 regarding the form and content of the so-called application for recognition. A benchmark administrator based in a third country can apply for recognition in the EU. In its application for recognition, that administrator must provide an overview of the arrangements, policies and procedures it has adopted to meet the applicable requirements of the Benchmark Regulation.
- **Who?** Benchmark administrators based outside the EU.
- **When?** The proposed changes will be submitted to the European Commission, which must then decide within three months whether to implement them.

ESMA consultation on changes to clearing and trading obligation in view of benchmark transition

- **What?** On July 11, 2022, ESMA published a [consultation paper](#) containing proposed amendments to, on the one hand, the EMIR clearing obligation on OTC derivatives as laid down in Delegated Regulation 2015/2205 and, on the other hand, the MiFIR trading obligation for derivatives as set out in Delegated Regulation 2017/2417. The proposed changes are related to the benchmark transition initiated with the Benchmark Regulation. As a result of the elimination of EONIA and LIBOR and the emergence of a new set of 'Risk-Free Rates' such as €STR, market participants enter into derivatives contracts with references to the new benchmarks. For this reason, the references to benchmarks in the clearing obligation and trading obligation for derivatives (as laid down in the aforementioned Delegated Regulations) should also be adjusted. The proposed adjustments build on [previous changes](#) related to the benchmark transition.
- **Who?** This development is mainly relevant to counterparties in derivatives, CCP and trading venues.
- **When?** The consultation ran until September 30, 2022. ESMA expects to publish a final report no later than early 2023.

CSDR

European member states agree on CSDR revision

- **What?** As part of the review of the CSDR, the European Commission published a [proposal](#) to amend the CSDR on March 16, 2022. On December 20, 2022, EU member states settled on their [negotiating position](#) regarding the proposed update of the CSDR. The CSDR revision aims to make securities settlement in the EU more efficient by (among other things) simplifying requirements and clarifying authorisation processes. The revision should (among other things) encourage cross-border settlement by CSDs, facilitate cooperation and exchange of information between regulators, streamline rules on mandatory buy-in (more on this in the topic below) and give CSDs access to banking-type ancillary services.
- **Who?** CSDs, CCPs, trading venues and market participants such as (bank) investment firms.
- **When?** Following the December 20, 2022 agreement between member states, the European Council will adopt its position and then enter into negotiations with the European Parliament.

ESMA publishes technical standards to suspend CSDR buy-in regime

- **What?** On June 2, 2022, ESMA published [technical standards](#) (RTS) to suspend the CSDR buy-in regime. ESMA's proposal includes suspending the application of the provisions related to the mandatory buy-in regime in the technical standards (RTS) on settlement discipline for three years, until possible changes to the existing CSDR buy-in regime become applicable (stemming from the CSDR revision described above). The CSDR provides rules for parties to prevent settlement of transactions from failing, and for the situation where settlement does fail, for rules on monitoring, sanctioning and so-called mandatory buy-ins. A mandatory buy-in simply refers to the situation where a buyer of unsettled securities, buys securities of the same type elsewhere in the market. If the price of this new transaction exceeds the price of the original (failed) transaction, the original (negligent) seller must reimburse the buyer for the difference.
- **Who?** CSDs, CCPs, trading venues and market participants such as (bank) investment firms.
- **When?** The postponement proposal has been sent to the European Commission for approval by ESMA, and will enter into force a few days after publication in the Official Journal of the European Union.



DLT pilot regime Regulation

- **What?** On June 2, 2022, the regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT) was [published](#). The regulation is part of the EU Digital Finance Package. The regulation introduces a pilot regime for multilateral trading facilities (MTFs) and central securities depositories (CSDs) using DLT. In doing so, these parties are temporarily exempted from certain requirements of MiFID II/MiFIR and CSDR, respectively. On July 11, 2022, ESMA published a consultation paper of [draft guidelines](#) on how parties should address their request for the aforementioned exemption to the competent supervisor.
- **Who?** The proposal is relevant to MTFs CSDs that (wish to) use DLT in their activities.
- **When?** The regulation will enter into force on March 23, 2023. ESMA's guidelines should also enter into force at that time.

ESMA publishes draft technical standards to amend Article 19 CSDR

- **What?** ESMA published [draft technical standards](#) to amend Article 19 CSDR on November 15, 2022. ESMA's proposal includes abolishing the separate process established in Article 19 of the Technical Standards (RTS) on settlement discipline for the collection and distribution of fines related to settlement failures on cleared transactions, in order to put CSDs entirely in charge of the collection and distribution process if fines.
- **Who?** CSDs, CCPs, trading venues and market participants such as (bank) investment firms.
- **When?** The technical standards have been sent to the European Commission by ESMA for endorsement, and will enter into force a few days after publication in the Official Journal of the European Union.

MARKET ABUSE REGULATION

EC new proposals Capital Markets Union

- **What?** On December 7, 2022, the European Commission presented a comprehensive set of new legislative proposals relating to clearing, corporate insolvency and listing of companies to make EU capital markets more attractive. This is a comprehensive package of laws and regulations aimed at further developing the Capital Markets Union. An [overview](#) of all legislative proposals under this framework can be found on the European Commission's website. The

legislative proposals will be discussed at the different players in this Outlook. It is mentioned at this point that one of the [proposals](#) deals with amending the Market Abuse Regulation (MAR) and aims to simplify or at least clarify a number of MAR provisions.

- **Who?** The proposals are relevant to, among others, securities issuers.
- **When?** The proposed legislative package consists of several draft regulations and draft directives. The timing of its entry into force will vary for each component. Given the size of the entire package further developments will take place in 2023, and 2024 will likely be the year when new rules will come into force.



SETTLEMENT INSTITUTIONS & CCPS

Note that the cross-sector [Integrity](#) section (think of the Wwft and sanction regulations) is also of great importance to settlement institutions (also referred to as ‘payment processing institutions’) and central counterparties (CCPs), as are the [FinTech & Crypto](#) section and the [Sustainability \(ESG\)](#) section. Subjects relating to the aforementioned topics are not covered - with a few exceptions - in this section, but only in the aforementioned specials. In addition, it is useful for settlement institutions and CCPs to take note of the [General](#) section, as it also covers more general topics that may affect these parties.

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

SETTLEMENT INSTITUTIONS

ECB

New oversight framework for electronic payment instruments, regulations and procedures
Exploration toward digital central bank money/a digital euro

NEW LAWS AND REGULATIONS

Further remuneration rules financial sector (Wnbfo)

OTHER DEVELOPMENTS

CPMI and IOSCO Report on cyber resilience of FMIs
Remuneration under the heading of dividends
Q&A Retention remuneration

CCPS

DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

European legal framework for recovery and resolution of CCPs

Dutch framework for recovery and resolution of CCPs

ESMA & EC

ESMA consults on CCP business reorganisation plans
Further developing the capital markets union
EC consultation Regulation mitigating exposure of third country central counterparties
ESMA temporarily amends collateral requirements for liquidity relief in energy derivatives market
ESMA guidelines on resolvability and cooperation arrangements
ESMA's strategic objectives for 2023-2025

SETTLEMENT INSTITUTIONS

ECB

New oversight framework for electronic payment instruments, regulations and procedures

- **What?** On November 22, 2021, the ECB (the euro area monetary authority) [published](#) the Eurosystem oversight framework for electronic payment instruments, schemes and arrangements (PISA). Among other things, it sets (new) requirements for the oversight on electronic payment instruments (such as payment orders) and the schemes and arrangements related to them, including settlement services such as the initiation and acceptance of payment orders and clearing and settlement. We already wrote about this framework in the Outlook [2021](#) & [2022](#). The PISA framework replaces the existing harmonized oversight approach and standards for Eurosystem payment instruments and is particularly relevant for entities providing a payment scheme or payment arrangement. The oversight framework also extends to digital payment tokens and services related to crypto-assets. The new framework includes an [exemption policy](#) and a new [assessment methodology](#).
- **Who?** Among others, card schemes and settlement institutions, as well as certain payment institutions and electronic money institutions.



- **When?** Entities already under Eurosystem oversight were required to comply with the new oversight framework as of November 15, 2022. Other entities must comply with this new oversight framework within one year of being notified that they are covered by the new oversight framework.

Exploration toward digital central bank money/a digital euro

- **What?** In October 2020, the ECB published a comprehensive exploration of central bank digital currency (CBDC). The ECB outlined the possible contours and associated minimum requirements of CBDC and called for public comments. CBDC seems best described as (i) fiat money (ii) held in digital form in accounts at central banks and (iii) accessible to anyone - both citizens and businesses. CBDC basically amounts to being able to hold a money account directly with a central bank (in the Netherlands this is DNB). The introduction of CBDC could thus make major changes to the current payments landscape, including how payments are executed, processed, accepted and settled. Following this, the Eurosystem (ECB + national central banks in the euro countries) has started the research phase of a "digital euro" project. In this phase at least one variant of CBDC that must meet certain minimum requirements will be explored.
- **Who?** Relevant to all settlement institutions.
- **When?** The European Commission has [announced](#) a legislative proposal on a digital euro for early 2023.

NEW LAWS AND REGULATIONS

Further remuneration rules financial sector (Wnbfo)

- **What?** On January 1, 2023, the Further Remuneration Measures for Financial Undertakings [Act](#) (Wnbfo) entered into force. This law introduced a number of changes to the remuneration rules as contained in the Wft, including (i) the introduction of a statutory retention period of at least five years for shares paid as a component of a fixed remuneration and (ii) a tightening of the averaging rule for non-CLA staff, who may be awarded a higher bonus than 20% under certain conditions. The AFM [published](#) a notification form for deviating from the bonus cap for non-CLA staff at the end 2022.
- **Who?** Settlement institutions with a seat in the Netherlands.

- **When?** The changes went into effect on January 1, 2023. The existing contracts of employees, who will no longer be able to use the deviation from the bonus cap for non-CLA staff as of January 1, 2023, must be adjusted by January 1, 2024.

OTHER DEVELOPMENTS

CPMI and IOSCO Report on cyber resilience of FMIs

- **What?** On Nov. 29, 2022, the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) published a [report](#) on cyber resilience of financial market infrastructures (FMIs). Management of operational risks (including cyber resilience) by FMIs is part of the Principles for financial market infrastructures. The ECB also includes these Cyber resilience oversight expectations for financial market infrastructures in its oversight on FMIs. The CPMI/IOSCO report finds that the Guidance on cyber resilience for financial market infrastructures is reasonably well applied. It does find one serious problem. Namely, there is a small number of FMIs that have not yet developed their cyber response and recovery plans sufficiently to meet the two-hour recovery time objective (2hRTO). This means that no plans have been designed to enable the FMI to ensure that critical IT systems can resume within two hours of a disruption, even in the case of extreme (but plausible) scenarios. In addition, there are four areas of concern: (i) deficiencies in established response and recovery plans to meet the 2hRTO in extreme cyber attack scenarios; (ii) a lack of cyber resilience testing following major system changes; (iii) a lack of comprehensive, scenario-based testing; and (iv) insufficient involvement of relevant stakeholders (e.g., FMI participants, critical service providers, or affiliated FMIs) in testing. These issues appear to pose challenges to the cyber resilience of FMIs. CPMI and IOSCO urge FMIs and their supervisors to address these issues with the highest priority. The relevant supervisory authorities are responsible for ensuring that the principles are implemented by individual FMIs.
- **Who?** The report covers FMIs, including systemically important payment systems (SIPS). DNB considers Dutch settlement institutions as FMIs.
- **When?** CPMI and IOSCO have called for these issues to be addressed with the highest priority. We therefore expect a further focus on cyber resilience by FMI supervisors in 2023.

Remuneration under the heading of dividends

- **What?** On August 1, 2022, the European Court of Justice (ECJ) [issued an important ruling](#) on the question of the extent to which dividends on employee shares can qualify as variable remuneration. Not surprisingly, the ECJ reads everything very broadly (and teleologically). Although the ruling was made with respect to regulated mutual fund managers, the point addressed in the ruling is relevant to all regulated market participants. After all, the issue at stake is what remuneration mechanisms are considered variable remuneration. As such, the considerations in the ruling are also relevant for assessing participation structures in settlement institutions.
- **Who?** Settlement institutions.
- **When?** It is expected that regulators will pay extra attention to participation structures in 2023.

Q&A Retention remuneration

- **What?** On December 2, 2022, DNB [published](#) a Q&A regarding retention remuneration, which was consulted earlier in the year. In the Q&A, DNB indicates which review frameworks it uses for retention remuneration for which consent is required and for cases where such consent is not required. It also indicates which elements must be substantiated in any case, even if no prior consent is required.
- **Who?** Settlement institutions.
- **When?** Effective immediately.

CCPS DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

European legal framework for recovery and resolution of CCPs

- **What?** The [Regulation](#) on a Framework for the Recovery and Resolution of Central Counterparties aims to create a credible framework for recovery and resolution and to ensure, to the greatest extent possible, that CCPs capture measures to overcome financial distress, to maintain the critical functions of a CCP that fails or is likely to fail, while the remaining operations are liquidated under normal insolvency procedures. This

will safeguard financial stability and prevent significant adverse effects on the financial system. It is also intended to preserve its ability to serve the real economy while ensuring that the failure of a CCP costs taxpayers as little as possible. To deal efficiently with failing CCPs, competent authorities should have the power to impose preparatory measures on CCPs. A minimum standard should be set regarding the content and information to be included in recovery plans to ensure that all CCPs in the European Union have sufficiently detailed recovery plans should they face financial difficulties. The Regulation provides the parameters to be observed in a recovery plan. Parts of the Regulation have been elaborated by the European Commission in delegated regulations ([C\(2022\)8433](#), [C\(2022\)8434](#), [C\(2022\)8435](#)).

- **Who?** The recovery framework is relevant to CCPs and the resolution authority of the relevant CCPs (to which latter parties the power to apply the resolution tools and to exercise the resolution powers as described in this Regulation is granted).
- **When?** The majority of the Regulation has been in effect since August 12, 2022, and as of February 12, 2023, the remaining Articles (relating to pre-funded specific own resources and the provision of compensation to non-defaulting clearing members) will come into effect.

Dutch framework for recovery and resolution of CCPs

- **What?** The implementation of the European law framework for recovery and resolution of CCPs described above requires changes to several Dutch laws, including the Financial Supervision Act (Wft). Although the Regulation has direct effect in the Dutch legal order, a number of provisions require amendments to Dutch laws to enable the functioning of the Regulation. These are parts of the Regulation that relate to enforcement, governance, bankruptcy and legal protection. The Dutch framework for recovery and resolution of CCPs appears as an [Implementation Act](#) and an [Implementation Decree](#).
- **Who?** The recovery framework is relevant to CCPs and the resolution authority of the relevant CCPs. In the Netherlands, DNB is designated as the resolution authority.
- **When?** The Implementation Act was published in the Dutch Gazette on November 3, 2022, and entered into force on November 4, 2022. The Implementation Decree has already entered into force in 2022.



ESMA & EC

ESMA consults on CCP business reorganisation plans

- **What?** On September 22, 2022, ESMA published a [consultation paper](#) on proposed rules for CCPs' business reorganisation plans. The consultation paper contains draft technical standards (RTS) related to business reorganisation plans for CCPs. The draft RTS are part of the European framework for the recovery and resolution of CCPs. The draft RTS contain clarifications and covers the minimum elements that must be included in CCP business reorganisation plans, as well as the criteria they must fulfil. The objective of the proposed measures is to ensure that CCPs that are (likely) to fail maintain the continuity of their critical functions and core business lines and to reduce the impact on the EU financial system.
- **Who?** CCPs.
- **When?** The consultation ran until December 1, 2022, and ESMA expects to submit a final report on the RTS, including feedback from the consultation, to the European Commission in Q1 2023.

Further developing the capital markets union

- **What?** On Dec. 7, 2022, the European Commission issued [new proposals](#) to further develop the Capital Markets Union (CMU). Part of these proposals include measures: (i) to make EU clearing services more attractive by enabling CCPs to expand their products more easily and quickly and encouraging market participants to build liquidity at EU CCPs, (ii) help build a safe and resilient clearing system by strengthening the EU supervisory framework for CCPs, for example by increasing the transparency of margin calls, and (iii) reduce excessive exposures of EU market participants to CCPs in third countries, particularly for derivatives identified by ESMA as substantially systemic.
- **Who?** CCPs.
- **When?** The proposals are still in the EU legislative process that continues through 2023.

EC consultation Regulation mitigating exposure of third country central counterparties

- **What?** Part of the further development of the Capital Markets Union (CMU) is a [proposed](#) Regulation with measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of the Union's clearing markets. The changes are intended to make

the EU a more attractive clearing hub. They include measures (among others) to improve the liquidity of EU CCPs and strengthen the EU's supervisory framework. The changes will be [consulted](#) from December 9, 2022 through the first half of 2023. See also the more detailed topic on this Regulation in the General section of this Outlook.

- **Who?** CCPs.
- **When?** Because the proposal is not yet available in the languages of all EU countries, the consultation will continue until a time to be determined in 2023.

ESMA temporarily amends collateral requirements for liquidity relief in energy derivatives market

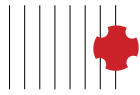
- **What?** ESMA has [proposed](#) measures to alleviate liquidity pressure on non-financial counterparties (NFCs) operating in gas and electricity regulated markets cleared in EU-based CCPs. The measures have been proposed as draft technical standards (RTS) containing a temporary expansion of the pool of CCP eligible collateral to uncollateralised bank guarantees for NFCs acting as clearing members and to public guarantees for all types of counterparties.
- **Who?** CCPs.
- **When?** The RTS were adopted by the Commission and the [delegated regulation](#) entered into force on November 29, 2022.

ESMA guidelines on resolvability and cooperation arrangements

- **What?** ESMA published two final reports on November 17, 2022, on the [guidelines on the assessment of resolvability](#) and the [guidelines on the cooperation arrangements](#). The guidelines on the assessment of resolvability set out aspects that resolution authorities should use when assessing the extent to which a CCP can be resolved without relying on certain types of external financial support, including public financial support or central bank assistance. The guidelines on the cooperation arrangements specify provisions to be included in cooperation arrangements entered into between resolution authorities and third-country authorities.
- **Who?** CCPs.
- **When?** The guidelines apply after publication by ESMA on its website in the official languages of the European Union. This is followed by the comply or explain procedure.

ESMA's strategic objectives for 2023-2025

- **What?** On October 11, 2022, ESMA's CCP supervisory committee [presented](#) its strategic objectives for the years 2023-2025. The objectives are: (i) strengthening the EU CCP resilience, (ii) addressing cross-border risks from third-country CCPs, and (iii) deepening risk- and data-driven supervision. These objectives are in line with the ESMA Strategy 2023-2028 (please see the General section of this Outlook).
- **Who?** CCPs.
- **When?** The years 2023-2025.



INVESTMENT FUNDS

This section discusses the rules for managers of alternative investment funds (AIFs) and undertakings for collective investment in transferable securities (UCITS). Instead of the formal legal term “investment institution”, we use the market-standard term “investment fund” as a generic term for all types of investment vehicles.

Managers who are allowed to provide investment services in addition to managing investment funds (managers with MiFID II top-up), must comply with many of the rules that apply to investment firms for that part of the service. Therefore, we recommend that those managers take note of the [Investment Firms](#) section of this Outlook in addition to this section. The cross-sectoral sections [Integrity](#) and [Sustainability \(ESG\)](#) are also of great importance to managers. Topics related to these are not covered in this section, but only in the aforementioned specials.

Finally, it is useful for investment fund managers to take note of the [General](#) section, as it includes topics that may affect managers and investment funds.

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

AFM SUPERVISION

AFM Trend Monitor 2023

AFM draws managers’ attention to AIFMD reporting

Start AIFMD reporting non-EU managers

AFM highlights valuation procedures of real estate funds

DNB OVERSIGHT

Supervision in focus

Q&A Retention fees

ESMA AND EBA

ESMA Work Programme 2023

ESMA Assessment of the Brexit relocation processes

ESMA Consultation Guidelines use of ESG in fund names

EBA Consultation on technical standards shadow banking entities

ESMA supports approach to liability driven investment funds

ESMA Q&A AIFMD - SPACs

ESMA Q&A PRIIPs

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

Revision of the AIFM Directive

Revision of the ELTIF Regulation - toward a full-fledged retail product?

KID obligation for retail AIFs and UCITS

PRIIPs - Amendments KID

General review PRIIPs

Consultation adjustments Short Selling Regulation

Review of the MMF Regulation

Updates Guidelines stress test scenarios MMF-regulation

EC exploration retail investment strategy

Further remuneration rules financial sector (Wnbfo)

Proposed amendment to House of Whistleblowers Act

Changes Nrgfo

Possible revisions EuVECA and EuSEF

NEW LAWS AND REGULATIONS

Level 2 regulations on cross-border distribution

AIFMD light regime for EU small managers

Regulation for foreign UCITS

Technical changes to UCITS

Financial Markets Amendment Act 2022-II - group DNO

Financial Markets (Amendment) Decree 2021 - group

DNO

Digital operational resilience regulation for the financial sector (DORA).

Consultation on measures to prevent dividend stripping

OTHER DEVELOPMENTS



Supervision under Integrity and Sustainability
FSB - Strengthening liquidity management of
open-end funds.
Remuneration under the heading as dividends

AFM SUPERVISION

AFM Trend Monitor 2023

- **What?** On November 3, the AFM [published](#) Trendzicht 2023, in which the AFM addresses the main trends and associated risks in the financial sector. For asset management, the AFM highlights the strategic repositioning of parties, the risks of outsourcing, liquidity risks due to the current volatile market, valuations, sustainability, further digitalization and a possible waterbed effect as banks continue to shape their gatekeeper role and risks may shift toward asset management. For the asset management sector, the AFM has prepared a so-called “risk map”. For a summary of this, see the [Investment Firms/Trend Monitor 2023](#) section in this Outlook.
- **Who?** Primarily licensed managers of AIFs and UCITS, but in principle equally relevant to AIFMD light managers.
- **When?** Immediately.

AFM draws managers’ attention to AIFMD reporting

- **What?** On Nov. 8, the AFM issued a [warning](#) about AIFMD reporting, reminding managers that they must comply with mandatory reporting. The deadline for delivering the Q4 2022 report, the 2022 (second) semi-annual report and the 2022 year-end report is January 31, 2023. Fund-of-fund managers have until February 15, 2023. End-of-year reporting is included in the annual *Data Quality Engagement Framework* (DQEF) audit.
- **Who?** All EU managers of AIFs (including managers under the light regime).
- **When?** No later than January 31, 2023 or February 14, 2023 (managers with fund-of-fund strategy).

Start AIFMD reporting non-EU managers

- **What?** In the same [warning](#), the AFM pointed out the AIFMD reporting for non-EU managers. Until 2022, non-EU managers were exempt from this obligation. As of 2023, they must also start complying with mandatory reporting. The 2023 reports will not be checked for data quality (DQEF). The DQEF will only be performed on non-EU managers’ reports starting in 2024.
- **Who?** Managers outside the EU (Non-EU AIFMs).
- **When?** From Q1 2023.



AFM highlights valuation procedures of real estate funds

- **What?** In a [sector letter](#) dated late November 2022, the AFM shared its findings from a previous investigation into valuation procedures of property fund managers. It points out the importance of a good valuation procedure. It specifically refers to certain aspects regarding valuation frequency, explanation of the valuation model used, explanation of the controls, explanation of the assurance of the professional competence and independence of the staff performing the valuation and an explanation of the periodic evaluation of the valuation procedure. The findings will be used by the AFM in its further supervision, partly because property valuation risks will remain relevant in the coming period.
- **Who?** Managers of real estate funds.
- **When?** Immediately.

DNB OVERSIGHT

Supervision in focus

- **What?** On November 22, 2022, DNB [published](#) the document Supervision in focus, in which DNB looks back on its activities of last year and indicates its priorities for 2023. Specifically regarding managers with MiFID II top-up, it will focus on further implementation of IFD/IFR. Furthermore, DNB (together with the AFM) is investigating the possibility of imposing a leverage limit on an investment fund when systemic risks arise.
- **Who?** Licensed managers and especially managers with MiFID II top-up.
- **When?** During 2023.

Q&A Retention fees

- **What?** On December 2, 2022, DNB [published](#) a Q&A regarding retention fees, which was consulted earlier in the year. In the Q&A, DNB indicates which review frameworks it uses for retention fees for which consent is required and for cases where such consent is not required. It also indicates which elements must (be able to) be substantiated in any case, even if no prior consent is required. The AFM [announced](#) on its website that the Q&A consultation is also being conducted on its behalf.
- **Who?** Managers within the scope of the remuneration rules, basically AIFMD and UCITS licensees.
- **When?** Immediately.

ESMA AND EBA

ESMA Work Programme 2023

- **What?** On September 21, 2022, ESMA published its [2023 Annual Work Program](#). ESMA identifies its priorities for 2023. As main themes, ESMA identifies improving and complementing sustainable finance regulation, facilitating innovation, efficient use of data and digitalization. Specifically for (managers of) investment funds and UCITS, ESMA will focus primarily on harmonization of rules and interpretations by regulators and assistance in establishing the single rulebook with respect to the review of the AIFM Directive, ELTIF Regulation and Money Market Funds (MMF) Regulation. In addition, through the Joint Committee, it will also participate in regulatory activities on PRIIPS, SFDR and the Taxonomy Regulation.
- **Who?** AIF and UCITS managers.
- **When?** During 2023.

ESMA Assessment of the Brexit relocation processes

- **What?** On [December 8, 2022](#), ESMA published a Peer review report called "Peer review into the NCAs: handling of relocation to the EU in the context of the UK's withdrawal from the EU". A special committee investigated the quality and depth of scrutiny of various local regulators, including the AFM, in applications for licenses of 'relocating entities' from the UK. Among other things, the committee has looked at UCITS and AIFMD license applications. It found that there is room for improvement, including in the areas of substance and outsourcing. It offers a very interesting and relevant insight into the processes of the AFM and the requirements set by the AFM, as well as points where there is room for improvement.
- **Who?** The report is addressed to local regulators, in this case the AFM. However, the report is also highly relevant to fund managers applying for a license and licensees.
- **When?** Continuing through 2023.

ESMA Consultation Guidelines use of ESG in fund names

- **What?** On [November 18, 2022](#), these Guidelines were consulted by ESMA. In the consultation, ESMA applies the standard that when there is an ESG claim in the name, at least 80% of the investments must actually be invested in that category. For this, it follows the mandatory disclosures in Annex II and III of the



Delegated Regulation to the SFDR. When there is “sustainable” or another word derived thereof in the name, the above also applies. However, for those funds, they must invest (as part of the 80% threshold) at least 50% in “sustainable investments” within the meaning of the SFDR. Fund documentation and other marketing communications will therefore need to be updated in a timely manner.

- **Who?** AIF and UCITS managers (offering funds with an ESG claim in the name).
- **When?** Entry into force of the Guidelines is likely by the end of 2023. Already existing funds will have a six-month transition period to (i) comply with the Guidelines or (ii) change their name.

EBA Consultation on technical standards shadow banking entities

- **What?** On July 26, 2021, EBA [published](#) a consultation for draft technical standards to identify shadow banking entities under CRD IV. Based on the draft standards, this may include certain types of investment funds. On May 23, 2022, the [final technical standards](#) were sent to the EC. To date, the EC has not yet endorsed them.
- **Who?** Certain types of investment funds as listed in the draft standards.
- **When?** EBA prepares draft technical standards which are then submitted to the EC. The timelines are not yet clear, especially since it has taken more than six months for the EC to endorse. It is important for managers to continue to monitor this development.

ESMA supports approach to liability driven investment funds

- **What?** Following the crisis after the presentation of the “Mini Budget” in the UK, which was (partly) caused by Liability Driven Investment Funds (LDI funds) and their UK Gilts, the Central Bank of Ireland (CBI) and the Luxembourg CSSF published a [letter](#) on November 30, 2022. They sent this letter to managers of LDI funds. Since the crisis, LDI (sterling-listed) funds have been building buffers to accommodate any adjustments in returns with equity. When these LDI funds want to reduce the accumulated buffers (which, incidentally, is not recommended), a number of steps must be taken. For example, the relevant regulators must be informed and the following must be submitted: (i) a thorough analysis, (ii) calculations regarding the ability to continue to function soundly with a reduced buffer and (iii) a step-by-step plan to restore the buffer in volatile market conditions. In addition, all LDI funds (including those listed in other currencies) are required to remain resilient (at sub-fund level) to absorb market shocks. On the

same day, ESMA issued a [press release](#) indicating that it will help coordinate supervisory actions, be supportive in improving information exchange between national supervisors, and take possible convergent measures to address risks that pose potential threats to financial stability.

- **Who?** Managers of funds with an LDI strategy.
- **When?** Immediately.

ESMA Q&A AIFMD – SPACs

- **What?** On [December 16](#), ESMA published another update to its Q&A regarding the AIFMD. In this update, ESMA addresses the question of whether so-called Special Purpose Acquisition Companies (SPACs) qualify as AIFs and thus fall within the scope of the AIFMD.
- **Who?** Parties considering launching a SPAC.
- **When?** Immediately.

ESMA Q&A PRIIPs

- **What?** On December 21, ESMA also published an [update to its Q&A](#) regarding the PRIIPs Regulation. ESMA is issuing this update because there will be changes with respect to KID as of January 1, 2023 (see below). Some Q&As therefore need to be updated and a few have been removed.
- **Who?** Licensed managers of retail AIFs and UCITS.
- **When?** By January 1, 2023.

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

Revision of the AIFM Directive

Introduction

Since July 22, 2017, the EC has been working on an evaluation of the AIFMD. In the 2021 Outlook, we already paid attention to the (long) run-up to the outcome of that evaluation. On November 25, 2021, the long-awaited clarity came from the EC with a [proposal](#) to amend the AIFM Directive and UCITS Directive (the Proposal). Meanwhile, the Council has also made its [position](#) known by proposing several changes to the initial Proposal, although this is not yet its final position.

EC proposal

For a long time it was unclear whether, as a result of the review, the EC would move to amend the Level 1 text



of the AIFM Directive or to modify certain requirements of the AIFMD framework in a less intrusive way, without amending the Level 1 text. Much input was provided from the market on an earlier consultation round in which the EC asked for input on certain topics. The general consensus from the market was that they preferred certain topics to be clarified, without adjusting the Level 1 text of the AIFM Directive.

The EC is finally opting to amend the Level 1 text of the AIFM Directive after all, but proposes a relatively limited amendment. Based on initial signals from the market, the response to this is largely positive. The Proposal also amends the UCITS IV Directive in certain parts to ensure consistency between the AIFMD and UCITS frameworks.

Key take-aways

As far as we are concerned, the key take-aways for AIF managers are:

- i. Substance.** The management of a manager must be determined by at least two natural persons working and residing full time in the Netherlands. The license applicant must also provide detailed information on the intended day-to-day policymakers.
- ii. Loan origination.** Managers who manage funds that provide loans (*loan origination*) must meet additional requirements in areas such as investment restrictions, risk management, liquidity management and control of conflicts of interest. These must be closed-end funds.
- iii. Liquidity management.** Additional liquidity management requirements with respect to open-end funds and a requirement to inform investors about the liquidity management techniques that the AIF may use. Managers would be required to include at least one liquidity management technique in their fund documentation.
- iv. Outsourcing.** Further tightening of the possibilities for outsourcing and its conditions. There will also be so-called peer reviews in which ESMA will conduct an analysis among local supervisors, more specifically with respect to the measures taken to prevent AIFMs, which outsource portfolio and/or risk management to service providers in third countries, from becoming so-called letterbox companies.
- v. Depositaries.** The possibility of appointing a depositary in a member state other than the one in which the AIF is established.
- vi. Costs.** Additional disclosure requirements on costs charged with respect to an AIF, including periodic reporting thereon.

Also relevant for UCITS managers

The Proposal also amends the UCITS IV Directive. The aim is to achieve greater harmonization of rules between the

two directives that dominate the supervision of managers in Europe. More specifically, parts (i), (iii) and (iv) above are also relevant for UCITS managers. There will also be further harmonization between the reporting requirements of UCITS and AIFs.

Council position

The following elements stand out in the Council's position compared to the initial Proposal:

- i. Substance.** No significant change.
- ii. Loan origination.** The Council's proposal only allows originate-to-hold and not originate-to-distribute. Open-end funds will be allowed in specific cases. There may be an exception for shareholder loans.
- iii. Liquidity management.** Managers would be required to include, instead of one, a minimum of two liquidity management techniques in their fund documentation. Reporting of the use of such a technique would be limited to specific techniques.
- iv. Outsourcing.** The Council proposes further reporting with respect to outsourcing by managers of AIFs and UCITS. Further, if a distributor distributes funds for its own account, this does not qualify as outsourcing.
- v. Depositaries.** Under the Council's proposal, there will not be an unrestricted European passport for depositaries, but the manager will have to demonstrate that no depositary service is available in the relevant member state (for example, because there is no expertise on a particular asset class).
- vi. Costs.** No significant change.

Continued

The proposal has yet to be finally negotiated at the European level. Once the proposal is finally adopted, there is currently provision for member states to then have 24 months to implement the changes into national law.

It also remains to be seen whether the Level 2 text relating to the AIFMD (the Delegated Regulation) will be amended. This is to be expected in view of the amendments to various Level 1 provisions that will be further detailed in the Level 2 text.

We will, of course, continue to monitor developments closely in the near future.

✚ Revision of the ELTIF Regulation – toward a full-fledged retail product?

Introduction

Together with the proposal to amend the AIFM Directive, the EC also [published](#) a proposal to amend the European Long Term Investment Fund (ELTIF) Regulation. This is still



a relatively unknown framework in the Netherlands. There are no ELTIF funds registered, but this proposal might just change that in the future.

Opportunities ELTIF Regulation

Briefly, the framework is designed for specific closed-end AIFs that invest in long-term investments (such as private equity, infrastructure or real estate) and where the AIFs are offered to retail investors. The ELTIF Regulation provides for the possibility for authorized AIFMs to apply for a separate label for AIFs that meet the investment restrictions set forth in the ELTIF Regulation. With this label, managers can then offer the ELTIF fund cross-border to retail investors in the EU. This system is similar to the EuVECA and EuSEF frameworks.

Cross-border offering of “ordinary” AIFs to retail investors on the basis of a European passport is not possible under the AIFM Directive. A separate check must then be made in each member state as to whether the national law of that member state permits an offer to retail investors. Thus, the ELTIF framework is potentially a nice complement to the UCITS framework, but for AIFs. An additional advantage of an ELTIF is the favorable tax treatment for investors in certain member states.

Restrictions

In practice, however, the ELTIF label is still hardly popular among managers, especially in the Netherlands. To obtain an ELTIF label, the manager must meet many different requirements in addition to the AIFMD framework. These requirements relate to the organization of the manager, investment restrictions for the ELTIF fund and various investor protection rules. For example, there are strict requirements on the type of assets in which an ELTIF fund may invest, there are investment restrictions and diversification requirements, there are thresholds for retail investors to be able to invest (namely a minimum of EUR 10,000 and a maximum of 10% of freely disposable capital) and there is a kind of suitability test for retail investors.

Proposed changes

With the proposed changes, the EC hopes to make the ELTIF framework more attractive to fund managers. The proposed changes include:

- Broadening the type of assets in which an ELTIF may invest, especially in the area of different types of movable and immovable assets.
- Remove investment barriers for retail investors.
- Reduced rules when an ELTIF is offered exclusively to professional investors.
- Additional liquidity requirements to ensure sufficient liquidity within the ELTIF and allow “matching” between investors who want to sell their stake and investors

who want to buy a stake in the ELTIF - simultaneously - which can then still give some flexibility to exit despite the closed-end nature of ELTIFs.

With this, the EC hopes that the ELTIF fund will become an attractive product for professional and retail investors seeking exposure to long-term investments, allowing additional capital to flow into the real economy.

Recent proposals

Regarding the proposal, a [preliminary agreement](#) has been reached at the European level. Some additional changes to the proposal have been proposed by the Council and the European Parliament that will make the ELTIF regime even more attractive. The text was [published](#) on December 7, 2022. From it we note that, among other things and most prominently, provision is made for:

- Introduction of a master feeder ELTIF;
- Broaden opportunities for fund-of-funds, by allowing them to invest in other ELTIFs, EuVECA, EuSEF, UCITS and EU AIFs;
- Lowering the threshold, to 55%, of investments in eligible assets;
- Certain possibilities for an open-end structure, under specific conditions;
- Explicit ability to “match” potential investors and exit requests, under specific conditions;
- For retail ELTIFs certain investment protection measures derived from MiFID II.

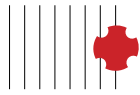
Continued

Once the proposal is finally adopted, it is currently scheduled to take effect 9 months after that. That is a bit longer than the Commission’s proposal, which assumed 6 months, but still a fairly short period of entry into force.

We hope this will boost the ELTIF framework, both for offers to retail and professional investors. At least the European legislature has done its best to do so.

KID obligation for retail AIFs and UCITS

- **What?** Two amendments were published in the Official Journal on December 15, 2021, regarding the PRIIPs Regulation and the mandatory Key Information Document (KID). The [first amendment](#) concerns (again) an extension of the exception for retail AIFs and UCITS to prepare an KID under PRIIPs (they must now prepare an Key Investor Information Document (KIID)). This postponement allows market participants to comply with the amended rules regarding the KID (see below). The [second change](#) involves an amendment that modifies the UCITS Directive and, in brief, provides that where a UCITS is offered exclusively to professional



investors, with PRIIPs then in principle not applicable, the manager has the choice of preparing an KIID or an KID. On June 24, 2022, the EC announced that the [deferral](#) would apply until January 1, 2023.

- **Who?** Licensed managers of retail AIFs and UCITS. Managers offering UCITS to professional investors only may also continue to use the KIID.
- **When?** January 1, 2023 (it was previously supposed to be July 1, 2022).

PRIIPs – Amendments KID

- **What?** On Sept. 7, the EC published amendments with respect to the Delegated Regulation to the PRIIPs Regulation, detailing KID requirements. These appeared in the [Official Journal](#) of the European Union on December 20, 2021. The amendments include (i) new methods to calculate appropriate performance scenarios and a revised presentation of these scenarios, (ii) how costs should be presented and (iii) how transaction costs should be calculated. In addition, there are several changes that apply specifically to retail AIFs and UCITS. For example, certain types of AIFs and UCITS are subject to the obligation to provide information on past performance. In addition, specific regulations apply with respect to sub-funds, share classes, fund-of-funds and feeder funds. Please note that open-end investment funds and investment funds open for subscription are also subject to website disclosure requirements.
- **Who?** From January 1, 2023, this will be relevant to all AIFMs and UCITS managers. PRIIPs does not apply to AIFs offered only to professional investors.
- **When?** The changes are effective as of January 1, 2023.

General review PRIIPs

- **What?** A study on the overall functioning of the PRIIPs Regulation is currently underway, in view of Article 33 PRIIPs Regulation. The EC has asked the ESAs to give [their advice](#) on many different topics in the PRIIPs Regulation. In connection with this, the ESAs themselves then [sought input](#) back from the market and [provided input](#) on April 29, 2022. Right now, we are waiting for the EC itself to come up with a proposal. The advice requested by the EC indicates that this will be an implementation of the Retail Investment Strategy (see below). At this time, the strategy has not yet been published.
- **Who?** Exempt AIFMs and licensed managers of AIFs whose units are offered and marketed for at least EUR 100,000. From January 1, 2023, this will be relevant for all AIFMs and UCITS managers. PRIIPs does not apply to AIFs offered only to professional investors.

- **When?** The Retail Investment Strategy is expected to be published in 2023. It remains to be seen whether the EC's proposal will be published immediately or then delayed.

Consultation adjustments Short Selling Regulation

- **What?** On September 24, 2021, ESMA published a [consultation paper](#) containing proposed amendments to Regulation 236/2012 (the Short Selling Regulation). ESMA's proposals include the calculation of short positions, the prohibition of naked short selling and the reporting requirement.
- **Who?** Managers of AIFs or UCITS who (also) engage in short selling.
- **When?** The consultation period ran until Nov. 19, 2021. ESMA published a [final report](#) on April 4, 2022. The report was sent to the EC, which itself may come up with a review report and/or amendment proposal.

Review of the MMF Regulation

- **What?** On March 26, 2021, ESMA [published](#) a consultation report for a review of the MMF Regulation, the framework that provides for the regulation of money market funds. Through this document, ESMA requested input for a possible review of the MMF Regulation. On Feb. 16, 2022, ESMA issued a [final report](#). This served as input for the European Commission's [review of the MMF Regulation](#), which ran from April 12 to May 20, 2022.
- **Who?** Managers of money market funds.
- **When?** The review closed on May 20, 2022. We now await further action from the EC.

Updates Guidelines stress test scenarios MMF-regulation

- **What?** On November 30, 2022, ESMA published its [final report](#) on the 2022 revision of the Guidelines on stress test scenarios under the MMF Regulation. In this revision, the stress test parameters have been recalibrated. In addition, ESMA expresses its intention to revise the section on establishing additional common reference stress test scenarios and, in addition, submit general questions to stakeholders on the entire text of the Guidelines.
- **Who?** Managers of money market funds.
- **When?** The already passed revision is expected to take effect in early 2023. The planned revision is expected to be consulted in the first half of 2023, so it is expected to take effect in late 2023.

EC exploration retail investment strategy

- **What?** The European Commission (EC) has been evaluating for some time whether the existing European legal framework provides adequate and effective protection for retail investors. Based on this evaluation, the EC will publish a [Retail Investment Strategy](#). In this context, on August 2, 2022, the EC published a comprehensive [final report](#) with findings on disclosure, commissions and the suitability test. In the summer of 2021, the EC had already published a [consultation paper](#). The EC then wanted to know, among other things, what stakeholders think about the comparability of financial products, financial illiteracy among consumers, sustainable investment and the impact of the digitization of financial services. In response to the latter EC's exploration, the AFM and the Ministry of Finance published a [non-paper](#) on December 13, 2021, containing their views on the position of retail investors. In May 2022, a [Call for Evidence](#) was launched on the Retail investment package, which was open from May 3 to May 31, 2022.
- **Who?** Particularly managers of UCITS, now that they are offered to retail investors, but thus to some extent also relevant to managers of retail AIFs.
- **When?** The consultation drew 186 responses. Publication of the European Retail Investment Strategy is expected in the first half of 2023.

Further remuneration rules financial sector (Wnbfo)

- **What?** The current remuneration rules (as included in the Financial Supervision Act under the Wbfo) have been amended, including by introducing a five-year statutory retention period for shares paid as a component of a fixed remuneration.
- **Who?** Managers of AIFs and UCITS falling within the scope of the Dutch remuneration rules, and potentially affiliated group companies.
- **When?** The [Wnbfo](#) entered into force on January 1, 2023.

Proposed amendment to House of Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House of Whistleblowers Act. Among other things, this law provides for the obligation to establish a procedure for dealing with the reporting of suspected wrongdoing within an organization. Currently, with respect to this obligation, a threshold of at least fifty people within the organization is still provided for. One of the proposed

changes is that this threshold no longer applies to companies active in the financial sector, including the AIFM Directive, UCITS Directive, EuVECA Regulation and EuSEF Regulation. Among others, the AFM will be appointed as the competent regulator. It is proposed to change the name of the law to Whistleblowers Protection Act.

- **Who?** Managers of AIFs and UCITS.
- **When?** The law change was actually supposed to take effect on December 17, 2021. However, the proposal was not passed by the House of Representatives until December 20, 2022. It is now before the Senate, which has yet to decide whether or not to adopt the proposal. Thus, it is still unclear when the amendment will take effect. We expect it to be in 2023.

Changes Nrgfo

- **What?** On October 12, 2022, the AFM consulted on a [proposal to amend the Nrgfo](#), which deadline ran through November 9, 2022. The AFM's [feedback statement](#) appeared on December 14, 2022. Now that the PRIIPS amendments really did come into effect on January 1, 2023, these regulations must be amended. The amendments drop references to the KIID and ensure correct reference to the KID in the Nrgfo. Also, in line with the obligations arising from PRIIPS (and Level 2 regulations), it is determined how the actual (historical) return, return projections and costs must be displayed in advertisements. For certain reference periods, the [ESMA Guidelines on Marketing Communications](#) are followed.
- **Who?** Investment institutions and UCITS offering PRIIPS products to retail investors.
- **When?** The changes took effect January 1, 2023.

Possible revisions EuVECA and EuSEF

- **What?** The previous amendments to the EuVECA and EuSEF regulations (2017) include a provision that the EC should have conducted a review by March 2, 2022. Currently, there are no public documents available on either regulation. It seems that the EC has started the review behind the scenes.
- **Who?** Managers of EuVECA or EuSEF funds.
- **When?** If, and when, is still unknown. The EC is expected to make the evaluations public sometime in 2023.



NEW LAWS AND REGULATIONS

Level 2 regulations on cross-border distribution

- **What?** On December 21, ESMA published its [Final Report](#), which contains the draft RTS and ITS sent to the EC. The aim is to facilitate the process of notification of cross-border trading and management activities and cross-border service provision. This is to be achieved by standardizing the content and format of information to be submitted. A [consultation](#) on this topic was already running from May 17 to September 9, 2022. The RTS contain rules on what information must be provided by AIF and UCITS managers wishing to conduct their business in host member states. The ITS contain various templates to be used by them for notifying their intention to carry on activities in host member states and specify the procedure for the exchange of information between national competent authorities in relation to these notifications.
- **Who?** Managers of AIFs and UCITS wishing to offer in other member states.
- **When?** It is expected that the EC will adopt these technical standards within 3 to 4 months and there is no objection from the EP and ER, after which publication should follow. Target entry into force is 3 months after publication.

AIFMD light regime for EU small managers

- **What?** On May 27, 2022, the [Financial Markets Amendment Act 2022](#) was published in the Official Gazette. One of the amendments provides that small managers with registered offices in another EU member state can also make use of the AIFMD registration regime. A small manager may benefit from this regime if the total assets under management do not exceed €100 million or do not exceed €500 million. With respect to the €500 million threshold, AIFs may not use leverage and no right to repurchase or redeem units may be exercised for a period of five years. The registration regime is only open to these managers insofar as they offer units to professional investors. Furthermore, the proposed Amendment Act contains a number of technical improvements, such as with respect to the Wge which clarifies that the articles in which the term "investment institution" appears extends not only to AIFs but also to UCITS.
- **Who?** Especially for small investment fund managers based in another EU member state offering units to

professional investors (EU light managers).

- **When?** This regime took effect on January 1, 2023.

Regulation for foreign UCITS

- **What?** Another proposed amendment to the Financial Markets Amendment Act 2022 provides that a UCITS manager based in another Member State may manage a UCITS based in the Netherlands, if the UCITS manager is licensed in the home Member State to manage the relevant UCITS. The UCITS manager must hold a UCITS license in the home country to manage the relevant type of UCITS. The AFM must have approved the manager's intention pursuant to Section 2:72(1) and (4) of the Wft. We find the proposed regulation somewhat surprising, since the UCITS regulations provide for a double licensing obligation for both the UCITS manager, and the UCITS. This is also implemented in other member states. The Netherlands now seems to be departing from this.
- **Who?** UCITS managers domiciled in another Member State who wish to manage a UCITS domiciled in the Netherlands.
- **When?** This regulation took effect on January 1, 2023.

Technical changes to UCITS

- **What?** On November 24, 2021, the Minister of Finance sent the proposal for the [Financial Markets Amendment Decree 2021](#) to the Senate and the House of Representatives. This proposes some technical amendments with respect to UCITS. The most obvious is the removal of the obligation to submit an annual audit report to the AFM showing that the UCITS has acted in accordance with the investment restrictions. This auditing task also rests with the depositary, and was thus deemed unnecessary. In addition, a ban on unhedged short selling is introduced.
- **Who?** UCITS fund managers.
- **When?** The rules will likely take effect in 2023, but it is not yet clear exactly when. The decision is related to the Financial Markets Amendment Act 2022-II.

Financial Markets Amendment Act 2022-II - group DNO

- **What?** In late 2019, the Ministry of Finance [consulted on](#) the Financial Markets Amendment Act 2021. Due to delays, the bill was "renamed" the [Financial Markets Amendment Act 2022-II](#). The bill amends various laws and provides, among other things, for the introduction of a notification obligation with respect to changes that take place within a group, after a group declaration of no

objection (DNO) has previously been granted by DNB as referred to in Section 3:102(2) Wft.

- **Who?** If the proposal will be enacted into law, it will have relevance for group companies that have a group DNO from DNB with regard to a UCITS.
- **When?** The Financial Markets Amendment Act 2022-II was passed by the Senate and House of Representatives late last year. The bill is intended to take effect in early 2023.

Financial Markets (Amendment) Decree 2021 – group DNO

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets Amendment Decree 2021](#) to the Senate and the House of Representatives. This Amendment Decree provides, among other things, for a more detailed elaboration of the DNO-notification in case of changes within a group.
- **Who?** Group companies that have a group DNO from DNB with respect to a UCITS.
- **When?** This rule is related to the proposed change in the Financial Markets Amendment Act 2022-II. Thus, it is unclear when this act will take effect n.

Digital operational resilience regulation for the financial sector (DORA).

- **What?** On December 27, 2022, the [Regulation](#) on Digital Operational Resilience for the Financial Sector (DORA) and its accompanying [Directive](#) were published in the Official Journal of the EU. DORA contains comprehensive rules related to the following six pillars:
 1. Solid ICT risk management;
 2. Adequate ICT incident management, including reporting serious ICT incidents to the regulator;
 3. Prudent management of risks when using third-party ICT providers;
 4. Periodic testing of own ICT resilience;
 5. Direct oversight of critical ICT service providers; and
 6. Cooperation and supervision/enforcement by supervisors.
- **Who?** Licensed managers of AIFs and UCITS (excluding managers of AIFs under the registration regime).
- **When?** The regulation is directly applicable in all member states, including the Netherlands, as of January 17, 2025. This means that institutions will have to comply with the obligations in DORA from then on.

Consultation on measures to prevent dividend stripping

- **What?** On December 15, 2021, the Ministry of Finance [launched](#) an Internet consultation related to possible

measures to prevent dividend stripping (in short, splitting economic and legal entitlement to dividends in order to obtain a dividend tax benefit). On July 15, 2022, the House of Representatives was [briefed](#) on the responses to the Internet consultation. Although the government has a preference for a European solution, it also indicates in the letter which proposed solution directions from the consultation it prefers.

- **Who?** Investment fund managers to the extent they are involved in such activities.
- **When?** The government's expectation is that no measures can be introduced before January 1, 2024.

OTHER DEVELOPMENTS

Supervision under Integrity and Sustainability

Reading this Outlook for Investment Funds is in some ways misleading for managers. Not because it contains developments that are not relevant, quite the contrary. It is because these developments stem from rules explicitly written for managers. However, managers must also be concerned with compliance with regulations that apply to the entire financial sector. Most prominent for managers are rules concerning integrity (anti-money laundering regulations) and sustainability. It is precisely in these areas that there have been a tremendous number of developments in recent years and are still ongoing. Examples include:

- The proposed Plan of Action Anti-Money Laundering Act, which will affect all fund managers;
- Developments on the “ordinary” UBO register and the UBO register for trusts and funds for joint account;
- Several Guidelines on anti-money laundering regulations, such as with respect to the Compliance Officer and remote customer onboarding;
- The various transparency requirements under the SFDR and Taxonomy Regulation; and
- The AFM's focus on these sustainability disclosures.

And so we could go on and on. However, we won't. We'll keep it short, so that it encourages you to also check out the specials of this Outlook regarding Integrity and Sustainability.

FSB – Strengthening liquidity management of open-end funds.

- **What?** On Dec. 14, 2022, the Financial Stability Board (FSB) [published](#) a report proposing to strengthen the liquidity management framework for open-end



investment funds. The report basically involves an analysis of how previous FSB [recommendations](#) have been followed up.

- **Who?** Regulators, supervisors and managers of AIFs and UCITS.
- **When?** Immediately.

Remuneration as dividends

- **What?** On August 1, 2022, the European Court of Justice issued [an important ruling](#) on the question of the extent to which dividends on employee shares can qualify as variable compensation. Not surprisingly, the ECJ read everything very broadly (and teleologically). Although the ruling was made with respect to regulated investment fund managers, the point addressed in the ruling is relevant to all regulated market participants. After all, the issue at stake is what remuneration mechanisms are considered variable compensation. As such, the considerations in the ruling are also relevant to assessing participation structures in managers.
- **Who?** Managers.
- **When?** It makes sense that regulators will pay extra attention to participation structures in 2023.



BANKS

For banks, 2023 will be a year of coping with the impact of geopolitical and macro-economic stress on their business, further implementing climate and environmental risk control measures, and further strengthening their IT environment and governance. There will also be a lot of new regulations for banks in 2023. This concerns 'hard' legal and regulatory rules, but also more detailed 'soft' guidance and interpretations from regulators and supervisors. Both on a global, European and national level.

In order to limit the size of this chapter, we had to make a selection. For example, in this Outlook 2023 we only address a number of supervisory law developments that are specifically relevant to the banking sector. We had to prioritize, and have not included each and every new amended regulation, guidance, interpretation, etc.

For banks that provide several types of services, other sections of this Outlook may also be relevant, such as the section for [Investment Firms](#), [Payment Institutions](#) and/or for [Lenders](#) and [Financial Service Providers](#).

The cross-sectoral components [Integrity](#) and [Sustainability \(ESG\)](#) are also of great importance to banks. Items relating to these topics are generally not discussed in this section but only in the aforementioned specials. Furthermore, it is useful for banks to take note of the [General](#) section, because it also discusses topics that may affect banks.

Also please note that hyperlinks link to documents and information in Dutch where no English version is available.

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- ECB doubles down on climate and environmental risk supervision
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DNB SUPERVISION

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Other Publications

SRB

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Updated 2022 MREL policy

Updated guidance for bail-in operationalization

AFM

Trend Monitor 2023

DEVELOPMENT OF EUROPEAN LEGISLATION AND REGULATIONS

Banking Package 2021

ITS on prudential disclosures on ESG risks

Amended Delegated Regulation on liquidity coverage requirement

ITS on supervisory reporting of risk concentrations and intra-group transactions

ITS for the purposes of identifying global systemically important institutions

DORA (Digital Operational Resilience Act)

Directive on credit servicers and credit purchasers

DEVELOPMENT OF DUTCH LEGISLATION AND REGULATIONS

Revised risk methodology Deposit Guarantee Scheme

Financial Markets Amendment Act 2022-II – group DNO

Decree on accessibility of banking services

Further remuneration rules for the financial sector

Proposed amendment to House for Whistleblowers Act

OTHER DEVELOPMENTS

Dividend remuneration

ECB SUPERVISION

✚ Supervisory Priorities 2023–2025

On December 12, 2022, the ECB [published](#) its Supervisory Priorities 2023-2025. In cooperation with national supervisors, the ECB assessed the main risks and vulnerabilities of significant banks and, based on this assessment, has set the strategic priorities for the period 2023-25. Where the first priority in last year's ECB Supervisory Priorities 2022-2024 was still recovering from the pandemic, this year's priorities are focused on resilience of banks to general macro-economic and geopolitical shocks. Each priority is linked to a number of vulnerabilities that the ECB has identified.

The priorities and corresponding vulnerabilities over the coming years are:

1. Strengthening resilience to immediate macro-financial and geopolitical shocks.
 - Credit risk: shortcomings in credit risk management, including exposures to vulnerable sectors.
 - Funding risk: lack of diversification of funding sources and deficiencies in funding plans.
2. Addressing digitalisation challenges and strengthening management bodies' steering capabilities.
 - Business model: deficiencies in digital transformation strategies.
 - Operational risk: deficiencies in operational resilience frameworks, namely IT outsourcing and IT security/ cyber risks.
 - Governance: deficiencies in management bodies' functioning and steering capabilities and deficiencies in risk data aggregation and reporting.
3. Stepping up efforts in addressing climate change.
 - Climate-related and environmental risk: material exposures to physical and transition risk drivers.

For each priority, the ECB has developed a set of strategic objectives and concrete underlying work programs for the next three years. The priorities provide guidance for planning and prioritizing supervision by the Joint Supervisory Teams (JSTs) on individual banks and important guidance for the annual SREP.

For each of the prioritized vulnerabilities, the ECB sets out the specific main supervisory activities part of the supervisory work programme. The ECB requires that these priorities are also taken into account by the national competent authorities in their supervision of less significant banks. Also see the ECB's [report](#) that examines key developments in the less significant banks sector.

The ECB will apply these priorities directly to all significant banks. Further, DNB will also apply these same

supervisory priorities to the less significant banks under its supervision.

ECB doubles down on climate and environmental risk supervision

- **What?** The mitigation of climate and environmental risks by banks is one of the key priorities of the ECB. In 2020, the ECB laid out its supervisory expectations on this in its [Guide](#) on climate-related and environmental risks. In November 2022, the ECB published the [results](#) of its 2022 thematic review on climate-related and environmental risks. This review showed that banks are still far from adequately managing climate and environmental risks. The ECB has now set staggered deadlines for banks to meet all the ECB expectations. The ECB also published a [compendium](#) of good practices observed in some banks. According to the ECB, these demonstrate that swift progress is possible and aiming to facilitate the improvement of practices across the banking sector. The ECB, and DNB, will now fully focus on banks' compliance with the supervisory expectations. We expect that they will start taking enforcement measures on the worst performing banks after the deadlines have past (i.e. after 2024). In this connection, it is also relevant to note that in December 2022, the ECB published its ECB [Report](#) on good practices for climate stress tests. These tests are to be performed by prudential supervisors (ECB and DNB), but also by the banks themselves.
- **Who?** All banks.
- **When?** The ECB expects institutions to be fully aligned with all supervisory expectations by the end of 2024 at the latest. Moreover, it expects institutions to reach, as a minimum, the following milestones:
 - by the end of March 2023 at the latest, to have in place a sound and comprehensive materiality assessment, including robust scanning of the business environment;
 - by the end of 2023 at the latest, to manage climate and environmental risks with an institution-wide approach covering business strategy, governance and risk appetite, as well as risk management, including credit, operational, market and liquidity risk management;
 - by the end of 2024 at the latest, to be fully aligned with all supervisory expectations, including having in place a sound integration of climate and environmental risks in their stress testing framework and ICAAP.

Draft Guide to qualifying holding procedures

- **What?** In September 2022, the ECB [consulted](#) a Guide of how to assess buyers of qualifying holdings in banks. The draft Guide aims to clarify how the ECB assesses applications to acquire qualifying holdings in banks in

order to increase the transparency of this process for market participants. It builds on the applicable legal framework (such as the relevant statutory provisions and the EBA/ESMA/EIOPA [Joint Guidelines](#) on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector and on the experience gained over the years in assessing this type of transactions. The Guide will complement the ECB's Guide on the supervisory approach to consolidation in the banking sector. The Guide contains helpful practical elements to be taken into account.

- **Who?** Acquirers of a qualifying holding in a bank established in the Banking Union; i.e. a shareholder directly or indirectly owning more than 10% of voting or economic rights in a bank (or being able to exercising similar influence over it).
- **When?** The consultation on the draft ran till 9 November 2022. We expect the ECB to publish a final version of the guide in the first months of 2023.

No extension temporary corona relief measures for banks

- **What?** The ECB [decided](#) to have the corona pandemic related capital and leverage ratio relief measures expire for the significant credit institutions that are under its direct supervision. Thereby it ended all special corona related measures, and requires banks to return to 'normal'. DNB also [adopted](#) the ECB's decision for the less significant banks. This means that from April 1, 2022, banks were to reinstate central bank exposures in their leverage ratio. Per January 1, 2023, banks are again expected to operate above the level of their Combined Buffer Requirement and their Pillar 2 Guidance. Furthermore, on 16 December 2022, the EBA [published](#) its closure report of Covid-19 measures and repealed its Guidelines on Covid-19 reporting and disclosure.
- **Who?** All banks.
- **When?** As of 1 January 2023, all relief measures have ceased.

Key observations IT and Cyber Risk

- **What?** The ECB [published](#) its key observations on IT and Cyber Risk at significant banks in December 2022. The ECB identified deficiencies in IT outsourcing and cyber resilience as a key vulnerability, and has thus performed various self-assessment questionnaires and on-site inspections around these topics. The ECB's eleven key observations will give further flavor to the ECB's concerns and supervision of this priority in the coming years. A few examples of ECB focus areas in this connection are (i) IT outsourcing risk levels increasing,



(ii) data quality management remaining one of the weak spots of banks' risk control environments, and (iii) IT change being an emerging risk.

- **Who?** Joint Supervisory Teams will follow up with their individual significant institutions on individual key observations and weaknesses that have been identified. We expect that DNB will also take these observations into account in its supervision of Dutch less significant banks.
- **When?** Highly relevant in 2023 and the years to come.

DNB SUPERVISION

Supervisory priorities for less significant banks

- **What?** In November 2022, DNB published [Supervision in Focus](#). In that guide, DNB summarizes its focus themes in supervision in general. Also in 2023, DNB will focus on the multi-year priorities from the Vision on [Supervision 2021-2024](#): (i) responding to technological innovation, (ii) steering for future orientation and sustainability and (iii) combating financial-economic crime. DNB adopts the general ECB priorities, but also includes some Dutch national particulars. Specifically for banks, in 2023 DNB's focus will continue to be on the risks that can materialize due to the economic slowdown, high inflation and rising interest rates. Those risks will result in DNB having its main focus on credit risks, liquidity and refinancing. In addition, the developments in the Dutch housing market are a supervisory priority, including banks' risk management of interest-only (*aflossingsvrije*) mortgages. Also, DNB's on and offsite supervision will continue to focus in the coming years on sustainability risks, digital transformation and cyber risk. Finally, DNB indicates it will specifically focus on data quality at banks. This affects the quality of banking supervisory reports, but also the quality of internal reports to bank management on income, cost developments and risks.
- **Who?** Less significant banks. DNB's priorities on financial-economic crime apply to all banks.
- **When?** Supervision in Focus looks at 2023. Vision on Supervision 2021-2024 describes DNB's supervisory course up to, and including 2024.

DNB raises the countercyclical capital buffer from 0% to 1%, eventually to 2%

- **What?** In May 2022, DNB [announced](#) that it is working towards a 2% countercyclical capital buffer (CCyB) in the coming years for all banks (Dutch and foreign) that have loan exposures in the Netherlands. Having

a countercyclical capital buffer of 2% in a standard risk environment in place more accurately reflects the inherent uncertainty in measuring cyclical systemic risk. The purpose of the CCyB (as introduced under CRD IV) is to increase banks' resilience as cyclical risks build up, and to release the buffer as soon as risks materialise. This gives banks additional headroom to absorb losses in bad times, and it supports lending to Dutch businesses and consumers. The CCyB applies to Dutch domestic exposure. The first step of this incremental build-up of the CCyB is a 1% CCyB as per 25 May 2023. On 3 October 2022 and 19 December 2022, DNB [confirmed](#) its decision to continue the build-up of the CCyB to 1% as per 25 May 2023.

- **Who?** All banks (also non-Dutch banks) that have loan exposures in the Netherlands.
- **When?** Banks will have to apply the CCyB of 1% as per 25 May 2023.

DNB reciprocates German and Belgian systemic risk buffers

- **What?** The ESRB has [recommended](#) the reciprocation by supervisory authorities of a macroprudential systemic risk buffer taken by various other competent authorities, including the German and Belgian authorities. DNB intends to reciprocate the [German](#) and [Belgian](#) measures in order to prevent the materialization of negative cross-border effects in the form of leakages and regulatory arbitrage. The German measure consists of a 2% systemic risk buffer rate on all exposures (i.e. retail and non-retail exposures) to natural and legal persons that are secured by residential real estate located in Germany. The Belgian measure consists of a 9% systemic risk buffer rate on all IRB retail exposures to natural persons secured by residential immovable property for which the collateral is located in Belgium.
- **Who?** This will be applicable to all Dutch banks having exposures secured by residential immovable property located in Germany and/or having IRB retail exposures to natural persons secured by residential immovable property for which the collateral is located in Belgium (with an institution-specific threshold of EUR 2 billion).
- **When?** The consultation is closed on 1 October 2022. After the measures are adopted, it will be applied in supervisions of the relevant banks.

Deposit Guarantee Scheme Regulations for banks

- **What?** In December 2022, DNB [published](#) the final amendments on the Single Customer View Policy Rule (SCV Policy Rule, *Beleidsregel Individueel Klantbeeld Wft 2017*) and the Policy Rule on the Scope and Execution

of the Deposit Guarantee Scheme. These two Policy Rules and the Regulation on Statements of Financial Undertakings under the Financial Supervision Act 2011 (Statements Regulation) enable a timely payout by the Deposit Guarantee Scheme (DGS); i.e. within seven business days. The amendments to the two Policy Rules include among other the clarification of the way in which banks must protect foreign personal data in report and the deposit base that DNB uses under various circumstances to determine the levies that banks are required to pay for the deposit guarantee scheme. On the webpage '[Single Customer View](#)' you will find the adoption document and other practical documents, such as the DGS Data Delivery Manual and the Data Delivery Agreement (GLO) which will be adjusted in cooperation with the sector, to ensure that these documents are in line with the amendments.

- **Who?** All banks.
- **When?** The amendments are yet to be published in the Government Gazette. These changes are set to be applicable from 1 July 2023, meaning all banks must submit data aligned with the amendments.

Extension of the risk weighting regulation for mortgage loans 2022

- **What?** DNB published a [consultation](#) on the regulation amending the Regulation on specific provisions CRD and CRR in connection with the extension of a minimum floor for the risk weighting of loans to private individuals secured by mortgages on real estate in the Netherlands. In light of the overheating of the Dutch housing market and the increasing systemic risk posed by such overheating, and considering that the risk weights that banks use for their mortgage loans based on their internal models do not sufficiently reflect the systemic risk in the housing market, DNB has decided to extend the scheme for two years after December 1, 2022.
- **Who?** All banks with exposures to Dutch residential mortgages.
- **When?** The arrangement will be extended for two more years (in any event until 1 December 2024).

Amendments to the DNB Regulation on options and discretions under CRD and CRR

- **What?** In December 2022, the [amended DNB Regulation](#) on specific provisions CRD and CRR entered into force. The amended DNB Regulation follows the [amended ECB Guide](#) on options and discretions of March 2022, implementing new options and discretions under CRD V, CRR II and the Liquidity Coverage Ratio Delegated Regulation in a harmonized manner for all significant banks.

- **Who?** All banks.
- **When?** The DNB Regulation entered into force in December 2022. The amended ECB Guide entered into force on 28 March 2022.

DNB repeals concentration policy rule

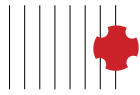
- **What?** Certain Dutch banks have a concentration risk of overexposure to high-risk jurisdictions using deposits covered under the Dutch deposit guarantee scheme (DGS) for funding. Thus, in 2014, DNB introduced the Policy Rule Maximising Deposits and Exposures Ratio (*Beleidsregel maximering ratio deposito's en uitzettingen Wft*) to mitigate this risk. Due to EU harmonization of capital rules and supervisory methods DNB has finally [decided](#) to revoke this Dutch-specific rule. Instead it will monitor and, where necessary, address institution-specific relevant concentration risks (in line with the EU rules). As part of the Supervisory Review and Evaluation Process (SREP) DNB will assess per relevant institution whether banks have structured their risk management adequately to address the underlying risk. The outcome will be used in determining the level of capital and liquidity requirements, and specific SREP measures if necessary. DNB gives as an example that it may require a bank to restrict activities that carry excessive risk to its soundness and/or that it treats liquidity items or assets in a specific way.
- **Who?** Dutch banks having a concentration of exposures in specific (high-risk) countries.
- **When?** The Policy Rule has been revoked from 1 January 2023.

Amendment to the Policy on individual client profile 2017

- **What?** On 14 December 2022, DNB [published](#) the regulation amending the Policy on individual client profile 2017. In the Policy on individual client profile 2017, DNB sets out the information DNB requires for the implementation of the Deposit Guarantee Scheme (DGS). This will make it possible to reduce the period in which DGS compensation is granted and made available for payment to seven working days. The amendment has clarified the policy rule on a number of points.
- **Who?** Banks.
- **When?** Effective as of 15 December 2022.

Q&A Retention Rewards

- **What?** On December 2, 2022, DNB published a [Q&A](#) regarding retention rewards, which was consulted earlier in the year. In the Q&A, DNB indicates which



assessment frameworks it uses for retention payments for which approval is required and for cases where this approval is not required. It also indicates which elements must (or can) be substantiated in any case, even if no prior consent is required. The AFM [stated](#) on its website that the consultation of the Q&A is also carried out on its behalf.

- **Who?** All banks.
- **When?** Immediately.

EBA

Annual Work Programme 2023

- **What?** In September 2022, the EBA [published](#) its Annual Work Programme 2023 setting out EBA's priorities for 2023. The EBA's work for 2023 is defined under six strategic areas and 19 specific activities. The programme includes a description of EBA's objectives for 2023, expected results and main outputs. The five vertical priorities identified for 2023 aim to ensure (i) the development, maintenance and proportionality of the harmonized Single Rulebook, (ii) the assessment of risks in the financial sector, using tools that support supervisory convergence, (iii) the strengthening of data on the sector and its actors for authorities and market discipline, (iv) the addressing of ICT risks and digital finance (including MiCA and DORA) challenges while operational resilience is strengthened, and (v) the development and enhancement of good conduct, consumer protection and AML-CFT practices, and the monitoring of related risks. At the same time, the EBA identifies one horizontal priority; embedding ESG-related considerations in all its products and activities. The specific EBA activities identified in the work programme are each linked to one or more of these strategic priorities. Most of the planned activities are linked to the first priority: the development, maintenance and proportionality of the harmonized Single Rulebook.
- **Who?** All banks.
- **When?** The Annual Work Programme 2023 describes EBA's focus areas in 2023.

Examination programme priorities for prudential supervisors for 2023

In October 2022, the EBA published the European Supervisory Examination Programme (ESEP) for 2023. The [ESEP](#) identifies key topics for prudential competent authorities' (such as the ECB and DNB) supervisory attention. The ESEP is part of an annual cycle and contributes to enhancing supervisory convergence in

the EU by providing common directions and focus areas for supervisors. This helps them shape their prudential supervisory priorities and respective practices.

The selection of the key topics for supervisory attention for 2023 is based on the EBA's EU-wide risk analysis, the EBA's relevant policy work and the practical experience of competent authorities (such as the ECB and DNB).

For 2023, the key topics are:

1. macroeconomic and geopolitical risks, such as the impact of the Russian aggression against Ukraine, the interest rate rises and inflation risk,
2. operational and financial resilience,
3. transition risks towards sustainability and digitalisation, and
4. money-laundering and terrorist financing (ML/TF) risks in the supervisory review and evaluation process (SREP) and internal controls/governance of banks.

The ESEP reflects EBA's priorities for competent banking supervisors, such as the ECB and DNB. This in turn is reflected in the supervisory priorities of these supervisors in relation to significant and less significant banks alike.

Supervisors should consider the above topics in shaping their supervisory priorities for 2023. As follows from their own priorities, the ECB and DNB indeed take the ESEP into account.

Examination programme priorities for resolution authorities for 2023

- **What?** In October 2022, the EBA published the European Resolution Examination Programme (EREP) for 2023. The [EREP](#) identifies key harmonised topics for EU resolution authorities. These resolution authorities are expected to consider the following key topics when developing their 2023 priorities: (i) how MREL (Minimum Requirement for own funds and Eligible Liabilities) shortfalls are being addressed, (ii) the development of management information systems for valuation in resolution, (iii) preparations for managing liquidity needs in resolution, and (iv) operationalisation of the bail-in strategy.
- **Who?** The EREP reflects EBA's priorities for resolution authorities having jurisdiction over all Dutch banks.
- **When?** Resolution authorities should consider the above issues in shaping their oversight priorities for 2023.

Revised Guidelines for common procedures and methodologies for the SREP

- **What?** In March 2022, the EBA [published](#) the second review of the Guidelines for common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing. These revised and fully updated Guidelines will be applied in the SREPs of all banks across the EU and further forge a consistent supervisory culture across the EU. These Guidelines provide a common framework for the work of banking supervisors in their assessment of risks to banks' business models', their solvency and liquidity as well as the conduct of supervisory stress testing.
- **Who?** The Guidelines apply to the supervision of all banks.
- **When?** The Guidelines apply from 1 January 2023.

Guidelines on remuneration and gender pay gap benchmarking

- **What?** In June 2022, EBA [published](#) its final guidelines on the remuneration and gender pay gap benchmarking exercise under the Capital Requirements Directive. The update of the previous guidelines was necessary to take into account additional requirements introduced by CRD V regarding the application of derogations and the benchmarking of the gender pay gap. This shows a greater focus of supervisory authorities on the gender pay gap.
- **Who?** All banks.
- **When?** The benchmarking data for the financial year ending in 2022, excluding gender pay gap data, should be submitted by banks to competent authorities by 31 August 2023. The first benchmarking exercise regarding the gender pay gap should concern the financial year 2023.

Guidelines on the high earner data collections under CRD

- **What?** CRD and IFD require competent authorities to collect information on the number of natural persons, per bank respectively, who are remunerated EUR 1 million or more per financial year. The information should also include details on their job responsibilities, the business area and the main elements of the salary, bonus, long-term award, and pension contribution. [Guidance](#) is provided to ensure that the data is of the appropriate quality for deriving reliable and consistent information. Banks and competent authorities should check the accuracy and consistency of data before submission.

- **Who?** All banks.
- **When?** The Guidelines apply from 31 December 2022 for the data to be collected in 2023 for the financial year 2022.

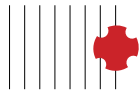
EBA Roadmap Sustainable Finance

- **What?** On 13 December 2022, EBA [published](#) its roadmap outlining the objectives and timeline for delivering mandates and tasks in the area of sustainable finance and ESG risks. The roadmap explains the EBA's sequenced and comprehensive approach over the next three years to integrate ESG risks considerations in the banking framework and support the EU's efforts to achieve the transition to a more sustainable economy. These mandates and tasks cover the three pillars of the banking framework, i.e., market discipline, supervision and prudential requirements, as well as other areas related to sustainable finance and the assessment and monitoring of ESG risks.
- **Who?** Banks.
- **When?** Ongoing.

Other Publications

With a view to further harmonisation of the Single Rulebook for banks, EBA published in 2022 a large number of guidelines, opinions, studies and draft technical standards that will be of great interest to all banks in 2023. These included, among others:

- EBA [consults](#) on Guidelines to institutions and resolution authorities on resolvability testing. The Guidelines aim to set-out a framework to ensure that resolvability capabilities developed to comply with the resolvability and transferability Guidelines under BRRD/SRMF are properly tested so that they are fit for purpose and effectively maintained. A final set of Guidelines is expected in Q2 2023.
- Final [Guidelines](#) on interest rate risk of an institution's non-trading book activities (IRRBB) and credit spread risk arising from non-trading book activities (CSRBB). These Guidelines specify the criteria for the evaluation by an institution's internal system of the interest rate risk of an institution's non-trading book activities (IRRBB) as well as the criteria for the identification, management and mitigation by institutions of the IRRBB either if it implements internal systems, the standardised approach or the simplified standardised approach. The new Guidelines apply as of 30 June 2023 (and partly as of 31 December 2023).
- [Implementing Technical Standards](#) on supervisory reporting amendments with regards to COREP, asset



encumbrance and G-SiIs. The proposed changes amending Regulation (EU) No 2021/451 on Supervisory Reporting aim at implementing new proportionality measures for small and non-complex institutions, as well as other amendments. The amended regulation applies from 31 December 2022 as of the reference date June 2023.

- The final draft [Regulatory Technical Standards](#) on the IRRBB standardised approach. Among other things, these RTS specify the criteria to evaluate the risks arising from potential changes in interest rates that affect both the economic value of equity (EVE) and the net interest income (NII) of a bank's non-trading book activities. They will also provide a simplified standardised approach for smaller and non-complex institutions.
- The final draft [Regulatory Technical Standards](#) on IRRBB supervisory outlier tests (SOT). These RTS specify the modelling and parametric assumptions and the supervisory shock scenarios to identify institutions for which the EVE would decline by more than 15% of Tier 1 Capital.
- The final draft [Regulatory Technical Standards](#) on the identification of a group of connected clients. These RTS aim at setting out new clear circumstances where interconnections can lead to a single risk and thus a grouping requirement (for e.g. large exposures rules).
- The final draft [Implementing Technical Standards](#) on standardized information requirements to support sales of non-performing loans. These ITS specify the requirements for the information that sellers of non-performing loans (NPL) shall provide to prospective buyers, seeking to improve the functioning of NPL secondary markets.
- Revised [Guidelines](#) on methods for calculating contributions to deposit guarantee schemes. These revised Guidelines aim at enhancing the proportionality between the risk of a bank and its contributions to the DGS and at streamlining and simplifying the original Guidelines.
- [Guidelines](#) on improving resolvability for institutions and resolution authorities. The Guidelines aim to implement existing international standards on resolvability and take stock of the best practices so far developed by EU resolution authorities on resolvability topics. The Guidelines apply as of 1 January 2024.
- [Guidelines](#) on transferability to complement the resolvability assessment for transfer strategies. These Guidelines provide guidance relating to (i) the definition of the transfer perimeter and (ii) the steps to operationalise the implementation of the transfer.

SRB

Work Programme 2023

- **What?** In November 2022, the Single Resolution Board (SRB) published its [2023 Work Programme](#), setting out the SRB's plans for 2023. Banks under the SRB remit are expected to be resolvable and compliant with the SRB Expectations for Banks (EfB), as well as achieve the final individual banks' Minimum Requirements for Own Funds and Eligible Liabilities (MREL) targets. Less significant banks, under the remit of the national resolution authorities (DNB for Dutch banks), are also expected to become resolvable along a similar timeline (in application of SRB's EfB and resolution policies). During 2023, the SRB will also prepare for and, if necessary, manage crisis cases.
- **Who?** All banks.
- **When?** The work programme is relevant for 2023.

Guidance on the identification and mobilization of collateral in resolution

- **What?** The SRB published its [Guidance](#) on the identification and mobilization of collateral in resolution in March 2022. The Guidance is aimed at banks' capacity to identify and mobilise certain asset classes that could be used as collateral in resolution in a timely way to support financial continuity.
- **Who?** All banks.
- **When?** The Guidance will apply in 2023.

Updated 2022 MREL policy

- **What?** The SRB [amended](#) the MREL policy in June 2022. The policy has been revised based on experience gained and stakeholder feedback and applies to the 2022 resolution planning cycle. The policy takes into account new regulatory developments, as well as changes to the Capital Requirement Regulation (CRR) recently agreed by the EU legislators on the indirect holding of internal MREL (iMREL) and the MREL calibration for banks with a multiple point-of-entry resolution strategy.
- **Who?** All banks.
- **When?** The updated policy will apply in 2023.

Updated guidance for bail-in operationalization

- **What?** In June 2022, the SRB publishes its updated operational [guidance](#) to banks on the implementation



of the bail-in tool, which enables the write-down or conversion of debt owed by a bank to creditors in resolution. The set of documents adds operational guidance to the SRB's Expectations for Banks, which outlines the responsibilities of banks in making themselves resolvable. These documents include an updated [Guidance](#) on bail-in playbooks, Bail-in data set [instructions](#) and an [Explanatory note](#) on the latter. This guidance compiles the main elements that banks are expected to consider for enhancing their bail-in playbooks and the operationalisation of the bail-in tool in resolution.

- **Who?** All banks.
- **When?** The revised policy will apply in 2023.

AFM

Trend Monitor 2023

- **What?** On November 3, 2022, the AFM published its [Trend Monitor 2023](#). In the Trend Monitor 2023, the AFM points out a number of trends and risks in the financial sector for the year 2023. The AFM draws the attention of banks to the rise in interest rates. The persistently high inflation is reason for central banks to raise the policy rate with the aim to cool the economy and lower inflation to the target of 2%. The AFM also mentions increased volatility in the capital markets, which still seems under control.
- **Who?** All Dutch banks that are subject to conduct supervision from the AFM.
- **When?** We expect the AFM to give increased attention to the themes in Trend Monitor 2023 in its ongoing supervision in 2023.

DEVELOPMENT OF EUROPEAN LEGISLATION AND REGULATIONS

Banking Package 2021

- **What?** The proposal for a [Banking Package 2021](#) has been published by the European Commission on 27 October 2021. The proposal (for an amendment of CRD and CRR) is now under discussion in the EU trilogue. The proposal includes, e.g. (i) changes to regulatory approval for bank mergers, acquisitions and reorganisations, (ii) more detailed fit & proper tests, (iii) a requirement to properly manage ESG risk (e.g. regular climate stress testing), and (iv) changes to the way

banks calculate their risk-weighted assets (RWA) giving greater weight to the standardized calculation approach (under Basel III). For more details, see our [Outlook 2022](#).

- **Who?** All banks.
- **When?** The changes are expected to take effect only in 2025 at the earliest.

ITS on prudential disclosures on ESG risks

- **What?** In December 2022, the [Implementing Regulation](#) on disclosure of environmental, social and governance (ESG) risks was officially published. The Regulation further details Article 449a CRR. That Article requires large banks that have issued securities on a regulated market of any Member State to disclose information on ESG risks, including physical risks and transition risks. The Regulation contains comparable quantitative disclosures on climate-change related transition and physical risks, including information on exposures towards carbon related assets and assets subject to chronic and acute climate change events. They also include quantitative disclosures on institutions' mitigating actions supporting their counterparties in the transition to a carbon neutral economy and in the adaptation to climate change. In addition, they include KPIs on institutions' assets financing activities that are environmentally sustainable according to the EU taxonomy (Green Asset Ratio (GAR) and Banking Book Taxonomy Alignment Ratio (BTAR)), such as those consistent with the European Green Deal and the Paris agreement goals. It should be noted that the ultimate EC Regulation as published deviates to a certain extent from the EBA's proposal (especially in relation to the BTAR disclosure). The EBA wrote an [opinion](#) on this.
- **Who?** A large bank that has issued securities on a regulated market of any Member State.
- **When?** The Regulation applies as of 31 December 2022.

Amended Delegated Regulation on liquidity coverage requirement

- **What?** The [Delegated Regulation](#) on liquidity coverage requirement has been amended and now allows banks issuing covered bonds to better comply, on the one hand, with the general liquidity coverage requirement for a 30 calendar day stress period, and on the other hand, with the cover pool liquidity buffer requirement of holding liquid assets to cover net liquidity outflows over the next 180 days. The amendment was regarded as necessary in order to clarify some of the existing rules and to align various regulations.
- **Who?** All banks.
- **When?** This Regulation applies from 8 July 2022.



ITS on supervisory reporting of risk concentrations and intra-group transactions

- **What?** On 19 December 2022, the [Implementing Regulation](#) on supervisory reporting of risk concentrations and intra-group transactions was published. The Regulation provides that regulated entities and mixed financial holding companies should report significant intra-group transactions and significant risk concentrations in a consistent and standardised manner and adds new reporting requirements.
- **Who?** All banks.
- **When?** This Regulation applies from 31 December 2023.

ITS for the purposes of identifying global systemically important institutions

- **What?** On 22 December 2022, the [Implementing Regulation](#) amending the implementing technical standards (Implementing Regulation (EU) 2021/451) as regards own funds, asset encumbrance, liquidity and reporting for the purposes of identifying global systemically important institutions was published. The Regulation reflects elements introduced in several legislations.
- **Who?** All banks.
- **When?** This Regulation applies from 11 July 2023.

DORA (Digital Operational Resilience Act)

- **What?** On 27 December 2022, the Regulation on Digital Operational Resilience for the Financial Sector (DORA) and its [Directive](#) were published in the Official Journal of the EU. DORA roughly consists of the following six pillars:
 1. Solid ICT risk management;
 2. Adequate ICT incident management, including reporting ICT incidents to the supervisor;
 3. Prudent management of risks when using third-party ICT providers;
 4. Periodic testing of its own ICT resilience;
 5. Direct supervision of crucial ICT service providers; and
 6. Cooperation and supervision/enforcement by supervisors.
- **Who?** DORA is an important development for all banks.
- **When?** The regulation is directly applicable in all member states, including the Netherlands, from 17 January 2025. This means that institutions must comply with the DORA obligations from that moment on.

Directive on credit servicers and credit purchasers

- **What?** On November 24, 2021, the [Directive](#) on credit servicers and credit purchasers was published. This directive standardizes the rules for servicers and buyers of credit in the European Union and facilitates the sale of non-performing loans (NPLs). When providers are faced with a large accumulation of NPLs and do not have the staff or expertise to properly service them, they should be able to outsource the servicing of those loans to a specialist credit servicer or transfer the credit agreement to a credit purchaser with the necessary risk appetite and expertise to manage it. The EBA published [draft implementing technical standards](#) on 16 December 2022, which specify which templates credit institutions must use to provide information for financial due diligence and valuation of NPLs.
- **Who?** Banks issuing credit agreements.
- **When?** The directive must be implemented by 29 December 2023. We can expect a bill for implementation next year.

DEVELOPMENT OF DUTCH LEGISLATION AND REGULATIONS

Revised risk methodology Deposit Guarantee Scheme

- **What?** DNB has evaluated and amended the [risk methodology](#) for the Dutch Deposit Guarantee Scheme. The amendment has now been laid down in the Ministerial Regulation [published](#) on 1 December 2022 amending the Deposit Guarantee Risk Indicators Regulation (*Regeling risicoindicatoren bijdragen depositogarantiestelsel Wft*).
- **Who?** All banks.
- **When?** The changed risk methodology applies from 31 December 2022.

Financial Markets Amendment Act 2022-II – group DNO

- **What?** At the end of 2019, the Ministry of Finance [consulted](#) the Financial Markets Amendment Act 2021. Due to delays, the bill has been renamed the [Financial Markets Amendment Act 2022-II](#). The bill provides, among other things, for the introduction of a notification obligation with regard to changes that

take place within a group, after the ECB has previously issued a group declaration of no objection as referred to in Section 3:102(2) of the Wft. This reporting obligation has been further elaborated in the proposed Financial Markets Amendment Decree 2021.

- **Who?** Group companies that have a group DNO from the ECB with regard to a bank.
- **When?** The Financial Markets Amendment Act 2022-II was adopted by the Senate and House of Representatives at the end of last year. The bill is intended to enter into force in early 2023.

Decree on accessibility of banking services

- **What?** In September 2022, the Ministry of Finance [consulted](#) the Implementation Decree accessibility requirements for banking products. The Decree aims to implement the EU Accessibility Requirements for Products and Services Directive, to the extent it relates to banking services. The Directive's aim is to make products and services accessible to persons with disabilities. The proposed Decree amends the Dutch Conduct Supervision Decree, and requires providers of consumer banking services (as defined in the Directive) to meet the accessibility requirements of the Directive. This includes a number of very detailed access and performance criteria and for instance a requirement to present all information relating to consumer banking service at a B2 language maximum level. The AFM will be the relevant supervisor on compliance with these rules.
- **Who?** All Dutch banks.
- **When?** The consultation period has ended. Banks will have to comply as of 29 June 2025.

Further remuneration rules for the financial sector

- **What?** On 1 January 2023, the Financial Undertakings Remuneration Measures [Act](#) came into effect. With this Act, a number of changes have been made to the remuneration rules as included in the Wft, including the introduction of a statutory retention period of at least five years for shares that are paid out as part of a fixed remuneration, and a tightening of the averaging scheme for non-CAO (*collectieve arbeidsovereenkomst*) staff, who can be awarded a higher bonus than 20% under certain conditions. At the end of 2022, the AFM [published](#) a notification form for deviations from the bonus ceiling for non-CAO personnel.
- **Who?** All banks.
- **When?** With effect from 1 January 2023. The contracts of existing employees who, as of 1 January 2023, can no longer make use of the averaging scheme for non-CAO staff, must be amended as of 1 January 2024.

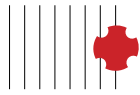
Proposed amendment to House for Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House for Whistleblowers Act. This law provides, among other things, for the obligation to establish a procedure for dealing with reporting a suspicion of wrongdoing within an organisation. With regard to this obligation, a threshold of at least fifty people within the organization is currently provided for. One of the proposed changes is that this threshold no longer applies to companies active in the financial sector, including banks. DNB and the AFM are appointed as competent supervisors. It is proposed to change the name of the law to Whistleblowers Protection Act.
- **Who?** All banks.
- **When?** The amendment to the law was supposed to come into effect on 17 December 2021. However, the proposal was not adopted by the House of Representatives until December 20, 2022. It is now with the Senate, which has yet to decide whether or not to adopt the bill. It is unclear when the change will take effect. We expect this to be in 2023.

OTHER DEVELOPMENTS

Dividend remuneration

- **What?** On 1 August 2022, the European Court of Justice delivered an [important ruling](#) on the question to what extent dividends on employee shares can qualify as variable remuneration. Not surprisingly, the ECJ reads everything very broadly (and teleologically). Although the ruling was made with regard to regulated investment fund managers, the point addressed in the ruling is important for all regulated market participants. After all, the question is which remuneration mechanisms are regarded as variable remuneration. The considerations in the ruling are therefore also relevant for the assessment of participation structures in banks.
- **Who?** Banks.
- **When?** Regulators will pay extra attention to participation structures in 2023.



INVESTMENT FIRMS

Note that the cross-sectoral sections [Integrity](#) (think of the Wwft and sanction regulations) and [Sustainability \(ESG\)](#) are also of great importance to investment firms. Developments relating to these topics, with a few exceptions, are not covered in this section, but only in the aforementioned specials.

In addition, it is useful for investment firms to take note of the [General Developments](#) section, as it includes topics that may affect investment firms (such as developments regarding EMIR and the Benchmark Regulation).

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

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- MiFID II/MiFIR review
- Transparency regime revision and other changes in MiFIR

and MiFID II

- MiFID II Quick Fix Implementation Act
- Consultation Decision MiFID II Quick Fix
- Financial Markets Amendment Act 2022
- Financial Markets Amendment Decree 2022
- Financial Markets Amendment Act 2022-II
- Financial Markets (Amendment) Decree 2021 - the group
- DNO
- PRIIPs - Amendments Eid
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- Proposed amendment to House of Whistleblowers Act
- Consultation Financial Markets Amendment Act 2024
- Consultation on amendments to Nrfgo
- Consultation Amendment to Financial Supervision
- Funding Decree 2019

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- EBA work on IFR & IFD
- DNB Regulation ICLAAP, delta formulas and the group capital criterion
- DORA
- MiCA
- Act on security test regarding investments, mergers and acquisitions



AFM SUPERVISION

Trend Monitor 2023

On November 3, 2022, the AFM published its [Trend Monitor 2023](#). As every year, the AFM identifies important trends and associated risks in the financial sector. The concrete implications of the trends and risks for the AFM's supervisory activities will be elaborated in the AFM Agenda 2023, which it will publish in early 2023. For investment firms, the following is particularly relevant:

- **Inflation and rising interest rates:** after more than 10 years of steady decline, interest rates are now rising. The direct effects of this seem limited for now. However, the AFM does note that rising interest rates are leading to falling equity valuations: retail investors are seeing the value of their investment portfolios decline and demand for exotic investment products is decreasing. With regard to institutional asset management, the AFM points out that interest rate shocks are testing asset managers' risk management and that liquidity risks may arise with interest rate derivatives due to margin obligations.
- **Sustainability:** new (European) legislation sets requirements for disclosure around sustainability. These include the Sustainable Finance Disclosure Regulation (SFDR) and sustainability provisions in MiFID II. With the increased focus on sustainability, the market for sustainable investments is also growing. The AFM is increasingly concerned about greenwashing and rogue providers. The AFM points to the risk that parties create false expectations around sustainable investment. According to the AFM, this can lead to consumers expecting a lot from the contribution of their investment to the sustainability transition, while this is not true for all products.
- **Digitization:** the AFM notes that digitization creates low-threshold access to financial products. Applications of artificial intelligence (AI) can ensure customers are served more effectively and at lower cost, but it can also bring risks such as inimitable outcomes, discrimination and exclusion. New European legislation is on the way, such as the Digital Operational Resilience Act (DORA) and the AI Regulation.
- **Internationalization:** the AFM points out that internationalization and digitalization in investment services are leading to the emergence of so-called neobrokers. These are companies that offer investment services in a low-threshold manner, often fully digital, and strongly technology-driven. According to the AFM, the advantage of these low-threshold services may be that more consumers with sufficient financial room to maneuver find their way to investing, provided that neobrokers act in the interests of the customer.

The revenue model of neobrokers has the increased attention of the AFM. See also our [earlier blog](#) on payment for order flow.

- **Money laundering:** the continuing political and social attention to money laundering and terrorist financing are putting greater pressure on the gatekeeper function. The AFM itself is committed, among other things, to an improved information position and further cooperation with chain partners. The AFM cites the example of a project aimed at increasing knowledge among chain partners and market participants about money laundering through Dutch investment firms and investment institutions.

Specifically for investment firms and other asset managers, the AFM has prepared a so-called 'risk map'. In it, the AFM identifies a number of specific risks, including the following:

- **Strategy of market participants:** the AFM points to the changing internal and external environment in the investment world (such as scale and margin pressure, emergence of (online) passive investing, increasing laws and regulations and outsourcing issues) that requires investment firms to strategically reposition themselves. According to the AFM, this strategic repositioning is putting pressure on the sound and controlled operations of investment firms.
- **Sustainability:** the current freedom of interpretation of sustainability legislation leads to information asymmetry between provider and client, which the AFM believes makes greenwashing possible. In addition, the AFM points out the risk that investment firms do not include sustainability aspects in the approach and design of controlled operations.
- **Cyber resilience:** investment firms are susceptible to cyber-attacks, according to the AFM, especially with the increasing remote working and dependence on digital processes. The industry's resilience to ICT incidents currently appears insufficient, partly due to parties' legacy systems.
- **Outsourcing:** the AFM points out that investment firms remain responsible for outsourced activities, which can put pressure on the integrity and controlled conduct of business in case of incidents in that area. In addition, the AFM sees concentration risks arising from outsourcing, namely when many parties become dependent on a few third-party service providers.
- **AI and investment policy:** the use of algorithms, AI and Machine Learning (ML) by investment firms continues to increase. According to the AFM, this raises questions about transparency about the investment policy towards investors and about risk management (including with respect to data quality and prevention of biases). Moreover, errors in algorithms can lead to financial instability in extreme cases, according to the AFM.



- **Money laundering:** finally, the AFM mentions that the sanctions introduced as a result of the Russian invasion of Ukraine, combined with the continuing political and social attention to money laundering and terrorist financing, puts greater pressure on the performance of the gatekeeper function. For example, according to the AFM, money laundering can take place through investment firms as other gatekeepers - such as banks - raise higher thresholds (waterbed effect). The AFM points out that the industry should be alert to this.

We expect the AFM to give increased attention to the above themes in its ongoing supervision of investment firms in 2023.

Communication about expected returns

- **What?** On June 30, 2022, the AFM [published](#) the results of its investigation into expected returns that investment firms present to their clients. The AFM suspects that some of the communicated expectations are not realistic. Subsequently, on August 29, 2022, the AFM published a [supplement](#) to the existing Guidance on advisory and asset management services for consultation. With this supplement, the AFM gives investment firms guidance on determining expected returns as part of the suitability test. On November 29, 2022, the AFM published this [final supplement](#) in the form of Appendix 5 to the Guidance on its website.
- **Who?** Investment service providers, especially advisors and asset managers.
- **When?** Ongoing in 2023. The AFM expects investment firms to check against the revised Guidance when determining expected returns and adjust their calculations where necessary. The AFM wants to give firms time to apply the supplement, but also intends to investigate at a later date the extent to which parties (still) use unrealistic expected returns.

Covenant with DSI on professional competence

- **What?** The AFM announced on November 16, 2022 that the covenant with Stichting DSI on professional competence will be [extended](#). MiFID II stipulates that employees of investment firms who provide information on financial instruments or give investment advice must be competent. The same requirement applies to asset managers, according to the AFM. ESMA published [guidelines](#) for this in 2016. The covenant includes that DSI only admits persons to its registers who meet these ESMA guidelines. The covenant states that the AFM recognizes that everyone on the register (currently about 5,000 people) is competent.

- **Who?** All investment service providers.
- **When?** The extension is for two years, through December 31, 2024.

Ex-ante and ex-post cost information

- **What?** On December 8, 2022, the AFM published the [results](#) of its investigation into a number of investment firms' compliance with the ex-ante and ex-post cost transparency requirements of Delegated Regulation 2017/565 to MiFID II. The AFM found deficiencies in all elements investigated. With the publication of the investigation findings, the AFM also wants to make other investment firms aware of the requirements.
- **Who?** All investment service providers.
- **When?** Ongoing. The AFM expects investment firms to ensure that they comply with the cost transparency requirements now and in the future both ex-ante and ex-post. Investment firms would do well to review Article 50 of the MiFID II Delegated Regulation very carefully and check whether each article paragraph has been implemented in their own processes.

Vulnerability to cyber attacks

- **What?** Based on self-assessments of 14 capital market institutions, the AFM is of the view that the capital market sector is vulnerable to cyber attacks. Such cyber attacks can seriously disrupt and damage the continuity of business activities. Based on these self-assessments, the AFM has made a number of recommendations for the capital market sector, including having and maintaining a cyber incident plan. With this, the AFM intends to further strengthen cyber resilience together with the capital markets sector. The AFM's report can be found [here](#).
- **Who?** Institutions operating within the capital markets, such as trading venues, proprietary traders and clearing & settlement firms.
- **When?** 2023 and beyond.

DNB SUPERVISION

Supervision in focus 2023

- **What?** In November 2022, DNB published its annual [Supervision in focus](#). In this publication, DNB looks back at what it has done as a regulator over the past year and looks ahead to its priorities for 2023. Specifically with regard to investment firms, DNB points out that 2022 has largely been dominated by the further implementation of IFR/IFD and that 2023 will focus on the entry into force of



the so-called Supervisory Review and Evaluation Process ([SREP guidelines](#)). These guidelines determine how the regulator can impose capital and liquidity requirements on an investment firm based on an “integrated risk view. According to DNB, this requires intensive cooperation between the AFM and DNB.

- **Who?** DNB’s supervisory priorities are relevant to all licensed investment firms. The SREP guidelines apply specifically to Class 2 and Class 3 investment firms.
- **When?** Ongoing in 2023.

ESMA & EBA

ESMA Annual Work Programme 2023

- **What?** On October 10, 2022, ESMA released its [Annual Work Programme 2023](#). In it, ESMA describes its supervisory priorities for 2023. ESMA mentions that in 2023 it will particularly focus on themes related to (i) sustainable finance and (ii) technological innovation. For investment firms, it is relevant that ESMA’s focus in 2023 will include the coordination of new EU-wide MiFID II supervisory examinations, the use of mystery shoppers and the review of technical standards under MiFID II/MiFIR.
- **Who?** All investment firms.
- **When?** The Annual Work Program 2023 will feed through into the supervision of investment firms in 2023.

ESMA Strategy 2023–2028

- **What?** On October 10, 2022, ESMA released its [2023-2028 Strategy](#). This document sets out ESMA’s priorities for its activities over the next five years. In doing so, ESMA distinguishes between three strategic priorities and two thematic ‘drivers’. The three strategic priorities are (i) promoting effective markets and financial stability, (ii) strengthening supervision of financial markets and (iii) enhancing the protection of retail investors. In addition, ESMA will work to ensure adequate rules for appropriate supervision of sustainable finance and technological innovation.
- **Who?** All investment firms.
- **When?** The 2023-2028 Strategy will feed through into the supervision of investment firms in 2023 and beyond.

EBA Annual Work Programme 2023

- **What?** On September 29, 2022, EBA published its [Annual Work Program 2023](#). In this document, EBA describes its main priorities for 2023. Relevant for investment firms, in 2023 EBA will focus on finalizing

technical standards (RTS) and guidelines it is required to produce under IFD/IFR (see also [‘EBA work on IFR & IFD’](#) later in this section).

- **Who?** All investment firms.
- **When?** The Annual Work Program 2023 describes EBA’s focus areas in 2023.

ESMA Consultation Guidelines MiFID II product governance

- **What?** On July 8, 2022, ESMA published [revised guidance](#) on the application of MiFID II product governance requirements for consultation.
- **Who?** All investment service providers subject to product governance obligations.
- **When?** ESMA expects to publish final guidance in the first quarter of 2023.

ESMA Guidelines MiFID II suitability test

- **What?** On September 23, 2022, ESMA published [final guidance](#) on the implementation of the MiFID II suitability test by investment firms. The final guidelines replace the old guidelines from 2018 and now also address, among other things, the integration of client preferences on sustainability in the suitability test, which has been a requirement since August 2, 2022. The guidelines also include examples of good and bad practices regarding the suitability test.
- **Who?** Investment advisors and asset managers.
- **When?** The guidelines come into effect 6 months after translation into all official EU languages.

ESMA Consultation measures trading platform in case of market outages

- **What?** On September 26, 2022, ESMA published a [consultation paper](#) outlining its expectations regarding communication protocols and other measures that trading venues should take in the event of market outages.
- **Who?** Trading platforms.
- **When?** The consultation period ran until December 16, 2022. ESMA will publish its final opinion in the first quarter of 2023.

ESMA Consultation rules for passport authorization

- **What?** On November 17, 2022, ESMA published a [consultation paper](#) containing proposed amendments to Delegated Regulation (EU) 2017/1018 and



Implementing Regulation (EU) 2017/2382 regarding information that investment firms must submit to the supervisor if they wish to provide cross border investment services. In the notification, local supervisors aim to gain greater visibility into how cross-border service provision will take place and be organized internally in the future.

- **Who?** Investment firms that (intend to) provide investment services across borders.
- **When?** The consultation period runs until February 17, 2023. ESMA expects to publish its final report by the end of 2023.

ESMA Attention to inflation in MiFID II compliance

- **What?** On September 27, 2022, ESMA published a [statement](#) reminding investment firms that they must factor in the sharply rising inflation and inflation risk when providing investment services into compliance with various MiFID II requirements, including in the suitability test and product governance.
- **Who?** All investment service providers.
- **When?** Ongoing. ESMA continues to closely monitor the situation of high inflation.

ESMA Opinion transparency obligations MiFIR

- **What?** On December 19, 2022, ESMA published its [opinion](#) regarding amendments proposed by the European Commission to the [amendments](#) previously proposed by ESMA to Delegated Regulation 2017/587 (RTS 1) and Delegated Regulation 2017/583 (RTS 2). These regulations provide an elaboration of the MiFIR pre-trade and post-trade transparency obligation with respect to equity and non-equity.
- **Who?** Trading venues and investment firms subject to RTS 1 and RTS 2.
- **When?** It is now up to the European Commission to adopt both RTS through Delegated Regulations. Then the European Parliament and the Council have the opportunity to express any objections they may have within three months.

EBA Focus Areas SREP

- **What?** On October 27, 2022, EBA published a [document](#) outlining focus areas for the Supervisory Review and Evaluation Process (SREP) to be conducted by national supervisors. The focus areas are (i) macroeconomic and geopolitical risks, (ii) operational and financial resilience, (iii) sustainability and

digitalization transition risks and (iv) money laundering risks and sanctions.

- **Who?** The report is addressed to national regulators, but is therefore also relevant to investment firms.
- **When?** Ongoing in 2023.

EUROPEAN COMMISSION

EC exploration Retail Investment Strategy

- **What?** The European Commission (EC) has been evaluating for some time whether the existing European legal framework provides adequate and effective protection for retail investors. Based on this evaluation, the EC will publish a [Retail Investment Strategy](#). In this context, on August 2, 2022, the EC published a comprehensive [final report](#) with findings on disclosure, inducements and the suitability test. In the summer of 2021, the EC had already published a [consultation paper](#). The EC then wanted to know, among other things, what stakeholders think about the comparability of financial products, financial illiteracy among consumers, sustainable investing and the impact of the digitization of financial services. In response to the latter exploration by the EC, the AFM and the Ministry of Finance published a [non-paper](#) on December 13, 2021, containing their views on the position of retail investors. The AFM is committed to (i) the importance of a carefully designed online choice environment, (ii) a total ban on inducements for investment products and services, and (iii) more effective cooperation and convergence of supervision. In May 2022, a [Call for Evidence](#) was launched on the Retail investment package, which was open from May 3 to May 31, 2022.
- **Who?** All investment firms providing investment services to retail investors.
- **When?** The publication of the European Retail Investment Strategy is expected in the first half of 2023. It is likely that the strategy will result in several proposed amendments to (among others) the MiFID II/MiFIR regime with respect to retail investors.

Capital Markets Union: new proposals European Commission

- **What?** On December 7, 2022, the EC presented a comprehensive set of new legislative proposals relating to clearing, insolvency and listing of companies to make EU capital markets more attractive. This is a comprehensive package of laws and regulations aimed at further developing the European Capital Markets Union. An [overview](#) of all legislative proposals under this framework can be found on the European Commission's website. These include proposed amendments to [IFD](#) (in the area



of clearing) and [MiFID II](#) and [MiFIR](#) (in the area of listings).

- **Who?** Securities issuers, but for other parts of the legislative proposals also central counterparties and (SME) companies more generally.
- **When?** The proposed legislative package consists of several draft regulations and draft directives. The timing of their entry into force will vary for each component. Given the size of the entire package, 2023 will still see the necessary developments and 2024 is expected to be primarily the year when new rules will come into force. So, this will certainly be reflected in the Finnius Outlook 2024.

DEVELOPMENTS REMUNERATION RULES

Further remuneration rules financial sector (Wnbfo)

- **What?** Effective January 1, 2023, the Further Remuneration Measures for Financial Undertakings [Act](#) (Wnbfo) entered into force. The current remuneration rules (as included in the Financial Supervision Act under the Wbfo) have been amended, including by (i) the introduction of a five-year statutory retention period for shares paid as a component of a fixed remuneration and (ii) a tightening of the averaging rule for non-CLA staff, who can be awarded a higher bonus than 20% under certain conditions. See also our [Finnius Finds blog](#) of June 23, 2022 on this subject. The AFM [published](#) a notification form for deviating from the bonus cap for non-CLA staff at the end of 2022.
- **Who?** Investment firms that fall within the scope of the Dutch remuneration rules.
- **When?** The changes went into effect on January 1, 2023, with transitional rights until January 1, 2024 for employees already working for the investment firm on January 1, 2023.

ESMA Guidelines on remuneration rules under MiFID II

- **What?** On March 31, 2022, ESMA published [final guidance](#) on the application of the remuneration rules under MiFID II. The guidelines replace ESMA's 2013 remuneration guidelines. The new guidelines address, among other things, the design of remuneration policies and the management of risks that may be associated with remuneration and remuneration policies. The guidelines include examples of good and bad practices in remuneration.
- **Who?** All investment firms.
- **When?** The guidelines will enter into force after

translation into the official EU languages.

Q&A Retention remuneration

- **What?** On December 2, 2022, DNB [published](#) a Q&A regarding retention remuneration, which was consulted earlier in the year. In the Q&A, DNB explains the review frameworks it uses for retention fees for which consent from DNB is required and for cases where such consent is not required. It also explains which elements must (can) be substantiated in any case, even if no prior consent by DNB is required. The AFM [announced](#) on its website that the Q&A consultation is also being conducted on its behalf.
- **Who?** All investment firms.
- **When?** Effective immediately.

Remuneration under the heading of dividends

- **What?** On August 1, 2022, the European Court of Justice (ECJ) issued [an important ruling](#) on the question of the extent to which dividends on employee shares can qualify as variable compensation. Not surprisingly, the ECJ read everything very broadly (and teleologically). Although the ruling was made with respect to regulated mutual fund managers, the point addressed in the ruling is relevant to all regulated market participants. After all, the issue at stake is what remuneration mechanisms are considered variable compensation. As such, the considerations in the ruling are also relevant to assessing participation structures in investment companies.
- **Who?** All investment firms.
- **When?** It is expected that regulators will pay extra attention to participation structures in 2023.

OTHER DEVELOPMENTS EXISTING LAWS AND REGULATIONS

MiFID II/MiFIR review

- **What?** In October 2021, the European Commission (EC) published the [results](#) of its 2020 consultation for a review of MiFID II/MiFIR. This consultation ran in parallel with the review work ESMA has been conducting for the EC since 2020 on various elements of MiFID II/ MiFIR. The EC proposes to consider the results of the consultation when making proposals to amend MiFID



II/MiFIR. This exploration by the EC is prompted by the requirement, in line with the Better Regulation principles, to review two years after the entry into force of new EU legislation whether the new legislation is functioning properly. The EC is currently reviewing the existing MiFID II/MiFIR framework along several lines. We refer here to the EC Retail Investment Strategy outlook of August 2022 and the CMU proposals of December 2022, which are also included in this Outlook.

- **Who?** All investment firms.
- **When?** So far, the review has not led to any major revision proposals, except where the transparency regime is concerned (see our next alert on that).

Review of transparency regime and other changes in MiFIR and MiFID II

One of the goals of the EC - as also follows from its September 2020 Capital Markets Action Plan - is to create better access to market data for smaller and retail investors in particular, making it easier to invest in stocks and bonds. This should contribute to more liquidity in markets, ultimately making it easier for companies to raise finance in capital markets as well. It will also improve investors' ability to verify that a broker is acting in accordance with MiFID II's best execution obligations. At the same time, ESMA has assessed in its reports that the current MiFID II/MiFIR transparency regime is not functioning adequately: the sources of market data are fragmented and therefore provide limited insight into the trading of a given financial instrument, the market data itself has become more expensive and the legislative framework is complex.

Against the above background, on November 25, 2021, the EC proposed an [amending directive](#) and [amending regulation](#) to amend MiFID II and MiFIR. First, the proposed amendments to MiFIR concern several adjustments to transparency rules for trading venues, approved publication arrangements (APAs), consolidated tape providers (CTPs) and systematic internalisers (SIs). The aim of these amendments is to increase transparency with respect to market data and remove existing obstacles to the introduction of a consolidated tape. 'Consolidated tape' refers to a single consolidated source of trading information for a particular financial instrument. Thus, it introduces the obligation for 'market data contributors', such as trading venues and APAs, to provide market data for each asset class (equities, ETFs, bonds and derivatives) directly, exclusively and in a harmonized manner to CCPs authorized and selected by ESMA. Through the publication of consolidated tapes by these CCPs, investors should get the required insight into the trading of the aforementioned financial instruments.

Other proposed changes by the EC include:

- dropping the MiFID II authorization requirement for proprietary traders who have direct electronic access (DEA) to a trading venue to the extent that they do not provide other investment services or perform investment activities;
- adjusting the derivatives trading obligation in MiFIR to align with the derivatives clearing obligation included in EMIR Refit; and
- the introduction of a prohibition in MiFIR for investment firms to receive payments or non-cash benefits from a third party for forwarding client orders for execution (so-called "payment for order flow" (PFOF)).

On March 15, 2022, ESMA published a [report](#) containing a number of recommendations regarding the various elements of the EC proposals. In essence, it supports the changes the EC wants to make, including those related to the consolidated tape and PFOF.

The EC's proposals have proved controversial; negotiations between the Council and the European Parliament are still ongoing. Topics of discussion include the proposed ban on PFOF. On that, see our [Finnius Finds blog](#) of November 23, 2022. We expect more clarity in 2023 on the extent to which the EC's proposals will become law, or will be amended or even dropped.

MiFID II Quick Fix Implementation Act

- **What?** In response to the corona crisis, the EC proposed a number of amendments to MiFID II in 2020. This resulted in [Directive 2021/338](#) amending MiFID II (MiFID II Quick Fix). The amendments include (i) an easing of the disclosure requirements of investment firms in relation to professional investors, including with respect to cost transparency, best-execution and product governance and (ii) a revision of the regime for position limits in commodity derivatives. As part of the implementation of the MiFID Quick Fix, the [implementation bill](#) was submitted to the House of Representatives on July 7, 2022, and a [letter of amendment](#) on December 20, 2022.
- **Who?** In principle, the MiFID II Quick Fix is relevant to all investment firms.
- **When?** Member states must apply the MiFID II Quick Fix rules as of February 28, 2022. This deadline has not been met by the Dutch legislature. We expect the law to enter into force during 2023.

Consultation Decision MiFID II Quick Fix

- **What?** On August 17, 2022, the Ministry of Finance published the [Implementation Decree MiFID II Quick Fix](#) for consultation. This Decree amends the Decree on Conduct of Business Supervision of Financial Undertakings Wft (BGfo), the Decree on Administrative Fines in the Financial Sector and the Decree on Market Abuse Wft. The amendments to the BGfo are related to the further implementation of the Implementation Act MiFID II Quick Fix (see the alert above).
- **Who?** In principle, the MiFID II Quick Fix is relevant to all investment firms.
- **When?** The consultation ran until September 29, 2022. We expect the decision to take effect during 2023.

Financial Markets Amendment Act 2022

- **What?** On May 27, 2022, the [Financial Markets Amendment Act 2022](#) was published in the Dutch Gazette. This bill introduces an ongoing reputation requirement for holders of a qualifying holding in an investment firm. More specifically, it concerns the element of professional competence which, together with the element of reliability, forms part of the concept of reputation.
- **Who?** All investment firms.
- **When?** The continuing reputation requirement must first be detailed at Decree level (see the alert below) and its entry into force will be delayed until it is provided for. The continuing reputation requirement is expected to take effect during 2023.

Financial Markets Amendment Decree 2022

- **What?** On July 15, 2022, the Ministry of Finance published the [Financial Markets Amendment Decree 2022](#) for consultation. Among other things, it is proposed that the AFM's consent requirement for proposed changes by a market operator licensed to operate a regulated market in the Netherlands be dropped. The proposal also contains an elaboration of the ongoing reputation requirement for holders of a qualifying participation in an investment firm, as introduced in the Financial Markets (Amendment) Act 2022 (see the alert above). It elaborates on what information must be submitted that DNB can use to determine whether this requirement is met. The consultation period ended on August 26, 2022.
- **Who?** All investment firms.
- **When?** Not yet known, but expected during 2023. On November 23, 2022, the Council of State issued its opinion and recommended adoption of the decision.

Financial Markets 2022-II Amendment Act

- **What?** In the summer of 2022, the proposed [Financial Markets 2022-II Amendment Act](#) was published. Among other things, the bill contains changes to the current group supervisory approval regime, including the obligation to notify DNB of intra-group changes already proposed earlier in the Financial Markets 2021 Amendment Act.
- **Who?** Group companies that hold a group authorization from DNB with respect to an investment firm.
- **When?** The Financial Markets Amendment Act 2022-II was passed by the Senate and House of Representatives late last year. The bill is intended to take effect in early 2023.

Financial Markets (Amendment) Decree 2021 – the group DNO

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets \(Amendment\) Decree 2021](#) to the First and Second Chamber of Parliament. This Amendment Decree provides, among other things, for a more detailed elaboration of the obligation to notify changes within a group in view of a group declaration of no objection (DNO) granted by DNB.
- **Who?** Group companies that hold a group DNO from DNB with respect to an investment firm.
- **When?** The amendment is related to the proposed Financial Markets 2022-II Amendment Act, which is expected to take effect in early 2023.

PRIIPs – Amendments Eid

- **What?** On September 6 2021, the EC published amendments with respect to the Delegated Regulation to the PRIIPs Regulation, detailing Eid requirements. These appeared in the [Official Journal](#) of the European Union on December 20, 2021. The amendments include (i) new methods to calculate appropriate performance scenarios and a revised presentation of these scenarios, (ii) how costs should be presented and (iii) how transaction costs should be calculated. Please note that open-end investment funds and other PRIIPs open for subscription are also subject to website disclosure requirements (during the subscription period).
- **Who?** Investment firms that manufacture, sell and/or advise on investment products within the meaning of the PRIIPs Regulation.
- **When?** The changes are effective January 1, 2023, after entry into force was again previously delayed.



General review PRIIPs Regulation

- **What?** A study on the overall functioning of the PRIIPs Regulation is currently underway, in view of Article 33 PRIIPs Regulation. The EC has asked the ESAs to give [their advice](#) on many different topics in the PRIIPs Regulation. In connection with this, the ESAs themselves then [sought input](#) back from the market and [provided input](#) on April 29, 2022. Right now, we are waiting for the EC itself to come up with a proposal. The advice requested by the EC indicates that this will be an implementation of the Retail Investment Strategy (see above under 'European Commission'). At this time, the strategy has not yet been published.
- **Who?** Investment firms that develop, sell and/or advise on investment products within the meaning of the PRIIPs Regulation.
- **When?** The Retail Investment Strategy is expected to be published in the first half of 2023. It remains to be seen whether the EC's proposal to amend PRIIPs will be published immediately or then delayed.

Proposed amendment to House of Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House of Whistleblowers Act. Among other things, this law provides for the obligation to establish a procedure for dealing with the reporting of suspected wrongdoing within an organization. Currently, a threshold applies that the organization has at least fifty people. One of the proposed changes is that this threshold no longer applies to companies operating in the financial sector. Among others, the AFM will be appointed as the competent supervisor. It is proposed to change the name of the law to Whistleblowers Protection Act.
- **Who?** All investment firms.
- **When?** The law change was actually supposed to take effect on December 17, 2021. However, the proposal was not passed by the House of Representatives until December 20, 2022. It is now before the Senate, which has yet to decide whether or not to adopt the proposal. Thus, it is still unclear when the amendment will take effect. We expect this to be in 2023. We note that under Article 23i of the Prudential Rules Decree, certain whistleblowing rules already apply to all investment firms. In our experience, this is still regularly overlooked.

Financial Markets Amendment Act 2024

- **What?** Last spring the Ministry of Finance published the [Financial Markets Amendment Act 2024](#) for consultation. Among other things, the bill provides for

a broader definition of 'state aid' resulting in a ban on payment of variable remuneration. This broader state aid definition stems from IFD. The bill was submitted for consultation to the Advisory Division of the Council of State on November 25, 2022.

- **Who?** All investment firms.
- **When?** The bill is expected to take effect on January 1, 2024.

Consultation on amendments to Nrgfo

- **What?** On October 12, 2022, the AFM published a [consultation paper](#) with proposed changes to the Further Regulations on the Supervision of the Conduct of Financial Undertakings (Financial Supervision Act) (Nrgfo). As of July 7, 2022, Section 4:87aa Wft introduces a "segregated account" as a new option for investment firms to protect clients' rights with respect to funds entrusted by them to the investment firm. In line with this, Section 7:20 Nrgfo will be amended so that it is clear that an investment firm does not need to request permission from the AFM when using this segregated account.
- **Who?** Investment firms subject to asset segregation rules due to the nature of their services.
- **When?** The changes took [effect](#) January 1, 2023.

Consultation Amendment to Financial Supervision Funding Decree 2019

- **What?** On April 25, 2022, the Ministry of Finance published for consultation the [Decree amending the Financial Supervision Funding Decree 2019](#). Among other things, this Decree proposes changes to the charging system for trading platforms.
- **Who?** Trading platforms supervised by the AFM.
- **When?** The consultation period expired on May 23, 2022. The changes are expected to take effect in early 2023.

NEW LAWS AND REGULATIONS

EBA work on IFR & IFD

- **What?** EBA is developing several technical standards (RTS) and guidelines in the context of IFR/IFD. These include the following RTS and guidelines:
 - [RTS](#) on the threshold above which reclassification from investment firm to credit institution occurs in accordance with Article 8a CRDV. These RTS are



relevant for Class 1 investment firms.

- [RTS](#) on “Pillar 2 add-ons” (additional own funds requirements) that regulators may impose on investment firms subject to Article 40 IFD. These RTS are relevant to Class 2 and Class 3 investment firms.
- [RTS](#) on specific liquidity requirements referred to in Article 42 IFD. These RTS are relevant for Class 2 and Class 3 investment firms.
- [Guidelines](#) (jointly with ESMA) on the Supervisory Review and Evaluation Process (SREP) under IFD. These guidelines are relevant to Class 2 and Class 3 investment firms. In this context, on Oct. 24, 2022, EBA published a [report](#) with recommendations on how supervisors should include ESG risks in the SREP.
- [Guidelines](#) on the criteria for regulators to exempt investment firms from IFR liquidity requirements. This guidance is relevant to Class 3 investment firms.
- [Guidelines](#) on the benchmarking exercises on remuneration practices and the gender pay gap referred to in Article 34(1) IFD. These guidelines are relevant to Class 2 investment firms.
- [Guidelines](#) on the data collection exercises regarding high earners as referred to in Article 34(4) IFD. This guidance is relevant to Class 1 and 2 investment firms and, where applicable, the investment firm’s group companies subject to consolidated prudential supervision.
- **Who?** The scope of application of the RTS/guidelines varies from one RTS/guideline to another, as follows from the above.
- **When?** The RTS and guidelines mentioned above came into force at the end of 2022 or are (expected) to come into force in 2023.

DNB Regulation ICLAAP, delta formulas and the group capital criterion

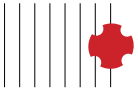
- **What?** On November 3, 2022, the [Regulation ICLAAP, delta formulas and the group capital criterion](#) was published in the Dutch Gazette. In this Regulation, which amends the Regulation Options and Discretions IFR and IFD 2021, DNB implements a number of supervisory options and discretions included in IFD/IFR. For example, the Regulation stipulates that certain investment firms must comply with the ICLAAP requirement in article 24a1 paragraph 1 Bpr. ICLAAP stands for “*Internal Capital and Liquidity Adequacy Assessment Process*.”
- **Who?** Investment firms falling within the scope of IFD/IFR. The ICLAAP obligation applies to Class 3 investment firms with the exception of investment firms that exclusively provide investment services as referred to in parts a or d of the definition of provision of investment service in Article 1:1 of the Wft.
- **When?** The Regulations came into effect as of Nov. 4, 2022.

DORA

- **What?** On December 27, 2022, the [Regulation](#) on digital operational resilience for the financial sector (DORA) and its accompanying [Directive](#) were published in the Official Journal of the EU. DORA roughly consists of the following six pillars:
 1. Solid ICT risk management;
 2. Adequate ICT incident management, including reporting ICT incidents to the supervisor;
 3. Prudent management of risks when using third-party ICT providers;
 4. Periodic testing of own ICT resilience;
 5. Direct oversight of critical ICT service providers; and
 6. Cooperation and supervision/enforcement by supervisors.
- **Who?** DORA is an important development for all investment firms as defined in MiFID II. For Class 3 investment firms, DORA proposes an alleviated regime. Mapping out the exact scope and content of all DORA obligations is a difficult task. We are happy to help you with this analysis and with translating the requirements into concrete action points.
- **When?** DORA is directly applicable in all Member States, including the Netherlands, as of January 17, 2025. This means that institutions will have to comply with the obligations in DORA from that date.

MiCA

- **What?** On October 5, 2022, the latest [text](#) of the proposed Regulation on Markets in Crypto-assets (MiCA) was published. MiCA is a comprehensive legislative effort by the EU to achieve harmonized regulation of crypto-assets at the European level. Under MiCA, for example, a whole range of services and activities will be required to be licensed, or at least brought within the scope of supervision.
- **Who?** MiCA provides certain exemptions from the MiCA licensing requirement for authorized investment firms offering services related to crypto assets.
- **When?** The next step is for the European Parliament and the Council to formally agree on the content of the text of MiCA, after which the text will be published in the Official Journal of the European Union. According to the most recent text, MiCA will be directly applicable in the Netherlands 12 and 18 months (depending on the section) after its entry into force, respectively.



Act on security test regarding investments, mergers and acquisitions

- **What?** The [Act on security test regarding investments, mergers and acquisitions](#) was published in the Dutch Gazette on June 10, 2022. Last summer, the draft decrees with [further technical rules](#) and with [rules on the scope of application of sensitive technology](#) were consulted. The Act introduces a test mechanism for investments, mergers and acquisitions that may pose a risk to national security. This includes investments in (i) vital providers or (ii) companies with sensitive technology. See also our [Finnius Finds blog](#) from May 19, 2022.
- **Who?** The Act designates several financial companies as vital providers, including trading venues.
- **When?** The law is expected to take effect in early 2023.



PAYMENT SERVICE PROVIDERS & EMIS

Please note: the cross-sector [Integrity](#) section (think of the Wwft and the sanctions regulations) is also of great importance to payment service providers and electronic money institutions (EMIs), but also the [FinTech & Crypto](#) section which includes matters relating to cyber security & IT, artificial intelligence (AI) and the use of distributed ledger technology (DLT) in payments, among other things. Subjects related to the aforementioned themes are - with a few exceptions - not covered in this section, but only in the aforementioned specials. In addition, it is useful for payment service providers and EMIs to take note of the [General](#) section, because it also deals with more general subjects that may affect these parties.

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

DNB OVERSIGHT

- Supervision Plans 2023
- Thematic survey securing funds
- Integrity investigation into fast-growing payment and electronic money institutions
- Research on effectiveness of sanction screening systems
- DNB Good Practice Gambling & Gaming for Payment Institutions

EBA

- EBA Annual Work Programme 2023
- EBA guidelines for remote customer onboarding
- Amendments to RTS on SCA and CSC

ECB & EC

- Legislative proposal instant payments
- Review of PSD2
- Reschedule of launch renewed wholesale payment system

EPC & SEPA

- Entry into force 2023 rulebooks and implementation guidelines SEPA schemes
- EPC calls for change requests SRTP Scheme Rulebook
- EPC publishes first SPAA Scheme Rulebook

DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

- Financial Markets Amendment Act 2022
- Financial Markets Amendment Decree 2022
- Financial Markets Amendment Decree 2021
- Financial Markets Amendment Act 2022-II
- Financial Markets Amendment Decree 2021 – group DNO
- Proposed amendment to House of Whistleblowers Act
- Financial Markets Amendment Act 2024

NEW LAWS AND REGULATIONS

- Regulation on digital operational resilience for the

financial sector (DORA)

- Digital Services Act entry into force
- Payment Service Providers Directive Implementation Act
- Further remuneration rules financial sector (Wnbfo)
- Remuneration under the heading of dividends
- Q&A Retention remuneration
- Implementation of directive on accessibility requirements for products and services
- Open finance framework

OTHER DEVELOPMENTS

- FSB outlines framework for monitoring progress on cross-border payment targets
- Parliamentary letter “remittances”
- Covenant Cash



DNB OVERSIGHT

Supervision Plans 2023

- **What?** In November 2022, DNB published its 2023 [Supervision Plans](#). In this publication, DNB looks back on what it has done as a regulator over the past year and looks ahead to its priorities for 2023. In 2023, DNB will focus on risk management related to the protection third-party funds, recovery and exit plans of financially vulnerable parties and combating money laundering and terrorist financing. In 2022, DNB launched two thematic surveys focusing on the transactions payment service providers process for their clients and on the management of integrity risks at so-called large growth companies. Both thematic surveys will continue in 2023.
- **Who?** DNB's Supervision Plans are relevant to all payment service providers and electronic money institutions (EMIs).
- **When?** Ongoing through 2023.

Thematic survey securing funds

- **What?** Payment institutions and EMIs are required to safeguard the funds they hold for their customers, in order to prevent social harm if they fail. In 2022, DNB conducted a thematic survey regarding the safeguarding of funds by payment institutions and EMIs. The [main findings](#) of the study are that, when it comes to safeguarding funds, some payment institutions and EMIs (i) do not sufficiently monitor the creditworthiness of the bank where the third-party funds are deposited, (ii) carry out limited or no monitoring activities, (iii) do not pay sufficient attention to operational and financial risks when preparing risk analyses, and (iv) do not report incidents to DNB or do not report them in a timely manner. In 2023, DNB will provide more guidance to the industry on safeguarding funds and it will be a focus point in DNB's supervision of payment institutions and EMIs. DNB will also conduct the thematic survey again in 2023, supplemented by an industry-wide survey.
- **Who?** Payment service providers and EMIs.
- **When?** In 2023.

Integrity investigation into fast-growing payment and electronic money institutions

- **What?** DNB also launched [an investigation](#) in 2022 focused on the management of integrity risks by payment institutions and EMIs that have experienced rapid growth in recent years. The research focuses on the growth of the institution and whether, with the growth, the integrity risks have also increased. In

selecting institutions for this study, the percentage of growth in transaction volume and/or number of merchants is considered. A few institutions are selected for an in-depth study.

- **Who?** Payment service providers and EMIs.
- **When?** The study will be completed in the first half of 2023.

Research on effectiveness of sanction screening systems

- **What?** DNB launched [a study](#) on the effectiveness of sanction screening systems in the fall of 2022. In particular, the research is about testing transaction screening and screening the names and details of "relationships. For this purpose, DNB is deploying a data-driven analysis tool. The research started in September 2022 and feedback to the participating payment institutions will follow after completion. Generic conclusions and good practices will be shared with the entire industry.
- **Who?** Payment institutions.
- **When?** The study will be completed in the first half of 2023.

DNB Good Practice Gambling & Gaming for Payment Institutions

- **What?** DNB published the [Good Practice Gambling & Gaming](#) for Payment Institutions in December 2022. In 2021 and 2022, DNB already conducted a thematic survey for payment institutions that provide payment services to parties active in the online Gaming and Gambling industry. The reason for this survey was the increased inherent integrity risks in that industry. The results of the thematic survey led to the Good Practice, which should provide guidance for managing integrity risks. The Good Practice addresses, among other things, the SIRA of payment institutions, the AML policy, customer due diligence and transaction monitoring.
- **Who?** Payment institutions.
- **When?** Ongoing.

EBA

EBA Annual Work Programme 2023

- **What?** On September 29, 2022, EBA published its [Annual Work Program](#) for the year 2023. In it, EBA describes its main priorities for 2023. With respect to payment services, EBA will particularly focus on further contributing to efficient, secure and easy retail

payments across the EU. More specifically, in 2023 EBA will focus on (i) monitoring technical standards (RTS) on strong customer authentication and secure communication (SCA&CSC), (ii) monitoring consistent implementation of the EBA Guidelines on the limited network exemptions, (iii) monitoring the consistent and accurate implementation by national regulators and financial institutions of EBA Guidelines on fraud reporting, (iv) assess the reporting of national supervisors under the revised EBA Guidelines under PSD2, including mandates related to incident reporting under DORA, (v) supporting the European Commission in the review of PSD2, and (vi) supporting the making of Q&A's on PSD2. Furthermore, EBA expects to publish a peer review of the EBA guidelines on authorisation under PSD2 in Q1 2023.

- **Who?** Payment institutions.
- **When?** Ongoing through 2023.

EBA guidelines for remote customer onboarding

In November 2022, EBA finalized [guidelines](#) for the use of remote customer onboarding solutions. The guidelines establish common EU standards for the development and implementation of processes regarding remote customer onboarding. These guidelines outline the steps financial institutions should take when choosing tools for remote customer onboarding. In addition, the guidelines state how institutions should assess the adequacy and reliability of such tools in order to effectively comply with their AML/CFT obligations.

The guidelines are relevant to payment institutions and EMIs because their relationships are increasingly established digitally. The guidelines are related to EBA guidelines in other areas, such as AML/CFT compliance management, outsourcing and ICT and security risk management. The guidelines should be applied in accordance with already existing EBA guidance.

The guidelines take effect six months after publication. Subsequently, national supervisors must report to EBA within two months on their compliance with these guidelines. This will take place in 2023.

Amendments to RTS on SCA and CSC

- **What?** On December 5, 2022, the [revised technical standards](#) (RTS) on strong client authentication (SCA) and secure open standards of communication (CSC) were published. Among other things, the amended RTS address the exemption for account servicing payment service providers (ASPSPs) not to apply SCA

under certain conditions. The amendments make this exemption mandatory in cases where customers wish to allow an account information services provider (AISP) to access their payment account. Another important change involves expanding the frequency for SCA renewal. This frequency will be adjusted from every 90 days to every 180 days.

- **Who?** Payment institutions, especially payment service providers offering payment accounts (ASPSPs).
- **When?** The technical standards are applicable as of July 25, 2023.

ECB & EC

Legislative proposal instant payments

- **What?** On October 26, 2022, the European Commission approved a [draft regulation](#) to make instant payments in euro (instant payments) available for all citizens and businesses holding bank accounts in EU and EEA countries. The legislative proposal is an amendment to the SEPA Regulation. The aim of the proposal is to ensure that instant payments are processed affordably, securely and without hindrance across the EU. An "instant payment" is a way to transfer money from the payer to the payee within seconds, at any time, day or night, and any day of the year. This distinguishes instant payments from traditional credit transfers that are processed by payment service providers during business hours, with the funds being credited to the payee by the end of the next business day. The proposal should bring innovation and competition to the European payments market, which remains highly fragmented. Currently, only 11% of credit transfers in the EU are instant payments. Promoting the use of instant payments is in line with the European Commission's objectives regarding digitalization and should contribute to the EU's strategic autonomy. The proposal also contributes to the retail payments strategy published by the European Commission in 2020. The main changes in the proposal are that (i) payment service providers executing credit transfers will be obliged to offer instant payments, (ii) instant payments will be offered at the same rate as traditional credit transfers, (iii) payment service providers will have to check whether the name and IBAN of the payee match, and (iv) more effective sanction screening will be carried out on instant payments.
- **Who?** Payment institutions.
- **When?** The proposal is still in the EU legislative process. It is expected that the requirements arising from the regulation will be phased in, so as not to put unreasonable pressure on payment service providers.



Review of PSD2

The revised Payment Services Directive (PSD2) was adopted in 2015 and aims to bring more competition and innovation to the European payments market, as well as to make payment services more secure and protect payment service users. PSD2 required the European Commission to report on the application and impact of PSD2 by January 13, 2021. More specifically, the review must include the costs for, scope of and access to payment services. Due to the late implementation of PSD2 in some European member states, the review of PSD2 has been delayed.

The review was finally announced in the European Commission's [Digital Finance Strategy](#) and [Retail Payments Strategy](#) in 2020, and its main objective is to examine whether PSD2 serves its purposes and is still fit for purpose. The review includes an assessment of risks arising from unregulated payment services, the impact of strong customer authentication (SCA) with respect to payment fraud and of new business models for sharing payment account data, such as payment initiation services and account information services.

On October 18, 2021, EBA was [asked](#) by the European Commission to provide an opinion on the revision of PSD2. The opinion was to cover almost the entire scope of PSD2 and aims to gather input on the application and impact of PSD2. In its [response](#), EBA came up with more than 200 proposals. The proposed changes include: merging PSD2 and the E-money Directive, clarifying the application of SCA, addressing fraud where customers are misled into initiating a payment transaction and moving from "open banking" to "open finance" (i.e. the expansion of access to payment accounts data to access to other types of financial data).

In the summer of 2022, the European Commission issued a so-called [call for evidence](#), with the aim of getting stakeholders to provide input for the review of PSD2. The Dutch Ministry of Finance provided input based on a national review of the PSD2 implementation. On October 22, 2022, Minister Kaag sent [two non-papers](#) to the European Commission for the purpose of the review of PSD2. The initial planning was for the European Commission to share its views on the review of PSD2 by the end of 2022, but it did not do so yet. If a proposal to amend PSD2 emerges from the review, it is expected in Q1 or Q2 of 2023.

Reschedule of launch renewed wholesale payment system

- **What?** The Governing Council of the ECB has [decided](#) to postpone the launch of the new real-time gross settlement system (RTGS) and central liquidity management model (T2). The go-live date has been postponed by four months, from November 21, 2022, to March 20, 2023. The reason for the postponement is to give users more time to complete their testing in a stable environment.
- **Who?** Users of RTGS and T2.
- **When?** The planned go-live date of RTGS and T2 is now March 20, 2023.

EPC & SEPA

Entry into force 2023 rulebooks and implementation guidelines SEPA schemes

- **What?** As of November 19, 2023, the 2023 versions of the rulebooks and implementation guidelines of the SEPA schemes come into effect. The rulebooks are based on the [ISO 20022 standard](#). They are rulebooks and implementation guidelines for the following schemes:
 - ✓ [SEPA Credit Transfer rulebook and implementation guidelines](#)
 - ✓ [SEPA Instant Credit Transfer rulebook and implementation guidelines](#)
 - ✓ [SEPA Direct Debit Core rulebook and implementation guidelines](#)
 - ✓ [SEPA Direct Debit B2B rulebook and implementation guidelines](#)
- **Who?** Payment institutions.
- **When?** The rulebooks will go into effect November 19, 2023, and will remain in principle until November 22, 2025.

EPC calls for change requests SRTP Scheme Rulebook

- **What?** The EPC has launched a [call for](#) change requests for the SEPA Request-to-Pay (SRTP) Scheme Rulebook (version 3.0). This scheme covers a set of operational rules and technical elements (including messages) that enable a payee in a wide range of physical or online use cases to request a payer to initiate a payment. The change request follows after the [third version](#) of the SRTP Scheme Rulebook was published by the EPC on November 24, 2022. In addition, on December 15, 2022, the EPC published a [framework](#) related to the SRTP



Scheme Rulebook with security-related requirements applicable to the scheme participants using APIs. This framework will become mandatory for SRTP Scheme Rulebook participants as of November 30, 2023.

- **Who?** Payment institutions.
- **When?** Change requests can be submitted until December 29, 2023.

EPC publishes first SPAA Scheme Rulebook

- **What?** The EPC has published a [Scheme Rulebook](#) for SEPA Payment Account Access (SPAA). The rulebook consists of a set of rules, practices and standards that enable the exchange of payment accounts related data. The Rulebook also includes standards that facilitate the initiation of payment transactions in the context of value-added services (“premium” services) provided by ASPSPs. From December 16, 2022 to March 15, 2023, the EPC [is consulting on](#) the extension of the SPAA Scheme Rulebook sections on the usage of strong customer authentication (SCA).
- **Who?** Payment institutions, especially payment service providers offering payment accounts (ASPSPs).
- **When?** The SPAA Scheme rulebook will become applicable from November 30, 2023.

DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

Financial Markets Amendment Act 2022

- **What?** On May 27, 2022, the [Financial Markets Amendment Act 2022](#) was published in the Dutch Gazette. The main amendments for payment and electronic money institutions concern: (i) the possibility to open an account with segregated assets for the purpose of realizing asset segregation (which offers an alternative to securing third-party funds through a third-party funds foundation), and (ii) the application of the mandatory audit of financial statements as laid down in Article 3:72(7) Wft. Furthermore, the Amendment Act introduces an ongoing reputation requirement for holders of qualifying holdings in a payment institution or EMI. More specifically, it concerns the element of professional competence which, together with the element of reliability, forms part of the concept of ‘reputation’.
- **Who?** Payment institutions and EMIs.
- **When?** The possibility to open an account with segregated assets went into effect as of July 1, 2022. The amendment introducing a mandatory audit went

into effect on January 1, 2023. The ongoing reputation requirement must first be elaborated on the level of lower regulations (see the alert below) and its entry into force is delayed until this is provided for. The ongoing reputation requirement is expected to take effect during 2023.

Financial Markets Amendment Decree 2022

- **What?** From July 15, 2022 to August 26, 2022, the Ministry of Finance published the [Financial Markets Amendment Act 2022](#) for consultation. Proposed is an elaboration of the ongoing reputation requirement for holders of a qualifying holding in a payment institution or EMI, which is introduced in the Financial Markets Amendment Act 2022. At decree level, it elaborates on what information must be submitted to DNB, to enable DNB to assess whether the requirement is met.
- **Who?** Payment institutions and EMIs.
- **When?** Not clear yet, but expected during 2023. On November 23, 2022, the Council of State issued its opinion and recommended adoption of the decision .

Financial Markets Amendment Decree 2021

- **What?** On November 24, 2021, the [Financial Markets Amendment Decree 2021](#) was presented to the Dutch Senate and House of Representatives. Among other things, this decree amends the Decree on Prudential Rules Wft (Bpr) for payment institutions and EMIs with regard to intra-group outsourcing. From the moment this decree takes effect, these institutions must also comply with Articles 29 through 31 of the Bpr when outsourcing activities within their group. These articles stipulate, among other things, that an institution must have an adequate policy and established procedures and measures for the structural outsourcing of activities and the monitoring of outsourced activities. In addition, an outsourcing agreement must also be drawn up in the case of intra-group outsourcing.
- **Who?** Payment institutions and electronic money institutions, as well as group companies that hold a group DNO from DNB with respect to a payment or electronic money institution.
- **When?** The rules will likely take effect in 2023, but it is not yet clear exactly when. The Decree is related to the Financial Markets Amendment Act 2022-II.

Financial Markets Amendment Act 2022-II

- **What?** In the summer of 2022, the proposed [Financial Markets Amendment Act 2022-II](#) was published. The proposal contains, among other things, changes to the current intra-group supervisory approval regime,



including the obligation to notify DNB of intra-group changes already proposed earlier in the Financial Markets 2021 Amendment Act.

- **Who?** Group companies that have a group DNO from DNB with respect to a payment institution or EMI.
- **When?** The Financial Markets Amendment Act 2022-II was passed by the Dutch Senate and House of Representatives late last year. The bill is intended to take effect in early 2023.

Financial Markets Amendment Decree 2021 – group DNO

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets Amendment Decree 2021](#) to the Dutch Senate and the House of Representatives. This Amendment Decree provides, among other things, for a more detailed elaboration of the group DNO requirement for a notification in case of changes within a group.
- **Who?** Group companies that have a group DNO from DNB with respect to a payment institution or EMI.
- **When?** This amendment act is related to the proposed Financial Markets Amendment Act 2022-II.

Proposed amendment to House of Whistleblowers Act

- **What?** A [bill](#) amending the House of Whistleblowers Act is currently (still) pending. Among other things, this law provides for the obligation to establish a procedure for dealing with the reporting of suspected wrongdoing within an organization. Currently, with respect to this obligation, a threshold of at least fifty people within the organization is still in place. One of the proposed changes is that this threshold no longer applies to companies operating in the financial sector. Also proposed is to change the name of the law to Whistleblowers Protection Act.
- **Who?** Payment institutions and EMIs (among others).
- **When?** The legislative amendment was supposed to take effect on December 17, 2021. However, the proposal was not passed by the House of Representatives until December 20, 2022. The Senate has yet to decide whether or not to adopt the proposal. Therefore, it is still unclear when the legislative amendment will take effect. We expect this to be in 2023.

Financial Markets Amendment Act 2024

- **What?** Last spring, the Ministry of Finance published the [Financial Markets Amendment Bill 2024](#) for consultation. Among other things, the bill provides for

a broader definition of state aid resulting in a ban on the payment of variable remuneration. The bill was submitted for consultation to the Advisory Division of the Council of State on November 25, 2022.

- **Who?** Payment institutions and EMIs.
- **When?** The bill is expected to take effect on January 1, 2024.

NEW LAWS AND REGULATIONS

Regulation on digital operational resilience for the financial sector (DORA)

- **What?** On December 27, 2022, the [Regulation](#) on Digital Operational Resilience for the Financial Sector (DORA) and its accompanying [Directive](#) were published in the Official Journal of the EU. DORA roughly consists of the following six pillars:
 1. Solid ICT risk management;
 2. Adequate ICT incident management, including reporting serious ICT incidents to the supervisor;
 3. Prudent management of risks when using third-party ICT providers;
 4. Periodic testing of own ICT resilience;
 5. Direct oversight of critical ICT service providers; and
 6. Cooperation and supervision/enforcement by supervisors.Payment service providers and EMIs fall within the scope of DORA because they qualify as “financial entities” to which DORA applies. There is an ongoing discussion about whether payment systems should also be included in the scope of DORA. This discussion is related to the review and revision of PSD2.
- **Who?** Payment institutions and EMIs.
- **When?** The regulation is directly applicable in all member states, including the Netherlands, as of January 17, 2025. This means that institutions will have to comply with the obligations in DORA from that date.

Digital Services Act entry into force

- **What?** On November 16, 2022, the Digital Services Act entered into force. The [Digital Services Act Regulation](#) amends the Electronic Commerce Directive 2000. The Digital Services act will apply to all digital services that connect consumers to goods, services or content. Comprehensive obligations will apply to online platforms to reduce harm and counter risk online, and a framework for transparency and accountability will apply. In addition, the Digital Services Act should protect the rights of users of online services. The Digital Services

Act will apply to: (i) intermediary services (offering a network infrastructure), (ii) hosting services (such as cloud and webhosting services), (iii) online platforms (which bring together sellers and consumers, such as online marketplaces, appstores, collaborative economy platforms and social media platforms), and (iv) very large online platforms (which pose a risk in the context of the distribution of illegal content and societal harm). Specific rules are foreseen for platforms that reach more than 10% of Europe's 450 million consumers.

- **Who?** The Regulation may impact online trading platforms that also offer payment services, if they fall within the scope of the Digital Services Act. Many of these online trading platforms currently use the commercial agent exemption and therefore fall outside the scope of financial supervisory law.
- **When?** After the Digital Services Act takes effect, online platforms will have three months to report their active end users. This is therefore due by February 17, 2023. Based on these user numbers, the European Commission will determine whether a platform should be designated as a "very large platform." If a platform is designated as such, it will be given four months to comply with the requirements of the Digital Services Act, including carrying out the first annual risk assessment exercise. European member states must empower Digital Services Coordinators by February 17, 2024. Ultimately, the Regulation will apply from February 17, 2024.

Payment Service Providers Directive Implementation Act

- **What?** On October 21, 2022, the [bill](#) to implement the Payment Service Providers Directive was submitted to the Dutch House of Representatives. The Directive ensures targeted access for tax authorities to international payment data to combat VAT fraud in cross-border Internet sales. The implementation entails a registration and reporting obligation for payment service providers. In situations where the payer is in an EU Member State and the payee is in another EU Member State (or third country), either the payer's payment service provider or the payee's payment service provider has a registration obligation. This obligation means that the payment service provider must keep records of the cross-border payments they facilitate over each calendar quarter. They must then provide these records to the tax authorities of the relevant member states. The tax authorities of the member states ensure that the payment information is delivered to the Central Electronic System of Payment Information (CESOP).
- **Who?** Payment institutions.
- **When?** The bill will implement the Payment Service Providers Directive in the Netherlands by January 1, 2024.

Further remuneration rules financial sector (Wnbfo)

- **What?** On January 1, 2023, the Further Remuneration Measures for Financial Undertakings [Act](#) (Wnbfo) entered into force. This law introduced a number of changes to the remuneration rules as contained in the Wft, including (i) the introduction of a statutory retention period of at least five years for shares paid as a component of a fixed remuneration and (ii) a tightening of the averaging rule for non-CLA staff, who may be awarded a higher bonus than 20% under certain conditions. The AFM [published](#) a notification form for deviating from the bonus cap for non-CLA staff at the end 2022.
- **Who?** Payment institutions and EMIs that fall within the scope of the Dutch remuneration rules.
- **When?** The changes went into effect on January 1, 2023. The existing contracts of employees, who will no longer be able to use the deviation from the bonus cap for non-CLA staff as of January 1, 2023, must be adjusted by January 1, 2024.

Remuneration under the heading of dividends

- **What?** On August 1, 2022, the European Court of Justice (ECJ) issued [an important ruling](#) on the question of the extent to which dividends on employee shares can qualify as variable remuneration. Not surprisingly, the ECJ reads everything very broadly (and teleologically). Although the ruling was made with respect to regulated mutual fund managers, the point addressed in the ruling is relevant to all regulated market participants. After all, the issue at stake is what remuneration mechanisms are considered variable remuneration. As such, the considerations in the ruling are also relevant for assessing participation structures in payment institutions and EMIs.
- **Who?** Payment institutions and EMIs.
- **When?** It is expected that regulators will pay extra attention to participation structures in 2023.

Q&A Retention remuneration

- **What?** On December 2, 2022, DNB [published](#) a Q&A regarding retention remuneration, which was consulted earlier in the year. In the Q&A, DNB indicates which review frameworks it uses for retention remuneration for which consent is required and for cases where such consent is not required. It also indicates which elements must be substantiated in any case, even if no prior consent is required.



- **Who?** Payment institutions and EMIs.
- **When?** Effective immediately.

Implementation of directive on accessibility requirements for products and services

- **What?** As of June 28, 2025, the implementation of the Directive on Accessibility Requirements for Products and Services will enter into force. The purpose of this directive is to contribute to the proper functioning of the internal market by approximating the laws and regulations of Member States on accessibility requirements for certain products and services. The articles in the directive dealing with services and service providers apply to consumer banking services. Therefore, payment service providers and EMIs, among others, fall within the scope of this Directive. After previously consulting the Dutch [Implementation Act](#) related to the Directive, the Dutch [Implementation Decree](#) was also consulted at the end of 2022.
- **Who?** Payment institutions and EMIs.
- **When?** Leading up to June 28, 2025, the next steps in the legislative process will be taken.

Open finance framework

- **What?** The EU Digital Finance Strategy announced a [proposal](#) on *open finance*, which refers to the access and reuse of customer data, with consent, for certain financial services. This initiative should enable data sharing and third-party access for a wide range of financial sectors and products, in line with data protection and consumer protection rules. It is based on the principle that customers of financial services own and control the data they provide or that is created on their behalf.
- **Who?** Payment institutions and EMIs.
- **When?** The feedback from the European Commission was scheduled for Q4 2022, but did not appear at that time. We expect the feedback in Q1 of 2023.

OTHER DEVELOPMENTS

FSB outlines framework for monitoring progress on cross-border payment targets

- **What?** On Nov. 17, 2022, the Financial Stability Board (FSB) released [a report](#) to the G20 on the framework for monitoring progress toward meeting the goals for the G20 Roadmap for Enhancing Cross-Border Payments. This roadmap aims to achieve cheaper, faster, more transparent and accessible payments globally. Earlier, in

October 2022, the FSB presented the [prioritized](#) themes for the next phase of work on the G20 Roadmap that was published in 2020.

- **Who?** Banks and payment institutions.
- **When?** 2023.

Parliamentary letter “remittances”

- **What?** On December 9, 2022, Minister Kaag sent a [letter](#) to the House of Representatives on a study conducted on remittances in the Netherlands. This research was prompted by a motion to investigate how (i) to reduce the transaction costs of remittances in the Netherlands and (ii) to improve migrants’ access to formal financial services. Key recommendations from the report include exploring whether market entry can be made easier for remittance providers (the lack of license applications indicates a barrier). In addition, attention should be paid to “overcompliance”, particularly in the area of combating money laundering and terrorist financing. Addressing the barriers around cost, speed, access and transparency in remittances is part of the FSB’s G20 roadmap as mentioned above.
- **Who?** Payment institutions.
- **When?** 2023.

Covenant Cash

- **What?** On April 7, 2022, the [Covenant Cash](#) was published. With this covenant, the four major Dutch banks and the Dutch Payments Association, representatives of consumers and the elderly, retailers, restaurants and gas stations, cash service providers and DNB agree to ensure that cash remains readily available and usable.
- **Who?** Payment institutions.
- **When?** The covenant is established for a period of five years. During the first year, an external study of the future perspective will be conducted. No later than the end of July 2023, or earlier as soon as political decision-making has taken place, the parties will enter into consultations to determine whether, and if so to what extent, the Covenant (i) can be continued, (ii) requires adjustment, or possibly (iii) will not be continued.



FINANCIAL SERVICE PROVIDERS ADVISORS, INTERMEDIARIES AND AUTHORIZED AGENTS

This section discusses important developments for so-called financial service providers that come into play in 2023. This collective category includes advisers and intermediaries in financial products such as credit and insurance. Authorized agents are also financial service providers.

Consumer credit providers and insurers also qualify as 'financial service providers' under the Dutch Financial Supervision Act. Developments for these financial service providers are included in a separate section of the Outlook, namely [Lenders](#) and [Insurers](#), respectively. Furthermore, the section [General](#) is worth reading for financial service providers, as it discusses general developments in areas such as supervision and enforcement that are also relevant to financial service providers.

For life insurance intermediaries, the [Integrity section](#) of this Outlook is relevant. Finally, the [Sustainability \(ESG\)](#) section may also be relevant to certain financial service providers.

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

AFM SUPERVISION

Trend Monitor 2023

Market Impressions 2022 report: controlled business operations must improve

Survey: quality mortgage advice and responsible lending

Study: correlation of mortgage amounts and arrears

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EIOPA: guidelines for integrating sustainability preferences customer

Q&As about IDD

EIOPA: credit protection insurance sales must improve



AFM SUPERVISION

Trend Monitor 2023

- **What?** On November 3, 2022, the AFM published [Trend Monitor 2023](#). In it, the AFM points out a number of trends and risks in the financial sector for the year 2023. The AFM draws the attention of financial service providers to pay extra attention to their duty of care due to increased energy prices, high inflation and rising interest rates. The affordability of current financial products, such as mortgages and non-life insurance, may be at risk as a result. In addition, the risk of financial stress among low-income households is increasing. Therefore, the AFM fears suboptimal financial decisions by households, such as credit accumulation and alternatives such as flash credit, private lease and Buy Now, Pay later. The AFM also points out that the risk of overcrediting when taking out consumer credit is now higher because inflation is factored into lending standards with some delay.
- **Who?** All advisors and intermediaries.
- **When?** The trends and risks identified by the AFM will have its attention in 2023 and contribute to determining the AFM's supervisory priorities. The concrete implications of the trends and risks for AFM supervision will be elaborated in its Agenda 2023 to be published in early 2023.

Market Impressions 2022 report: controlled business operations must improve

The AFM [published](#) the Market Impressions 2022 report late last year. From this we extract the following relevant points of attention, among others:

- The AFM expects financial service providers to encourage their customers to periodically pay attention to their financial situation.
- Investigations by the AFM have shown that financial service providers need to comply better with the legal standards of controlled business operations. For example, investigations into diploma requirements have shown that the required diplomas are not always (all) present.
- The AFM calls on financial service providers to update the license register. The AFM will check this in 2023.
- Other AFM research has shown that far from all firms comply with the obligation to publish the remuneration policy.
- Yet other research revealed that the professional liability insurance of financial service providers with a collective license and their affiliated companies does not in all cases apply to each individual affiliated company. This

is because each affiliated company must be able to dispose of the statutory minimum sum insured itself. This had to be properly arranged by each financial service provider before January 1.

- The AFM is of the opinion that the European Digital Operational Resilience Act (DORA), which will apply to (re)insurance intermediaries and ancillary insurance intermediaries with more than 250 FTEs and a turnover of more than €50 million and/or a balance sheet total of more than €43 million, can also serve as a framework for the proportional design of the ICT controls of all financial service providers, including smaller financial service providers. The AFM lists a number of examples of measures from DORA with a brief explanation of why it believes these measures can be seen as good practice for companies that do not fall within the scope of DORA.
- The AFM calls attention to the legal obligation to report relevant changes and incidents to the AFM, because it notices that this does not always happen (on time), and asks to check the data in the AFM register.

The AFM will continue to monitor financial service providers' compliance with the legal standards of controlled business operations in 2023.

Survey: quality mortgage advice and responsible lending

- **What?** In the aforementioned Market Impressions 2022 report, the AFM announced that it will investigate the quality of mortgage advice and responsible lending in 2023.
- **Who?** Mortgage loan intermediaries and advisors.
- **When?** During 2023.

Study: correlation of mortgage amounts and arrears

- **What?** In mid-November 2022, the AFM [published](#) its occasional paper, 'Maximum mortgage borrowing? An analysis of households with high mortgage debt and arrears'. Among other things, the AFM concludes that the risks are highest for first-time buyers who have recently taken out a maximum mortgage and that the current extreme decline in purchasing power is putting pressure on lending standards.
- **Who?** Mortgage loan intermediaries and advisors.
- **When?** Continuing through 2023.



DEVELOPMENTS EXISTING LAWS AND REGULATIONS

Scope of tying in insurance

- **What?** There is currently an obligation for insurance intermediaries, in case of intermediation of an insurance together with an additional product (other than insurance) or additional service, to inform the client whether the different products or services can be purchased separately and, if so, to provide a description of those products or services and information on the costs and charges of each financial product or service. The proposed [Financial Markets Amendment Decree 2021](#) amends this requirement to clarify that it applies when insurance is offered together with an additional product or service. Thus, it need not be insurance in combination with another *financial* product or *financial* service.
- **Who?** Intermediaries offering insurance along with a complementary product or service.
- **When?** The Amendment Decree was sent to the Senate and House of Representatives back in November 2021. It is not yet known when the decree will take effect.

Active inducement transparency in non-life insurance

This topic has been on the agenda for several years, and there is no concrete end to the discussions on it. Where are we and what preceded it?

Intermediaries and advisors may not provide or receive inducements for intermediating or advising on non-life insurance, other than payment protection insurance, individual disability insurance or life insurance, except for exempted inducements. Closing or ongoing inducements are exempted provided the condition is met that, in brief, the inducement is disclosed free of charge at the client's request. Bonus or turnover inducements are not permitted.

The proposed [Financial Markets Amendment Decree 2021](#) adds as a condition that the information requirements from Section 86i of the Financial Supervision Conduct Decree (*Besluit Gedragstoezicht financiële ondernemingen Wft*, BGfo) must also be met. Moreover, Section 86i BGfo is extended with new subjects on which transparency must be provided, namely the existence of the closing or ongoing inducement received for the provision of financial services relating to non-life insurance and the characteristics of the service. Thus, the current "passive"

inducement transparency obligation in non-life insurance is converted into an active obligation with the aim of actively informing policyholders, prior to the conclusion of the insurance policy, about any closing and ongoing inducement and the services provided in return (instead of the customer having to request this information himself first).

The Minister of Finance has [indicated](#) that it is up to the intermediary or adviser to determine how he or she communicates the inducement amount per product to the consumer and at what stage the consumer is informed about the general principle of inducement. Thus, the adviser or intermediary can also - according to the minister - choose to inform the consumer at the beginning of the service provision process that he or she will be paid by commission, only to mention the exact inducement amount just before closing. A verbal communication of the exact amount is among the options here. In addition, if the exact amount cannot be calculated, the method of calculation can be communicated.

The market has raised many questions about the feasibility of this new obligation. Against this background, the minister sent a [letter](#) to the House of Representatives in November 2021 regarding the feasibility of the proposed active inducement transparency in non-life insurance. In response to [parliamentary questions](#), the minister further clarified his position on the feasibility of active inducement transparency in December 2021. In short, the minister believes that this new obligation is feasible and in line with existing laws and regulations. At the request of the Lower House, the minister also [submitted](#) the advice of the AFM, and the underlying advice from or discussion reports with the (industry) organizations (Adfiz, OvFD, Keurmerk Objectief Vergelijken and Verbond van Verzekeraars) regarding the feasibility of active inducement transparency in non-life insurance.

The Amendment Decree was already sent to the Senate and House of Representatives in November 2021. At the end of June 2022, the, now new, Minister of Finance informed the Lower House by [letter](#) of her desired consequence regarding the intended active inducement transparency in non-life insurance. She chooses, contrary to what is included in the Amendment Decree, for active inducement transparency of fine-grained averages of various types of products. This is therefore a change from the route previously chosen in the Financial Markets Amendment Decree 2021, which assumes active transparency of exact nominal amounts per product. According to the letter, the minister will amend the proposal and then submit the amended draft decree to the Advisory Division of the Council of State for advice. To our knowledge, this has not happened to date. Another [motion](#) was proposed in the House of Representatives in



September 2022, requesting the government to ensure that consumers are actively informed about inducements when taking out non-life insurance no later than January 1, 2024.

Introduction Comparison Chart financial service providers

- **What?** Last summer, the Ministry of Finance [consulted](#) on an amendment to the Financial Supervision Conduct Decree (*Besluit Gedragstoezicht financiële ondernemingen Wft*, BGfo). The proposed amendment concerns the introduction of the comparison chart for financial service providers. The comparison chart is to replace the service provision document (*dienstverleningsdocument*, DVD) as the information document that certain financial service providers are required to provide to consumers/clients. As a result of this proposed change, the *Nadere regeling gedragstoezicht financiële ondernemingen Wft* (Nrgfo) must also be amended, in which further rules of the AFM must be drawn up regarding the comparison chart. The AFM [consulted](#) on its proposal to this end last year and published its [feedback statement](#) in December.
- **Who?** Financial service providers that advise on and/or mediate payment protection, complex products, mortgage credit, individual disability insurance, death benefit insurance, premium pension claims and funeral insurance.
- **When?** The draft decision for the amendment of the BGfo has been with the Council of State for advice since December 22, 2022. The intended date of entry into force is April 1, 2023. The draft provides for a transition period of six months.

Revision Consumer Credit Directive

- **What?** The Consumer Credit Directive is currently being revised. In June 2021, the European Commission already [published](#) its proposal to that effect. The proposal includes new rules on advice services, rules of conduct when providing credit and professional competence of staff. Among other things, the proposal sets standards to ensure that when advice is provided by the credit intermediary, it is clear to consumers that it is advice, without introducing an obligation to provide advice. In July 2022, the European Parliament [published](#) its position on the Commission's proposal. The Council of the European Union [did](#) so on June 9, 2022. The Parliament and the Council are proposing amendments to the proposal. A [press release](#) dated December 2 shows that the European Parliament and the Council have reached a provisional agreement on a revised directive.

- **Who?** Advisors and intermediaries related to consumer credit.
- **When?** Negotiations are currently taking place between the European Commission, Parliament and Council. It is not clear at this time what will remain of the Commission's proposal and when the revision will enter into force. Where positions differ, a compromise will have to be reached. More will most likely become clear in 2023 - so this is an important development to follow with implications for the entire credit market.

Revision Mortgage Credit Directive

- **What?** The European Commission is working on a revision of the Mortgage Credit Directive. This will examine how: (i) consumers can receive simplified, timely and relevant information; (ii) rules can be adapted to the digital environment; and (iii) it can be made easier to get a mortgage loan for a home in another EU country. To this end, the Commission held a public [consultation](#) in late 2021/early 2022, to which the Netherlands [responded](#). In addition, the Commission asked the European Banking Authority (EBA) for advice. In June 2022, the EBA published its [opinion](#). In particular, the EBA advises:
 - review pre-contractual information and advertising requirements,
 - ensure disclosure requirements are appropriate for digital channels,
 - take additional measures to protect consumers when artificial intelligence systems are used for creditworthiness assessments,
 - introduce *borrowers-based measures* (BBMs) into the information provided to consumers to promote responsible borrowing,
 - establish an EU-wide definition of "green mortgages".In November 2022, the Commission further asked the EBA, more generally, for [its opinion](#) on green loans and mortgages.
- **Who?** Advisors and intermediaries regarding mortgage credit.
- **When?** We expect the European Commission to propose a revised directive in 2023.

Financial Markets Amendment Act 2022 – professional liability insurance

- **What?** The Financial Markets [Amendment Act](#) 2022 repealed the third paragraph of Articles 4:75 and 4:76 Dutch Financial Supervision Act (*Wet op het financieel toezicht*, Wft). The change was made because the level of professional liability insurance coverage and similar provision for an adviser, intermediary or reinsurance

intermediary is included in Delegated Regulation (EU) 2019/193.

- **Who?** Advisors, intermediaries and reinsurance intermediaries.
- **When?** The amendment is effective January 1, 2023.

Updating final and test terms for professional competence Wft

- **What?** At the end of last year, the Ministry of Finance [consulted](#) amendments to the Regulation on final and test terms for financial services exams (*Regeling eindtermen en toetstermen examens financiële dienstverlening Wft*). It concerns the annual updating of the final and test terms for the Wft exams in response to developments identified by the CDFC.
- **Who?** Advisors to whom the diploma requirement applies.
- **When?** The target date for the changes to take effect is April 1, 2023, concurrent with the start of the new Permanent Education (PE) year.

Financial Markets Amendment Act 2024

- **What?** Last spring, the Ministry of Finance published the [Financial Markets Amendment Act 2024](#) bill for consultation. Among other things, the bill provides that the AFM register must also include (i) affiliated intermediaries who mediate for (an) insurance intermediary(s) and (ii) the member states in which a registered intermediary in mortgage credit is authorized to mediate and the names of the policymakers. In addition, it is proposed to include in the law that affiliated mortgage credit intermediaries based in the Netherlands, who wish to operate in another member state, may do so after notifying the AFM.
- **Who?** Intermediaries related to insurance and mortgage credit.
- **When?** The bill was submitted to the Advisory Division of the Council of State for advice on November 25, 2022. The bill is expected to enter into force on January 1, 2024.

Further remuneration rules financial sector (Wnbfo)

- **What?** As of January 1, 2023, the Further Remuneration Measures for Financial Undertakings [Act](#) (*Wet nadere beloningsmaatregelen financiële ondernemingen, Wnbfo*) entered into force. This Act introduced a number of changes to the remuneration rules as contained in the Wft, including the introduction of a statutory retention period of at least five years for

shares paid as a component of a fixed remuneration, and a tightening of the averaging rule for non-CAO (*collectieve arbeidsovereenkomst*) staff, who can be awarded a higher bonus than 20% under certain conditions. The AFM [published](#) a notification form for deviating from the bonus ceiling for non-CAO staff at the end of 2022.

- **Who?** Virtually all financial service providers.
- **When?** Effective January 1, 2023. The contracts of existing employees who will no longer be able to use the averaging arrangement for non-CAO employees as of January 1, 2023, must be adjusted by January 1, 2024.

Remuneration under the heading of dividends

- **What?** On August 1, 2022, the European Court of Justice issued an [important ruling](#) on the question of the extent to which dividends on employee shares can qualify as variable remuneration. Not surprisingly, the ECJ reads everything very broadly (and teleologically). Although the ruling was made with respect to regulated investment fund managers, the point addressed in the ruling is relevant to all regulated market participants. After all, the issue at stake is what remuneration mechanisms are considered variable remuneration. As such, the considerations in the ruling are also relevant to assessing participation structures in financial service providers.
- **Who?** All financial service providers.
- **When?** It makes sense that regulators will pay extra attention to participation structures in 2023.

Q&A Retention fees

- **What?** On December 2, 2022, DNB [published](#) a Q&A regarding retention fees, which was consulted earlier in the year. In the Q&A, DNB indicates which review frameworks it uses for retention fees for which consent is required and for cases where such consent is not required. It also indicates which elements must (can) be substantiated in any case, even if no prior consent is required. The AFM [announced](#) on its website that the Q&A consultation is also being conducted on its behalf.
- **Who?** All financial service providers.
- **When?** Effective immediately.



NEW LAWS AND REGULATIONS

Quality requirements automated advice

- **What?** The proposed Financial Markets [Amendment Decree](#) 2021 introduces quality requirements for fully automated advice to ensure that such advice meets the same requirements as advice given by a natural person.
- **Who?** Advisors.
- **When?** The Amendment Decree was sent to the Senate and House of Representatives back in November 2021. It is not yet known when the decree will take effect.

Collection Services Quality Act

Last year, the Debt Collection Services Quality [Act](#) was passed by the Senate and House of Representatives and published in the Official Gazette. The Act is intended to improve the quality of out-of-court debt collection services. Collection agencies and debt collectors must meet various quality requirements. There will be a debt collection register and a system of supervision and enforcement for non-compliance with the law. The Act applies to extrajudicial debt collection activities (a) that are performed or offered in the exercise of a profession or business directed or co-directed towards that profession or business, or in a manner as if directed or co-directed towards that profession or business, (b) for a third party or after assignment of the claim, and (c) with respect to payment by a natural person domiciled in the Netherlands. Extrajudicial collection activities are activities aimed at obtaining extrajudicial payment of a claim for the payment of a sum of money. It follows from the explanatory memorandum that the rules for debt collection services exist alongside the rules in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, Wft). A debt collection service provider may therefore require registration under the Debt Collection Services Quality Act and require a license from the AFM under the Wft.

The [Decree on](#) Quality Collection Services, which fleshes out parts of the law, was consulted last year. Among other things, the Decree contains an amendment to the Compensation for Extrajudicial Collection Costs Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*), namely a new regulation on the collection costs that may be charged if instalments up to a maximum of €266.67 have remained unpaid and the debtor is served with a reminder for overdue instalments as referred to in the Collection Costs Act. The collection costs will then depend on the number of overdue instalments that remain unpaid after a reminder within a period up to six months ago.

The expected effective date was January 1, 2023.

However, that did not happen. A separate decree has yet to be issued that will determine when the Debt Collection Quality Act will take effect.

Proposed amendment to House of Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House of Whistleblowers Act. Among other things, this law provides for the obligation to establish a procedure for dealing with the reporting of suspected wrongdoing within an organization. Currently, with respect to this obligation, a threshold of at least fifty people within the organization is still provided for. One of the proposed changes is that this threshold no longer applies to companies operating in the financial sector. Among others, the AFM will be appointed as the competent supervisor. It is proposed to change the name of the law to Whistleblowers Protection Act.
- **Who?** Financial service providers.
- **When?** The law change was actually supposed to take effect on December 17, 2021. However, the proposal was not passed by the House of Representatives until December 20, 2022. It is now before the Senate, which has yet to decide whether or not to adopt the proposal. Thus, it is still unclear when the amendment will take effect. We expect it to be in 2023.

OTHER DEVELOPMENTS

EIOPA: guidelines for integrating sustainability preferences customer

- **What?** On July 20, 2022, EIOPA published [guidance](#) on integrating customer sustainability preferences into suitability assessments under the Insurance Distribution Directive (IDD). The IDD provides a set of specific standards applicable to insurance-based investment products (IBIPs). One of the regulations requires insurers and insurance intermediaries developing insurance products to maintain, apply and review a process for approving any insurance product, or significant modifications to existing insurance products, before the product is marketed or distributed to customers. In addition, when providing advice on insurance with an investment component on a customer, insurers and insurance intermediaries obtain information to assess the suitability of a particular insurance-based investment product. These requirements are detailed in the [Delegated Regulation](#) on product oversight and governance requirements and the [Delegated Regulation](#) on the integration of sustainability factors, risks and



preferences into the product oversight and governance requirements (applicable since August 2, 2022). To facilitate the implementation of these recent changes, the [directive](#) on integrating customer sustainability preferences under the IDD was consulted in early 2022. Also given the number of respondents who requested a simpler and more user-friendly document, it was decided to temporarily halt further drafting of the directive and focus on the needs of insurers and insurance intermediaries. This resulted in the guidelines for integrating customer sustainability preferences under the IDD. The guidelines provide guidance on how to better understand customers' sustainability preferences and investment choices and how to arrive at a product choice that meets customer sustainability preferences and the Sustainable Finance Disclosure Regulation (SFDR). In addition, the guidelines address the training and competency expected of insurance intermediaries and insurers providing advice on IBIPs on sustainable finance.

- **Who?** Insurance intermediaries.
- **When?** The guidelines apply as of July 20, 2022. As of January 1, 2023, the guidelines require an assessment of whether an IBIP matches customer sustainability preferences.

- **Who?** Advisors and intermediaries related to credit protection insurance.
- **When?** Continuing through 2023.

Q&As about IDD

- **What?** EIOPA has published three Q&As seeking further clarification from the industry regarding certain obligations under the Insurance Distribution Directive (IDD). These are an April 13, 2022 [Q&A](#) on the definition of 'Member State in which the risk is situated' in Article 13 Solvency II, a May 16, 2022 [Q&A](#) on the scope of the IDD and a July 11, 2022 [Q&A](#) on fee structure.
- **Who?** Insurance intermediaries.
- **When?** The Q&As are available on an ongoing basis.

EIOPA: credit protection insurance sales must improve

- **What?** European regulator EIOPA conducted a thematic review of the credit insurance market, which is sold with mortgages, consumer loans and credit cards, and [warned](#) banks and insurers late last year that action is needed. The problems identified by EIOPA for consumers include: limited choice and barriers to shopping around, high product diversity and price dispersion, issues with cancellation and switching providers, and high remuneration and conflicts of interest. EIOPA expects the industry to make improvements for consumers and ensure insurance meets the needs of the target market.



FINTECH & CRYPTO

Note: While this section focuses on crypto service providers, in particular, it is also relevant to other players in the financial sector as it describes topics applicable to the financial sector as a whole. The cross-sectoral sections [Integrity](#) and [Sustainability \(ESG\)](#) may also be of interest to parties undertaking FinTech initiatives. Furthermore, other sections of this Outlook may of course be relevant, depending on the regulations applicable to the initiatives in question. In addition, we recommend that parties take note of the [General Developments](#) section, as it discusses topics that may be relevant to anyone operating in the financial market.

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

AFM SUPERVISION

Trend Monitor 2023

DNB SUPERVISION

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DIGITAL EURO / CBDC

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FSB recommendations on regulation and supervision of crypto assets

BCBS prudential treatment exposures banks to crypto assets

BIS Innovation Hub launches new projects

IOSCO Roadmap 2023

IOSCO Report on online marketing and distribution of financial products

AFM SUPERVISION

Trend Monitor 2023

- **What?** On 3 November 2022, the AFM published its annual [Trend Monitor 2023](#). In this document, the AFM identifies important trends and associated risks in the financial sector.
 - An important trend that the AFM once again highlights is the ever-increasing digitalization in the financial sector. The AFM mentions the benefits of this, including easy access to advice and products, but also points out the risks, such as the exclusion of vulnerable groups, cyber threats, discrimination by AI applications, and dependence on ICT service providers. Given these challenges, new EU legislation is underway, such as DORA, the AI Regulation and MiCA (see also later in this Outlook).
 - The AFM sees MiCA as a good first step, but MiCA does not address all risks surrounding crypto assets to the same extent. In particular, the AFM is critical of the fact that (i) MiCA, unlike MiFID II, does not include requirements on product governance, (ii) MiCA rules around advice are less strict and (iii) also the market abuse requirements are less far-reaching than the current framework as resulting from the Market Abuse Regulation.
 - The AFM also discusses in detail the *Decentralised Finance* (DeFi) phenomenon. According to the AFM, DeFi has the potential to change all facets of financial services. On the one hand, DeFi offers an alternative to traditional products at potentially lower costs. On



the other hand, DeFi can radically change the market infrastructure by making central parties in the chain (such as clearing and settlement) redundant. The AFM also sees several risks of DeFi, including market manipulation, unclear governance (who can be held accountable if something goes wrong?) and stability risks. The rise of DeFi presents new challenges for supervision. Innovative methods will need to be developed to achieve some form of regulation and supervision.

- **Who?** Trend Monitor 2023 is relevant to all financial firms supervised by the AFM.
- **When?** The concrete implications of the trends and risks for the AFM's supervisory activities will be detailed in its Agenda 2023, which will be published by the AFM in early 2023.

DNB SUPERVISION

Supervision in focus 2023

- **What?** On 22 November 2022, DNB published its [Supervision in focus](#). DNB annually publishes such a report in which it pays extra attention to the supervision of the financial sector in the Netherlands. From this, DNB's supervisory priorities can be derived. DNB's report is relevant to various financial institutions, but for this Outlook section it is relevant to note that DNB mentions that digitalisation in the financial sector is continuing and with it, cyber risks are increasing. In addition, DNB notes for the crypto market that it continues to develop with new *stablecoins* and *DeFi* platforms. As digitization is increasingly an important part of the strategy of financial institutions supervised by DNB, this theme will also receive more attention in DNB's supervision, including with respect to cyber resilience. DNB also wants to make the way it works more digital. For crypto service providers, it is particularly relevant to mention that in 2023 DNB plans to conduct thematic surveys again to test the extent to which legal obligations by crypto service providers are met in practice.
- **Who?** For players across the financial sector, including crypto service providers and payment institutions.
- **When?** 2023 and beyond.

EUROPEAN PROPOSALS FINANCIAL REGULATION

DORA

- **What?** On December 27, 2022, the [Regulation](#) on

digital operational resilience for the financial sector (DORA) and its accompanying [Directive](#) were published in the Official Journal of the EU. DORA roughly consists of the following six pillars:

1. Solid ICT risk management;
 2. Adequate ICT incident management, including reporting ICT incidents to the supervisor;
 3. Prudent management of risks when using third-party ICT providers;
 4. Periodic testing of own ICT resilience;
 5. Direct oversight of critical ICT service providers; and
 6. Cooperation and supervision/enforcement by supervisors.
- **Who?** DORA is an important development for a wide range of financial companies, which the financial sector will have to deal with in the coming years. We see that there is also an increasing focus from regulators on digital operational resilience. Mapping out the exact scope and content of all DORA obligations is a difficult task. We are happy to help you with this analysis and with translating the requirements into concrete action points
 - **When?** DORA is directly applicable in all Member States, including the Netherlands, as of January 17, 2025. This means that institutions will have to comply with the obligations in DORA from that date.

MiCA

Introduction: a new European crypto asset framework

On 5 October 2022, after extensive negotiations, the [final texts](#) of the proposed Regulation on Markets in Crypto Assets (MiCA) were published. MiCA is a comprehensive legislative effort to achieve harmonized regulation at the European level for crypto assets that fall outside existing supervisory frameworks. MiCA distinguishes between four types of crypto assets: (i) utility tokens, (ii) asset-referenced tokens (ARTs), (iii) e-money tokens (EMTs), and (iv) other crypto assets. Thus, while potentially covering a very broad group of digital assets, the intention is to keep existing regulated financial products out of the equation.

In short, MiCA will in principle become applicable to persons who (1) engage in the issuance/offering and listing of crypto assets in the EU (issuers) or (2) offer crypto asset services (crypto asset service providers). Despite consumer protection being one of the objectives of MiCA, its scope is not limited to offers and services to consumers. Offers and services to parties that do not qualify as "consumers" also fall within the scope unless a specific exception applies. Furthermore, MiCA introduces a regime to combat market abuse. Other current topics within the crypto sector such as *decentralised finance* (DeFi) and *non-fungible tokens*



(NFTs) will not be brought within the scope of MiCA as a starting point. The following briefly discusses the regime for issuers, crypto asset service providers, and market abuse.

Issuers

The exact regulatory framework for the issuer depends on the type of crypto asset. The “lightest” regime applies to utility tokens and other crypto assets that do not qualify as ART or EMT. For the issuance and/or listing of these types of cryptoassets, (one of) the main requirement(s) is that a *white paper* is prepared and notified to the competent regulator. Heavier regimes apply to the issuance and listing of ARTs and EMTs. Indeed, for the issuance and/or listing of ARTs, MiCA in principle requires that the issuer be licensed or is a licensed credit institution. Issuers of EMTs should in principle be either a licensed credit institution or a licensed electronic money institution. If there are “significant” ARTs or EMTs, additional requirements apply to their issuers. It is important to mention that MiCA does provide for several exceptions, such as small offers and offers to subsequent ‘qualified investors’ as referred to in MiFID-II (2014/65/EU).

Providers of crypto asset services

MiCA further introduces a licensing requirement for any person whose profession or business consists of offering one or more “crypto asset services” to third parties. In this regard, MiCA distinguishes between ten (10) different crypto asset services, clearly taking inspiration from MiFID II and the FATF recommendations:

1. the custody and management of crypto assets on behalf of third parties;
2. The operation of a crypto asset trading platform;
3. exchanging crypto assets for cash;
4. exchanging crypto assets for other crypto assets;
5. The execution of crypto asset orders on behalf of third parties;
6. placing crypto assets;
7. Providing crypto asset transfer services on behalf of third parties;
8. Receiving and transmitting orders for crypto assets on behalf of third parties;
9. Advising on crypto assets; and
10. Providing individual asset management services related to crypto assets.

For many institutions that are already regulated, in particular credit institutions, electronic money institutions, and investment firms, MiCA provides (partial) exemptions from the authorization requirement.

Market abuse

MiCA also introduces three anti-market abuse provisions, similar to those in the Market Abuse Regulation:

1. a ban on insider trading;
2. a tip prohibition; and
3. a market manipulation ban.

In addition, issuers/providers of crypto assets are required to disclose inside information relating directly to them as soon as possible, in such a way that such information is easily accessible and can be assessed by the public in a complete, accurate and timely manner. However, the disclosure requirement does not apply as long as an issuer can use the deferral provision in MiCA on good grounds.

Timing

MiCA will be directly applicable in the Netherlands 12 months (for issuers of ARTs and EMTs) and 18 months (all other provisions) respectively after its entry into force. Assuming that the final MiCA texts will be published in the spring of 2023 (see in this regard also a [parliamentary letter](#) dated 21 December 2022), MiCA is expected to become applicable (in phases) in mid-2024. In the meantime, several more technical regulatory standards will be developed at the European level that will give further substance to MiCA.

Transfer of Funds 2 Regulation (WTR2 Realignment)

General

In addition to MiCA, a final agreement was also reached on 5 October 2022 on the already existing Transfer of Funds 2 Regulation (WTR2 Regulation). This concerns the so-called Regulation on information to accompany transfers of funds and certain crypto assets (WTR2 Recast), also known as the “*travel rule*”. The final text of this WTR2 Recast can be found [here](#). This proposal is part of the AML/CFT package released by the Commission on 20 July 2021, which includes the proposal for a European Anti-Money Laundering Regulation.

Obligations for cryptocurrency service providers (CASPs)

The existing WTR2 Regulation entered into force in 2017 and, in brief, contains provisions regarding the traceability of funds transfers to prevent, detect and investigate money laundering and terrorist financing. The WTR2 Regulation is currently particularly relevant to banks and payment service providers, among others. With the introduction of the WTR2 Recast, this set of rules will be extended to crypto assets, which will begin to result in CASPs having to send information about both the recipient and the sender with every transaction of crypto assets. Among other things, the legislature has deemed this desirable given the characteristics of cryptoassets, such as anonymity, remote service provision and the cross-border nature of cryptoasset transactions.



The WTR2 Recast requires that for transfers of crypto assets, identifiable information must be maintained on the sender (e.g., name, address, and place and date of birth) and the beneficiary (name and account number) of the transfer. The information obtained must be kept for five years. The CASPs of the originator and beneficiary must verify the accuracy of the information about the originator and beneficiary. CASPs must also use an independent reliable source to conduct these verifications before making or accepting the transfer. CASPs cannot make or accept a transfer of crypto assets until this information is obtained and verified. This requirement should ensure that crypto asset transactions are effectively and fully traceable. The WTR2 Realignment also covers transactions from so-called *non-custodian wallets*, a crypto wallet address that is managed and held by a private user, and requires proof of ownership for a transaction whose value is EUR 1,000 or more.

In cases where the information outlined above is incomplete or missing, the CASP of the beneficiary will have to make a risk-based decision on whether to execute a transfer of crypto assets. The CASP of the beneficiary will have to report negligence in verifying accurate information, as well as the steps taken to do so, to the competent European anti-money laundering and anti-terrorist financing authorities.

Timing

As with much of MiCA, the WTR2 Realignment will take effect eighteen (18) months after publication of the WTR2 Realignment. This is expected to be in mid-2024. Meanwhile, various regulatory technical standards and guidelines will be developed by European financial regulators to provide further detail on various parts of the WTR2 Recast.

DLT pilot regime Regulation

- **What?** The regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT) was [published](#) on 2 June 2022 and is part of the broader EU Digital Finance package. The regulation introduces a pilot regime for multilateral trading facilities (MTFs) and central securities depositories (CSDs) using DLT. In doing so, these parties are temporarily exempted from certain requirements of MiFID II/MiFIR and CSDR, respectively. On 11 July 2022, ESMA published for consultation [draft guidelines](#) on how parties should address their request for the aforementioned exemption to the competent supervisor.
- **Who?** The proposal is particularly relevant to operators of MTFs and CSDs who (wish to) use DLT in their operations.

- **When?** The regulation will enter into force on 23 March 2023. ESMA's guidelines should also enter into force at that time.

AI Regulation

- **What?** On 21 April 2021, the European Commission published a [draft regulation](#) establishing harmonized rules on artificial intelligence (AI Regulation). The AI Regulation aims to establish a uniform legal framework for the development, marketing, and use of artificial intelligence. The key concept in the AI Regulation is "AI system"; the proposed regulation contains rules (among others) for AI systems themselves, for providers of AI systems, and for users of AI systems. The AI Regulation distinguishes between different risk classes of AI applications. The most far-reaching rules relate, logically, to AI applications labelled as "high risk" in the AI Regulation.
- **Who?** The proposed AI Regulation has a very broad scope and is therefore an important development for all financial companies that (wish to) use AI. However, the interaction between existing European financial supervisory legislation and the proposed AI Regulation is not yet clear; the proposed AI Regulation only contains provisions in this area for credit institutions.
- **When?** The Council and the European Parliament must agree on the text of the proposal. This may still take some time. After the final text enters into force, it will still take some time before the AI Regulation is directly applicable in all EU member states, including the Netherlands. The [July 15, 2022 version](#) proposes a 36-month period for most of the AI Regulation before parties must comply with the AI Regulation.

Strategy reporting to regulators

- **What?** On 15 December 2021, the European Commission released a [communication](#) outlining a strategy for revising how financial firms should report information to their national and/or European regulators. The European Commission wants to move towards a modernized, effective reporting system while reducing the administrative burden on the financial sector as much as possible. The new system should also enable the use of modern technologies, such as RegTech (technology to meet supervisory requirements more efficiently and effectively) and SupTech (technology that supports supervisors in supervision).
- **Who?** Virtually all financial firms, and especially financial firms that have to report frequently to their regulator(s).
- **When?** The European Commission will develop its strategy in the coming period. No later than 2023, the European Commission will report on the progress made.



Digital Services Act Regulation

- **What?** On 4 October 2022, the European Council adopted and published the [final](#) version of the *Digital Services Act Regulation*. It should become the basis of new European laws and regulations for the digital economy. The Digital Services Regulation oversees the day-to-day processes of providing intermediary services, including online platforms. The new law provides a better mechanism for removing illegal content and protects the fundamental rights of consumers within the online world. In addition, the Digital Services Regulation provides a clear framework for transparency, promotes innovation, growth and competition, and ensures stricter government oversight of the larger platforms.
- **Who?** The Digital Services Regulation will apply to online platforms that provide so-called “intermediary services” (intermediary services); the part that deals with retransmission, storage and public dissemination of user-generated content. The regulation will have a very broad scope and will be particularly relevant to online market players outside the financial sector. Nevertheless, the Digital Services Regulation will also be able to apply to market players that do operate within the financial sector operating an online platform and offering their services within the EU.
- **When?** Except for certain provisions, the Digital Services Regulation is expected to take effect on 1 January 2024.

Revision directive on security of network and information systems (NIS 2 directive)

- **What?** On 27 December 2022, the [new Network and Information Systems Security Directive](#) (NIS 2 Directive) was published in the Official Journal of the EU. The original *network and information security (NIS) directive* dates back to 2016 and was implemented in the Netherlands in 2018 in the Network and Information Systems Security Act (Wbni). The NIS 2 directive will form the basis for risk management and reporting obligations in many sectors that are (or will be) covered by this directive, including the banking sector and market infrastructures within the financial sector. The revised NIS Directive should (further) harmonize cybersecurity rules and the implementation of relevant measures in different member states. The NIS 2 directive will also be aligned with sector-specific laws and regulations such as DORA.
- **Who?** The NIS 2 directive is relevant to banks, trading venues, and central counterparties (CCPs).
- **When?** Member states have until 17 October 2024, at the latest, to transpose the provisions of the NIS 2 directive into their national law.

Digitizing the energy system – EU Action Plan

- **What?** On 18 October 2022, the European Commission presented the [final](#) version of the EU Action Plan on Digitalizing the Energy System (*EU Action Plan for digitalizing the Energy System*). Digital technologies can fully exploit the potential of flexible energy generation and consumption in different sectors and boost the use of renewable energy. This EU Action Plan aims to contribute to the development of a competitive market for cyber-secure, efficient and sustainable digital energy services and energy infrastructure. The EU Action Plan also considers energy consumption related to crypto assets, with a particular desire to reduce the electricity consumption of crypto miners (which relates to the *proof-of-work* mechanism).
- **Who?** This EU Action Plan is of particular interest to players in the energy sector, as well as cloud services and data centers. In addition, this EU Action Plan is also of interest to providers active within the crypto sector (in particular blockchain developers).
- **When?** There is no specific effective date. Regarding the crypto asset market, it is noted that the European Commission will prepare a report describing the environmental and climate impact of new technologies in the crypto asset market by 2025. The report will also include an assessment of policy options for mitigating the negative climate impact of technologies used in the crypto asset market, particularly with respect to consensus mechanisms.

Reporting requirements for transactions by crypto service providers

- **What?** On 8 December 2022, the European Commission [announced](#) that a proposal is in the works to make crypto service providers subject to a reporting requirement with respect to transactions carried out by them for clients based in the EU. The proposal, which amends Directive 2011/16/EU, should help tax authorities identify taxable income/assets from crypto assets.
- **When?** This development is relevant to crypto service providers.
- **When?** The proposal must first be approved by the European Parliament and the Council. The European Commission aims for the reporting requirement to take effect on 1 January 2026.

ESMA, EBA & EIOPA

ESMA Annual Work Programme 2023

- **What?** Also for this year, ESMA published its annual

supervisory program - [ESMA Annual Work Programme 2023](#) - on 21 September 2022. In its 2023 supervisory program, ESMA sets out its supervisory priorities and specific areas of focus for the next 12 months, with the relevant supervisory priority for this section of the Outlook being facilitating technological innovation and the effective use of data. These supervisory priorities, in turn, are simultaneously part of [ESMA's strategic supervisory priorities \(2023-2028\)](#), which it published for the next five years on 10 October 2022. ESMA will continue to undertake a wide range of activities in 2023 to promote technological innovation and, in that context, also follow specific trends and developments, such as SupTech, Regtech, decentralised finance (DeFi), artificial intelligence (AI), and open finance. In particular, ESMA also expects several mandates related to MiCA, DORA, DLT pilot regime regulation, and the regulation establishing a European Single Access Point (ESAP). This will include ESMA drafting various regulatory technical standards and guidelines under these regulations, which will be done in cooperation with EBA, among others.

- **Who?** For players across the financial sector, but in particular FinTech parties and crypto service providers.
- **When?** Relevant for 2023 and also the following year.

EBA Annual Work Programme 2023

- **What?** EBA published its annual supervision program for 2023 - [EBA Annual Work Programme 2023](#) - in September 2022. In its supervisory program, EBA sets out its supervisory priorities and specific areas of focus for the next 12 months. For 2023, EBA has set out six supervisory priorities, with the most important supervisory priority for this section of the Outlook being that related to digital finance and the development of its mandates under MiCA and DORA. Specifically, EBA needs to develop extensive policy work (such as regulatory technical standards and guidelines) before these regulations come into effect. The goal here for EBA is to further strengthen digital risk management and contribute to a consistent framework for the regulation and supervision of crypto asset activities. With respect to EBA's policy work on DORA, it aims to improve and streamline the implementation of ICT risk management by financial institutions. EBA will also continue to monitor financial innovation in 2023 and identify areas where further regulation or supervision is needed.
- **Who?** For players across the financial sector, but in particular FinTech parties and crypto service providers.
- **When?** Relevant for 2023 and also the following year.

ESMA guidance for applicants under the DLT pilot regime

- **What?** On 15 December 2022, ESMA [published](#) final guidelines covering applicants under the DLT Pilot regime. These guidelines include templates for market participants to use to apply for specific permission to operate a DLT market infrastructure (DLT MI) under the DLT Pilot regime regulation (as also discussed above), namely: a DLT MTF, a DLT settlement system or a DLT trading and settlement system. They also contain templates that allow applicant DLT MIs to apply for limited exemptions from specific requirements under MiFIR, MiFID II or CSDR, provided they meet certain conditions.
- **Who?** The proposal is particularly relevant to operators of MTFs and CSDs who (wish to) use DLT in their operations.
- **When?** These ESMA guidelines will enter into force on 23 March 2023.

DIGITAL EURO / CBDC

Central Bank Digital Currency (CBDC) project

- **What?** After DNB already published a [comprehensive report](#) on central bank digital currency ("CBDC") in April 2020 and the European Central Bank (ECB) conducted a [comprehensive reconnaissance](#) of CBDC in October 2020, on 14 July 2021, the ECB [announced](#) the launch of a digital euro project. The project aims to answer key questions surrounding the design and dissemination of CBDC. A digital euro should meet the needs of Europeans while preventing illegal activities. It should also avoid undesirable effects for financial stability and monetary policy. The ECB emphasises that a digital euro is in any case a complement to cash, not a replacement for it. The European Commission initiated a [consultation](#) on the digital euro in 2022, addressed to a broad group of stakeholders. Furthermore, in its [Work Programme 2023](#), the European Commission announced the publication in 2023 of a proposal containing the principles for a digital euro.
- **Who?** CBDC basically amounts to being able to hold a money account directly with a central bank, in the Netherlands DNB. The introduction of CBDC could thus make major changes to the current payments landscape, but also, for example, to the way banks are financed. The ECB's current exploration is therefore at least relevant to the payments and banking sector.
- **When?** The research phase will last from October



2021 to October 2023. At the end of 2023, the ECB's Governing Council will decide whether to launch the "realisation phase". That phase, which could last three years, involves developing and testing the technical solutions needed for a digital euro, the ECB said in its [progress update](#). The decision on whether a digital euro will actually be introduced in the Eurozone will follow at a later date and will also depend on the state of European legislation. After all, the digital euro requires a legal basis. The European Commission is aiming to publish a legislative proposal in the second quarter of 2023 to serve as the legal basis for a digital euro (possibly to be introduced).

Letter to House of Representatives regarding digital euro

- **What?** By [letter](#) dated 22 November 2022, the Minister of Finance provided an update to the House of Representatives on the development of the digital euro. For example, in the first quarter of 2023, the minister expects the results of the prototypes to be examined by the ECB. The letter further explained the issues surrounding the digital euro that have been discussed by the Eurogroup (the consultative body of finance ministers of Eurozone countries).
- **Who?** The current exploration of the digital euro is at least relevant to the payments and banking industry.
- **When?** Ongoing through 2023 (see also the alert above).

FSB, BCBS, BIS & IOSCO

FSB recommendations on regulation and supervision of crypto assets

- **What?** On 11 October 2022, the Financial Stability Board (FSB) released for consultation a proposed framework for the international regulation and supervision of crypto assets. The proposed framework is set out in two different documents: (i) [recommendations for regulation and supervision of crypto asset activities](#) and (ii) [revised recommendations for the regulation of "global stablecoins arrangements" \(GSAs\)](#). In both cases, the recommendations (19 in total) focus on addressing the risks of crypto assets (and specifically stablecoins) to financial stability.
- **Who?** This development is relevant for all parties dealing with crypto assets, and stablecoins in particular. Having said that, in Europe first and foremost, MiCA is the framework parties will need to prepare for.
- **When?** The FSB aims to publish its final recommendations in mid-2023.

BCBS prudential treatment exposures banks to crypto assets

- **What?** On 30 June 2022, the Basel Committee on Banking Supervision (BCBS) launched a second [consultation](#) on the prudential treatment of bank exposures to crypto assets (other than CBDC). BCBS proposes to distinguish between two different groups of crypto assets. In group 1 fall the less risky crypto assets, for which the existing prudential framework can be applied with certain "add-ons". In group 2 are the more risky crypto assets (including all crypto assets that are not covered) for which new stringent capital requirements are proposed. On 16 December 2022, the BCBS published a [final standard](#) in this regard.
- **Who?** This development is particularly relevant for banks with exposures to crypto assets.
- **When?** The crypto exposure standard will be a new chapter in the [Basel Framework](#) and must be implemented into law by participating jurisdictions no later than 1 January 2025.

BIS Innovation Hub launches new projects

- **What?** On 17 June 2022, the Innovation Hub of the Bank of International Settlements (BIS) [announced](#) the opening of a Eurosystem Center in Frankfurt and Paris. This center, working with the 19 central banks of the Eurozone, will focus, among other things, on establishing an open-source platform with information on crypto-asset markets.
- **Who?** This development is relevant to parties active in the crypto sector, among others.
- **When?** Ongoing in 2023.

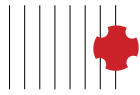
IOSCO Roadmap 2023

- **What?** On 7 July 2022, the International Organization of Securities Commissions (IOSCO) published its [Crypto-Asset Roadmap 2022-2023](#). Within IOSCO, a Fintech Task Force (FTF) has been created to deal with (i) crypto and digital assets (CDA) and (ii) decentralized finance (DeFi). The former workstream will be led by the FCA in the UK. The second workstream will be led by the SEC in the United States. Both work streams will focus on analyzing and responding to market integrity and investor protection issues.
- **Who?** Although guidance from IOSCO is not directly applicable, because of its influence on policymakers and regulators, this development is relevant to parties dealing with crypto assets and DeFi.
- **When?** IOSCO aims to publish a CDA report and a DeFi report with recommendations in the fourth quarter of 2023.



IOSCO Report on online marketing and distribution of financial products

- **What?** In October 2022, the IOSCO Board published a [report](#) on digitisation in the financial sector and, more specifically, the developments that BIS observes in this context in the way financial products are advertised to consumers (online marketing) and sold (online distribution). The report contains recommendations to regulators on how to shape their supervision of this changing environment.
- **Who?** Although guidance from IOSCO is not directly applicable, its influence on policymakers and regulators makes it relevant to virtually every supervised financial firm.
- **When?** Ongoing in 2023.



CAPITAL MARKETS: ISSUERS & CROWDFUNDING

A large number of financial market participants are active in the capital market. In a sense, the Finnius Outlook is almost entirely about capital markets. In this section, we focus on two specific types of players in the capital markets: Issuers and Crowdfunding service providers.

Please note that the [Sustainability \(ESG\)](#) section in this Outlook is also of interest to issuers. Subjects related to this, with a few exceptions, are not covered in this section, but only in the aforementioned special.

In addition, it is useful for issuers and crowdfunding service providers to take note of the [General section](#), because it also addresses topics that may affect these parties (such as developments with respect to the Benchmark Regulation and the Market Abuse Regulation). For crowdfunding service providers, it is important to also look at the section [Integrity](#) (with respect to the Wwft and sanctions regulations).

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

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[Reporting listed companies for 2022](#)

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CROWDFUNDING REGULATION

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OTHER NEW LAWS AND REGULATIONS

[Proposed amendment to House of Whistleblowers Act](#)

[New national security investment screening Act \(Vifo Act\)](#)

AFM SUPERVISION

Trend View 2023

- **What?** The AFM has again presented its [Trend View](#) for the year 2023. In it, the AFM describes relevant trends and associated risks that it observes that will (expectedly) affect the financial sector and supervision. For the capital markets, the AFM observes a number of risks related, among other things, to macroeconomic conditions (such as the sharp rise in energy prices) and geopolitical tensions, which are causing unrest and uncertainty in the financial markets. Also, as capital markets become increasingly digitized, this has implications for the requirements of institutions' controlled operations. Against this background, the operational digital resilience of institutions has the specific attention of the AFM. Furthermore, it is relevant that the AFM detects that issuers (deliberately) provide incomplete or incorrect ESG information, while this information is becoming increasingly important for society and investors. Issuers may have an incentive to present their ESG qualifications more favorably than they are (positive signaling effect to society,

attractiveness for institutional green mandates, and lower cost of capital), which leads to increased information asymmetry between company and investor and possibly to suboptimal investment decisions. In 2023, the AFM is therefore again expected to pay extra attention to green investment products and disclosure in this regard.

- **Who?** Among others, issuers that seek to issue securities to the public, as well as trading venues.
- **When?** Continuing through 2023.

Reporting listed companies for 2022

- **What?** On 25 November 2022, the AFM highlighted on its [website](#) several key areas of focus for listed companies as they prepare their 2022 reporting, including:
 - ensuring consistent and complete information in the non-financial statement (particularly relevant for large publicly traded companies with more than 500 employees);
 - Presenting alternative performance measures clearly and transparently;
 - connectivity between disclosures on non-financial information and figures in financial statements (think ESG aspects, where the AFM will especially assess how listed companies present their *net-zero targets* and scope-3 disclosures); and
 - The increasing importance of clear, relevant climate-related information (which is also highlighted by ESMA).

In relation to reporting concerns, we also point to [ESMA's annual statement](#) in which it released its reporting topics. Furthermore, the AFM (together with ESMA) urges listed companies to be clear about the impact of macroeconomic conditions.

- **Who?** The aforementioned concerns are important for listed companies preparing their 2022 reporting, as well as for audit committees overseeing the reporting process and audit firms auditing the reporting.
- **When?** 2023.

AFM 2022 legislative letter

- **What?** On 28 March 2022, the AFM published its [Legislative Letter 2022](#). In it, the AFM expresses its proposals for desired changes to Dutch laws and regulations. One of the AFM's legislative wishes concerns changing the current notification requirements in chapter 5.3 of the Wft for securities issuers, because the AFM has observed that there is inequality in transparency between securities issuers. This is because the AFM sees that more and more securities issuers are joining a regulated market that are exempt from

chapter 5.3 Wft, and thus the disclosure obligations contained therein. In its legislative letter, the AFM specifically requested the Minister of Finance to review the scope of chapter 5.3. Wft which may also require changes elsewhere in the Wft. In her letter in [response to the legislative letters](#) of the AFM (and DNB), the Minister expressed her positive view on this. The Minister hereby notes that this legislative desire must also be viewed from the perspective of streamlining the simplification of corporate law with regard to BVs (Dutch private company with limited liability), as these topics touch each other.

- **Who?** Issuers listed on a regulated market.
- **When?** Possibly as early as 2023, but also expected to be relevant in 2024.

Capital markets sector vulnerable to cyber attacks

- **What?** Based on self-assessments of 14 capital market institutions, it appears that the capital market sector is vulnerable to cyber-attacks. Such cyber-attacks can seriously disrupt and damage the continuity of business activities. Based on these self-assessments, the AFM has made some recommendations for the capital market sector, including having and maintaining a cyber incident plan. With this, the AFM wants to further strengthen cyber resilience together with the capital markets sector. The AFM's capital markets monitor can be found [here](#).
- **Who?** Institutions operating within the capital markets, such as trading venues, proprietary traders, and clearing & settlement firms.
- **When?** 2023 and beyond.

ESMA

Annual Work Program 2023

- **What?** On 21 September 2022, ESMA published its annual supervisory program for this year as well, [ESMA Annual Work Programme 2023](#). In this program, ESMA sets out its supervisory priorities and specific areas of focus for the next 12 months, including further strengthening the supervision of European financial markets and promoting the protection of retail investors. These supervisory priorities, in turn, are simultaneously part of [ESMA's strategic supervisory priorities \(2023-2028\)](#), which it published for the next five years on 10 October 2022. Among other things, ESMA will pay particular attention in 2023 to the protection of retail investors in the context of the development of ESG products and the increased risk of



“greenwashing. Finally, ESMA expects to be mandated, together with EBA, to provide technical advice to the European Commission on possible amendments to the Crowdfunding Regulation. With respect to disclosure obligations of issuers, it can be seen from the ESMA document that ESMA will issue several reports, including on the application of IFRS-15 and the implementation of the Shareholders’ Rights Directive (SRD) with respect to identification, communication, and voting. ESMA will also produce a report on prospectus activity within Europe.

- **Who?** For players across the financial sector, including issuers and trading venues.
- **When?** Relevant for 2023 and the following year.

Guide national rules on notifications participations

- **What?** On 15 December 2022, ESMA published a [practical guide](#) publishing for each EU Member State, including the Netherlands, the main rules and practices regarding notifications (notification) of major holdings under national law in accordance with the European Transparency Directive. This practical guide describes the main rules and practices related to a notification requirement, as well as practical information on how to make such a notification requirement (in the case of the Netherlands to the AFM). The practical guide is informative and intended as a tool for market participants and may be particularly useful for shareholders with notification obligations under national laws and regulations.
- **Who?** Investors in listed issuers.
- **When?** Continuing through 2023.

EUROPEAN COMMISSION/ESAS

European Commission proposals on clearing, insolvency and listing

- **What?** On 7 December 2022, the European Commission presented a comprehensive set of new legislative proposals relating to clearing, corporate insolvency and listing of companies aimed at making EU capital markets more attractive. This is a comprehensive package of laws and regulations aimed at further developing the European Capital Markets Union (CMU). An [overview](#) of all legislative proposals can be found on the Commission’s website. The Commission’s legislative proposals consist of three pillars, namely (i) clearing, (ii) corporate insolvency and (iii) companies seeking

listing. The last component is particularly relevant. The proposed legislative package involved is discussed further below (Package of legislative proposals “Listing Act”). For the clearing component, it aims, among other things, to make EU clearing services more attractive and resilient, while from the insolvency component, a proposal has been presented to, among other things, harmonize specific aspects of insolvency procedures across the EU.

- **Who?** Securities issuers, but for other parts of the legislative proposals also central counterparties and (SME) companies more generally.
- **When?** The proposed legislative package consists of several draft regulations and draft directives. The timing of their entry into force will vary for each component. Given the scope of the entire package, 2023 will still see the necessary developments and, in our opinion, 2024 will mainly be the year when new rules will come into force.

Package of bills ‘listing law’

On 7 December 2022, the European Commission introduced new legislative proposals for the “Law on Stock Exchange Listing” under the title “[Listing Law](#)”. This package consists of two draft directives and one draft regulation that will amend, among others, the European Prospectus Regulation and the Markets in Financial Instruments Regulation (MiFID-II):

- An amending regulation amending the European Prospectus Regulation, the Market Abuse Regulation and MiFID-II;
- An amending directive amending MiFID-II and repealing the Listing Directive (Directive 2001/34/EC) (see also in this regard an [opinion](#) of FISMA published on 12 December 2022); and
- A directive on shares with multiple voting rights.

The “listing law,” as mentioned, is part of the comprehensive legislative package on clearing, insolvency and listing with which the European Commission aims to further develop the CMU, which should further reduce administrative burdens and costs for companies. The current prospectus rules have apparently not yet brought what was expected from them, namely making European capital markets more accessible and therefore more attractive. The objective of this legislative initiative is to make the listing of shares and non-equity securities on public markets in the EU more attractive to companies, especially SMEs, by simplifying listing requirements. This would make it easier for EU issuers to finance and grow their operations, innovate and create jobs, while maintaining a high level of investor protection and market integrity.

In a nutshell, the proposed amendments relate to:

- simplifying the documentation required by companies to list on public markets and streamlining the monitoring processes by national regulators, thereby speeding up the listing process wherever possible and reducing its costs;
- simplifying and clarifying certain market abuse requirements without compromising market integrity;
- helping companies become more visible to investors by encouraging more investment research, especially for small and medium-sized enterprises (SMEs);
- allowing company owners to list on SME growth markets using multiple voting rights structures so that they can retain sufficient control of their company after listing, while protecting the rights of all other shareholders.

The package of legislative proposals is relevant to issuers located within the EU. Feedback on the “Listing Bill” is possible until 6 February 2023, after which the legislative process will continue. It is not yet clear when a final agreement will be reached on the content of the bill and when the regulation will enter into force and the directives must be implemented at the national level at the latest, respectively. We expect that this will not take place before 1 January 2024.

Proposal Regulation European Green Bonds

- **What?** On 6 July 2021, the European Commission introduced a [legislative proposal](#) for the Regulation on European Green Bonds. On 20 May 2022, a [report](#) by the European Parliament was released proposing amendments by the European Parliament. Following this, trilogue negotiations between the European Commission, the European Parliament, and the Council of the European Union began. The final adoption of the bill is currently awaited. This proposal is part of the European Commission’s broader agenda on sustainable finance and lays the foundation for “European Green Bonds” (EuGB), bonds that pursue environmentally sustainable investments within the meaning of the Taxonomy Regulation ((EU) 2020/852). The European green bond standards can also be found on the European Commission’s [website](#). In more general terms, the bill aims to make better use of the capital market union (CMU) and contribute to the achievement of the EU’s climate and environmental goals. Furthermore, more specifically, the bill aims to address barriers by setting and introducing a standard for high-quality green bonds, which, among other things, will enable investors to better identify such green bonds and verify their reliability.
- **Who?** Securities issuers that offer and issue green

bonds.

- **When?** The European Green Bond Regulation has not yet entered into force at the time of writing this Outlook and is not expected to take effect until 2023 at the earliest.

ESA’s Joint Committee Work Program 2023

- **What?** The joint supervisors, referred to as the European Supervisory Authorities (ESAs), are seeking to increase consistency in cross-sectoral supervision. The ESAs published their [Joint Committee Work Program 2023](#) on Sept. 30, 2022, in which they present various topics that are priorities in 2023. These include reviewing the PRIIPs regulation and possibly developing technical advice, as well as continuing to develop *level-3* regulations such as Q&As. The ESAs will also want to ensure further supervisory convergence on the Securitization Regulation in 2023, including through further developments of *level-3* regulations in that area.
- **Who?** Issuers.
- **When?** 2023.

EU strategy for retail investors (‘call for evidence’)

- **What?** Earlier this year, the European Commission issued a so-called “*call for evidence*” in the market for a new package of measures to increase consumer participation in capital markets within the EU. Market participants were able to respond to this [call](#), after which an impact assessment is taking place to arrive at regulations. Indeed, the European Commission believes that consumers in the EU do not benefit sufficiently from capital markets, partly because retail investors lack sufficient basic knowledge to make correct investment decisions, but also because it is difficult for investors to understand and compare product information due to excessive or complex information. The European Commission wants to take action to address these problems. This request was preceded by an [earlier consultation](#) on the Retail Investment Strategy by the European Commission, which has not yet been published.
- **Who?** Issuers.
- **When?** It is not yet entirely clear what legislative actions will be taken at the European level as a result of this *call for evidence*. The publication of the EU Retail Investor Strategy is expected in the first half of 2023.



DEVELOPMENTS OF EXISTING LAWS AND REGULATIONS

✚ Developments PRIIPs & general review PRIIPs rules

Introduction

Last year, in Outlook 2022, we already discussed the [proposed amendments](#) to the Delegated PRIIPs Regulation ((EU) 2017/653), which further elaborates on the essential information document (Eid) requirements. 'PRIIP' stands for *packaged retail and insurance-based investment product*. This includes, for example, depositary receipts. The proposed amendments will only amend the PRIIPs Delegated Regulation, not the PRIIPs Regulation itself.

The changes in outline

Changes to the Delegated PRIIPs Regulation include:

- (i) New methods to calculate appropriate performance scenarios;
- (ii) the introduction of new requirements on the content and presentation in the Eid of these scenarios;
- (iii) How transaction costs should be calculated and presented in the Eid.

In addition, PRIIPs open for enrollment during the enrollment period are also subject to website publication requirements.

The amendment to the Delegated PRIIPs Regulation is relevant to all parties offering a PRIIP, including issuers of equity instruments. These amendments took effect on 1 January 2023. Our experience has already shown that the application and interpretation of these amended PRIIPs rules has not become simpler or clearer in every respect. In order to help market participants prepare the EID, Finnius has developed a special template and a detailed instruction document.

General review

In the context of PRIIPs rules, it is further noted that mindful of Article 33 PRIIPs Regulation, a study on the overall functioning of the PRIIPs Regulation is currently ongoing at the European level. In this context, the European Commission has [asked](#) the ESAs to give their opinion on many different topics of the PRIIPs Regulation. In connection with this, the ESAs themselves then [asked](#) the market for input again and [provided input](#) on 29 April 2022. At the moment, we are waiting for the European

Commission itself to come up with a proposal. The advice requested by the European Commission indicates that this will be an implementation of the *Retail Investment Strategy*. Currently, this strategy has not yet been published, but we expect it to be published in 2023.

CROWDFUNDING REGULATION

Crowdfunding Regulation general

- **What?** On 10 November 2021, the [European crowdfunding regulation](#) on crowdfunding service providers for businesses ((EU) 2020/1503) (Crowdfunding Regulation) came into force. The Crowdfunding Regulation created a new financial supervisory law landscape for crowdfunding service providers. These service providers are often referred to as crowdfunding service providers, CSPs. A "crowdfunding service" is defined as matching a financing need of an SME project owner with the desire to provide financing from the *crowd*, or public. Project owners can be funded by raising loans or issuing securities. When issuing securities, the CSP's services include receiving and transmitting orders and placing securities without a placement guarantee. A crowdfunding project within the scope of the Crowdfunding Regulation is up to EUR 5 million, calculated over a 12-month period. Under the Crowdfunding Regulation, a licensing requirement has been introduced for CSPs. There is still a transitional period (until 10 November 2023) for service providers who were already providing crowdfunding services before the Regulation entered into force and were using an exemption, for example.
- **Who?** Crowdfunding service providers.
- **When?** Originally, crowdfunding service providers were required to be licensed by the AFM by 10 November 2022. However, the European Commission has [extended](#) this transition period by one (1) year to 10 November 2023. This means that existing market participants have been given additional time to apply for a crowdfunding license and meet all associated requirements. Despite the extension of the transition period, the AFM notes [on its website](#) that market parties should not wait with the license application. The first crowdfunding permits have now been granted by the AFM.

✚ Technical regulatory standards

ESMA is mandated in the Crowdfunding Regulation to elaborate on certain topics through regulatory technical standards. These include complaint handling, conflicts of



interest, business continuity plan, admission knowledge test, and the key investor information sheet. Although these regulatory technical standards have already been drafted by ESMA and entered into force in mid-2022 in the form of directly applicable regulations and the approach of this Outlook is precisely to look ahead to future laws and regulations, we still believe it is important in this section to provide a brief overview of the regulatory technical standards that are most important for CSPs in connection with the extension of the transition period under the Crowdfunding Regulation until 10 November 2023:

- [Delegated Regulation \(EU\) 2022/2111](#) - these regulatory technical standards address conflicts of interest and, among other things, impose an obligation on CSPs to have internal written rules to prevent conflicts of interest.
- [Delegated Regulation \(EU\) 2022/2112](#) - this delegated regulation elaborates on the eligibility knowledge test and loss-carrying capacity simulation (using an online calculation tool) for non-experienced prospective investors in crowdfunding projects.
- [Delegated Regulation \(EU\) 2022/2115](#) - this regulatory technical standard requires a CSP to calculate the default rate of loans offered on its crowdfunding platform. This delegated regulation also contains the calculation methodology that a CSP must apply for this purpose.
- [Delegated Regulation \(EU\) 2022/2116](#) - these regulatory technical standards detail the determination of business continuity plan measures and procedures for CSPs and provide the framework of information to be included in the business continuity plan at a minimum.
- [Delegated Regulation \(EU\) 2022/2117](#) - complaint handling also plays a central role in a CSP's operations. These regulatory technical standards contain further requirements, standard templates and procedures for complaint handling by CSPs.
- [Delegated Regulation \(EU\) 2022/2118](#) - these regulatory technical standards cover individual portfolio management of loans by CSPs and the further definition of elements for credit risk assessment, information on each individual portfolio to be disclosed to investors, and policies and procedures required in connection with contingency funds.
- [Delegated Regulation \(EU\) 2022/2119](#) - CSPs are required by the Crowdfunding Regulation to provide prospective investors with a key investment information sheet prepared by the project owner for each crowdfunding offering. This Delegated Regulation elaborates the template to be used by a CSP for this purpose.

Due to these technical regulatory standards, CSPs are faced with further obligations and elaboration requirements that the regulator reviews when applying for a license. Existing CSPs have until 10 November 2023 to obtain a license from the AFM. New CSPs wishing to enter the market must first apply for a license before crowdfunding services can be provided in the Netherlands

(and in the EU via a European passport). Finnius can further assist both existing and new CSPs in advising on the crowdfunding rules, as well as assisting in the license application with the AFM.

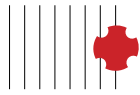
OTHER NEW LAWS AND REGULATIONS

Proposed amendment to House of Whistleblowers Act

- **What?** A [bill](#) amending the House of Whistleblowers Act is currently pending. This law aims to improve the conditions for reporting social abuses, by enabling investigations into abuses and better protecting those reporting abuses. The House of Whistleblowers Act already provides for a mandatory internal reporting procedure for employers who employ at least 50 people. One of the proposed amendments is that this threshold will no longer apply to companies operating in the financial sector, including securities issuers to which the Prospectus Regulation applies. Among others, the AFM will be appointed as the competent regulator. It is proposed to change the name of the law to Whistleblowers Protection Act.
- **Who?** Securities issuers.
- **When?** The law change was actually supposed to take effect on 17 December 2021. However, the proposal was not passed by the House of Representatives until 20 December 2022. It is now before the Senate, which has yet to decide whether or not to adopt the proposal. Thus, it is still unclear when the amendment will take effect. We expect it to be in 2023.

New national security investment screening Act (Vifo Act)

- **What?** The new national security investment screening Act (Vifo Act) was published in the Official Gazette on 10 June 2022. Last summer, the draft decrees with [further technical rules](#) and with [rules on the scope of application of sensitive technology](#) were consulted. The Vifo Act introduces a review mechanism for investments, mergers and acquisitions that may pose a risk to national security. These include investments in (i) vital providers or (ii) companies with sensitive technology. See also our [Finnius Finds blog](#) from 19 May 2022.
- **When?** The law identifies several financial companies as vital providers, including certain issuers.
- **When?** The law is expected to take effect in early 2023.



LENDERS

This section covers important developments for consumer credit providers (mortgage and consumer credit) that play out in 2023. If these lenders also provide additional services, such as advising on credit or intermediating in the purchase of an insurance product, we recommend consulting the sections in this Outlook that are aimed at those additional services ([Financial Service Providers](#)). Furthermore, the section [General](#) is worth reading for lenders, as it discusses general developments in areas such as supervision and enforcement, for example, that are also relevant to lenders.

In addition, for lenders licensed as [Banks](#), [Insurers](#), [Payment Service Providers](#) or [Investment Firms](#), the relevant sections of this Outlook are of course also relevant. Finally, the cross-sectoral [Integrity](#) section is also important for lenders.

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

AFM SUPERVISION

- Trend Monitor 2023
- Buy Now, Pay Later
- Market Impressions 2022 report: controlled business operations must improve
- Survey: quality mortgage advice and responsible lending
- Study: correlation of mortgage amounts and arrears
- Consultation supplement Guideline compensation for early mortgage repayment
- Explanation AFM assessment upon dismissal of joint and several liability

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

- Revision Consumer Credit Directive
- Revision Mortgage Credit Directive
- Prejudicial questions to Supreme Court on BNPL
- Introduction Comparison Chart financial service providers
- Maximum credit rate increased to 12%
- Intention to lower threshold verification requirement to €250
- Proposal to reduce frequency of audit cost model
- Mortgage loan standards update
- Further remuneration rules financial sector (Wnbfo)
- Remuneration under the heading of dividends
- Q&A Retention fees

NEW LAWS AND REGULATIONS

- Proposed amendment to House of Whistleblowers Act
- Directive on credit servicers and credit purchasers
- Collection Services Quality Act

OTHER DEVELOPMENTS

- DNB launches new mortgage dashboard

AFM SUPERVISION

Trend Monitor 2023

- **What?** On November 3, 2022, the AFM published [Trend Monitor 2023](#). In it, the AFM points out a number of trends and risks in the financial sector for the year 2023. According to the AFM, credit providers will have to pay extra attention to their duty of care because of increased energy prices, high inflation and rising interest rates. Payment risks on mortgage and consumer credit are increasing as well as the risk of financial stress among low-income households. Therefore, the AFM fears suboptimal financial decisions by households, such as credit accumulation and alternatives such as flash credit, private lease and Buy Now, Pay Later. The AFM also points out that the risk of overcrediting when taking out consumer credit is now higher because inflation is factored into lending standards with some delay.
- **Who?** All credit providers.
- **When?** The trends and risks identified by the AFM will have its attention in 2023 and contribute to determining the AFM's supervisory priorities. The concrete implications of the trends and risks for AFM supervision will be elaborated in its Agenda 2023 to be published in early 2023.

Buy Now, Pay Later

- **What?** The AFM has conducted an [exploration](#) of the growing Buy Now, Pay Later (BNPL) market. While the AFM recognizes the benefits of BNPL, it believes it can also contribute to the risk of debt piling up for consumers in a financially vulnerable situation, especially in the current economic conditions. Other risks identified by the AFM relate to the provision of information, the underwriting process, arrears management, charges for non-payment and the revenue model. The increasing popularity of payment by instalments can also lead to the normalization of buying on credit, which contributes to debt habituation, according to the AFM. It points out that fees charged if customers do not pay on time must comply with the Collection Costs Act (*Wet Incassokosten*). The AFM also says it will ensure that providers of BNPL can clearly demonstrate that they, and the collection agency they are working with, comply. Given the risks, the AFM supports regulation of BNPL. The European Commission has proposed to place BNPL under the scope of the Consumer Credit Directive. See more on this later in this section of the Outlook.
- **Who?** Providers of BNPL.
- **When?** Ongoing attention through 2023.

Market Impressions 2022 report: controlled business operations must improve

- **What?** The AFM [published](#) the report Market Impressions 2022 late last year. This shows, among other things, that the AFM expects credit providers to encourage their customers to periodically pay attention to their financial situation. For a detailed explanation of the lessons to be learned from the report, please refer to the relevant section [Financial Services Providers](#) in this Outlook.
- **Who?** All lenders.
- **When?** Ongoing. The AFM will continue to monitor financial service providers' compliance with the legal standards of controlled business operations in 2023.

Survey: quality mortgage advice and responsible lending

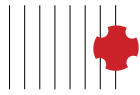
- **What?** In the aforementioned Market Impressions 2022 report, the AFM announces that it will investigate the quality of mortgage advice and responsible lending in 2023.
- **Who?** Mortgage loan providers.
- **When?** During 2023.

Study: correlation of mortgage amounts and arrears

- **What?** In mid-November 2022, the AFM [published](#) its occasional paper, 'Maximum mortgage borrowing? An analysis of households with high mortgage debt and arrears'. Among other things, the AFM concludes that the risks are highest for first-time buyers who have recently taken out a maximum mortgage and that the current extreme drop in purchasing power is putting pressure on lending standards.
- **Who?** Mortgage loan providers.
- **When?** Ongoing attention through 2023.

Consultation supplement Guideline compensation for early mortgage repayment

- **What?** The AFM intends to add a passage to the Guideline Compensation for early mortgage repayment. To this end, it launched a [consultation](#) at the end of last year. The AFM wants to clarify in the Guideline when the comparison interest rate for early repayment should be determined by means of an addition to that Guideline. An incorrectly applied date for the determination of the comparison interest may result in a higher fee being charged than the financial



disadvantage suffered.

- **Who?** Mortgage loan providers.
- **When?** The consultation ran until January 6, 2023. The AFM expects to publish the new guidance on its website in early February, possibly modified if responses to the consultation warrant it.

Explanation AFM assessment upon dismissal of joint and several liability

- **What?** At the end of last year, the AFM [published](#) a further explanation of the application of NHG management criteria when assessing the financial situation after a relationship break-up if discharge of joint and several liability is requested. Without further substantiation, these criteria cannot replace the regular standards in the Temporary Regulation on Mortgage Credit (*Tijdelijke regeling hypothecair krediet*). If it follows from the test based on these norms that the mortgage is not appropriate, customization is allowed, but justification must be provided and substantiated in the file as to why the credit is justified, and it must be made plausible that the situation is permanent.
- **Who?** Mortgage loan providers.
- **When?** Ongoing attention through 2023.

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

Revision Consumer Credit Directive

European Commission proposal

The Consumer Credit Directive is currently under review. In June 2021, the European Commission already [published](#) its proposal to that effect. The proposal contains some changes with major impact. For example, the Commission proposes to greatly broaden the scope of application compared to the current directive and to clarify and supplement the rules on the creditworthiness test. Unlike the current directive, it is proposed that the new directive should apply to: all hire or leasing agreements (i.e. even if they do not involve an obligation to purchase the property), credit agreements free of charge, credit agreements under which the credit must be repaid within three months and only insignificant charges are payable ('buy now, pay later'), credit agreements of less than EUR 200 and credit agreements granted in the form of an overdraft facility and which must be repaid within one month.

Furthermore, the Commission makes proposals to ensure that the provision of pre-contractual information to consumers is done in a more effective way than it is today. In addition to the already well-known SECCI ("Standard European Consumer Credit Information"), a form "Standard European Consumer Credit Overview" should also be provided, i.e. a one-page summary of the main characteristics of the credit. The concept of "in good time" is no longer used in the proposal as to when the SECCI should be provided. The proposal stipulates that the pre-contractual information must be provided at least one day before the consumer is bound by an agreement or offer. If this is less than one day, the consumer must be reminded of the possibility to withdraw no later than one day after the conclusion of the contract or acceptance of the offer. It is also noteworthy that the proposal prohibits tying in principle.

Position of the European Parliament and the Council of the European Union

In July 2022, the European Parliament [published](#) its position on the Commission's proposal and proposes amendments. The Council of the European Union [did](#) so on June 9, 2022. The Council is also proposing amendments. One of the proposed changes concerns the proposed scope of application by the Commission of the directive regarding buy now, pay later products. The Parliament and the Council, unlike the Commission, see no reason to include all deferred payment parties in the scope of the directive. They believe that deferred payment should be exempt if the merchant or supplier of the product or service itself grants the deferred payment and no interest and other costs are charged. The Parliament makes it a condition that the consumer must pay within 45 days of delivery of the good or service. The Council considers that the payment should be made within 90 days of the conclusion of the contract for the supply of the good or service.

BNPL services where a third party offers the credit, and thus the credit is not offered by the merchant or the supplier itself, should therefore be covered by the directive, according to both the Commission and the Parliament and Council. However, the Parliament and the Council, unlike the Commission, are of the opinion that in these cases, Member States should be given the option to opt for a kind of 'light regime'. Namely, the option to declare certain provisions of the Directive (relating to pre-contractual information, advertising requirements and early repayment) not applicable to these BNPL services. We also recently wrote a [blog](#) on the developments surrounding BNPL.

Another change from the Commission's proposal concerns the regulation of private leasing. Both Parliament and the Council, unlike the Commission,

exempt private leasing from the directive, as in the current directive.

A [press release](#) dated 2 December shows that the European Parliament and the Council have reached a provisional agreement on a revised directive. The agreement must still be approved by them. It is not yet known exactly what this agreement entails.

Position Netherlands

[In response](#) to questions on this subject from the House of Representatives, the Minister of Finance indicated that a majority of the member states were not in favor of including leases within the scope of the directive, because they do not view renting and leasing as a form of credit and therefore do not view the directive as an appropriate instrument to mitigate any risks for consumers. In principle, the government is positive about the Commission's proposal to cover private leasing, but on the basis of a risk-based delineation. We have long known from the AFM that it is in favor of legal regulation of private leasing.

The Cabinet supports the Commission's proposal to bring buy now, pay later service providers within the scope of the Directive. However, the Cabinet does consider whether it is necessary and proportionate to declare all provisions of the proposed Directive applicable to these services. The Cabinet does not want any unnecessary obstacles for consumers to pay for products at (web) stores with a short payment period, insofar as the risks of this for the consumer are limited.

How further

Negotiations are currently taking place between the European Commission, Parliament and Council. It is not clear at this time what will remain of the Commission's proposal and when the revision will enter into force. Where positions differ, a compromise will have to be reached. More will most likely become clear in 2023 - so an important development to follow with implications for the entire credit market.

Revision Mortgage Credit Directive

- **What?** The European Commission is working on a revision of the Mortgage Credit Directive. This will examine how: (i) to provide simplified, timely and relevant information to consumers; (ii) to adapt the rules to the digital environment; and (iii) to make it easier to obtain a mortgage loan for a home in another EU country. To this end, the Commission held a public [consultation](#) in late 2021/early 2022, to which the Netherlands [responded](#). In addition, the Commission

asked the European Banking Authority (EBA) for advice. In June 2022, the EBA published its [opinion](#). In particular, the EBA advises:

- review pre-contractual information and advertising requirements,
- ensure disclosure requirements are appropriate for digital channels,
- take additional measures to protect consumers when artificial intelligence systems are used for creditworthiness assessments,
- introduce *borrower-based measures* (BBMs) in the information provided to consumers to promote responsible borrowing,
- establish an EU-wide definition of "green mortgages".

In November 2022, the Commission further asked the EBA, more generally, for [its opinion](#) on green loans and mortgages.

- **Who?** Mortgage loan providers.
- **When?** We expect the European Commission to propose a revised directive in 2023.

Prejudicial questions to Supreme Court on BNPL

The Subdistrict Court of the District Court of Gelderland has [submitted](#) preliminary questions to the Supreme Court concerning the regulation of Buy Now, Pay Later (BNPL). The main question is whether BNPL (deferred payment) qualifies as credit to which the credit rules apply. Relevant in that context is then the so-called 'insignificant cost' exception that providers of BNPL products can make use of, namely an exception for credit that has to be repaid within 3 months and for which only insignificant costs are charged to the consumer. The important question then is which costs are relevant in that context. In these proceedings, the more specific issues are payment fees (fees for using a post-payment service), and the statutory interest and statutory collection costs that customers become liable for if they fail to pay on time. Once it has been determined what the relevant costs are, the next question is how to assess whether those costs are insignificant and whether the AFM's interpretation of them should be followed. In the situation that the credit rules are applicable, because an exception cannot be used, the Subdistrict Court further wonders when the requirement to provide the pre-contractual information (also known as SECCI) "in good time" before the conclusion of the credit agreement has been met. Another interesting question is whether judges are obliged in civil proceedings, if necessary ex officio, to assess whether - the administrative law - provisions of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, Wft) and the Financial Supervision Conduct Decree (*Besluit Gedragstoezicht financiële ondernemingen Wft*, BGfo) have been correctly



complied with, and if so, whether the verification obligation of Section 113 BGfo also applies to credits of less than €1,000.

On November 30, 2022, the Deputy Attorney General (*plv. procureur-generaal*, PG) gave an [opinion](#) to the Supreme Court on the answers to the preliminary questions in the form of a so-called conclusion. Among other things, the PG's opinion is that a deferred payment agreement qualifies as a credit agreement and the credit regulations apply unless the credit agreement is excepted. Regarding the costs relevant to determining whether there are insignificant costs, the concept of total cost of credit to the consumer is relevant. This includes a payment fee. Statutory interest and collection costs may also be included if these costs are payable in connection with the credit agreement and the creditor is aware of these costs. This is to be judged by the circumstances of the case, of which the PG gives a few examples. Similarly, the question of whether costs are 'insignificant' must be answered taking into account all the circumstances of the case, such as the amount of the costs and their relationship to the total amount of credit. The civil court is not obliged to adhere to the AFM's interpretation, the PG said.

Regarding the timeliness of the provision of the SECCI, the PG gives a less rigid interpretation than, among others, the Arnhem-Leeuwarden Court of Appeal in its well-known [ruling](#) of July 9, 2019. The PG believes that the circumstances of the case must be looked at to assess whether the SECCI was provided on time. The circumstance in which the consumer, after having made a choice for a certain product, will almost immediately complete the purchase and proceed to the (digital) checkout to pay, and in which there will rarely have been some time between the provision of the SECCI and the conclusion of the contract, does not force the court to rule that the SECCI was not provided in time.

It is now up to the Supreme Court to answer the preliminary questions. The Supreme Court may follow the conclusion, but is not obliged to do so. The ruling is particularly important for parties offering a post-payment service, but also for other providers using the insignificant cost exception or parties that are regulated and required to provide the SECCI and to whom the verification requirement may or may not apply.

The preliminary questions were raised because there is currently uncertainty about what the answer to those questions should be. In fact, the (lower) courts are ruling differently. The Supreme Court's answer to the preliminary questions is thus of great importance, and very important to keep an eye on. For BNPL providers this speaks for itself, but also for other credit providers the ruling is important, also in view of the obligation to provide the SECCI.

Introduction Comparison Chart financial service providers

- **What?** Last summer, the Ministry of Finance [consulted on](#) an amendment to the Financial Supervision Conduct Decree (BGfo). The proposed amendment concerns the introduction of the comparison chart for financial service providers. The comparison chart is to replace the service provision document (*dienstverleningsdocument*, DVD) as the information document that certain financial service providers are required to provide to consumers. As a result of this proposed change, the Nadere regeling gedragstoezicht financiële ondernemingen Wft (Nrgfo) must also be amended, in which further rules of the AFM must be introduced with regard to the comparison chart. To this end, the AFM [consulted](#) its proposal last year and published its [feedback statement](#) in December 2022.
- **Who?** Mortgage loan providers.
- **When?** The draft decision for the amendment of the BGfo has been with the Council of State for advice since December 22, 2022. The intended date of entry into force is April 1, 2023. The draft provides for a transition period of six months.

Maximum credit rate increased to 12%

- **What?** The legal interest rate has been [increased](#) from 2% to 4% as of January 1, 2023. As a result, the maximum credit rate that may be charged on an annual basis is no longer 10%, but 12%. This follows from the Credit Fees Decree (*Besluit kredietvergoeding*), which stipulates that the maximum credit rate allowed should be calculated by increasing the statutory interest rate by 8%. The increase in the statutory interest rate is related to an increase by the European Central Bank (ECB) of the [main refinancing rate](#). Every six months, on January 1 and July 1, the statutory interest rate is determined by reviewing the ECB's main refinancing rate on the reference date, at the end of October and the end of April, respectively, and, depending on that, increasing or decreasing the statutory interest rate. Last October's reference date resulted in the legal interest rate being changed to 4% as of January 1, 2023. Recently, however, the main refinancing rate has already risen again, now to 2.5%. If that interest rate rises further, then, in principle, the statutory interest rate will rise further again as of July 1, 2023, namely in the event of a difference of more than 1%-point between the applicable statutory interest rate and the interest rate that would apply at that time. The next reference date will be in April 2023. Therefore, should the legal interest rate rise again by then, the maximum credit rate will also rise further.

- **Who?** Consumer credit providers.
- **When?** By January 1, 2023.

Intention to lower threshold verification requirement to €250

- **What?** Currently, in order to prevent over-indebtedness, lenders are obliged to have sufficient information, in writing or recorded on another durable medium, regarding the consumer's financial position, such as a payslip and bank statements in support of data on income and expenses, for credit exceeding €1,000. This is called the verification requirement. Verbal information about the consumer's financial situation is not sufficient. The minister intends to lower that amount to €250 to protect consumers in small loans. That intention was already there at the beginning of 2021, but according to a [parliamentary letter](#), the cabinet is postponing the decision. This is because the Cabinet first wants to wait for the revision of the Consumer Credit Directive and will not pursue further decision-making until the revision is completed. If the minister implements the lowering of the threshold of the verification obligation, lenders, who offer credit between €250 and €1,000, will thus no longer be able to suffice with obtaining information as part of the creditworthiness check, but will have to verify the financial position of consumers. So for relatively small loans, this has major implications.
- **Who?** Lenders, offering credit between €250 and €1,000.
- **When?** The decision on the reduction is linked to the revision of the Consumer Credit Directive. Once the revision is completed, the Cabinet will decide. This could be in 2023.

Proposal to reduce frequency of audit cost model

- **What?** The [Financial Markets Amendment Decree 2021](#) proposes to reduce the frequency of auditing the cost model. In its place, an obligation is introduced for the financial product provider to report each year whether the cost model correctly and completely allocates the advisory costs and distribution costs to the mortgage loan and whether there has been a material change therein. The cost model must now still be audited annually by an auditor. If there is no material change, the frequency with which the auditor must audit the cost model is lower.
- **Who?** Providers of mortgage credit who make mortgages without the involvement of an intermediary (direct writers).
- **When?** The Amendment Decree was sent to the Senate and House of Representatives back in November 2021. It is not yet known when the decree will take effect.

Mortgage loan standards update

- **What?** As of January 1, 2023, the Temporary Regulation on Mortgage Credit (*Tijdelijke regeling hypothecair krediet*) was [amended](#). This regulation aims to establish the income criteria for providing mortgage credit and the maximum amount of credit in relation to the value of the home. As of January 1, 2023, the calculation of the financing burden percentage for two-income earners has been adjusted in line with the advice of the Nibud. The financing charge percentage is determined based on the joint test income instead of the highest test income plus 90 percent of the lower test income. In addition, the income tables with corresponding financing burden percentages have been replaced, also in line with Nibud's advice.
- **Who?** Mortgage loan providers.
- **When?** By January 1, 2023.

Further remuneration rules financial sector (Wnbfo)

- **What?** Effective January 1, 2023, the Further Remuneration Measures for Financial Undertakings [Act](#) (*Wet nadere beloningsmaatregelen financiële ondernemingen*, Wnbfo) entered into force. This Act introduced a number of changes to the remuneration rules as contained in the Wft, including the introduction of a statutory retention period of at least five years for shares paid as a component of a fixed remuneration, and a tightening of the averaging rule for non-CAO (*collectieve arbeidsovereenkomst*) staff, who may be awarded a higher bonus than 20% under certain conditions. The AFM [published](#) a notification form for deviating from the bonus ceiling for non-CAO staff in late 2022.
- **Who?** All credit providers.
- **When?** Effective January 1, 2023. The contracts of existing employees who will no longer be able to use the averaging arrangement for non-CAO employees as of January 1, 2023, must be adjusted by January 1, 2024.

Remuneration under the heading of dividends

- **What?** On August 1, 2022, the European Court of Justice issued an [important ruling](#) on the question of the extent to which dividends on employee shares can qualify as variable remuneration. Not surprisingly, the ECJ reads everything very broadly (and teleologically). Although the ruling was made with respect to regulated investment fund managers, the point addressed in the



ruling is relevant to all regulated market participants. After all, the issue at stake is what remuneration mechanisms are considered variable remuneration. As such, the considerations in the ruling are also relevant to assessing participation structures in credit providers.

- **Who?** All credit providers.
- **When?** It makes sense that regulators will pay extra attention to participation structures in 2023.

Q&A Retention fees

- **What?** On December 2, 2022, DNB [published](#) a Q&A regarding retention fees, which was consulted earlier in the year. In the Q&A, DNB indicates which review frameworks it uses for retention fees for which consent is required and for cases where such consent is not required. It also indicates which elements must (can) be substantiated in any case, even if no prior consent is required. The AFM [announced](#) on its website that the Q&A consultation is also being conducted on its behalf.
- **Who?** All credit providers.
- **When?** Effective immediately.

NEW LAWS AND REGULATIONS

Proposed amendment to House of Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House of Whistleblowers Act. Among other things, this law provides for the obligation to establish a procedure for dealing with the reporting of suspected wrongdoing within an organization. Currently, with respect to this obligation, a threshold of at least fifty people within the organization is still provided for. One of the proposed changes is that this threshold no longer applies to companies operating in the financial sector. Among others, the AFM will be appointed as the competent supervisor. It is proposed to change the name of the law to Whistleblowers Protection Act.
- **Who?** Credit providers.
- **When?** The law change was actually supposed to take effect on December 17, 2021. However, the proposal was not passed by the House of Representatives until December 20, 2022. It is now before the Senate, which has yet to decide whether or not to adopt the proposal. Thus, it is still unclear when the amendment will take effect. We expect it to be in 2023.

Directive on credit servicers and credit purchasers

- **What?** On November 24, 2021, the [Directive](#) on credit servicers and credit purchasers was published. This directive standardizes the rules for servicers and buyers of credit in the European Union and facilitates the sale of non-performing loans (or NPLs). When providers are faced with a large accumulation of NPLs and do not have the staff or expertise to service them properly, they should be able to outsource the servicing of those loans to a specialized credit servicer or transfer the credit agreement to a credit buyer with the necessary risk appetite and expertise to manage them. The European Banking Authority (EBA) published December 16, 2022 [draft implementing technical standards](#), which specify the templates that credit institutions should use to provide information for the purpose of financial books examination and valuation of NPLs.
- **Who?** Buyers of credit who qualify as providers after purchase.
- **When?** The directive must be implemented by December 29, 2023. Next year we can expect a bill for implementation.

Collection Services Quality Act

- **What?** Last year, the Debt Collection Services Quality [Act](#) was passed by the Senate and House of Representatives and published in the Official Gazette. The Act is intended to improve the quality of out-of-court debt collection services. Collection agencies and debt collectors must meet various quality requirements. There will be a debt collection register and a system of supervision and enforcement for non-compliance with the law. The Act applies to extrajudicial debt collection activities (a) that are performed or offered in the exercise of a profession or business directed or co-directed towards that profession or business, or in a manner as if directed or co-directed towards that profession or business, (b) for a third party or after assignment of the claim, and (c) with respect to payment by a natural person domiciled in the Netherlands. Extrajudicial collection activities are activities aimed at obtaining extrajudicial satisfaction of a claim for payment of a sum of money. It follows from the explanatory memorandum that the rules for debt collection services exist alongside the rules in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, Wft). A debt collection service provider may therefore require registration under the Debt Collection Services Quality Act and require a license from the AFM under the Wft. The [Decree](#) on Quality Collection Services, which fleshes

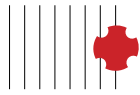
out parts of the law, was consulted last year. Among other things, the Decree contains an amendment to the Compensation for Extrajudicial Collection Costs Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*), namely a new regulation for the collection costs that may be charged if instalment payments with a maximum of €266.67 have remained unpaid and the debtor is served with a reminder for overdue instalments as referred to in the Collection Costs Act. The collection costs will then depend on the number of overdue installments that remain unpaid after a reminder within a period up to six months ago.

- **Who?** Credit providers covered by the scope of the Quality Collection Services Act.
- **When?** The expected effective date was January 1, 2023. However, that did not happen. A separate decree has yet to be issued that will determine when the Debt Collection Quality Act will take effect.

OTHER DEVELOPMENTS

DNB launches new mortgage dashboard

- **What?** DNB has launched a new [residential mortgage dashboard](#) containing figures around mortgages, such as interest rates and the size and distribution of the mortgage market.
- **Who?** Mortgage loan providers.
- **When?** Ongoing.



TRUST OFFICES

Note: The cross-sector [Integrity](#) section is also of interest to trust offices. In addition, we recommend that trust offices take note of the [General section](#), as it discusses topics that may be relevant to all service providers in the financial sector. Please note that several hyperlinks to documents and sources are available in the Dutch language only.

DNB OVERSIGHT

Supervisory strategy 2021-2024

Supervision in focus

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

Financial Markets Amendment Act 2022

Financial Markets Amendment Act 2024 - amending Wtt 2018

Ban on provision of trust service in relation to high risk and non-cooperative countries

Exemptions for pension funds and investment institutions

Ban on providing trust services to clients in Russia or Belarus

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Proposed Data Processing by Cooperatives Act

Money laundering action plan bill - update

Registration UBOs of trusts and similar legal arrangements

OTHER DEVELOPMENTS

Future of the trust sector

Response to recommendations committee on conduit companies

Draft guidance regarding FATF Recommendation 24

Compliance with Sanctions Act has full attention DNB

Modernization of sanctions system

DNB OVERSIGHT

Supervisory strategy 2021-2024

- **What?** In the [strategy document](#), DNB has set out how it fulfills its supervisory task. The strategy document was published in November 2020, but is also relevant for 2023 because it outlines the priorities of DNB's supervision. These are (i) technological innovation, (ii) sustainability and future orientation, and (iii) combating financial-economic crime. More specifically, DNB provides the following:
 - With respect to technological innovation, DNB points to the increasing importance of data integrity. Institutions are expected to have their data in good order (quality, completeness and accuracy of data) and to provide good security against, for example, cyberattacks. In addition, DNB points to the importance of the privacy aspects of data management and use;
 - In recent years, DNB has examined how climate change, energy transition and loss of biodiversity can affect financial institutions. The focus of the research was specifically on the impact for banks and insurers. DNB indicates that institutions will have to assess the potential impact and integrate it into their policies and risk management. DNB pays attention to this in its supervision of institutions; and
 - DNB urges financial institutions to take more structural measures aimed at managing integrity risks and preventing financial-economic crime effectively. This relates in particular to the management of integrity risks, which DNB has the impression is still insufficiently embedded in the primary process of financial institutions. Specifically for trust offices, DNB announces active enforcement regarding the designation of a Wwft responsible person within the board and the provision of an independent and effective internal compliance function. In addition, DNB points to the instrument of reassessment op



policymakers insofar as an institution is involved in criminal proceedings. Furthermore, DNB makes the remarkable statement that it can, if necessary, fine 'de facto managers' in criminal investigations.

- **Who?** Trust offices and all other financial institutions.
- **When?** Ongoing.

Supervision in focus

- **What?** On November 22, 2022, DNB published the document [Supervision in Focus 2022-2023](#). In this document, DNB outlines what it is working on in its supervision. DNB conducts only integrity supervision of trust offices and notes that the consolidation trend regarding trust offices has continued. In 2022 the total number of trust offices decreased from 169 to 140 at the end of 2022, with some trust offices increasing in size. Among other things, DNB is taking action against illegal providers of trust services and anticipates increasing its enforcement efforts in 2023. With respect to licensed trust offices, DNB's primary focus is on sound and controlled operations and on adequately fulfilling the role of gatekeeper. Trust offices' compliance with the Sanctions Act continues to receive full attention, in response to geopolitical tensions and expansion of sanctions regulation.
- **Who?** Trust offices and unregulated parties providing trust services.
- **When?** Ongoing in 2023.

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

Financial Markets Amendment Act 2022

- **What?** An amendment to the General Administrative Law Act (Awb) in spring 2021 inadvertently removed the possibility for supervisors in the financial sector to publish measures imposed for violating the 'duty to cooperate' as laid down in Article 5:20 Awb. The [Financial Markets Amendment Act 2022](#) rectifies this omission by making corrections in the various supervisory laws (including the Wtt 2018).
- **Who?** Trust offices (and other financial institutions).
- **When?** The law was published in May 2022 and led to a number of amendments to the Wtt as of June 2022. Amendments to other supervisory laws (such as the Wtt 2018) entered into force on 1 January 2023.

Financial Markets Amendment Act 2024 – amending Wtt 2018

- **What?** In its [ZBO report 2021](#) DNB stated that trust offices do not yet have a sufficiently coherent picture of integrity risks. This is also referred to in the [Cabinet response](#) to the SEO Research on the Future of the Trust Sector. One of the measures proposed to improve this is to amend legislation with a view to prevent circumvention of the Wtt 2018. In consultation with DNB, legislation has been drafted to amend the Wtt 2018, which amendments are included in the Financial Markets Amendment Act 2024 (see above). It is proposed to tighten the definitions of the trust services 'directorship' and 'domiciliation and ancillary services'. A preliminary draft of the Amendment Act was publicly [consulted](#) last spring. In November 2022 the bill was submitted to the Advisory Division of the Council of State for advice.
- **Who?** Trust offices.
- **When?** The bill is expected to take effect on 1 January 2024. It is advisable to keep a close eye on developments in this regard.

Ban on provision of trust service in relation to high risk and non-cooperative countries

- **What?** The Wtt 2018 is being amended by introducing two prohibitions (through the Integrity Measures Trust Offices Act). First, it provides for an outright prohibition on the professional use of conduit companies. It refers to the use of a conduit company belonging to the provider's own group, for the benefit of a client. The legislator did create room for an exemption from the prohibition by ministerial regulation. Second, the provision of services by trust offices is prohibited if the client, the object company or the UBO of the client or object company is domiciled or established or has its registered office in (i) a high-risk jurisdiction or (ii) a country that is on the list of 'non-cooperative jurisdictions for tax purposes'. Background is the notion that the provisions trust services in conjunction with such countries leads to unjustifiably high integrity risks. The prohibitions are intended to combat tax avoidance and tax evasion in the Netherlands. This is one of the components in the Anti-Money Laundering Plan. The [bill](#) introducing these prohibitions, was passed by the House of Representatives on 17 November 2022 and by the Senate on 6 December 2022. Trust offices engaged in activities covered by these prohibitions at the time of entry into force must cease these activities. They will have six months to comply with the new bans. As soon as new jurisdictions are designated, trust offices will have a maximum of three months to implement the



prohibition. This period ties in with the moment when a country is added to the list of high-risk jurisdictions or list of tax non-cooperative countries.

- **Who?** Trust offices.
- **When?** The law will enter into force at a time to be determined by royal decree.

Exemptions for pension funds and investment institutions

- **What?** From October 1st, 2022, a new [exemption](#) for providing the trust service 'directorship' applies to investment institutions and UCITS. The Regulation on Supervision of Trust Offices 2018 (Rtt 2018) has been amended for this purpose. Managers of investment institutions regularly outsource the management of financial resources to professional parties. These managers are supervised by the AFM and must comply with integrity regulations. With this, the main integrity risks are covered. It concerns a reintroduction of an exemption that was previously included in the Exemption Regulation under the Trust Offices Act and that had lapsed with the introduction of the Supervision of Trust Offices Act 2018. In practice, it turned out that these services still occur and that such an exemption is still desirable. Furthermore, the Rtt 2018 includes a clarification in the wording of the exemption for the trust service 'directorship' in relation to pension funds. This concerns the clarification of an existing exemption, so the material significance of this change is limited for practice.
- **Who?** Legal persons who provide the trust service "directorship" to a manager of an investment institution, UCITS or pension fund.
- **When?** The changes are effective as per 1 October 2022.

Ban on providing trust services to clients in Russia or Belarus

- **What?** In July 2022, the Supervision of Trust Offices Act 2018 was amended in response to Russia's invasion of Ukraine. As a response to the invasion, the European Union decided to impose, among other things, individual and financial sanctions. One of the objectives of these sanctions is to restrict money flows from Russia into the European Union. This amendment generally prohibits the provision of trust services to clients located or resident in Russia or Belarus, or to clients with a UBO located in Russia or Belarus. The prohibition does not apply with respect to natural persons who are EU citizens. There is also an exception to the service prohibition in case the person is subject to the sanctions regulations. Because in that case the trust office cannot

make changes and the business relationship must be maintained until the sanctions have expired or an exemption is granted. In the [amending decree of the Decree on Administrative Fines for the Financial Sector](#), DNB has been given the possibility to impose a fine with a view to enforcing this prohibition. Violation of the prohibition is also punishable under the Economic Offenses Act.

- **Who?** Trust offices.
- **When?** The amendment took effect per 16 July 2022 and the four-week transition period has expired already. DNB's ability to impose a fine took effect per 8 September 2022.

NEW LAWS AND REGULATIONS

Proposed Data Processing by Cooperatives Act

- **What?** This [bill](#) aims to create a legal basis for the systematic sharing and processing (including profiling) of personal data by cooperative associations. These are associations of administrative bodies and private parties that jointly process data for the general interest, such as the fight against fraud and organized crime. For the financial sector, the Financial Expertise Center (FEC) and the Infobox Criminal and Unexplained Assets are relevant partnerships. DNB sits on both bodies. Among other things, the proposal amends the secrecy obligation for DNB as stipulated in the Wtt 2018. The bill is pending in the Senate, which led to additional opinions from, amongst others, the Council of State, the Human Rights Board and the Personal Data Authority. On 24 November 2021, the Council of State issued an [opinion](#) regarding the scope of the bill and the risks of unequal treatment and discrimination resulting from the use of profiling. The Senate Committee on Justice and Security issued a [preliminary](#) report on 18 February 2022, and is awaiting the Memorandum of Reply.
- **Who?** Trust offices and all other financial institutions.
- **When?** At the time of publishing this Outlook, the bill was still pending before the Senate.

Money laundering action plan bill - update

- **What?** In the Finnius Outlook 2021 we already wrote extensively about new national regulations in respect of the fight against money laundering (the Money Laundering Action Plan Bill). The [bill](#) was submitted to the House of Representatives on 21 October 2022,

and – in brief – provides for: (i) a ban on cash payments above EUR 3,000 for professional or business traders; (ii) enabling data sharing between institutions of the same category in the event of enhanced customer due diligence with respect to “high-risk customers”; (iii) enabling banks to conduct joint (transaction) monitoring; and (iv) clarifying the use of special categories of personal data and personal data of a criminal nature in the context of obligations under the Wwft. For trust offices, the bill has limited relevance because the proposal leads to amendments to the Wwft while for trust offices the standards in the Wtt 2018 are leading. Furthermore, the changes regarding transaction monitoring via a “shared facility” are limited to banks.

- **Who?** Trust offices and other service providers within the scope of the Wwft.
- **When?** At the time of publishing this Outlook, the bill was pending in the House of Representatives.

Registration UBOs of trusts and similar legal arrangements

- **What?** The amended Fourth Anti-Money Laundering Directive requires, among other things, that member states ensure a central registry of trusts and similar legal arrangements and the UBOs of those trusts and similar legal arrangements. This has taken shape through an Implementation Act ([2021, 610](#)) and Decree ([2022, 168](#)). The Implementation Act introduces the registration requirement and the Implementation Decree regulates matters such as the concept of “beneficial owner,” the classes in which the size of the beneficial interest can be expressed, the retention periods, the grounds for shielding information and the competent authorities. In the Netherlands, a FGR is considered a “similar legal construction”. The rules will take effect in phases. As of 1 November 2022, the obligation to register came into effect. There is a transitional period of three months which means that a trustee (or whoever in a similar legal construction has a similar position as a trustee in a trust) must comply with the registration obligation as of 1 February 2023. The parts in the Implementation Act and Decree aimed at accessing the register and sharing information have yet to enter into force.
- **Who?** Trusts and similar legal arrangements and their UBOs. Also relevant to trust offices (and other financial institutions) that provide services to these parties.
- **When?** Important parts of the Implementation Act and Decree entered into force by [royal decree](#) on 1 November 2022 (with a transition period of three months). A number of (remaining) parts have yet to enter into force at a time to be determined by royal decree.

OTHER DEVELOPMENTS

Future of the trust sector

The report “The Future of the Trust Sector” was [published](#) on 31 July 2022. The study on the future of the trust sector has a broad scope and was conducted by SEO. The central question was whether integrity can be sufficiently guaranteed in case of the provision of trust services in the Netherlands. In addition to the supervisory angle, the financial-economic and social added value of the trust sector for the Netherlands was also examined. The report concludes that there is an inherent integrity risk, related to the possibility of using complex structures to conceal the origin and ownership of transactions and assets. This risk can be partly controlled by having trust offices act as gatekeepers.

In light of the aforementioned central question, the researchers considered several scenarios, including the scenario of a total ban on the provision of trust services. However, the conclusion is that such a ban is neither efficient nor effective in controlling integrity risks. First, because defecting to the illegal circuit is easy, as legitimate service provision would no longer be possible. A second reason is that with a ban, the function of gatekeeper for the trust sector is lost. The visibility of structures with potential money laundering risks disappears, while a large proportion of those structures are likely to remain after a ban. A third reason to doubt the effectiveness of a ban is that enforcement of the ban is likely to be difficult. The regulator is no longer responsible for detection, so detection will probably have to take place under the responsibility of the public prosecutor. That means there must be capacity and priority for this. Also, knowledge of the market will diminish as there is no supervision. Finally, the financial-economic value that the trust sector represents for the Netherlands will be lost with a ban. That is inefficient.

The Minister of Finance (on whose instructions the study was conducted) informed the House of Representatives by [letter](#) in October 2022 to endorse the conclusions of the report. The Minister then discussed ongoing legislative measures for better risk management in trust services, namely the bill on integrity measures for trust offices and the legislative tightening in the fight against illegal trust services in the [Financial Markets Amendment Act 2024](#). In the EU context, the Netherlands is also making the case for a statutory registration requirement for domiciliary providers in the negotiations on the Anti-Money Laundering Regulation and an amended Anti-Money Laundering Directive.



In addition, the Minister is proposing additional measures. First, the Minister plans to require trust offices to exchange more information in order to prevent 'trust shopping'. Article 68 Wtt 2018 regulates the exchange of information between trust offices. A trust office has a duty to investigate whether another trust office provides or has provided services to the client or object company. If so, the trust office must inquire with that other trust office about revealed integrity risks. The idea is to amend article 68 to make it explicit that this obligation also applies in relation to *potential* clients. The aim is to prevent potential clients from approaching various trust offices until a firm has been found that is willing to accept the client. By requiring a trust office to inquire with other trust offices even in that situation, it becomes clear whether a potential client that is shopping has already been rejected by another trust office. Furthermore, the possibility of a record-keeping obligation is being investigated, so that DNB can monitor how trust offices implement the obligation to exchange information.

Second, measures are being devised that look at increasing transparency to increase public trust in the trust sector. The Minister believes that trust services have a concealing element by definition - such as acting as a director on behalf of a third party - and are rightly under a social magnifying glass, which justifies measures to increase transparency in the trust sector. It is envisaged to include in the Wtt 2018 the obligation to report in the financial statements of trust offices on, for example, (i) the trust office's policy on (tax) integrity risks and (ii) anonymized client data (e.g. which jurisdictions clients come from). Such information should also be publicly available.

Finally, the Minister states that an intrinsic motivation for trust offices to act as gatekeepers is indispensable for a transparent and future-proof trust sector. The Minister's message to trust offices is that it will closely monitor the sector through DNB's annual ZBO reporting.

A concrete schedule regarding the announced proposals was not yet known at the time of publication of this Outlook.

Response to recommendations committee on conduit companies

- **What?** In November 2021, the report "[Towards Acceptable Conduit Companies](#)" by the Conduit Companies Commission was sent to the House of Representatives. The Commission made fiscal and non-tax recommendations. The fiscal recommendations concern withholding tax benefits or securities, improving the exchange of information and tightening the Dutch commitment in treaty and multilateral

negotiations in the tax field. The non-tax measures relate to withholding the legal benefits that investment protection agreements provide to conduit companies, increasing the transparency of legal entities by tightening the obligations regarding the identification of UBOs, the UBO register, and accounting law, and combating financial crime through tighter supervision, improved international cooperation, and additional research. Parliamentary consideration of the report was delayed due to the government's prolonged caretaker status, but started in the fall of 2022. The government has promised to send a formal response to the recommendations of the Conduit Companies Commission to the House of Representatives by the end of January 2023.

- **Who?** Trust offices.
- **When?** A Cabinet position on the recommendations of the Conduit Companies Commission will be issued by the end of January 2023.

Draft guidance regarding FATF Recommendation 24

- **What?** At its March 2022 plenary, the FATF amended [Recommendation 24](#) on transparency and UBOs of legal entities. The changes are aimed at greater transparency about the UBOs of legal entities. Also, new bearer shares were banned. The Netherlands, through European regulations, now has a UBO register for legal entities. The adjustments to this standard therefore had a particular effect for countries outside the EU that have not yet introduced a UBO register. Bearer shares for non-listed companies were already prohibited since 1 July 2019. In response to this adjustment, the FATF began developing guidelines to help support the implementation of the new requirements. Public consultation on the draft guidelines closed on 6 December 2022. The FATF is processing the consultation responses with a view to drafting the final guidelines.
- **Who?** Regulatory authorities and supervisors.
- **When?** Responses to the draft guidelines will be considered by the FATF in February 2023.

Compliance with Sanctions Act has full attention DNB

- **What?** Compliance with the Sanctions Act has been a major theme for trust offices in 2022. In its publication [Supervision in focus 2022-2023](#), DNB indicates that compliance with the Sanctions Act by trust offices will receive undiminished attention in 2023. One of the points where things did not always go well in practice is the way trust offices (and other financial institutions) implemented the duty to report. Pursuant to article 3

of the Regulation on the Supervision of the Sanctions Act 1977 (RtSw), institutions that establish that the identity of a relationship corresponds to a (legal) person as referred to in the Sanctions Regulations must immediately report this to the supervisor. The reporting obligation applies *regardless of* the applicability of material standards in the relevant sanctions regulation. In November 2022, DNB provided additional [clarification](#) on the scope of this duty to report. DNB clarified that the institution is only required to make a notification the first time a sanctioned relationship is identified. Thus, any transaction with a sanctioned relationship that is subsequently identified and stopped need not be reported again to DNB.

- **Who?** Trust offices (and other financial institutions).
- **When?** Ongoing.

Modernization of sanctions system

- **What?** In November 2022, the Cabinet sent a [letter](#) to the House of Representatives on the intended modernization of the sanctions regime. The background is that the Sanctions Act dates back to 1977 and has undergone very limited changes since then, while the scope and complexity of EU sanctions regulations has increased significantly. Comprehensive and rapidly changing EU sanctions regulations repeatedly set new requirements for the supervision and enforcement of sanctions in the Netherlands. Moreover, sanctions instruments are expected to gain in relevance in the future. In that light, the National Coordinator for Sanctions Compliance has [recommended](#) strengthening the sanctions system and ensuring that laws and regulations keep pace. The intention is to completely overhaul the existing sanctions system including future-proofing (endorsement) powers, regulating management and custody of certain frozen assets and economic resources, modernizing and possibly expanding administrative law supervision and enforcement, providing sound bases for data sharing, and breaking confidentiality obligations where necessary.
- **Who?** Trust offices (and other financial institutions).
- **When?** Indicative planning is that the consultation phase of a bill will begin in July 2023 and a bill will be submitted to the House of Representatives in mid-2024.



INSURERS

This section discusses foreseeable developments in 2023 directed specifically at insurers. Insurers that also provide ancillary services, we recommend that they consult the sections in this Outlook that pertain to them. For example, the Lenders section is relevant to insurers insofar as there is mortgage lending by the insurer.

In addition, we point out that for insurers, the [Financial Service Providers](#) section of this Outlook is also relevant because, as providers of insurance, they also qualify as financial service providers within the meaning of the Wft. The cross-sectoral sections [Integrity](#) and [Sustainability \(ESG\)](#) are also relevant to insurers. Topics related to these are not covered in this section, with a few exceptions, but only in the aforementioned specials.

Finally, it is useful for insurers to take note of the [General](#) section, as it includes topics that may affect insurers.

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

DNB SUPERVISION: GENERAL

- Supervision in focus
- Legislative Letter 2022
- Conservatrix

DNB SUPERVISION: (DRAFT) Q&A'S & GOOD PRACTICES

- Valuation Mortgage Loans Solvency II
- Leverage in case of qualified holding

DNB SUPERVISION: INTERNAL GOVERNANCE

- Guide to climate and environmental risk management
- Policy rule on resolution of insurers
- Reporting requirements insurers
- ESG at insurers

DNB SUPERVISION: OTHER

- Call to improve quality of completed questionnaires
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- Financial Stability Report
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- Guidelines on contract limits and the valuation of technical provisions

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- Guidelines impact climate

- Revised Single Programming Document 2023-2025

- Stress testing with a focus on cyber risks

- Dashboard insurance gap

- Prudential treatment of sustainability risks by insurers

ESAs

- ESAs on PRIIPs

- ESAs on securitisation framework.

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

- Solvency II revision and proposed IRRD

- Insurance Recovery and Resolution Act amendment

- Financial Markets Amendment Act 2022-II - relevant changes for insurers

- Financial Markets Amendments Act 2022-II - group declaration of no-objection

- Financial Markets Amendment Decree 2021- active commission transparency in non-life insurance

- Financial Markets Amendment Decree 2021 - cost model

- Financial Markets Amendment Act 2022 - reputation

- Financial Markets Amendment Decree 2022 - reputation

- Financial Markets Amendment Act 2024 - disciplinary law for insurers

- Financial Markets Amendment Act 2024 – change in



supervision for insurers
Decision comparison chart financial service providers
Further remuneration rules financial sector (Wnbfo)
House of Whistleblowers Act

NEW LAWS AND REGULATIONS

DORA (Digital Operational Resilience Act)

OTHER DEVELOPMENTS

Research insurance guarantee scheme (IGS)
Remuneration under the heading of dividends
IAIS on diversity, equality and inclusion in the insurance industry
Global Insurance Market Report from IAIS

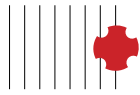
DNB SUPERVISION: GENERAL

Supervision in focus

- **What?** DNB presented [Supervision in Focus](#) on November 22, 2022. This is a summary showing what DNB is working on and has been working on in its supervision. In 2023 DNB will focus, among other things, on the impact of inflation on, for example, claims, future costs and related buffers. It will also monitor the impact of changing interest rates on, for example, insurers' valuation, hedging, asset allocation and liquidity. In addition, attention will be paid to the further implementation of sustainability risks in day-to-day policies and the cyber resilience of insurers. A few weeks later, on December 15, 2022, DNB published the [Supervision Calendar for Insurers](#). This calendar provides an overview of the concrete supervisory activities DNB plans to carry out in 2023 regarding insurers. There are four specific themes: interest rates and inflation, sustainability, cyber resilience and risk margin.
- **Who?** Insurers.
- **When?** DNB will include the points she raises in its supervision.

Legislative Letter 2022

- **What?** In DNB's annual [legislative letter](#) dated April 6, 2022, to the Minister of Finance, DNB expresses a desire to tighten licensing and supervisory requirements for third-country branches of insurers in order to increase assurance that assets of such branches are and remain available to Dutch policyholders. Among other things, it is important to achieve greater control over the assets of the branch and better reporting on the solvency of the branch and the insurer in the third country. In addition, DNB notes that the resolution framework for insurers needs to be strengthened. DNB hopes to fix some omissions and legislative inadequacies in the resolution legislation for insurers. The [Financial Markets Amendment Act 2024](#) currently provides for a requirement for DNB's consent if assets are transferred to a third country in an asset-intensive reinsurance contract. This amendment law was submitted for consultation in April 2022. In addition, a number of improvements to strengthen the resolution framework for insurers have been bundled in the Insurer Recovery and Resolution Amendment Act, which was submitted for [consultation](#) in May 2022.
- **Who?** Insurers.
- **When?** The consultation period for both the Financial Markets Amendment Act 2024 and the Insurance



Recovery and Resolution Act ended in June 2022. Both proposals are currently with the Council of State for advice. We expect the proposals to be sent to the House of Representatives this year.

Conservatrix

In a [response](#) from DNB dated March 23, 2022 and a [letter/reply](#) from the Minister of Finance dated April 5, 2022, DNB and the Minister explain how the recommendations of the December 2021 Conservatrix Evaluation Committee will be incorporated into supervision.

- DNB will use special ownership structures as an aggravating indicator when assessing natural persons. When assessing an application for a declaration of no-objection, DNB will examine whether the option of imposing additional regulations or restrictions should be used. In ongoing supervision, DNB will be extra alert to the conduct of shareholders and directors concerned. DNB will perform its own investigations if it has doubts about the information provided, particularly by supervisory authorities outside the EU. In addition, DNB will increase its supervision of international reinsurance and is in discussion with the Ministry of Finance regarding legislative changes in this area.
- In addition, the Minister will regularly review whether rules still meet objectives for which they were designed when shaping future amendment processes, including consideration of the scheduling of revisions. The Evaluation Committee has also recommended consideration of whether policyholder protection can qualify as an independent objective in resolution. This question also arises in the context of the negotiations on the European Commission's proposal for the *Insurance Recovery and Resolution Directive*, IRRD. It is possible that policyholder protection could remain an independent review criterion under the public interest test.
- Finally, based on the recommendations, a [study](#) was conducted by KPMG on the desirability of an *insurance guarantee scheme* (IGS) or other protection mechanisms for the position of policyholders. The study shows that such a scheme can be valuable for the protection of policyholders, but at the same time is costly and complex. The minister will enter into discussions with stakeholders about this. The KPMG study and the results of discussions with stakeholders will be used to shape the Dutch stake in the negotiations on a possible European proposal for further harmonization of national IGSs.

DNB has indicated that it will incorporate the recommendations into its supervision as soon as possible. No legislative change has yet been announced regarding

international reinsurance. The minister will inform the House of Representatives about the IGS.

DNB SUPERVISION: (DRAFT) Q&A'S & GOOD PRACTICES

Valuation Mortgage Loans Solvency II

- **What?** On March 7, 2022, DNB published the final version of the [Solvency II Mortgage Loan Valuation Good Practice](#). The Good Practice specifically addresses the valuation of mortgage loans by insurers. During the consultation of the Good Practice, DNB received two responses. DNB included these responses and feedback from DNB in a [feedback document](#). One of the responses concerned the comment that valuation should pay more attention to important elements of cash flows. For example, valuation should take place on a loan-by-loan basis and that individual characteristics of loans should be taken into account. This has been incorporated into the published Good Practice.
- **Who?** Insurers that have mortgage loans on their balance sheets.
- **When?** From March 7, 2022.

Leverage in case of qualified holding

- **What?** On July 7, 2022, DNB published a [Q&A](#) "Assessment of the leverage used in funding the acquisition or expansion of a qualifying holding". Specifically for insurers, DNB submitted this Q&A for [consultation](#). No responses were received. It follows from the Q&A that DNB assesses loan capital used to finance the acquisition or increase of a qualifying holding in an insurer. This assessment takes place as part of the examination of the financial soundness of the acquirer and the test whether the insurer, after participation, can continue to meet the prudential requirements.
- **Who?** Parties seeking to acquire a qualifying holding in an insurer.
- **When?** From July 7, 2022.

DNB SUPERVISION: INTERNAL GOVERNANCE

Guide to climate and environmental risk management

- **What?** On Oct. 24, 2022, DNB published the [consultation](#) of the “Guide to managing climate and environmental risks.” This [guide](#) consists of cross-sectoral focus points for the integrated management of climate and environmental risks. For insurers, DNB lists several concrete *good practices*, which oversee the focus areas of business model and strategy, governance, risk management and information provision. Specifically, DNB cites as an example the use of scenario analysis as part of strategic planning. For example, the insurer chooses the 2 degree warming scenario in the year 2050 and compares that to *business as usual*. DNB also mentions the allocation of risks and opportunities related to climate and the environment to a management board member and supervisory board member, and the establishment of a management board and supervisory board committee for climate and environmental risks and opportunities. In this committee, in addition to a number of management board members and supervisory board members respectively, managers with expertise in managing these risks and external experts in the field will participate. Finally, DNB mentions as a good practice that there is sufficient knowledge among directors and supervisory directors regarding climate and environmental risks and opportunities.
- **Who?** Insurers.
- **When?** The consultation ran until December 18, 2022. The intention is to publish the final Guide with feedback statement on DNB’s website in early 2023.

Policy rule on resolution of insurers

- **What?** DNB prepares resolution plans for all insurers. An important part of the resolution plan is the assessment of the resolvability of an insurer or group, in which DNB determines whether substantial impediments to resolution exist. On October 26, 2022, DNB launched the public [consultation](#) for the [draft text](#) for the Policy Rule on resolution of insurers. With this policy rule, DNB aims to clarify the aspects that DNB considers when assessing the resolvability of insurers and groups.
- **Who?** Insurers.
- **When?** The consultation ran until December 15, 2022. DNB plans to adopt a policy rule in the first quarter of 2023.

Reporting requirements insurers

- **What?** DNB has [updated](#) the [reporting requirements for Solvency II insurers](#) in the Regulation for Financial Undertakings Wft 2011. First, the state “Profit and loss account” has been updated to reflect the entry into force of IFRS 17. In addition, DNB has introduced two new states: the “Capital Generation Life Insurers” and the “Business Model Analysis. Finally, DNB has removed the national state “Natura funeral.” The [reporting requirements for Basic insurers](#) in the Regulation on prudential supervision of limited-risk insurers have also been amended. In the amended regulation, DNB also introduced two new states; the “Business Model Analysis” and the “Impact alternative extrapolation” for life and in-kind insurers with long-term liabilities. Furthermore, DNB removed the in-kind funeral tab from the annual reporting for basic insurers.
- **Who?** Insurers.
- **When?** The state “Income Statement” will not take effect until Jan. 1, 2024. The states “Business Model Analysis” and “Capital Generation Life Insurers” should be reported for the first time for fiscal year 2022. Also, the “Impact alternative extrapolation” state should be reported for the first time for fiscal year 2022. For the “Business Model Analysis” state, an adjusted submission deadline (24 weeks after the end of the fiscal year instead of 20 weeks) applies for the first two years.

ESG at insurers

- **What?** On December 21, 2022, DNB provided [feedback](#) on its initial investigations into insurers’ management of Environmental, Social & Governance (ESG) risks. In 2022, DNB conducted on-site surveys at a number of insurers on the integration of ESG into its investment policy, strategy, underwriting risk and the risk management cycle. With these surveys, DNB is implementing its ambition to fully integrate sustainability into all elements of its mission, as articulated in DNB’s [Sustainable Finance Strategy](#). Briefly, the feedback means that DNB sees insurers formulating ESG goals, committing to international covenants, making a positive contribution to the United Nations Sustainable Development Goals with their investments, and taking steps to align their investment portfolios with the Paris climate target. DNB believes insurers can make the targets even more concrete to monitor progress and make their influence in investments on ESG even more effective. DNB also believes that ESG is less developed in the underwriting side of the insurance business than the asset side.
- **Who?** Insurers.



- **When?** ESG remains an important theme for insurers in 2023. In the feedback, DNB also refers to the Guide to managing climate and environmental risks, which was published on Oct. 24 and was in [consultation](#) until Dec. 18. DNB announces that as a follow-up to this guide there will be a self-assessment for a large number of insurers. Based on this self-assessment, DNB will assess insurers on the management of ESG risks.

DNB SUPERVISION: OTHER

Call to improve quality of completed questionnaires

- **What?** On September 22, 2022, DNB [called on](#) the sector to improve the quality of the completion of the Sector-wide Analysis of Non-Financial Risks (SBA-NFR) questionnaires. A survey of 8 smaller insurers on the quality of the completion of the SBA-NFR questionnaires showed that it is not yet at the desired level. Especially the completion of the Information Security section offers room for improvement given the often too optimistic completion of the maturity levels. The input on the questionnaires is used by DNB in calculating the automatic risk score of a supervised institution (ATM risk methodology). DNB calls on insurers to check the answers to the SBA-NFR carefully and to inform the supervisor in case of ambiguities. Given the importance of insurers completing the questionnaires in the ATM risk methodology in a qualitative manner, the quality of the completed questionnaires will again be assessed at a number of insurers in 2023. Furthermore, DNB will meet with insurers in early 2023 to explain the questionnaires and learn where any ambiguities exist. In addition, last year DNB administered some questionnaires with a new, more user-friendly, tool. Feedback from the sector was positive about the new tool and DNB will use the tool more broadly for the upcoming survey.
- **Who?** Insurers.
- **When?** In 2023, the questionnaires will be reviewed by DNB.

Long-term low interest rate insurers

- **What?** On Oct. 4, 2022, DNB [published](#) the potential impact of rising interest rates on the financial position of insurers. Rising interest rates may affect insurers that have taken interest coverage measures. In addition, DNB notes that rising interest rates are accompanied by rising inflation, with the difference between expected inflation and realized inflation affecting the technical

provisions held by insurers and especially the cost provision, partly because labor costs are highly sensitive to wage inflation. DNB expects institutions to steer their balance sheet in line with their interest rate policy and to consider the risk of future interest rate decreases and increases in their interest rate policy. DNB's recently developed supervisory approach for dealing with low interest rates ([newsletter](#) Oct. 18, 2021) remains in place. This approach was recently externally reviewed, and the findings have been incorporated into the latest version.

- **Who?** Insurers.
- **When?** A possible thematic study on interest rates and inflation is planned for next year. In addition, DNB will continue (intensive) monitoring of the effects of the rise in interest rates on yields, on liquidity and on 'search for yield'.

Q&A Retention fees

- **What?** On December 2, 2022, DNB [published](#) a Q&A regarding retention fees, which was [consulted](#) earlier in the year. In the Q&A, DNB indicates which supervision frameworks it uses for retention fees for which consent is required and for cases where such consent is not required. It also indicates which elements must (can) be substantiated in any case, even if no prior consent is required. The AFM [announced](#) on its website that the Q&A consultation is also being conducted on its behalf.
- **Who?** Insurers.
- **When?** Effective immediately.

AFM SUPERVISION

Trend Monitor 2023

- **What?** On November 3, 2022, the AFM published its [Trend Monitor 2023](#). In it, the AFM points out a number of trends and risks in the financial sector for the year 2023. The AFM draws insurers' attention to rising interest rates and the impact of climate risks on insurers' liabilities. The AFM warns that damage due to climate change is becoming increasingly uninsurable, such as with respect to flooding, excessive weather and subsidence, and that household expectations are not in line with this.
- **Who?** Insurers.
- **When?** The trends and risks identified by the AFM will have its attention in 2023 and contribute to determining the AFM's supervisory priorities. The concrete implications of the trends and risks for AFM supervision will be elaborated in its Agenda 2023 to be published in early 2023.



EIOPA

Financial Stability Report

- **What?** EIOPA released its [Financial Stability Report](#) on June 22, 2022. In it, EIOPA describes macroeconomic developments and key risks for insurers and the pension industry. EIOPA cites the impact of inflation due to stressed supply chains and the geopolitical situation that has further exacerbated price pressures. In addition, EIOPA analyzes risks related to climate change and cybersecurity, while it also includes a thematic article that examines whether stress test results influence insurers' dividend payout and share buyback activities.
- **Who?** Insurers.
- **When?** To be consulted by insurers as part of ongoing risk management.

Annual European Insurance Overview 2022

- **What?** On September 20, 2022, EIOPA published its [Annual European Insurance Overview](#). This report is published by EIOPA as part of its statistical services to provide a user-friendly and accessible overview of the European (re)insurance sector. The report provides a graphical overview of the life and non-life sector by country and type of insurer. In doing so, EIOPA also shows the development of various ratios, including the SCR (solvency capital ratio) and the MCR (minimum capital ratio).
- **Who?** Insurers and national regulators, such as DNB.
- **When?** The report provides an overall picture of the European (re)insurance market and can be consulted by insurers as part of ongoing risk management.

Supervisory reporting and disclosure

- **What?** On March 31, 2022, EIOPA submitted to the European Commission [proposals](#) to amend the Implementing Technical Standards (ITS) on supervisory reporting and disclosure under Solvency II. The proposed amendments involve adjustments to current templates and the introduction of new templates. In particular, the changes include simplifying quarterly reporting for all (re)insurers, eliminating some templates for annual reporting, and new thresholds to better promote risk-based and proportionate reporting requirements. The proposed changes will be incorporated into the XBRL taxonomy version 2.8.0 of Solvency II reporting, available through EIOPA's [website](#).
- **Who?** Insurers.
- **When?** The final version of the XBRL taxonomy 2.8.0 will be published in January 2023. The modified and

new templates will be used for the first time when reporting annual data for 2023 and quarterly data for Q4 2023.

Q&As about IDD

- **What?** EIOPA has published three Q&As seeking further clarification from the industry regarding certain obligations under the Insurance Distribution Directive (IDD). These are an April 13, 2022 [Q&A](#) on the definition of "member state in which the risk is situated" in Article 13 Solvency II, a May 16, 2022 [Q&A](#) on the scope of the Insurance Distribution Directive (IDD) and a July 11, 2022 [Q&A](#) on fee structure.
- **Who?** Insurers, to the extent they fall within the scope of the IDD.
- **When?** The Q&As are available on an ongoing basis.

Guidelines on contract limits and the valuation of technical provisions

- **What?** On July 6, 2022, EIOPA published revised guidelines on [contract limits](#). In this amended guidance, EIOPA provides guidance on determining the boundaries of an insurance or reinsurance contract. Also on July 6, 2022, EIOPA published revised guidelines on the [valuation of technical provisions](#). These amended guidelines aim at more uniform application of Solvency II in estimates and assumptions. For example, (re)insurers should ensure that the determination of all assumptions and the use of expert judgment follow a validated and documented process.
- **Who?** Insurers.
- **When?** The amended guidelines are effective as from Jan. 1, 2023.

Guidelines for integrating sustainability preferences customer

On July 20, 2022, EIOPA published [guidance](#) on integrating the customer's sustainability preferences in the suitability assessment under the Insurance Distribution Directive (IDD). The IDD provides a set of specific standards applicable to insurance-based investment products (IBIPs). One of the regulations requires insurers and insurance intermediaries developing insurance products to maintain, apply and review a process for approving any insurance product, or significant modifications to existing insurance products, before the product is marketed or distributed to customers. In addition, when providing advice on insurance with an investment component on a customer, insurers and insurance intermediaries obtain information to assess the suitability of a particular insurance-based investment product. These



requirements are detailed in the [Delegated Regulation](#) with regard to product oversight and governance requirements and the [Delegated Regulation](#) on the integration of sustainability factors, risks and preferences into the product oversight and governance requirements (applicable since August 2, 2022). To facilitate the implementation of these recent changes, the [Guidelines](#) on integrating the customer's sustainability preferences in the suitability assessment under the Insurance Distribution Directive (IDD) was consulted in early 2022. Partly given the number of respondents who requested a simpler and more user-friendly document, it was decided to temporarily halt further drafting of the guidelines and focus on the needs of insurers and insurance intermediaries. This resulted in the [guidance](#) for incorporating the customer's sustainability preferences in the suitability assessment under the IDD. The guidelines provide guidance on how to better understand customers' sustainability preferences and investment choices and how to arrive at a product choice that meets customer sustainability preferences and the Sustainable Finance Disclosure Regulation (SFDR). In addition, the guidelines address the training and competence expected of insurance intermediaries and underwriters providing advice on IBIPs in the area of sustainable finance.

The guidance applies as of July 20, 2022. As of Jan. 1, 2023, the guidance requires an assessment of whether an IBIP aligns with customer sustainability preferences.

Guidelines impact climate

- **What?** On Aug. 2, 2022, EIOPA published its [guidance](#) on climate change materiality assessments and climate change scenarios in risk and solvency assessments (ORSA). In it, EIOPA provides concrete case histories and examples of how to incorporate climate change risks into the ORSA. This guidance follows an earlier consultation on EIOPA's [opinion](#) on climate change scenario selection in April 2021.
- **Who?** The guidelines are addressed to regulators (DNB), but insurers can use the guidelines when identifying regulatory expectations.
- **When?** The guidelines are effective as of date of publication.

Revised Single Programming Document 2023-2025

- **What?** On September 30, 2022, EIOPA published its [Single Programming Document 2023-2025](#), which includes the *annual work program* for 2023. In it, EIOPA describes its focus areas for 2023-2025 and its priorities for 2023. In formulating its priorities for 2023, EIOPA based its work on six areas of focus: (i) integrating sustainable finance into all areas of work, (ii) supporting

the market and supervisory community during the digital transformation, (iii) enhancing the quality and effectiveness of supervision, (iv) ensuring technically sound prudential policies and responsible business practices, (v) identifying, assessing, monitoring and reporting risks to financial stability and promoting preventive policies and mitigating measures, and (vi) ensuring good governance, flexible organization, cost-effective management of resources and a strong corporate culture.

- **Who?** Insurers and national regulators, such as DNB.
- **When?** The *Annual Work Program 2023* as contained in the Single Programming Document describes EIOPA's areas of focus in 2023.

Stress testing with a focus on cyber risks

- **What?** On Nov. 24, 2022, EIOPA published its [discussion paper](#) on Methodological Principles of Insurance Stress Testing with focus on Cyber Risk. The discussion paper is part of a broader effort by EIOPA to improve the stress testing framework. EIOPA aims to lay the groundwork for assessing insurers' financial resilience to severe but plausible cyber incidents. The paper discusses two aspects: (i) cyber resilience, understood as the ability of an insurer to bear the financial impact of an adverse cyber incident and (ii) underwriting risk from a cyber perspective, understood as the ability of an insurer to bear - from a capital and solvency perspective - the financial impact of an extreme cyber incident.
- **Who?** Insurers.
- **When?** EIOPA welcomes responses to the discussion paper until Feb. 28, 2023. Stakeholders are invited to submit their feedback via email using a [template](#).

Dashboard insurance gap

- **What?** On Dec. 5, 2022, EIOPA officially made its [dashboard](#) available, after a *pilot version* was published in 2020 (please refer to the [Outlook 2022](#) in this respect). This dashboard shows the gap for natural disaster coverage in Europe. In the past, about a quarter of total damages caused by extreme weather and climate-related events across Europe were not insured. It is expected that damage caused by climate-related events will increase and the price of insurance will also increase. In the medium to long term, this could lead to insurance becoming unavailable or unaffordable, further widening the gap for natural disaster coverage. The dashboard brings together data on economic and insured losses, risk estimates and insurance coverage from 30 European countries.
- **Who?** Insurers and national regulators, such as DNB.
- **When?** The dashboard can be used starting Dec. 5, 2022.

Prudential treatment of sustainability risks by insurers

- **What?** On December 5, 2022, EIOPA published its [discussion paper](#) on the Prudential Treatment of Sustainability Risks by insurers. Insurers play a central role in promoting sustainable finance. Since sustainability risks can have material implications for investments by insurers, EIOPA considers it important to ensure that Solvency II - as a risk-based and forward-looking framework - appropriately reflects sustainability risks. EIOPA proposes a step-by-step approach to assess whether specific prudential treatment of assets and activities related to environmental or social objectives would be justified under Solvency II.
- **Who?** Insurers.
- **When?** EIOPA welcomes responses to the discussion paper until March 5, 2023. Stakeholders are invited to provide feedback by answering the questions in the [online survey](#).

ESAS

ESAs on PRIIPs

- **What?** On May 2, 2022, the ESAs published an [advice](#) in response to a *call for advice* from the European Commission on the revision of the *Packaged Retail and Insurance-based Investment Products* (PRIIPs) regulation. The ESAs recommend improving the presentation of information provided to consumers in the Key Information Document (KID) and making it easier for them to compare different products. More specifically, the ESAs recommend, among other things, that the application of the PRIIPs Regulation should not be expanded, but that the existing scope should be further specified, opportunities for digital disclosure of the KID should be exploited, and different approaches to the presentation of the KID should be allowed for different types of products where necessary to ensure proper understanding by retail investors.
- **Who?** Insurers.
- **When?** The European Commission will take this advice into account when revising the PRIIPs regulation.

ESAs on securitisation framework.

- **What?** On Dec. 12, 2022, the ESAs published an [advice](#) in response to a *call for advice* from the European Commission on the current framework for securitizations. There is an advice with the focus on banks and an advice with the focus on insurers. The advice with the focus

on insurers shows that only 12% of insurers using the standard approach invest in securitisations. Two-thirds of insurers do not foresee an increase in investments in securitisations over the next three years. The ESAs conclude that the STS framework for securitisations has had no impact on insurers' investment decisions. Nor does Solvency II appear to be a major driver for (re) insurers to invest in securitisations. For a number of insurers, capital charges seem to play a role. However, the vast majority of insurers are not interested in this asset type because it does not match their investment preferences. Adjustment of the framework would be possible, but this will not revive the securitization market. Therefore, EIOPA is not proposing any changes either.

- **Who?** Insurers.
- **When?** The European Commission will take this advice into account when assessing the securitization framework.

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

Solvency II revision and proposed IRRD

In late 2021, the European Commission announced the [revision of the Solvency II regulations](#), consisting of:

- A [legislative proposal](#) to amend the Solvency II Directive;
- A [communication](#) on the revision of the Solvency II Directive; and
- A [legislative proposal](#) for a new Insurance Recovery and Resolution Directive (IRRD).

The Council of the European Union formulated its [position](#) in December 2022. Now it is the European Parliament's turn. After the European Parliament has also adopted a final view, the Council and the European Parliament will jointly negotiate the final text of the revision. An agreement on this is expected in mid-2023 at the earliest, after which the revision is expected to enter into force from the end of 2024. After that, member states still have 18 months to transpose the directives into national regulations.

Overview of changes revision Solvency II

The amendments relate to proportionality, quality of supervision, long-term guarantee measures, macro-prudential instruments, sustainability risks, group supervision and cross-border supervision.



Changes to the size thresholds will narrow the scope of the Solvency II regime, excluding a larger number of small firms. The proposals also introduce a new category of insurers and reinsurers with a low risk profile that will benefit from lighter requirements, reflecting a more proportionate approach to supervision.

A number of changes are made to better reflect the long-term nature of insurance business, reducing procyclical behavior. The proposals increase the percentage of the risk-adjusted spread that is part of the volatility adjustment. The Commission believes that a higher volatility adjustment resulting from the proposed change can more effectively compensate for asset price fluctuations in the valuation of insurance liabilities.

Among the proposals is the introduction of the requirement for insurers to identify material exposure to climate risks and assess the impact of long-term climate change scenarios on their business. It is proposed to assess macroeconomic conditions and integrate any macroeconomic developments into investment strategies and the assessment of own risk and solvency.

There are also significant changes to group supervision, including the application of Solvency II to insurance holding companies and mixed financial holding companies. Changes also allow group supervisors, as a last resort, to require a group to restructure.

Proposal for an Insurance Recovery and Resolution Directive (IRR)

There is currently no harmonized EU approach to the recovery and resolution of insurance and reinsurance undertakings. The proposed directive, also called the *Insurance Recovery and Resolution Directive (IRR)*, will apply to all insurance and reinsurance undertakings in the EU that fall under the Solvency II regime.

Under the directive, each member state will have to establish a resolution authority that will require insurers to prepare preventive recovery plans. Such a preventive recovery plan must include measures to be taken by the company in question to restore its financial position when that position has deteriorated significantly. It will give the supervisor the power to direct the resolution of plan deficiencies and obstacles to recovery. Resolution plans will have to be updated annually and upon any material change in the insurer's business (such as an acquisition or corporate restructuring).

If the conditions for resolution are met, the resolution authorities have at their disposal the following resolution tools: (i) a solvent run-off; (ii) the sale of business lines; (iii) the creation of a bridge company; (iv) carve-out of assets

and liabilities; and (v) write-down or conversion of capital instruments, debt instruments and other eligible liabilities (i.e., a bail-in).

Interestingly, unlike the bank resolution framework (BRRD), the directive does not require insurers to hold a minimum amount of equity to facilitate resolution.

The Dutch commitment in the European playing field is aimed at ensuring, through minimum harmonization, that the final directive is as much as possible in line with the Dutch Insurer Recovery and Resolution Act, as laid down in the Wft. The Dutch government's [Fiche](#) on this point is also interesting.

Insurance Recovery and Resolution Act amendment

- **What?** On May 19, 2022, the Insurer Recovery and Resolution Act amendment was published for [consultation](#). This bill amends the Insurance Recovery and Resolution Act, as implemented in the Financial Supervision Act (Wft), the General Administrative Law Act (Awb) and the Bankruptcy Act (Fw). The Insurance Recovery and Resolution Act dovetailed with the *Bank Recovery and Resolution Directive (BRRD)*. When BRRD II was introduced, a number of omissions in the bank resolution legislation were identified and rectified. It is now desirable to make these adjustments for insurers as well. The current amendment also aims to streamline the legal protection regime in the resolution of insurers.
- **Who?** Insurers.
- **When?** The consultation period ended on June 16, 2022. On January 4, 2023, the Council of State issued an opinion on the amendment law. The proposal now goes to the House of Representatives.

Financial Markets Amendment Act 2022-II – relevant changes for insurers

- **What?** In late 2019, the Ministry of Finance [consulted on](#) the Financial Markets Amendment Act 2021. Due to delays, the bill has been renamed the Financial Markets Amendment [Act 2022-II](#). The Amendment Act contains a number of relevant changes for insurers. For example, among other things, it adds to Section 3:73c(1) of the Wft that a limited-risk insurer must include information about its solvency and financial position in the notes to the financial statements. Furthermore, the bill contains an amendment to Book 7 of the Dutch Civil Code. The purpose of this amendment is to entitle the insurer to a premium refund in the event that the insurer invokes the forfeiture of the benefit in the event that the policyholder breaches the duty of disclosure in good faith.



- **Who?** Insurers.
- **When?** The Financial Markets Amendment Act 2022-II was passed by the Senate and House of Representatives late last year. The bill is intended to take effect in early 2023.

Financial Markets Amendments Act 2022-II – group declaration of no-objection

- **What?** In late 2019, the Ministry of Finance [consulted on](#) the Financial Markets Amendment Act 2021. Due to delays, the bill has been renamed the Financial Markets Amendment [Act 2022-II](#). The bill amends various laws and provides, among other things, for the introduction of a notification obligation with respect to changes that take place within a group, after a declaration of no-objection has previously been granted by DNB to a group as referred to in Section 3:102(2) Wft. This notification obligation is further elaborated in the proposed [Financial Markets \(Amendment\) Decree 2021](#).
- **Who?** Group companies that have a group declaration of no-objection from DNB with respect to an insurer.
- **When?** The Financial Markets Amendment Act 2022-II was passed by the Senate and House of Representatives late last year. The bill is intended to take effect in early 2023.

Financial Markets Amendment Decree 2021- active commission transparency in non-life insurance

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets Amendment Decree 2021](#) to the Senate and the House of Representatives. Among other things, this decree provides for active commission transparency in non-life insurance, requiring active transparency of the exact nominal commission amount per product. The purpose of active commission transparency in non-life insurance is to make consumers aware of the fact that commission is paid and that services are also provided in return. At the end of June 2022, the Minister of Finance informed the House of Representatives in a [letter](#) that the proposal would be modified. The option of stating exact nominal amounts will be replaced by the option of fine-grained averages, whereby the goal of active commission transparency will be fully guaranteed.
- **Who?** Direct providers of certain non-life insurance policies, as well as intermediaries and advisors who broker and advise on certain non-life insurance policies.
- **When?** According to the letter, the minister will amend the proposal and then submit the amended draft decree to the Advisory Division of the Council of State for advice. To our knowledge, this has not happened

to date. Another [motion](#) was proposed in the House of Representatives in September 2022, requesting the government to ensure that consumers are actively informed about commission when taking out non-life insurance no later than January 1, 2024.

Financial Markets Amendment Decree 2021 – cost model

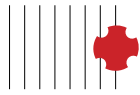
- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets Amendment Decree 2021](#) to the Senate and the House of Representatives. In this decree, as part of the detailed regulations for financial advice, Section 86g of the Decree on Conduct Supervision of Financial Undertakings Wft (BGfo) is also amended. The second paragraph that stipulates that the auditor annually checks whether the budgeted advisory costs and distribution costs are correctly and fully allocated to the financial products will be deleted. This will be replaced by annual reporting by the provider in combination with an audit at regular intervals.
- **Who?** Insurers.
- **When?** It is not yet known when the decree will take effect.

Financial Markets Amendment Act 2022 – reputation

- **What?** On May 27, 2022, the [Financial Markets Amendment Act 2022](#) was published in the Official Gazette. This bill introduces an ongoing reputation requirement for holders of qualifying holdings in insurers. More specifically, it concerns the element of professional competence which, together with the element of reliability, forms part of the concept of reputation.
- **Who?** All holders of a qualifying holding in an insurer.
- **When?** The continuing reputation requirement must first be worked out at the [decision level](#) (see the alert below) and its entry into force will be delayed until it is provided for. The continuing reputation requirement is expected to take effect during 2023.

Financial Markets Amendment Decree 2022 – reputation

- **What?** On July 15, 2022, the Ministry of Finance published the [Financial Markets Amendment Act 2022](#) for consultation. The proposal contains an elaboration of the ongoing reputation requirement for holders of a qualified participation in an insurer, as introduced in the Financial Markets Amendment Act 2022. It elaborates on the information to be submitted that DNB can use



to determine whether this requirement is met. The consultation period ended on August 26, 2022.

- **Who?** All holders of a qualifying holding in an insurer.
- **When?** Not yet known, but expected during 2023. On Nov. 23, 2022, the Council of State issued its opinion and recommended adoption of the decision.

Financial Markets Amendment Act 2024 – disciplinary law for insurers

- **What?** On April 29, 2022, the Ministry of Finance published the [Financial Markets Amendment Act 2024](#) for consultation. Among other things, the bill provides for disciplinary law for insurers to further safeguard standards of conduct in the insurance sector. Unlike banks, however, the disciplinary regulation of insurers will not focus on individual employees, but on the insurer itself. The further detailing and organization of the disciplinary regulations is, as with the disciplinary law for banks, primarily up to the insurer or insurance sector itself. After all, it is important that (the organization of) disciplinary law comes primarily from the group itself. The consultation period will end on June 12, 2022.
- **Who?** Insurers.
- **When?** The proposal is currently before the Council of State for its opinion. The bill is expected to take effect on Jan. 1, 2024.

Financial Markets Amendment Act 2024 – change in supervision for insurers

- **What?** On April 29, 2022, the Ministry of Finance published the [Financial Markets Amendment Act 2024](#) for consultation. Among other things, the bill provides for an obligation for DNB to give its consent if assets are transferred to a third country in an asset-intensive reinsurance contract (as mentioned in DNB's Legislative Letter 2022) and a declaration of no objection for insurers based in the Netherlands that wish to admit shares and other participation rights to which control is attached to trading on a regulated market. Finally, the bill provides for an amendment to article 1:107 Wft, pursuant to which affiliated intermediaries who mediate for (an) insurance intermediary(s) must be included in the public register. The consultation period ended on June 12, 2022.
- **Who?** Insurers.
- **When?** The proposal is currently before the Council of State for its opinion. The bill is expected to take effect on Jan. 1, 2024.

Decision comparison chart financial service providers

- **What?** Last summer, the Ministry of Finance [consulted](#) on an amendment to the Decree on Conduct Supervision of Financial Undertakings Wft (BGfo). The proposed amendment concerns the introduction of the comparison chart for financial service providers. The comparison chart is to replace the service provision document (DVD) as the information document that certain financial service providers, including advisors or insurance intermediaries, are required to provide to consumers. As a result of the aforementioned proposed amendment to the BGfo, the *Nadere regeling gedragstoezicht financiële ondernemingen Wft* (Nrgfo) must also be amended, in which further rules of the AFM must be drawn up regarding the comparison chart. The AFM [consulted](#) its proposal to this end last year and published its [feedback statement](#) in December.
- **Who?** Financial service providers who advise on and/or mediate individual disability insurance, term life insurance, premium pension claims and funeral insurance, among others.
- **When?** The draft decree for the amendment of the BGfo will soon be submitted to the Council of State for its opinion. The intended effective date is April 1, 2023. The draft provides for a transition period of six months.

Further remuneration rules financial sector (Wnbfo)

- **What?** On January 1, 2023, the [Act](#) on Further Remuneration Measures for Financial Enterprises (Wnbfo) entered into force. This Act introduced a number of changes to the remuneration rules as contained in the Wft, including the introduction of a statutory retention period of at least five years for shares paid as a component of a fixed remuneration, and a tightening of the averaging rule for non-Cao staff, who can be awarded a higher bonus than 20% under certain conditions. The AFM [published](#) a notification form for deviating from the bonus ceiling for non-CBA staff at the end of 2022.
- **Who?** Insurers.
- **When?** Effective January 1, 2023. The contracts of existing employees who will no longer be able to use the averaging arrangement for non-CO employees as of Jan. 1, 2023, must be adjusted by Jan. 1, 2024.

House of Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House of Whistleblowers Act. Among other things, this bill provides for the obligation to establish a procedure for



dealing with the reporting of suspected wrongdoing within an organization. Currently, with respect to this obligation, a threshold of at least fifty people within the organization is still provided for. One of the proposed changes is that this threshold will no longer apply to companies operating in the financial sector, including insurers. DNB, among others, will be appointed as the competent supervisor. It is proposed to change the name of the law to Whistleblowers Protection Act.

- **Who?** Insurers.
- **When?** The law change was actually supposed to take effect on Dec. 17, 2021. However, the proposal was not passed by the House of Representatives until December 20, 2022. It is now before the Senate, which has yet to decide whether or not to adopt the proposal. Thus, it is still unclear when the amendment will take effect. We expect it to be in 2023.

NEW LAWS AND REGULATIONS

DORA (Digital Operational Resilience Act)

- **What?** On December 27, 2022, the [Regulation](#) on Digital Operational Resilience for the Financial Sector (DORA) and its accompanying [Directive](#) were published in the Official Journal of the EU. DORA roughly consists of the following six pillars:
 1. Solid ICT risk management;
 2. Adequate ICT incident management, including reporting ICT incidents to the supervisor;
 3. Prudent management of risks when using third-party ICT providers;
 4. Periodic testing of own ICT resilience;
 5. Direct oversight of critical ICT service providers; and
 6. Cooperation and supervision/enforcement by supervisors.
- **Who?** DORA is an important development for all (re) insurers.
- **When?** The regulation is directly applicable in all member states, including the Netherlands, as of Jan. 17, 2025. This means that institutions will have to comply with the obligations in DORA from then on.

OTHER DEVELOPMENTS

Research insurance guarantee scheme (IGS)

By [letter](#) dated April 5, 2022, the Minister of Finance presented the [KPMG report](#) on the costs and benefits

of an insurance guarantee scheme or IGS to the Senate. This study had been promised during the discussion of the bill on recovery and resolution of insurers in the Senate, after EIOPA published its [opinion](#) on this subject on December 17, 2020. The Conservatrix Evaluation Committee also recommended investigating the desirability of an IGS.

KPMG's conclusion is that such a system can be valuable in protecting policyholders, but at the same time is costly and complex. In the case of non-life insurance the costs are limited, but in the case of life insurance they are high. At the same time, the study shows that there are many choices to be made regarding the design of an IGS, such as the function of an IGS (to whom and for what purpose does it provide financial support?), the level of compensation provided by an IGS (and thus own risk for policyholders), the underlying assumptions such as the assumed deficits in the estate of a failing insurer, the lines of business that fall within the coverage of an IGS, and the choice of an IGS based on the home or host principle.

With the entry into force of the Insurer Recovery and Resolution Act in 2019, current legislation is already largely focused on protecting policyholders. The question of whether in addition to this an IGS is desirable and under what conditions requires further consideration, for which the KPMG report provides an important basis. The Minister of Finance will enter into discussions with all stakeholders, including DNB, the Association of Insurers and the Consumers' Association, to determine whether and under what specific preconditions an IGS would be desirable and workable. The outcomes of the review of Solvency II and the IRRD Directive are important for the considerations regarding an IGS. The Minister of Finance has expressed a preference for an IGS in the context of European minimum harmonization. Given the European nature of the insurance market, EU-wide coordination is necessary for a good level of policyholder protection. As a result of the European single market for insurance products, more and more consumers are taking out insurance policies with insurers that are not based in the Netherlands, but in another EU member state. The European Commission has chosen not to propose an IGS so far. However, it is quite possible that the European Commission will still present a proposal for further harmonization of national IGSs after completion of the proposals for the revision of Solvency II and the IRRD Directive that are now before us.

More will become clear during 2023 about a possible national IGS or any proposals from the European Commission.



Remuneration under the heading of dividends

- **What?** On Aug. 1, 2022, the European Court of Justice issued [an important ruling](#) on the question to which extent dividends on employee shares can qualify as variable compensation. Not entirely surprisingly, the ECJ interprets everything very broadly (and teleologically). Although the ruling was made with respect to regulated mutual fund managers, the point addressed in the ruling is relevant to all regulated market participants. After all, the issue at stake is what remuneration mechanisms are considered variable compensation. As such, the considerations in the ruling are also relevant to assessing participation structures in insurers.
- **Who?** Insurers.
- **When?** It makes sense that regulators will pay extra attention to participation structures in 2023.

IAIS on diversity, equality and inclusion in the insurance industry

- **What?** On Dec. 6, 2022, the International Association of Insurance Supervisors (IAIS) released its [stocktake report](#) outlining the actions IAIS supervisors, other international organizations and the insurance industry are taking to advance diversity, equity and inclusion (DEI) in the insurance industry. The report also describes IAIS' intention to maintain its focus on DEI with two new projects in 2023. These two projects look at (i) the link between DEI within the insurer and its governance, risk management and corporate culture and (ii) how DEI considerations in insurers' operations and supervision can lead to fairer treatment of vulnerable consumers or consumers with different needs.
- **Who?** Insurers.
- **When?** DEI will also become a "hot topic" for insurers in 2023.

Global Insurance Market Report from IAIS

- **What?** On December 15, 2022, the International Association of Insurance Supervisors (IAIS) published its [Global Insurance Market Report \(GIMAR 2022\)](#). This report presents the results of IAIS' Global Monitoring Exercise (GME) study of risks and trends in the global insurance industry. The IAIS concludes that systemic risk in the insurance sector is moderate overall. However, there is an upward trend in insurers' overall systemic risk scores, particularly due to increased exposures to illiquid, hard-to-value assets, OTC derivatives, short-term funding and intra-financial assets. In addition, insurers' solvency and profitability improved in 2021, due in

part to strong financial market performance. Albeit, Geopolitical conflicts, inflation, tighter monetary policy and deteriorating economic outlook did already lead to an increase in market, credit and liquidity risks. Finally, IAIS cites the lack of progress in reducing global fossil fuel emissions. This contributes to increased transition and physical climate change risks in the insurance sector. The IAIS supports regulators in understanding climate-related exposures in the insurance sector in order to provide effective oversight.

- **Who?** Insurers.
- **When?** The report looks at 2022, but provides important insights for 2023.



INTEGRITY

By Integrity laws and regulations, we mean the European and Dutch regulations in the field of anti-money laundering and combating the financing of terrorist activities. This subject is also known by the English acronym AML/CFT (*anti-money laundering and countering the financing of terrorism*). The subject has been extremely relevant to any licensed financial undertaking for several years and can count on a lot of attention from the supervisory authorities (and following suit: the media).

However, market participants without a license from the ECB, DNB or AFM also fall under the Dutch Money Laundering and Terrorist Financing (Prevention) Act (Wwft). Examples include exempt payment service providers or exempt managers of investment funds (so-called light managers), but also lenders in the small business market (providers of SME loans) or corporate finance firms.

Also please note that hyperlinks link to documents and information in Dutch when there is no English version available.

AFM SUPERVISION

AFM Trend Monitor 2023

AFM Legislative Letter

DNB SUPERVISION

Supervision in View - Fighting financial-economic crime

DNB report From Recovery to Balance

Sanction screening

Scope of sanction notification requirement

Q&A sanctions screening by crypto service providers

EBA SUPERVISION

Guidelines on remote onboarding

Guidelines on the role of AML/CFT compliance officers

Draft guidelines on de-risking

Money laundering and terrorist financing risks in

SREP test

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

Consultation on general guidance Wwft

Renewed focus on Sanctions Act compliance

Modernization of Dutch sanctions system

Policy agenda to address money laundering

Transition period UBO register for corporations and other legal entities

Proposed amendment of high-risk country list

NEW LAWS AND REGULATIONS

New European package of AML/CFT legislation - update

Entry into force of UBO register for trusts and FGRs

Anti-Money Laundering Action Plan Bill

Consultation Bill Strengthening Approach to Undermining Crime II

Consultation Banking Information Reference Portal Amendment Act

FATF

Evaluation of the Netherlands' compliance with FATF standards

Revised guidance on risk-based approach to real estate industry

Report on money laundering via fentanyl and other synthetic opiates

Implementation of FATF standards on virtual assets and virtual asset service providers

Consultation updated guidance on identifying UBOs of legal entities

Consultation amendment of FATF standards

OTHER DEVELOPMENTS

Supranational risk analysis European Commission 2022

Access to UBO register (temporarily) suspended

More room for tailor-made approach in Wwft compliance



AFM SUPERVISION

AFM Trend Monitor 2023

- **What?** In November 2022, the AFM published its [Trend Monitor 2023](#). The AFM points parties, among other things, to the waterbed effect that may arise in combating money laundering, terrorist financing and violations of the Sanctions Act. According to the AFM, there is a chance that money laundering risk will shift to asset management parties as banks continue to shape their role as gatekeepers.
- **Who?** All Wwft institutions under the supervision of the AFM.
- **When?** Effective immediately; the report provides insight into issues on which the AFM will focus in its supervision.

AFM Legislative Letter

- **What?** On 28 March 2022, the AFM published its [Legislative Letter](#). In this letter, the AFM annually reports its identified bottlenecks in laws and regulations and its legislative wishes. One of the AFM's legislative wishes relates to the disclosure regime under the Sanctions Act. Currently, measures imposed under the Sanctions Act may not be published. The AFM would like to see this changed. According to the AFM, making these measures public leads to a more transparent government and thereby has a deterrent effect on potential offenders. In the [letter](#) of 14 April 2022, the Minister of Finance responded positively to this proposal and indicated that he would enter into discussions with the Minister of Foreign Affairs about a disclosure regime in the Sanctions Act. In [response](#), the Minister of Foreign Affairs indicated his intention to modernize the Sanctions Act in the coming year, including the current administrative oversight. For example, it is proposed that this will be aligned with the disclosure regime under the Wwft.
- **Who?** All financial undertakings.
- **When?** More clarity is expected during 2023.

DNB SUPERVISION

Supervision in View – Fighting financial-economic crime

- **What?** DNB presented its [Supervision in View](#) in November 2022. This is a summary that reflects what DNB is and has been working on in its supervision. Supervision with respect to the prevention of financial-

economic crime is a spearhead of DNB's supervision. In 2023, DNB will, among other things, implement the points for improvement that have emerged from recent evaluations by, for example, the FATF. For example, the FATF considered that more (supervisory) efforts are needed to combat illegal financial services. DNB also indicates that the thematic investigations started in 2022, one focused on the transactions payment service providers process for (partners of their) clients and one focused on the management of integrity risks at so-called large growth companies, will continue in 2023.

- **Who?** The entities subject to the supervision of DNB, but entities subject to the supervision of the AFM may also find it useful to consider this.
- **When?** DNB will incorporate the points mentioned in this document into its supervision.

DNB report From Recovery to Balance

- **What?** DNB published a [report](#) in September 2022 advocating a more risk-based approach to preventing and combating money laundering and terrorist financing. DNB finds that countering financial-economic crime can be made more efficient and effective by a more risk-based approach. Among other things, DNB expects banks to achieve better risk identification of their customers and also sees a (greater) role for technological solutions to make the approach more targeted. Finnius also wrote a [blog](#) about the report.
- **Who?** Banks. It may also be useful for the other financial firms supervised by DNB (or the AFM) to take a look at this.
- **When?** In the coming months, DNB will discuss the main bottlenecks in a number of round table discussions with representatives from the financial sector and other stakeholders and in which areas further guidance can help to remove them.

Sanction screening

- **What?** DNB has indicated in a [news release](#) to the market that it will soon change its policy statements regarding sanctions screening. Earlier DNB policy statements can be read as if, in the context of sanctions screening, not all relationships should be screened (this conclusion is not intended). However, it is possible to give a risk-based interpretation on how the screening is carried out and what it requires, provided that this interpretation is substantiated and documented.
- **Who?** The financial undertakings subject to DNB's Sw supervision.
- **When?** It is not clear when DNB will update its policy statements. In the meantime, DNB has included a disclaimer in relevant policy statements.

Scope of sanction notification requirement

- **What?** DNB has indicated in a [news release](#) that a reporting institution only needs to make a sanction notification to DNB the first time a sanctioned relationship is identified. Thus, not every transaction with a sanctioned relationship that is subsequently identified and stopped needs to be reported to DNB.
- **Who?** The financial undertakings subject to DNB's Sw supervision.
- **When?** Effective immediately.

Q&A sanctions screening by crypto service providers

- **What?** DNB has published a [Q&A on compliance](#) with the Sanctions Act when crypto service providers screen relationships. The Q&A deals specifically with how crypto service providers can implement sanctions screening in a crypto transaction. Among other things, the Q&A elaborates on who, in addition to clients, falls within the definition of relation.
- **Who?** Crypto service providers.
- **When?** The Q&A was published in September 2022. It is recommended that crypto service providers, if they have not already done so, implement this guidance from DNB and adjust their policies accordingly.

EBA SUPERVISION

Guidelines on remote onboarding

- **What?** In November 2022, EBA finalized [guidelines](#) for the use of remote customer onboarding solutions. The guidelines establish common EU standards for the development and implementation of processes regarding the acceptance (onboarding) of remote customers. The guidelines outline the steps financial undertakings should take when choosing tools for remote customer onboarding. In addition, the guidelines state how firms should assess the adequacy and reliability of such instruments in order to effectively comply with their AML/CFT obligations. Given that more and more relationships are being established entirely digitally, these are important guidelines for practitioners.
- **Who?** Financial undertakings that fall under the integrity supervision of DNB and/or the AFM. The AFM has indicated that it will incorporate these guidelines into the new version of the AFM Guidance Wwft and Sw, which will be published in mid-2023.
- **When?** The guidelines will come into force six months

after publication in all official languages of the EU. This will mean that the guidelines could enter into force in mid-2023.

Guidelines on the role of AML/CFT compliance officers

- **What?** In summer 2022, the EBA issued [guidelines](#) on the role, duties and responsibilities of AML/CFT compliance officers and the governance of an institution. For example, certain requirements are set for the management board and the supervisory board. The guidelines also discuss the person who is responsible for compliance with the Wwft within the board, the tasks and responsibilities of the compliance officer, and when the board of an institution must set up a compliance function on the basis of the proportionality criteria included in the guidelines. If the undertaking is part of a group, the guidelines prescribe that a compliance officer is appointed at group level. The tasks and responsibilities of this compliance officer should also be further specified.
- **Who?** All financial undertakings, insofar as they fall within the scope of the Wwft.
- **When?** The guidelines entered into force on 1 December 2022. DNB has indicated that it will include the new guidelines in its supervision. It is unclear at the time of writing whether the AFM will do the same.

Draft guidelines on de-risking

- **What?** EBA has published draft [guidelines](#) aimed at ensuring that clients, especially the most vulnerable such as refugees and the homeless, are not denied access to the financial system without a valid reason. In this context, the EBA is proposing two "new" guidelines: (i) an update to the already existing "Risk Factor Guidelines" that will help financial firms understand what they can do to address the ML/TF risks associated with these parties rather than denying these clients services; and (ii) new guidelines that describe the interplay between access to financial services and the AML/CFT obligations of financial firms, including in situations where clients have legitimate reasons for not being able to provide traditional forms of identity documentation. DNB recently [referred](#) to the (negative) consequences of de-risking.
- **Who?** All financial undertakings, insofar as they fall within the scope of the Wwft.
- **When?** The consultation will run until 6 February 2023. EBA will then adopt the final guidelines.



Money laundering and terrorist financing risks in SREP test

- **What?** EBA has established [guidelines](#) setting out how prudential supervisors (such as DNB), among others, should incorporate money laundering and terrorist financing risks into their annual Supervisory Review and Evaluation Process (SREP) test. Supervisors should be able to identify relevant risks. For example, institutions may face weaknesses in their ICT systems that criminals can exploit. EBA also expects supervisors to cooperate efficiently with other (European) public investigative and supervisory partners. This mainly involves information exchange.
- **Who?** The guidelines are addressed to the prudential supervisor (DNB), but are also relevant to parties that are required to prepare a SREP, such as banks and investment firms.
- **When?** The guidelines are effective as of 1 January 2023.

DEVELOPMENTS EXISTING LAWS AND REGULATIONS

Consultation on general guidance Wwft

- **What?** In the summer of 2021, the Ministry of Finance, together with the Ministry of Justice and Security, submitted a new version of the general Wwft guideline for [consultation](#). The current guidance needs to be adjusted, among other things, as a result of implementation of AMLD5.
- **Who?** All financial undertakings subject to integrity supervision by the AFM and DNB.
- **When?** The consultation ended in July 2021. It is currently unclear when the new version of the general guidance will be published.

Renewed focus on Sanctions Act compliance

- **What?** In response to the war in Ukraine and the subsequent European Union sanctions packages against Russia (and Belarus), the AFM and DNB have stepped up their supervision regarding compliance with the Sanctions Act. For example, both regulators have published several news releases outlining their expectations (see, for example, DNB's 4 March 2022 [release](#)), and provide updates on the state of play with some regularity (see, for example, the October 2022 [update](#)). DNB also conducted a [study](#) in fall 2022 on

the effectiveness of sanction screening systems at banks and payment institutions.

- **Who?** All financial undertakings subject to integrity supervision by the AFM and DNB.
- **When?** Effective immediately.

Modernization of Dutch sanctions system

- **What?** The Minister of Foreign Affairs has indicated in an [outline letter](#) to the House of Representatives that the government intends to modernize the Dutch sanctions system. The intention is to completely revise the Sanctions Act 1977, and where necessary related legislation and regulations, including futureproofing (endorsement) powers (which minister is responsible for what?), regulating the management and administration of certain frozen assets and economic resources, modernizing and possibly expanding administrative law supervision and enforcement, providing sound bases for data sharing, and breaking confidentiality obligations where necessary.
- **Who?** All financial undertakings subject to integrity supervision by the AFM and DNB.
- **When?** A draft bill is expected to be submitted for consultation in Q3 2023. The minister expects to present a final version of the bill to parliament in mid-2024.

Policy agenda to address money laundering

- **What?** The Minister of Finance, in coordination with the Minister of Justice and Security, published the Money Laundering [Policy Agenda](#) in September 2022. The Government sees three overarching themes to achieve certain identified improvements. First, in view of the risk-based approach, it is important that both regulations and their application are aimed at effectively addressing the greatest risks of money laundering. In line with this, second, it is important to avoid disproportionate effects on customers and gatekeepers in doing so, particularly where customers or services are at low risk of money laundering. Third, to improve the effectiveness of the approach, it is desirable to measure the effects of the policy.
- **Who?** Regulators including the AFM and DNB, and all financial undertakings subject to integrity supervision by the AFM and DNB.
- **When?** The minister has indicated that she will provide a first update on the progress of the follow-up actions in the spring of 2023. Thereafter, the Government will provide annual feedback to the House of Representatives after the summer on the progress of the various follow-up actions. In doing so, the Government will also provide an annual update on anti-money laundering policy statistics.



Transition period UBO register for corporations and other legal entities

- **What?** Under the Wwft, financial undertakings are not allowed to enter into a (new) business relationship with a client whose UBO registration in the UBO register is missing. To prevent this obligation, in combination with the longer processing time at the Chamber of Commerce, from disrupting the provision of services, the Minister of Finance announced a temporary regulation in April 2022 under which, among other things, it was sufficient if new clients could prove that they had registered in the UBO register, even if the registration had not been processed. This regulation initially applied until 1 September 2022, but was [extended](#) to 1 January 2023 given the workload.
- **Who?** All financial undertakings within the scope of the Wwft.
- **When?** The transition period expired on 1 January 2023. Given the ruling of the Court of Justice of the European Union (see below for more information), it is unclear if and when financial undertakings will regain access to the UBO register. In response to the ruling, the [BFT](#) has indicated that this temporary arrangement will be extended until the institutions subject to the disclosure obligation will regain access to the UBO register.

Proposed amendment of high-risk country list

- **What?** In December 2022, the Commission proposed amending the [list](#) of high-risk countries. The Commission proposes to add Congo, Gibraltar, Mozambique, Tanzania and the United Arab Emirates to the list and to remove Nicaragua, Pakistan and Zimbabwe from the list. With respect to business relationships and transactions related to these high-risk countries, Wwft institutions must conduct enhanced client due diligence.
- **Who?** Financial undertakings that fall within the scope of the Wwft.
- **When?** The Commission sent the proposal to Parliament, which then has one month to react to it. The final proposal will then have to be published in the Official Journal of the European Union before it enters into force. This process is likely to be completed by Q1 2023.

NEW LAWS AND REGULATIONS

New European package of AML/CFT legislation - update

The Commission [presented](#) four legislative proposals on 20 July 2021:

- A [proposal](#) for a regulation establishing a new European AML/CFT authority;
- A [proposal](#) for an AML/CFT regulation;
- a [proposal](#) for a sixth anti-money laundering directive, which will replace the existing fourth anti-money laundering directive (as amended by the fifth anti-money laundering directive); and
- A [proposal](#) to revise the regulation on information to accompany transfers of funds.

This implements the Commission's 7 May 2020 action plan to tackle money laundering and terrorist financing even more rigorously. This package of legislative proposals, if adopted by the Council and Parliament, will lead to significant changes in the European AML/CFT landscape.

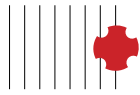
AMLA regulation - European AML/CFT authority

The Commission is proposing to create a new European AML/CFT Authority (AMLA). The AMLA was intended to be established by 1 January 2023. Reportedly, the negotiating parties have agreed on the content of the regulation, but are still negotiating where the AMLA will be located. Once established, the AMLA will focus (among other things) on:

- The coordination of supervision by national supervisors and investigations by national FIUs;
- Exercising direct AML/CFT supervision of selected financial firms (certain institutions with a high risk profile and operating in multiple member states);
- Exercising indirect AML/CFT supervision of unselected institutions; and
- Issuing guidelines for the purpose of uniform application of AML/CFT rules in the EU.

The proposed AMLA regulation provides AMLA with far-reaching investigative and enforcement powers. The activities of the AMLA are to be funded on the one hand from the EU budget and on the other from the fees that selected and certain non-selected institutions will be required to pay to AMLA each year.

AMLCFT regulation - including customer due diligence rules



Second, the Commission is introducing an AML/CFT regulation. Among other things, this proposed regulation sets out requirements for customer due diligence (CDD), outsourcing of AML/CFT tasks, business-wide risk assessment, the compliance function and reporting unusual transactions to the FIU. These requirements currently follow largely from AMLD4 and AMLD5. Thus, in the future, the AML/CFT Regulation will become the primary legislative source for institutions subject to AML/CFT supervision.

If the AML/CFT Regulation enters into force at any time, it will mean that many provisions of the Wwft will lapse. After all, a regulation has direct effect in all EU member states. In this connection, it will be interesting to see how certain concepts will then be interpreted at the European level and how this relates to the interpretation as we currently know it under the Wwft, such as with respect to the scope of the obligation to report unusual transactions.

This proposal is still being discussed in the trilogue between the Commission, the Parliament and the Council. The Council recently adopted its [position](#).

Sixth anti-money laundering directive - including enforcement by national regulators

Third, the Commission is proposing a Sixth Anti-Money Laundering Directive (AMLD6). This directive, which unlike the AML/CFT regulation must first be implemented in the Netherlands, should replace AMLD4/5. Under the proposed AMLD6, Member States may, for example, in the future propose to the Commission that sectors other than those mentioned in the AML/CFT Regulation should also be subject to AML/CFT supervision in their country.

This proposal is still being discussed in the trilogue between the Commission, the Parliament and the Council. The Council recently adopted its [position](#).

Extension of regulation on information to accompany remittances to crypto-assets

Finally, the Commission is presenting a proposed revision of the regulation on information to accompany transfers of funds. As a result of this revision, the scope of said regulation will be extended to crypto-asset transfers involving a 'crypto-asset service provider', as referred to in the proposed MiCA regulation. This means that these crypto-asset service providers will be required to collect and record, on a transaction-by-transaction basis, information about the sender and beneficiary of certain crypto-asset transactions.

The negotiating parties reached a tentative agreement on the content of the regulation in the summer of 2022.

The preliminary agreement agreed, among other things, that information about the "originator" will accompany crypto-asset transfers, regardless of the amount. Transfers of crypto-assets between crypto-asset service providers and non-hosted wallets will also be subject to specific requirements.

Entry into force

The comprehensive package of proposals is currently being discussed in the trilogue between the Council, the Commission and Parliament. Originally, the idea was that most of the proposed measures would enter into force at the end of 2024, and the AMLA would start its direct supervision in 2026. Given the fact that, for example, the AML/CFT Regulation and AMLD6 do not enter into force until three years after they have been adopted, our current expectation is that the entire package will enter into force in mid-2026.

Entry into force of UBO register for trusts and FGRs

- **What?** Parties can register with the UBO-register for trusts and FGRs since 1 November 2022. In the [Finnius Outlook 2022](#), we already discussed the upcoming entry into force of the 'trust register' in detail. With the final version of the Implementation Decree on registration of beneficial owners of trusts and similar legal arrangements (the Implementation Decree), it became clear that the previously proposed 3% threshold had been dropped, and another exception had taken its place. Licensed investment fund managers whose funds are offered to more than 150 persons do not have to register all participants in the trust register. They can suffice with a description of the group in whose interest a FGR is primarily established or operates. If a FGR does not fall under the "exception" as included in the Implementation Decree, all participants with an interest from 0% onwards will still have to be included in the trust register. We also wrote a [blog](#) on the Trust Register.
- **Who?** All financial undertakings that use an FGR (or trust).
- **When?** Parties must register by 1 February 2023. Newly created trusts or FGRs also have until 1 February 2023 to register. After 1 February 2023, newly created trusts or FGRs will have to comply with the registration requirement within one week of formation. The Trust register is expected to be completed mid-2023. It is unclear, given the ruling by the Court of Justice of the European Union (see below for more background information), if and when financial undertakings will regain access to the UBO register(s).

Anti-Money Laundering Action Plan Bill

In October 2022, the Minister of Finance (the Minister) [sent](#) - finally - the Anti-Money Laundering Action Plan (the Bill) to the House of Representatives. For a long time, the status of this (draft) legislation was unclear. After the [consultation](#) in December 2019, things remained quiet for a long time. Last summer it became clear that a critical [report](#) by the Council of State was partly to blame for the Minister's long standstill on this Bill.

Briefly, the Bill can be divided into the following four parts:

1. A prohibition for professional or business traders in goods to conduct cash transactions above EUR 3,000;
2. An obligation to request data about the customer from institutions belonging to the same category as part of the customer due diligence in the event of a higher risk of money laundering or terrorist financing - it remains to be seen how this will have to be implemented in practice;
3. Enable joint monitoring of transactions for banks; and
4. Clarifying the use of special categories of personal data and personal data of a criminal nature in the context of obligations under the Wwft

Ban on cash payments above EUR 3 000

The Bill includes a ban on cash payments from an amount of EUR 3000 for professional and business traders in goods. The ban applies to cash payments made in or from the Netherlands and applies primarily to professional or business buyers and sellers of goods (traders). These parties currently have to deal with the Wwft for cash payments over EUR 10 000. With the entry into force of this law, the current obligation for merchants to conduct customer due diligence, transaction monitoring and report unusual transactions will cease. The ban does not affect the objective reporting limits and subjective reporting obligation that apply to institutions other than dealers. In addition, it also applies to dealers in works of art and pawnbrokers to the extent that they purchase or sell goods in cash. Thus, the ban does not apply to transactions between private individuals and does not cover services.

Increase cooperation and information exchange Wwft institutions

The Bill obliges Wwft institutions to investigate, (i) if a business relationship or transaction by its nature entails a higher risk of money laundering or terrorist financing, (ii) if there are factors indicating a higher risk listed in Annex III of the Fourth Anti-Money Laundering Directive and (iii) in the context of the enhanced customer due diligence, whether the customer has requested services from another

Wwft institution in the same category, has received services from this Wwft institution or is currently receiving services from this Wwft institution. If this is the case, the institution should inquire with the other institution about revealed money laundering or terrorist financing risks. If the other service provider has identified such risks, it is obliged to provide the relevant data without delay. Wwft institutions should, prior to the provision of services, inform their clients of this obligation.

This is a best-efforts obligation. This means that a Wwft institution must have taken reasonable measures to ascertain whether a client has previously purchased services from another Wwft institution in the same category. What is reasonable depends on the context of the specific case. The Minister does not require a Wwft institution to randomly approach all other Wwft institutions in its category to make inquiries. It is reasonable, for example, to check with the client from which other Wwft institutions the latter has currently or in the past purchased similar services, and to consult public sources and sources of information that the Wwft institutions have at their disposal, such as databases with various news sources. The effort obligation to research past services goes back to services that ended no later than five years ago. Despite this explanation, we foresee a struggle for practitioners as to how to fulfil this effort obligation.

Joint transaction monitoring by banks

The Bill allows banks to outsource transaction monitoring to a "joint facility". This is a separate vehicle that banks establish or in which they can participate. However, this outsourcing can only concern the generation of alerts. The follow-up to these alerts cannot be outsourced. This means that the banks themselves must always (i) investigate whether the transaction is unusual, (ii) assess whether mitigating measures are necessary and (iii) report an unusual transaction to the FIU. Other institutions that fall within the scope of the Wwft, including payment institutions, investment firms and investment funds, cannot use this form of outsourcing. Indeed, Article 10(1) Wwft (new) still states that Wwft institutions - excluding banks - are in principle not allowed to outsource the ongoing monitoring of the business relationship (including transaction monitoring) to a third party. This is remarkable and, in our opinion, a missed opportunity, because the explanatory memorandum to the Bill explicitly states that EU regulations leave room for this form of outsourcing (i.e. also for non-banks).

Continued

The Bill is now being debated in the House of Representatives. Depending on the duration of the debate in Parliament, the Bill may be adopted (and enter



into force) in mid-2023. We recommend that market participants continue to closely follow developments regarding the Bill.

Consultation Bill Strengthening Approach to Undermining Crime II

- **What?** In November 2021, the Minister of Justice and Security submitted for [consultation](#) the Bill on Strengthening the Approach to Undermining Crime II. One of the proposals is to give the FIU the power to request a bank to temporarily hold up the execution of a transaction. A bank must comply with such a request without delay, under penalty of enforcement action.
- **Who?** Banks.
- **When?** The consultation ran until 31 January 2022. The Minister submitted a [draft regulation](#) to the Council of State at the end of December 2022. The draft regulation shows that, following advice from the NOvA, the Minister split the original bill into two separate bills: (i) the bill on confiscation of criminal property; and (ii) the bill on strengthening the approach to undermining crime II. The bill on confiscation of criminal property is now being reviewed by the Council of State. At the time of writing, the status of the bill strengthening the approach to undermining crime II which, among other things, introduces the obligation or banks to freeze a transaction is unclear.

Consultation Banking Information Reference Portal Amendment Act

- **What?** The Minister of Finance submitted the Consultation Banking Information Reference Portal Amendment Act for [consultation](#) in the fall of 2021. The Amendment Act introduces, among other things, a national policy wish from the Money Laundering Action Plan, namely allowing balance and transaction data to be requested via the referral portal from banks with more than 2.5 million account holders. In November 2022, the minister presented the Banking Data Referral Portal Amendment Decree for [consultation](#) (the consultation ended on 28 December 2022). The amendment decree regulates, among other things, which bodies and officials will have access to the referral portal. It also regulates which data will be accessed through the portal.
- **Who?** Banks.
- **When?** Consultation on the Amendment Law ran until November 2021, and was [offered](#) to the Council of State for advice in September 2022. At the time of writing, the Amendment Act has not yet been submitted to the House of Representatives.

FATF

Evaluation of the Netherlands' compliance with FATF standards

- **What?** In August 2022, the FATF published an [evaluation report](#) on Dutch policy against money laundering, terrorist financing and financing the proliferation of weapons of mass destruction. According to the FATF, the Netherlands has made great progress in tackling money laundering and terrorist financing in recent years. The FATF refers to the Dutch approach to money laundering as a robust system and considers domestic cooperation and coordination at both the policy and operational levels as core strengths. At the same time, the FATF comes up with a number of recommendations. For example, the FATF notes that the Netherlands must step up its efforts to prevent legal entities from being misused for criminal purposes.
- **Who?** The Dutch legislature and relevant regulators.
- **When?** The Government has now responded to, among other things, the FATF report (see policy agenda on tackling money laundering). The Minister of Finance has indicated that she will provide an update in spring 2023.

Revised guidance on risk-based approach to real estate industry

- **What?** The FATF adopted (revised) [guidance](#) on a risk-based approach to the real estate sector in July 2022. The revised guidance highlights the importance of increasing the industry's understanding of the risks it faces in terms of money laundering and terrorist financing. Vulnerabilities include exploitation by politically exposed persons, the purchase of luxury real estate, the use of virtual assets, the use of anonymous companies and gatekeepers used to launder the proceeds of crime. The FATF calls on the industry to take adequate measures to mitigate the higher risks, including thorough client due diligence on the beneficial owner(s) of a real estate transaction.
- **Who?** Regulators and financial undertakings operating in the real estate industry.
- **When?** The revised guidance is dated July 2022. We recommend that, to the extent relevant given their business activities and type of business relationships, financial undertakings include the risks identified by the FATF in relevant risk analyses.

Report on money laundering via fentanyl and other synthetic opiates

- **What?** The FATF published a [report](#) on money laundering through certain opioids in November 2022. The report looks at how the proceeds of trafficking in synthetic opiates are laundered. Organized crime groups use a range of methods, including high-volume cash smuggling, cash couriers, virtual assets (crypto), shell companies and the services of professional money launderers. This report aims to raise awareness of opiate trafficking, including the use of drug precursors, and related global financial flows. It also makes recommendations on how best to detect and disrupt the criminal networks involved.
- **Who?** Regulatory authorities and supervisors.
- **When?** Effective immediately.

Implementation of FATF standards on virtual assets and virtual asset service providers

- **What?** The FATF has issued a focused [update](#) on the implementation of FATF standards with respect to virtual assets and virtual asset service providers, and in particular the so-called Travel Rule. The FATF emphasizes, among other things, in the report that while technological solutions are now available to facilitate Travel Rule compliance in practice, the industry must continue to increase interoperability between solutions and across jurisdictions and strive for full Travel Rule compliance.
- **Who?** Regulatory authorities and supervisors.
- **When?** The FATF has indicated that it will issue a new report by June 2023 addressing the progress that has been made and the remaining challenges regarding the implementation of the Travel Rule.

Consultation updated guidance on identifying UBOs of legal entities

- **What?** In March 2022, following consultation, the FATF updated Recommendation 24 on transparency and UBOs of legal entities. In response to this update, the FATF updated its guidance on Beneficial Ownership, and submitted it for [consultation](#). The adjustments to this standard will particularly affect countries outside the EU that have not yet introduced a UBO register.
- **Who?** Regulatory authorities and supervisors. May result in changes to laws and regulations that will also affect financial undertakings.
- **When?** The consultation ran until 6 December 2022. The FATF has indicated that it will discuss the results of the consultation at its February 2023 meeting.

Consultation amendment of FATF standards

- **What?** The FATF intends to amend [Recommendation 25](#) on transparency of legal arrangements (including trusts). The proposed amendments are intended to strengthen the standard for transparency of beneficial owners (UBOs) of trusts and other legal arrangements without legal personality.
- **Who?** Regulatory authorities and supervisors. May result in changes to laws and regulations that will also affect financial undertakings.
- **When?** The consultation ran until 6 December 2022. The FATF has indicated that it will discuss the results of the consultation at its February 2023 meeting.

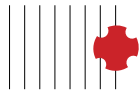
OTHER DEVELOPMENTS

Supranational risk analysis European Commission 2022

- **What?** The Commission published its supranational [risk analysis](#) (SNRA) in October 2022. The SNRA discusses potential money laundering and terrorist financing risks for 43 different products and services. With regard to the financial sector, the Commission indicates that credit and payment institutions, bureaux de change, electronic money institutions and lenders (other than credit institutions) are particularly vulnerable to risks arising from weaknesses in AML/CFT systems. The Commission also notes, again, the potential money laundering risks surrounding crypto assets and investment funds. More generally, the Commission notes that the anonymity of ultimate beneficiaries remains a weakness, but it also sees that initiatives have been taken in recent years to increase corporate transparency and prevent its abuse by criminals (e.g., the introduction of UBO registers).
- **Who?** Financial undertakings within the scope of the Wwft (and regulatory authorities).
- **When?** Effective immediately; Wwft institutions will have to include the identified risks in business-wide risk analysis.

Access to UBO register (temporarily) suspended

- **What?** The Court of Justice of the European Union (CJEU) issued an important [ruling](#) on the UBO register in November 2022. The CJEU found that, in light of the Charter of Fundamental Rights of the European Union, the provision requiring public access to the UBO register is invalid. The CJEU finds that the intrusion of the measure (general access to the UBO register) on the privacy of the individuals included in the UBO



register is not limited to what is strictly necessary and not proportionate to the objective pursued (greater transparency regarding the natural persons behind a structure).

- **Who?** Financial undertakings within the scope of the Wwft (and regulatory authorities).
- **When?** According to a [letter](#) to the House of Representatives, on 22 November 2022, the Minister of Finance asked the Chamber of Commerce to temporarily stop providing information from the UBO register as a result of the CJEU ruling. In December 2022, the [minister](#) indicated that competent authorities, such as investigative agencies, will regain access to the register in the near future. For Wwft institutions, according to the minister, this is more complex and is being looked at carefully. For the time being, access for the general public will be limited to persons or organizations that can demonstrate a legitimate interest. Further investigation is needed into what can be defined as a legitimate interest.

More room for tailor-made approach in Wwft compliance

- **What?** In October 2022, the Trade and Industry Appeals Tribunal (het *College van Beroep voor het bedrijfsleven*, CBb) issued an important [ruling](#) on the interpretation of a number of obligations under the Wwft. Among other things, the CBb confirmed that the rules from the Wwft on conduction customer due diligence do not prescribe the *manner* in which that research must be performed. The rules only determine what *result* must be achieved. This meant in this particular case that the institution in question (bunq) had more freedom to fulfil certain obligations under the Wwft, namely: (i) establishing the purpose and nature of the business relationship; and (ii) transaction monitoring. We also wrote a [blog](#) on this ruling.
- **Who?** Financial undertakings within the scope of the Wwft (and regulatory authorities).
- **When?** DNB has indicated that it is studying the ruling further and examining what it means for its supervision. The ruling will also be included in DNB's dialogue following its report "From Recovery to Balance" (see also above). The AFM has not yet indicated how it will take this ruling into account in its supervision.



SUSTAINABILITY (ESG)

This is the fourth year that we publish a special on Sustainability (ESG) in the Outlook, and it continues to look like this will not be the last! This topic is far from static. One could publish an Outlook solely covering sustainability (ESG) developments given the European goals and overarching (twin) transition packages, multi-level legislation that is newly proposed (or amended) to optimize the fight to climate change and to enhance the level of (transparency on) sustainability characteristics of financial products, and the supervisory attention on these topics. We therefore have made a selection of developments that, we believe, are the most concrete or relevant for financial market parties at the start of 2023.

Different from other specials addressed in the Outlook, the lay-out of this special has an introduction and then five focus points: (1) the overarching sustainability goals, (2) the ESG disclosure framework, (3) the ESG risk framework, (4) the supervisory sustainability aims and (5) some final topics worth to keep an eye on in 2023. The alerts for 2023 on these five focus points are listed in more detail after the general introduction below.

Please note that hyperlinks link to documents and information in Dutch when there is no English version available.

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ESMA Annual Work Programme 2023
EIOPA Annual Work Programme 2023
EIOPA Natural catastrophe insurance protection gap

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AFM Trendzicht 2023
AFM Focus on improvement ESG transparency
SFP Vision, strategy and approach 2023
DNB Supervision Strategy 2021-2024

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INTRODUCTION

Prior to discussing the sustainability developments that will be relevant in 2023, we look at the broader sustainability context within which the vast majority of developments are taking place.

In a global context, sustainability goals have been relevant since 2015 following the Paris Climate Agreement. Over time, multiple (global) sustainability initiatives have emerged, including the [“Fit for 55”- package](#) providing a set of proposals to revise, update and introduce EU legislation with the aim of ensuring that EU policies are in line with the agreed climate goals. From the European perspective, aside from the Green Deal, the EU Action Plan for Financing Sustainable Growth and the Sustainable Finance Package, the [Sustainable Europe Investment Plan](#) and [InvestEU Programme](#) are important “drivers” of sustainability in the EU.

Currently, a number of regulations form the basis of sustainability legislation in Member States. Some of these were discussed previously in the Outlook 2021 and Outlook 2022. A brief review of this sustainability legal framework will be made before looking at the sustainability alerts for 2023 in more detail.

The following regulations are specifically relevant to keep in mind in the context of sustainability legislation for the financial sector:

- The [Sustainable Finance Disclosure Regulation](#) (SFDR) and the [SFDR Commission Delegated Regulation](#);
- The [Taxonomy Regulation](#) (TR) and the two delegated regulations [Taxonomy Climate Delegated Regulation \(EU\) 2021/2139](#) and the [Taxonomy Disclosures Delegated Regulation \(EU\) 2021/2178](#);
- The [Corporate Sustainability Reporting Directive](#) (CSRD) (replacing the [Non-Financial Information Directive](#) (NFRD)).

Market parties are generally already familiar with the [SFDR](#). Based on this legislation, financial institutions must be transparent about the manner in which they deal with sustainability risks and about their sustainability ambition (which are two separate things, that are often mixed up which each other!). Information on the aforementioned topics must be included on the website, in pre-contractual information and in periodic reporting. For these publications, data provided under the CSRD and TR must be used or referred to. The precise rules regarding publication depend on the classification pursuant to the SFDR. Such aforementioned requirements are set out in more detail in the SFDR Commission Delegated Regulation which, amongst others, provides regulatory



technical standards and templates on the precontractual and periodic reporting and website-disclosures. The SFDR Commission Delegated Regulation is applicable as of 1 January 2023.

The [Taxonomy Regulation](#) introduces a classification system for sustainable activities. Financial institutions must use this classification system to classify investments, products, et cetera. This classification is used to determine which information must be published.

From a standpoint of reporting on non-financial information, the [NFRD](#) currently requires companies to publish non-financial information and contain important principles for certain large companies to annually report sustainability information. On 21 April 2021, the European Commission presented its proposal for a Corporate Sustainability Reporting Directive ([CSRD](#)), which aims to revise and strengthen the existing rules introduced by the NFRD, and to bring - over time - sustainability reporting on a par with financial reporting. Companies will have to report on how sustainability issues affect their business and the impact of their activities on people and the environment. On 10 November 2022, the European Parliament adopted the agreed text of CSRD.

Legislative changes have also been announced in other areas that aim to provide for the next steps in European sustainability. These include a proposal for a regulation in the area of [green bonds](#) and further elaboration on topics such as deforestation, nuclear energy and (climate) benchmarks. These and other developments for 2023 will be discussed in this Outlook.

This Outlook 2023 builds on the knowledge shared in the Outlook 2021 and Outlook 2022. The legislation as mentioned above has already been partly outlined in the previous versions. We recommend readers interested in the general framework to start with the sustainability chapter in the Outlook 2021 and Outlook 2022.

OVERARCHING SUSTAINABILITY GOALS

EC Annual Sustainable Growth Survey 2023

- **What?** The [Annual Sustainable Growth Survey](#) of the European Commission (the Survey) outlines an economic policy agenda to mitigate the negative impacts of energy shocks in the short term, and to keep up efforts to support sustainable and inclusive growth and increase resilience in the medium term. The Survey focusses on the four dimensions of

competitive sustainability and is in line with the UN Sustainable Development Goals: fairness, environmental sustainability, productivity and macroeconomic stability. The Survey outlines the main characteristics of the 2023 European semester cycle while taking into account [REPowerEU](#) priorities and the need to adapt to evolving circumstances. An example of such evolving circumstances is the obligation for Member States to update their national energy and climate plan by June 2023 (in which [the 2022 and 2023 country-specific recommendations](#) should be taken into account). One of the other elements addressed in the Survey is the implementation of the Sustainable Development Goals (SDGs). It is noted that these SDGs will continue to be integrated into the [European Semester](#) and that the 2023 country reports will assess the progress and challenges for each Member State on SDGs implementation. The 2023 country reports will include a detailed annex for each country which will link SDG implementation to the aforementioned four dimensions.

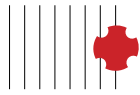
- **Who?** All financial market parties.
- **When?** The Survey was published on 22 November 2022 and continues in 2023.

EC Climate Resilience Dialogue

- **What?** At the end of 2022, the European Commission launched the [Climate Resilience Dialogue](#), which is part of the Strategy for Financing the Transition to a Sustainable Economy as well as the new EU Strategy on Adaptation to Climate Change. Such meeting aims to exchange views and best practices to address the losses incurred from climate-related disaster and the role that insurers, reinsurers, the corporate sector, consumers, public authorities and other stakeholders could play in enhancing the climate resilience (for example through increasing climate risk insurance penetration, incentives and investments in good adaptive solutions).
- **Who?** Insurers, managers of investment institutions, public authorities.
- **When?** The dialogue will meet several times up until mid-2024 to identify good practices and deliver voluntary commitments.

Fit for 55: Stricter greenhouse gas emissions

- **What?** On 8 November 2022 it was [published](#) that a provisional agreement was reached on a revision of the Effort Sharing Regulation (ESR), which sets binding annual greenhouse gas (GHG) emission reductions for EU Member States. The ESR sets national targets for emission reductions from road transport, heating of buildings, agriculture, small industrial installations and waste management. Its revision is part of the "Fit



for 55"-package. As a consequence, all EU countries must now reduce GHG emissions with targets ranging between 10-50% (refer [here](#) for the Member States targets). To reach these more ambitious national reduction targets, each Member State will have to ensure every year that they do not exceed their annual GHG emission allocation. These are defined by a linear trajectory ending in 2030. For 2023-2025, the annual GHG emission allocation for that Member State in 2022 applies. The provisional agreement aims to balance the need for flexibility for EU countries to achieve their targets while ensuring a just and socially fair transition for all, and to close loopholes so the EU Climate Law is not undermined. This was achieved by restricting the possibilities to transfer, borrow and save emission allocations compared to the Council's position. In line with the above, the European Parliament has indicated in its [newsletter](#) dated 27 December 2022 that in 2023, it will continue to push for climate neutrality by means of decarbonisation of all economic sectors.

- **Who?** Parties that hold a position in European emission allowances or hold derivative positions on such emission allowances.
- **When?** The European Parliament and Council will have to formally approve the provisional agreement before it can come into force. This is expected in 2023.

Fit for 55: Increased climate target

- **What?** On 11 November 2022 it was [published](#) that a provisional agreement was reached on the revision of the regulation on the land use, land use change and forestry sector (LULUCF Regulation). The revision of the LULUCF Regulation seeks to improve natural carbon sinks to make the EU the first climate-neutral continent by 2050 and improve biodiversity in line with the European Green Deal. The new EU target will de facto raise the EU's 2030 GHG reduction target to 57% from 55%. EU Member States will be obliged to take corrective action if progress towards their target is not sufficient.
- **Who?** This development is relevant to parties that hold a position in European emission allowances or hold derivative positions on such emission allowances.
- **When?** The European Parliament and Council will have to formally approve the provisional agreement before it can come into force. This is expected in 2023.

EU Green Bonds Strategy

- **What?** Already on 6 July 2021, the European Commission issued its [strategy](#) on green bonds by means of a proposal for a regulation on European green bonds. The introduced European Green Bond

Framework ([EUGBS](#)) is a voluntary standard that will provide guidance to companies and governments on how to use green bonds to raise capital in capital markets to finance ambitious investments, while meeting stringent sustainability requirements and protecting investors from greenwashing. Such proposal has been reviewed and assessed in various committees, as a result of which was, amongst others, the [study](#) by the Think Tank of the European Parliament and the [report](#) of the ECON Committee. Various changes to the proposal were introduced to better regulate the entire green bond market rather than only establishing the EUGBS and reduce greenwashing. Examples hereof are introducing transparency requirements for all bonds marked as green (incl. the alignment with the taxonomy legislation on the use of proceeds derived from bond issuance) and DNSH-safeguards.

- **Who?** Issuers of green bonds.
- **When?** At the time of preparing this Outlook, the amended proposal is presented in interinstitutional negotiations. We therefore recommend that parties keep an eye on the [legislative train](#) on this topic.

ESMA Sustainable Finance Timeline

- **What?** ESMA has published an [implementation timeline](#) regarding the dates on which obligations pursuant to the SFDR, TR, CSRD, MiFID II, IDD, UCITS and AIFMD are triggered by the sustainable finance objectives. Even though such implementation timeline is useful for the broader overview of the obligations following from the sustainable framework, the updates of and amendments to current legislation in this field arise and develop so fast, that it is recommended to take notice of the more specific and up-to-date timelines provided through the latest (amended) legislative proposals instead.
- **Who?** All financial market parties captured by the scope of any of the aforementioned legislation.
- **When?** At the date of this Outlook, the version of the timeline referred to herein is dated 26 September 2022.

PSF Report on minimum safeguards

- **What?** The Platform on Sustainable Finance (PSF) published its [final report](#) on (the functioning of) the minimum safeguards of Article 18 TR (in conjunction with Article 3(c) TR). In short: Article 18 TR provides the obligation for a financial undertaking carrying out an environmentally sustainable economic activity to establish procedures that are aligned with – in short – the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. Based hereon, the report identifies



four core minimum safeguards: human rights, bribery/corruption, taxation and fair competition. The report addresses that newly introduced legislation (such as the CSRD and CSDDD) applies similar standards and that alignment with the safeguards included in Article 18 TR is preferable, but that, due to the fact that these directives are (partly) not yet finalised, it is difficult to determine whether such full alignment is already in place. In respect of compliance with such minimum safeguards, PSF provides detailed examples of circumstances it considered a sign of non-compliance;

- inadequate or non-existent corporate DD processes on human rights (incl. labour rights, bribery, taxation and fair competition);
- final liability of companies in respect of breaches of any of these four core minimum safeguards;
- the lack of collaboration with a national contact point (NCP) and an assessment of non-compliance with the OECD Guidelines by an OECD NCP; and
- non-response to allegations by the Business and Human Rights Resource Centre.

Even though no explicit guidance or circumstances have confirmed this view to date, we could see that the latter four takeaway's may be picked up by the AFM or DNB, respectively, when supervising the compliance with Article 18 TR in 2023, especially since the CSRD is now finalised and published.

- **Who?** Financial institutions that are subject to the TR. Market parties that qualify as an SME are encouraged to take notice of Section 6.5 of the report reflecting interesting considerations on voluntary reporting on taxonomy alignment.
- **When?** Given the developments on the CSRD and the CSDDD (please refer below for more details), additional guidance on the minimum safeguards (and the requirements to comply with these) is expected in 2023.

European Climate Law

- **What?** Given the core objective of the [European Green Deal](#), the European Commission has sought to enshrine this objective in law by means of an introduction of a [European Climate Act](#). This act has already been addressed in the Outlook 2022. In short, the objectives of the European Climate Act are (i) to set a long-term European vision to achieve the goal of climate neutrality by 2050 in a social and cost-effective manner, (ii) to set a more ambitious EU target for 2030 to ensure that Europe is climate neutral by 2050, (iii) creating a system for monitoring progress in this respect and, if necessary, taking further action(s) in light hereof, (iv) ensuring predictability for economic actors (including businesses, employees, investors and consumers), and (v) ensuring an irreversible transition to climate neutrality. The European Climate Act was [published](#) on July 9, 2021.

- **Who?** All economic and social sectors (including the financial sector).
- **When?** The European Climate Act came into force from July 29, 2021 and will continue to be relevant in 2023.

DISCLOSURE FRAMEWORK

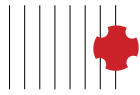
Sustainable Finance Disclosure Regulation (SFDR)

SFDR Delegated Regulation

- **What?** This [SFDR Delegated Regulation](#) supplements the SFDR and provides the regulatory technical standards on the content and presentation of the information in relation to the DNSH-principle and in relation to sustainability indicators and adverse sustainability impacts (PAI). It further provides more detailed requirements on the type of information that should be included on the website and in precontractual documents and in periodic reports, and in which format such information should be provided (reference is made to the Annexes to the SFDR Delegated Regulation, providing templates in this respect). The AFM has indicated in its [new flash dated 8 December 2022](#), that the templates to be used for the disclosure pursuant to the SFDR Delegated Regulation do not need to be submitted by managers of AIFs with the AFM for prior approval nor shall be considered a material change (*materiële wijziging*). The AFM furthermore indicated that in 2023, it will pursue a market-wide investigation on the compliance with the SFDR requirements (including the conditions as set out in the SFDR Delegated Regulation). Finnius previously addressed the specific items of the SFDR Delegated Regulation relevant to asset managers in its [news flash](#).
- **Who?** Financial market participants and financial advisors as defined in the SFDR, including, for example, alternative investment fund managers, insurers and pension providers.
- **When?** The SFDR Delegated Regulation is applicable as of 1 January 2023.

Supplementary SFDR Delegated Regulation

- **What?** A proposed amendment and correction to the [SFDR Delegated Regulation](#) is included in the [Supplementary SFDR Delegated Regulation](#) dated 31 October 2022. The contents of the (relatively small) Supplementary SFDR Delegated Regulation must ensure that disclosures addressing the degree of investments that are made in targets considered environmentally sustainable



economic activities (i.e. taxonomy-aligned activities), provide full transparency about investments in sectors and sub-sectors covered by the [Taxonomy Complementary Climate Delegated Regulation](#) (such as natural gas and nuclear energy sectors) as well. Please refer to the section 'Taxonomy Regulation' below for more detail on this topic.

- **Who?** Financial market participants and financial advisors as defined in the SFDR, including, for example, alternative investment fund managers, insurers and pension providers.
- **When?** This Supplementary Delegated Regulation is not yet in force, but market parties are advised to closely monitor developments in this regard as they will become more relevant in 2023.

ESAs SFDR mandate decarbonisation targets

- **What?** The ESAs received a [mandate](#) that invites the ESAs to propose amendments to the SFDR Delegated Regulation on 28 April 2022 and use this mandate to develop draft regulatory technical standards. This mandate, aside from the review of the PAI indicators and the financial product disclosures under the SFDR Delegated Regulation, focusses on amendments regarding decarbonisation targets. Also, the ESAs shall address the question whether the financial products making taxonomy-aligned investments sufficiently address the disclosure and information on taxonomy-aligned economic activities. The deadline for the input of the ESAs was set at 23 April 2023. The ESAs have however informed the European Commission through a [letter](#) that they are unable to meet the deadline of the mandate.
- **Who?** Financial market participants and financial advisors as defined in the SFDR, including, for example, alternative investment fund managers, insurers and pension providers.
- **When?** The ESAs have indicated a six month delay in response in respect of the mandate. Input on the intended amendments to the SFDR Delegated Regulation are thus expected by the end of 2023.

ESAs Request for clarification interpretation of SFDR

On 9 September 2022, the ESAs submitted to the European Commission a [letter](#) expressing a list of further queries relating to the interpretation of Union law with reference to the SFDR. The ESAs address the interpretation of certain definitions: 'How the definition of 'sustainable investment' applies to investments in funding instruments that do not specify the use of proceeds (for example general equity or debt of an investee company)', and 'How should "investment in an economic activity that

contributes to an environmental objective" or "investment in an economic activity that contributes to a social objective" in Article 2(17) SFDR be interpreted'?

Furthermore, regarding carbon emissions and benchmark questions, the ESAs wonder 'whether a financial product could disclose carbon emissions reduction as an environmental characteristic under Article 8 SFDR, or whether any financial product which targets carbon emissions reduction as a feature should always be considered to be having "carbon emissions reduction" as an "objective" (and therefore be required to disclose the information required by Article 9(3) SFDR)'. And 'if the financial product is considered an Article 8 SFDR product, what would be the criteria to differentiate it from an Article 9 SFDR product'?

The interpretation of the word 'consider' in respect of PAI statements or the scope of workers captured by the 500 employee-threshold are also mentioned. Finally, the ESAs request clarity on the frequency of periodic reporting for portfolio management based on the SFDR disclosure templates.

Financial market participants and financial advisors as defined in the SFDR (for example, alternative investment fund managers, insurers and pension providers) would benefit from more clarity on the items raised by the ESAs. No response by the European Commission has been published yet, however, it is expected that the European Commission will respond to such questions in 2023.

ESMA Consultation ESG terms in funds' names

- **What?** On 18 November 2022, the [draft Guidelines](#) for the use of ESG or sustainability-related terms in funds' names were [consulted](#) by ESMA. The AFM also referred to the consultation on its [website](#). In order not to mislead investors, ESMA believes that ESG- and sustainability-related terms in funds' names should be supported in a material way by evidence of sustainability characteristics or objectives that are reflected fairly and consistently in such fund's investment objectives, policy and strategy.
- **Who?** AIF and UCITS managers with an ESG claim in the name.
- **When?** The consultation closes on 20 February 2023. The finalisation of the Guidelines is likely to take place at the end of 2023. Existing funds will have a transitional period of six months as of the application date of the Guidelines to (i) comply with the Guidelines or alternatively (ii) change their name to comply with the aforementioned standards.



Taxonomy Regulation (TR)

EU Taxonomy

The Taxonomy Regulation itself contains a classification system for sustainable activities. Financial institutions must use this classification system to classify investments, products, et cetera. This classification is used to determine which information must be published. In order to do so, as a starting point, certain environmental objectives were formulated in the Taxonomy Regulation that is currently in place. In the future, the classification system will extend to other objectives than the ones currently defined; the current Taxonomy Regulation is 'just a start'.

Six environmental objectives

From a transparency point of view, the reporting on six environmental objectives became one of the main elements on which the taxonomy legislation currently focusses. As of 1 January 2023, financial market participants shall report on taxonomy-related disclosures for all six environmental objectives referred to in Section 9(a)-(f) TR (in relation to Section 8(2a) SFDR). This includes disclosure requirements in pre-contractual information and periodic reporting, as well as transparency on all six environmental objectives. At this point, market parties are already fairly familiar with the first two environmental objectives included in the TR, (i) climate change mitigation and (ii) climate change adaptation. The other four objectives relate to (iii) the sustainable use and protection of water and marine resources; (iv) the transition to a circular economy; (v) pollution prevention and control; and (vi) the protection and restoration of biodiversity and ecosystems. Even though these were already embedded in the Taxonomy Regulation from the beginning, the objectives are still quite 'new', as no reporting on these topics was required until now.

Level 2-legislation

At the moment, within the TR-framework, two Delegated Acts with technical screening criteria are in force:

- The [Taxonomy Climate Delegated Regulation \(EU\) 2021/2139](#) provides for technical screening criteria under which certain economic activities qualify as contributing substantially to climate change mitigation or climate change adaptation and not causing significant harm to any of the other relevant environmental objectives.
- The [Taxonomy Disclosures Delegated Regulation \(EU\) 2021/2178](#) specifies the content, methodology, and presentation of the information to be disclosed by both non-financial and financial undertakings required to report about the alignment of their activities with the EU Taxonomy.

On 6 October 2022, The European Commission has [published](#) a FAQ (in addition to the previously published FAQs on reporting taxonomy-eligible economic activities on 20 December 2021) to clarify the content of the Taxonomy Disclosures Delegated Regulation. The clarification addresses general questions such as '*To what undertakings does the reporting obligation pursuant to the Taxonomy Disclosures Delegated Regulation apply?*' and '*What are 'enabling' and 'transitional' economic activities in the context of the Taxonomy-eligibility reporting?*' to financial market party focussed questions such as '*How may asset managers weight their holdings in a portfolio to report Taxonomy-eligible assets?*' or '*How should a credit institution with a Markets in Financial Instruments Directive (Mifid) investment firm license report its Taxonomy-eligible economic activities?*'. The contents of the FAQ could assist market parties in getting a feel for the supervisory expectations in this respect.

On 19 December 2022, the European Commission published a [draft notice](#) on the interpretation and implementation of certain legal provisions of the Taxonomy Disclosures Delegated Regulation under Article 8 of EU Taxonomy Regulation on the reporting of taxonomy eligible and taxonomy-aligned economic activities and assets. Such notice aims to clarify the provisions already contained in the applicable legislation on EU taxonomy. They do not extend the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the operators concerned and competent authorities. The notice was published alongside another [draft notice](#) of the European Commission in the form of replies to FAQs concerning the technical screening criteria for taxonomy-aligned economic activities set out in the Taxonomy Climate Delegated Regulation. The replies to FAQs merely intend to assist non-financial undertakings in the implementation of the relevant legal provisions. These draft notices were approved by the European Commission in principle on 19 December 2022 and will be formally adopted in all official languages of the EU as soon as all of the language versions are available.

Amendment to Taxonomy Delegated Regulations

As was [published](#) on the website of the European Commission and [agreed](#) upon by the members of the European Parliament, the two aforementioned Delegated Regulations are now amended by a [Taxonomy Complementary Climate Delegated Regulation](#). The reason for this amendment lays in the fact that the existing Delegated Regulations did not yet include all relevant sectors and activities such as natural gas and nuclear energy. Technical screening criteria and the specific disclosure requirements for natural gas and nuclear energy sectors are being included through the Taxonomy Complementary Climate Delegated Regulation. This



Regulation is relevant to all financial market participants that fall within the scope of the TR and applies as of 1 January 2023.

RTS on the four remaining environmental objectives await

On 30 March 2022, the Platform on Sustainable Finance (PSF) published an [initial report](#). In this report, (i) the PSF's recommendations to the European Commission relating to technical screening criteria for objectives 3 – 6 of the Taxonomy Regulation are set out, as well as recommendations to improve the design of the Taxonomy and the Taxonomy criteria, and (ii) technical screening criteria for economic activities are included contributing to all six environmental objectives of the Taxonomy Regulation, including the rationale for those criteria. As a supplement to the initial report, PSF has published a [supplementary report](#) in October 2022 including an update on the matter since March 2022, a framework methodology to describe 'enabling activities' and recommendations to the European Commission to consider in its further work on EU Taxonomy, aside from additional technical screening criteria that have been developed since March 2022. The European Commission will assess the contents of the reports of PSF and on the date of this Outlook, no further steps seem to have been undertaken by the European Commission. Therefore, unfortunately, the regulatory technical standards in respect of the other four environmental objectives are pending and expected during 2023. The lack of support through Level 2-legislation on these four environmental objectives is likely to raise a lot of questions on the implementation and application of the requirements included in the TR as per 1 January 2023.

Social taxonomy in the making

More and more attention is given to social aspects within the EU's sustainable finance strategy. Such focus is also shown through the high demand on social bonds (relating to social housing, healthcare, employment for target groups) and the flow of private capital directed to socially valuable activities. Therefore, it is crucial to clearly define what constitutes a social investment, as has already been done with environmental investments. The [European Pillar of Social Rights Action Plan](#) has developed 20 principles in this respect and focusses on fair and well-functioning labour markets and social protection systems.

Furthermore, following these developments, in its [final report](#), the Platform on Sustainable Finance proposes a structure for a social taxonomy within the present EU legislative environment on sustainable finance and sustainable governance (now consisting of the EU taxonomy legislation, CSRD, SFDR and sustainable corporate-governance (SCG) initiatives).

The suggested structure of the social taxonomy employs the following structural aspects of the environmental taxonomy: (i) the development of social objectives; (ii) types of substantial contributions; (iii) 'do no significant harm' (DNSH) criteria; and (iv) minimum safeguards. However, the social taxonomy deviates from the environmental taxonomy by containing sub-objectives which spell out different aspects of the three social objectives. Three objectives can be identified, each of which addresses a different group of stakeholders:

- decent work (including for value-chain workers);
- adequate living standards and wellbeing for end-users; and
- inclusive and sustainable communities and societies.

Finally, the social taxonomy considers socially harmful activities. Similar to the environmental taxonomy, the question is which activities can be considered socially harmful under any circumstances. Hopefully European guidance will be provided in order to support financial market parties to take these social objectives into account when doing business and wanting to enhance the European social taxonomy standards. Likely in 2023, further developments will take place in this respect.

PSF Recommendations on Data and Usability of EU Taxonomy

- **What?** On 12 October 2022, the Platform on Sustainable Finance (PSF) provided its [recommendations](#) on data and usability as part of taxonomy reporting. The PSF provides useful observations and recommendations on, amongst others, (i) non-financial reporting of taxonomy-eligibility and alignment (including key usability issues and good reporting practices), (ii) taxonomy reporting by specific financial market parties such as asset managers, credit institutions and insurers, (iii) reporting pursuant to Article 5, 6 and 8 of the [Taxonomy Disclosures Delegated Regulation](#) (including recommendations on updates to the Taxonomy Climate Delegated Regulation and recommendations on the timeline for the adoption of delegated acts for the four environmental objectives), (iv) the consistency within the sustainable finance framework between the CSRD, SFDR and the Benchmark Regulation, and (v) international operation of taxonomy regarding the DNSH-principle and minimum safeguards.
- **Who?** Relevant to various financial market participants, such as asset managers, pension funds, credit institutions, insurers, investment firms, and non-financial companies which are subject to NFRD (and shortly, the CSRD).
- **When?** The recommendations may lead to more specific guidance on, for example, updates to the Taxonomy Climate Delegated Regulation and the RTS



for the four environmental objectives pursuant to the Taxonomy Regulation. Further developments hereon may be expected in 2023.

Other disclosure related regulations

Corporate Sustainability Due Diligence Directive (CSDDD)

The proposal for a Corporate Sustainability Due Diligence Directive (CSDDD) is also known under the name 'sustainable corporate governance'. On 23 February 2022, the European Commission published the final version of its [initial proposal](#). This establishes a corporate due diligence (DD) duty and duties for the directors of the EU companies within scope. The corporate DD duty entails the identification, bringing to an end, preventing, mitigating and accounting for negative human rights and environmental impacts in the company's own operations, their subsidiaries and their value chains. Certain large companies shall be required to put in place a business strategy plan which is compatible with limiting global warming to 1.5 Degrees Celsius. Directors are incentivised to contribute to sustainability and climate change mitigation goals and more specifically, to set up and monitor the DD processes and integrate DD into corporate strategy.

Various committees as well as the Permanent Representatives Committee were requested to provide input to the initial proposal, by whom certain issues were raised, for example, on the coverage of the provision of financial services by the regulated financial undertakings and the responsibilities of directors. On 30 November 2022, a [consolidated revised proposal](#) of the CSDDD was sent to the Council aiming on an approval on their negotiating position (the general orientation).

Main elements revised proposal CSDDD

The following main elements are captured by the revised proposal of the CSDDD:

- Scope:
 - Companies in scope:
 - companies having either (i) 500+ employees and net EUR 150 million+ turnover worldwide for the last financial year (for which annual financial statements were adopted); or (ii) not met the thresholds under (i) but had 250+ employees and net EUR 40+ million turnover worldwide for the last financial year (for which annual financial statements were adopted), provided that at least 20 million was generated in one or more high impact sectors that are associated with the applicable statistical classification of

economic activities established by Regulation (EC) No 1893/2006 (and listed in Annex II to the CSDDD), e.g. textiles, agriculture, extraction of minerals; and

- non-EU companies having (a) generated a net turnover of 150+ million in the financial year preceding the last financial year; or (b) net EUR 40+ million turnover worldwide for the last financial year (for which annual financial statements were adopted), provided that at least 20 million was generated in one or more high impact sectors as mentioned under (ii) in the aforementioned bullet.

The CSDDD shall apply to a company if the company has met the aforementioned conditions during two consecutive financial years.

- The proposed text introduces the Member State option to apply the CSDDD to *regulated financial undertakings* and also with respect to their business partners to which such regulated financial undertakings provide the services, each within the meaning of the CSDDD. Such definition includes amongst others, credit institutions, AIFMs, managers of UCITS, insurers, payment institutions, certain crypto service providers and CCPs;
- AIFs and UCITS are left out of scope of the CSDDD;
- Member States may decide to apply the CSDDD to pension institutions which are considered to be social security schemes. If applied, those pension institutions shall be considered *regulated financial undertakings* within the meaning of CSDDD;
- Although SMEs are not included in the scope of the CSDDD, they could be impacted by its provisions as contractors or subcontractors (direct or indirect business partners) to the companies which are in the scope.
- DD requirements:
 - The proposed text requires companies to conduct human rights and environmental DD by means of various actions as stipulated in article 4 of the CSDDD, including amongst others, integrating DD into their policies and risk management systems and monitoring the effectiveness thereof. The CSDDD also includes provisions on DD at a group level;
- Complaints procedure:
 - A specific complaints-procedure needs to be implemented in order for persons and organisations as set out in the CSDDD to submit complaints where they have legitimate concerns re. action of potential adverse impacts re. their own operations, those of their subsidiaries or of their business partners in the company's chain of activities.

Duty of directors

The provision initially proposed by the European



Commission included a duty of care and a duty for directors of EU companies to set up and oversee the DD actions and to adapt the corporate strategy to take into account the identified adverse impact and adopted DD measures. Due to strong concerns regarding the duty of care having an inappropriate interference with national provisions of duty of care and potentially undermining the duty to act in the best interest of the company, the duty of care has been deleted in the revised proposal of the CSDDD. The main elements of the second duty (which were concluded to be too closely related to the DD process) are now integrated in the provision of integrating the DD into the company's policies and risk management procedures. Also, the proposed provision linking the variable remuneration of directors to their contribution to the company's business strategy and long-term interest and sustainability was deleted.

Timing and next steps

The revised proposal includes a phase-in clause and a 1-year '*vacatio legis*' period between the end of the transposition period and the application of the rules of the proposed CSDDD in order to ensure proportionality of the newly introduced rules. Therefore, the rules of the proposed CSDDD shall first apply to very large companies that have more than 1000 employees and EUR 300 million net worldwide turnover, or 300 million net turnover generated in the Union for non-EU companies 3 years from the entry into force.

It was [announced](#) on 1 December 2022 that the Council has adopted its negotiating position ('general approach') on the CSDDD. The Council can now start negotiations with the European Parliament on the revised proposal. Once adopted, Member States will have two years to transpose the CSDDD into national law and communicate the relevant texts to the European Commission. It is recommended to market parties to keep track of these developments regarding the CSDDD as this could tie in with (the development of) DD processes which market parties are putting in place in light of gathering the PAI data on the product-level pursuant to the SFDR.

Corporate Sustainability Reporting Directive (CSRD)

- **What?** On 21 April 2021, the European Commission presented its proposal for the CSRD, which aims to revise and strengthen the existing rules introduced by the NFRD, and to bring - over time - sustainability reporting on a *par* with financial reporting. The CSRD aims to be a 'one-stop-shop' solution for market parties in respect of sustainability reporting standards. The CSRD (i) extends the scope to all large companies and

all companies listed on regulated markets (except listed micro-enterprises), (ii) requires the audit (assurance) of reported information, (iii) introduces more detailed reporting requirements, and a requirement to report according to mandatory EU sustainability reporting standards, and (iv) requires companies to digitally 'tag' the reported information into a machine readable form so it feeds into the European single access point envisaged in the Capital Markets Union Action Plan. In the press release on 28 November 2022 it was [announced](#) that the Council gave its final approval to the CSRD. The [final version](#) of the CSRD was adopted on 14 December 2022 and was published on 16 December 2022.

- **Who?** All large companies and all listed companies, including certain credit institutions and insurance undertakings, however excluding listed micro-enterprises.
- **When?** The CSRD is in effect as of 5 January 2023 and must be transposed into national laws 18 months later. The provisions of the CSRD will have to be applied in phases:
 - reporting in 2025 on the financial year 2024 for companies already subject to the NFRD;
 - reporting in 2026 on the financial year 2025 for large companies that are not currently subject to the NFRD;
 - reporting in 2027 on the financial year 2026 for listed SMEs (except micro-enterprises), small and non-complex credit institutions and captive insurance undertakings;
 - reporting in 2029 on the financial year 2028 for third-country undertakings with net turnover above 150 million in the EU if they have at least one subsidiary or branch in the EU exceeding certain thresholds.

European Single Access Point (ESAP) Regulation

- **What?** On 25 November 2021, a [legislative proposal](#) on the European Single Access Point (ESAP) Regulation was adopted (which proposal was corrected or amended by means of various [documents](#) after such date). The ESAP will provide for a central point for public financial and sustainability-related information about EU companies and EU investment products. Any natural or legal person may voluntarily submit to a collection body information (different from information that is already mandatorily provided through directives or regulations) being of relevance to financial services provided in the Union. The ESAP will also contain sustainability-related information published by companies, which will support the objectives of the European Green Deal. On 29 June 2022, the Council published a [press release](#) indicating that it has agreed its position on three proposals creating the ESAP.
- **Who?** The scope of the ESAP Regulation would capture



any natural or legal person that intends to make information available to ESAP.

- **When?** Such Council's position sets out the position of the Member States ahead of negotiations with the European Parliament. Market parties are encouraged to keep a close eye on developments in this respect in 2023.

CRR Implementing Regulation on ESG risk disclosure

- **What?** On 30 November 2022, the European Commission adopted an [Additional Implementing Regulation](#) which amends the implementing technical standards as laid out in the [Implementing Regulation \(EU\) 2021/637](#). The latter specifies uniform disclosure formats and associated instructions for the disclosures required under the Capital Requirements Regulation (CRR). The CRR was amended by [Regulation \(EU\) 2019/876](#), which imposed the obligation onto large institutions having issued securities which are admitted to trading on a regulated market of any Member State, to disclose information on ESG risks (including physical risks and transition risks). The Additional Implementing Regulation arranges additional uniform disclosure formats and associated instructions for the disclosures of ESG risks, in addition to the existing uniform disclosure formats and associated instructions.
- **Who?** Institutions, financial holding companies and mixed financial holding companies supervised under [CRD IV](#).
- **When?** The Additional Implementing Regulation was published on 19 December 2022 and has entered into force as of 8 January 2023. First disclosures on e.g. (parts of) the banking book taxonomy alignment ratio (BTAR) and the Green Asset Ratio (GAR) start in 2024.

RISKS FRAMEWORK

European resources

ECB Good practices ESG Risk Management

In November 2020, the ECB published the [ECB Guide](#) on climate-related and environmental (C&E) risks. ECB sets out its view that institutions should take a strategic, forward-looking and comprehensive approach to considering climate-related and environmental risks. In 2022 the ECB launched the thematic review, which involved conducting deep dives into institutions' climate-related and environmental risk strategies, as well as their governance and risk management frameworks and processes. The results were [published](#) in November 2022, showing that banks are still far from adequately managing climate and environmental risks.

The ECB has furthermore published a [compendium of good practices](#) to meet the supervisory expectations set out in the ECB Guide which are generally divided into three main sections: (i) business strategy, (ii) governance and risk appetite and (iii) risk management. The good practices originate from a wide range of significant institutions within the SSM and the observed use by institutions of tools and approaches to monitor and mitigate the impact of C&E risk drivers on credit, operational and market risk management.

In respect of the risk management and associated processes to monitor and mitigate C&E risks in the compendium, ECB has also mentioned its expectations of institutions, while addressing the good practices. In short, ECB expects institutions in respect of management of C&E risks:

- to conduct proper C&E due diligence, both at the inception of a client relationship and on an ongoing basis;
- to include C&E risks in all relevant stages of the credit-granting process and credit processing;
- to evaluate the extent to which the nature of the activities in which they are involved increases the risk of a negative financial impact arising from future reputational damage, liability and/or litigation;
- to adjust risk classification procedures in order to identify and evaluate, at least qualitatively, C&E risks;
- to monitor and manage credit risks in their portfolios, in particular through sectoral/geographic/single-name concentration analysis, including credit risk concentrations stemming from C&E risks, and using exposure limits or deleveraging strategies;
- to monitor on an ongoing basis the effect of C&E factors on their current market risk positions and future investments, and to develop stress tests that incorporate C&E risks;
- to consider how C&E events could have an adverse impact on business continuity and the extent to which the nature of their activities could increase reputational and/or liability risks;
- to ensure that their loan pricing frameworks are expected to reflect their credit risk appetite and business strategy with regard to C&E risks and that their loan pricing is expected to reflect the different costs driven by C&E risks;
- to consider C&E risks in their collateral valuations;
- to assess the impact of C&E risks on their capital adequacy from an economic and a normative perspective; and
- to adequately quantify the C&E risks that the institution is exposed to.

It is mentioned that the materiality assessment (as addressed in section 2 of the compendium) should be taken into account when addressing C&R risks, as this



provides the basis for determining which tools are required to monitor and mitigate C&E risks that are material or likely to be material.

Separate from the C&E risks, there is another chapter dedicated to the good practices for environmental risks other than climate-related risks, such as biodiversity loss, pollution and water stress.

Timing-wise, the ECB has [set](#) institution-specific deadlines for achieving full alignment with its expectations by the end of 2024 (which was mentioned in the [ECB speech](#) dated 8 July 2022, an [ECB article](#) on 7 September 2022 and the [ECB speech](#) on 22 September 2022). In 2023, the ECB expects banks to (i) adequately categorise C&E risks and conduct a full assessment of their impact on the banks' activities (by March 2023 ultimately) and (ii) have included C&E risks in their governance, strategy and risk management (ultimately by the end of 2023).

The contents of the good practices of ECB becomes relevant in 2023 and it is expected that DNB will also require Dutch banks to meet these requirements to align with the aforementioned 2024-goals.

EIOPA Discussion Paper Prudential Treatment ESG Risks

- **What?** On 5 December 2022, EIOPA has [published](#) a [discussion paper](#) on the prudential treatment of sustainability risks and seeks input from stakeholders on the presented approach. The report outlines a step-by-step approach to assess whether a dedicated prudential treatment of assets and activities associated with environmental or social objectives under Solvency II would be warranted. The focus points are: (i) assets and transition risk exposures (assessment of ways to assess how risks associated with less carbon-intensive economy transition potentially impact prudential risks), (ii) underwriting risk and climate change adaptation (assessment of the potential effect of climate-related adaptation measures on underwriting risks and related loss), and (iii) social risks and objectives (assessment of how social risks would translate to prudential risks and adequate treatment options re. governance, risk management, reporting and disclosure).
- **Who?** Insurers.
- **When?** Stakeholders can respond to the discussion paper until 5 March 2023.

EIOPA Climate change assessment in ORSA

- **What?** On 2 August 2022, EIOPA followed up on the [EIOPA's opinion](#) on supervision of the use of climate

change risk scenarios in ORSA (published in April 2021). The Opinion sets out supervisory expectations on the integration of the use of climate change scenarios by insurance undertakings in their Own Risk and Solvency Assessment ORSA. Following the public consultation of the Opinion, EIOPA decided to elaborate on application guidance, seeing the advantages of developing and providing optional guidance for materiality assessment in the context of climate change, climate change scenario design and specifications using concrete case studies. This also contributes to lowering implementation costs for insurance undertakings, in particular small- and mid-sized ones, and to enhancing the comparability of reported information. The [application guide](#) on running climate change materiality assessment and using climate change scenarios in ORSA was published on 2 August 2022.

- **Who?** Insurers and supervisory authorities (DNB).
- **When?** Ongoing.

FSB Roadmap

- **What?** During his [speech](#) 'Navigating climate-related financial risks' on 29 September 2022, the president of the Dutch Central Bank, Klaas Knot, discussed how can be navigated through climate-related risks. In this respect, he referred to the FSB Roadmap. The FSB Roadmap sets out a comprehensive and coordinated plan for identifying and addressing (the impact of) climate-related financial risks, including steps and indicative timeframes needed to do so. The FSB published an [FSB Roadmap for Addressing Financial Risks from Climate Change: 2022 progress report](#). It can be derived from the progress report that besides the continuous need for strong international coordination on this topic, understanding of implications of other sustainability topics, such as biodiversity loss, is also deepening.
- **Who?** All financial market parties.
- **When?** The FSB Roadmap remains relevant over the course of 2023.

National resources

DNB Consultation Guide on ESG risks control

- **What?** On 24 October 2022, DNB published the [consultation](#) of the "Guide to the management of climate and environmental risks". DNB expects financial institutions to understand all material risks and to manage them appropriately. This guide consists of cross-sector points for attention for the integrated management of climate and environmental risks. The

set-up of the guide provides (i) the legislative framework for the management of climate and environmental risks, (ii) a more detailed explanation of the various risks, and (iii) focal points for the management of the institutions in respect of business model and strategy, governance and information provision. In addition, various sector-specific good practices are provided, as examples of a possible interpretation of a selection of the points for attention.

- **Who?** Investment firms, investment institutions, electronic money and payment institutions, insurers and pension funds.
- **When?** The consultation ran until 18 October 2022. The intention is to publish the definitive Guide with feedback statement on DNB's website in early 2023.

DNB ESG risk management insurers and pension funds

- **What?** DNB performed an investigation on-site at insurers and pension funds specifically targeting the integration of ESG in their investment decision-making policy, strategy, insurance-related risks and risk management cycle. The results of these on-site investigations were published by DNB on its website (for [insurers](#) and for [pension funds](#)). For 2023, amongst others, reference is made to the Guide on management of ESG risks currently under consultation (please refer to the header '*DNB Consultation Guide on ESG risks control*' in this Outlook) and as a follow-up, self-assessments will be initiated at various insurers in the Netherlands in order to assess the management of ESG risks by these market parties.
- **Who?** Insurers and pension funds.
- **When?** The investigations have been completed, however, the outcome is likely to result in more specific focus of DNB on the risk management of such ESG risks by insurers and pension funds in 2023. This is also in line with the other guidance provided by DNB regarding its sustainability-focus in its supervising activities in 2023.

DNB Good Practices and Q&A on risk management

- **What?** DNB has published the [DNB Good Practices](#) relating to the integration of climate related and environmental risks as part of the risk management of investment firms and managers of UCITS and AIFs (the '*investment market parties*' for the purpose of this topic). The document addresses how climate-related and environmental risks can translate into conventional financial risks, such as market and operational risk, and what applicable laws and regulations are relevant in this respect.

- **Who?** Investment firms and managers of UCITS and AIFs.
- **When?** Even though these Good Practices were published in 2022, these remain relevant for market parties in respect of the implementation of climate and environmental risks in their businesses and internal governance.

MinFin Response to banks' ESG risk management

- **What?** On 29 November 2022, the ministry of Finance provided [answers](#) to questions raised by the Parliament in respect of the sustainability risk management applied by banks (referring to the [results](#) of the thematic review by ECB on climate-related and environmental risks). The questions raised and answers provided relate to items such as (i) identification and management of sustainability risks and the fact that banks in general do not sufficiently comply, (ii) the more firm implementation of integration of sustainability risks within the supervisory frameworks applicable to financial institutions (for example the supervisory framework applicable to banks), (iii) the insight by DNB on the level of sustainability risk management by Dutch banks, and (iv) the requirement of setting intermediate goals to achieve the climate commitments. In respect of the latter, the Minister indicated that it is expected from financial institutions that they provide sufficient insight in their action plans as to how their measures lead to achieving the CO₂-reduction targets in practice. In that context, it is also expected that financial institutions establish quantitative reduction targets for 2050 and 2030 (including intermediate goals) to achieve this reduction.
- **Who?** Banks.
- **When?** It is expected in 2023 that DNB will apply an extra focus on the integration and management of sustainability risks. Market parties are encouraged to keep track of these developments.

MinFin Response to Sustainable Financing Agenda

- **What?** On 30 November 2022, the Ministry of Finance provides [answers](#) to questions by the Parliament in respect of the Sustainable Financing Agenda (*beleidsagenda voor duurzame financiering*). Aside from more general topics on sustainability, in respect of 2023, the Minister indicated, amongst others, that she will determine whether normative actions will be applied if it is concluded that no significant (of sufficient) results have been achieved in order to meet the climate goals to which the Netherlands has committed itself. In respect of market parties that have committed themselves to the climate goals, it is expected of these



parties that they act in compliance with such targets and that they prepare CO₂-reportings and action plans (including emission reductions targets for 2030) to the benefit of their lenders and investors by the end of the year 2022. An interim progress assessment of those action plans is prepared by KPMG to the benefit of the Ministry and is expected to be completed early 2023. Such interim progress assessment will reflect the level and quality of the committed institutions on an aggregated level and might form the basis of the introduction of possible next steps.

- **Who?** All financial market parties that have committed themselves to the climate goals of 2030.
- **When?** Results of the assessment by the Ministry of the level of compliance of the action plans to the climate goals (and need for additional requirements following from such results) are expected in early/mid 2023.

SUPERVISORS & SUSTAINABILITY

European supervisors

ECB European Climate Law and ECB supervision

- **What?** In its [speech](#) dated 1 December 2022, the ECB confirmed that currently it does not directly apply the European Climate Law as this does not directly relate to its tasks as a banking supervisor nor does it relate to prudential supervision. As a consequence, ECB does not impose an obligation on banks to take the necessary measures to contribute to the achievement of the objectives of the European Climate Law, but due to the fact that the ECB needs to integrate environmental obligations into their policies under Article 11 TFEU and the European Climate Law will have prudential implications, the European Climate Law and its consequences feature in ECB's supervisory assessments, interactions with the banks and measures it takes.
- **Who?** Banks.
- **When?** The ratio of the European Climate Law is likely to be (further) embedded in the supervision on banks in 2023.

ESAs Joint Committee Work Programme 2023

- **What?** On 5 September 2022, the Joint Committee of ESAs published its [2023 Work Programme](#). In the areas of the European Green Deal and the Renewed Sustainable Finance strategy, the ESAs will continue to focus on mandates related to the introduction of targeted revisions and extensions of the technical

standards under the SFDR and on Q&As and other Level 3-tools. The ESAs will also carry out activities on climate risk stress testing, including running a one-off system wide climate risk stress test and developing Guidelines for supervisors on ESG stress testing. Furthermore, the ESAs will continue to coordinate and exchange on disclosure standards for non-financial information in the context of the NFRD, and of its successor CSRD, once in force. The SFDR gives an optional mandate to the ESAs to work on one optional Implementing Technical Standard (ITS) on marketing communications. The ESAs will monitor the application of the SFDR to determine whether that optional ITS is required. The ESAs are required pursuant to Article 18 SFDR to provide an annual report on the best practices regarding the entity- and product-level disclosures on PAIs and to make recommendations regarding voluntary reporting standards. The delivery of such report may be affected by the delay of application of the Level 2-legislation regarding the SFDR.

- **Who?** Through the Joint Committee, the ESAs coordinate their activities with a view to ensuring consistency of EU rules and their supervision by local supervisors. Given the areas of work of the ESAs and the nature of the subjects mentioned, the 2023 Work Programme is relevant to a large part of the Dutch financial sector.
- **When?** ESAs Joint Committee Work Programme describes the focus areas of the ESAs in 2023.

ESAs Call for Evidence on greenwashing

- **What?** On 16 May 2022, the European Commission [issued](#) a [Call for Advice](#) to the ESAs on several aspects related to greenwashing and its related risks as well as the implementation, supervision and enforcement of sustainable finance policies aimed at preventing greenwashing. On 12 November 2022, the ESAs have [published](#) their [Call for Evidence](#) on greenwashing. The Call for Evidence was issued in the context of the [mandates](#) received from the European Commission in May 2022. The Call for Evidence was also mentioned on the [website](#) of DNB. The ESAs aim to collect: (i) the views from various stakeholders on how to understand (the core characteristics of) greenwashing and what the main drivers of greenwashing might be; (ii) examples of potential greenwashing practices across the EU financial sector relevant to various segments of the sustainable investment value chain and of the product lifecycle, and (iii) any available data to help the ESAs gain a concrete sense of the scale of greenwashing and identify areas of high greenwashing risks.
- **Who?** Financial institutions, investors, NGO's and academic professionals could participate in the Call for Evidence.
- **When?** Responses to the Call for Evidence are to be



submitted by 10 January 2023. Contributions will feed into the ESAs' findings for its progress report expected in May 2023, and final report is likely expected in May 2024.

EBA Integration of ESG risks of investment firms

- **What?** In June 2021, the EBA published a [Report on the management and supervision of ESG risks for credit institutions and investment firms](#), reflecting common definitions of ESG risks and elaborates on the arrangements, processes, mechanisms and strategies to be implemented by credit institutions and investment firms to identify, assess and manage ESG risks. On 24 October 2022, EBA [published](#) a complementary [report](#) on how to incorporate ESG risks in the supervision of investment firms. The Report also provides an initial assessment of how ESG factors and ESG risks could be included in the supervisory assessment of investment firms. The complementary report highlights the need to embed ESG considerations in a proportionate manner where the ESG factors and risks could affect the risk profile of the investment firm. This integration should be carried out taking into account not only an investment firm's business model, size, internal organisation and the nature, scale, and complexity of its services and activities, but also the materiality of its exposure to ESG risks. In the short-term, supervisory authorities are directed to focus on the integration of ESG risks in the investment firms' strategy, as part of the business model analysis, and in their internal governance arrangements and, in terms of risk management, to assess how investment firms identify, assess, and manage their exposures subject to ESG risks. Subsequently, the supervisory assessment could provide coverage of risks to capital and liquidity risk. Even though the report is directed to supervisory authorities, its contents is useful to investment firms to determine what requirements it will need to comply with.
- **Who?** Investment firms.
- **When?** It may be the case that following this complementary report, DNB increases its focus to recognition and the implementation of ESG risks in the governance structure of investment firms in the Netherlands.

EBA Roadmap on sustainable finance

- **What?** On 13 December 2022, EBA [published](#) its roadmap outlining the objectives and timeline for delivering mandates and tasks in the area of sustainable finance and ESG risks. The roadmap explains the EBA's

sequenced and comprehensive approach over the next three years to integrate ESG risks considerations in the banking framework and support the EU's efforts to achieve the transition to a more sustainable economy. These mandates and tasks cover the three pillars of the banking framework, i.e., market discipline, supervision and prudential requirements, as well as other areas related to sustainable finance and the assessment and monitoring of ESG risks.

- **Who?** Banks.
- **When?** Ongoing.

ESMA Annual Work Programme 2023

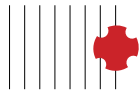
- **What?** On 10 October 2022, ESMA has [published](#) its [Annual Work Programme 2023](#) on its website. Part of this is the aim to develop remaining technical standards under the SFDR and work to better understand and fight against greenwashing. This fits within the ESMA [Strategy](#) for 2023-2028.
- **Who?** Investment fund managers and investment firms.
- **When?** Ongoing in 2023.

EIOPA Annual Work Programme 2023

- **What?** EIOPA [published](#) its [Single Programming Document, including the Annual Work Programme 2023](#). EIOPA has indicated the following key sustainability-related topics to be focus points for 2023, which is consistent with its [strategy for 2023-2026](#) and its [sustainable finance activities 2022-2024](#):
 - Integrating ESG risks in the prudential frameworks on insurers and pension funds; and
 - Initiating a one-off coordinated climate change stress test.
- **Who?** Insurers and pension funds.
- **When?** Ongoing.

EIOPA Natural catastrophe insurance protection gap

- **What?** On 5 December 2022, EIOPA [released](#) its dashboard (which was first released by EIOPA in 2020 as a pilot version, please refer to the [Outlook 2022](#) in this respect) depicting the insurance protection gap for natural catastrophes across Europe. This tool is the first dashboard which presents the drivers of a climate-related insurance protection gap and enables evidence-based decision-making on measures to improve society's resilience against natural catastrophes. It should also help to increase the awareness of the protection gap and promote a science-



based approach to protection gap management and policy making. This approach will help in identifying regions at risk, protection gap risk drivers as well as defining proactive prevention measures.

- **Who?** Insurers.
- **When?** The dashboard will be updated regularly and remains relevant to insurers throughout 2023.

National supervisors

AFM Trendzicht 2023

- **What?** On 3 November 2022, The AFM published its [Trendzicht 2023](#). Aside from the identified trends in the financial market in the Netherlands, the AFM addresses the improvement of sustainability levels as focus point. This includes the increased role of physical and transitional climate risks impacting the financial sector and the level of disclosure of information on sustainability risks and -performances by market parties and financial products. Also, the AFM has addressed the developments on the gas futures market (*gastermijnmarkt*) and discussed how to make impact through sustainable investments and sustainable finance (for example by engagement or capital allocation).
- **Who?** All financial market parties under supervision of the AFM.
- **When?** Ongoing. It is noted that the AFM will likely publish its Agenda 2023 (including the concrete implications of the trends and risks for the supervision by the AFM) in early 2023.

AFM Focus on improvement ESG transparency

- **What?** In light of the SFDR Delegated Regulation, the AFM has assessed the implementation of the SFDR requirements that have been in effect prior to 1 January 2023. On 10 November 2022, the outcome of such assessment is [published](#) in three reports, each addressing a specific sector within the Dutch financial markets: (a) asset managers, (b) banks, investment firms and insurers and (c) pension funds and premium pension funds (PPIs). The general takeaways from the reports are:
 - sustainability information must be made more understandable and concrete;
 - 93% of participants have a pension scheme that promotes sustainable characteristics;
 - managers of investment funds have become more cautious when classifying a fund as 'sustainable';
 - the sector must prepare for more specific rules about sustainability disclosures; and
 - transparency laws for sustainable finance should

prevent greenwashing.

- **Who?** Financial market participants and financial advisors as defined in the SFDR, more specifically asset managers, banks, insurers, investment firms and pensions funds or PPIs.
- **When?** In 2023, the AFM will carry out another review of compliance with the SFDR, taxonomy and other sustainability-related requirements. This is announced in the aforementioned reports. In addition, on its [website](#), the AFM has indicated on 9 September 2022 already that it will perform a follow-up investigation on the asset management practices in the light of the SFDR and TR obligations.

SFP Vision, strategy and approach 2023

- **What?** On 29 November 2022, DNB has [published](#) the [vision, strategy and approach of the Platform on Sustainable Finance Platform \(SFP\)](#), a partnership between the Dutch financial sector, government and supervisory authorities to promote sustainable finance in the Netherlands. The strategy of the SFP is to connect key parties in the field of sustainable finance from different sectors, to encourage knowledge acquisition in open dialogue, to act as a galvanising force for action and to represent and disseminate actions and recommendations for the financial sector, government, supervisory authorities and other relevant parties, making clear what the financial sector can and cannot do to promote sustainable finance.
- **Who?** All financial market parties.
- **When?** Ongoing.

DNB Supervision Strategy 2021-2024

- **What?** DNB published its [supervisory strategy for 2021-2024](#) in a [news release](#) on 24 November 2020. This document reflects the manner in which DNB gives substance to its supervision. Over the past recent years, DNB has investigated how climate change, the energy transition and loss of biodiversity can affect financial institutions. The investigation was specifically focussed on the impact for banks and insurers. DNB indicates that the next step for institutions is to assess the potential impact and integrate such impact into their policy and risk management procedures. DNB pays attention to this in its supervision of institutions.
- **Who?** All financial companies that are (also) supervised by DNB, such as banks, pension funds, trust offices and payment services providers.
- **When?** The supervisory focus points remain relevant for DNB's supervision in 2023.

OTHER

Gender Balance Directive: gender equality on corporate boards

- **What?** On 7 December 2022, the "[Gender Balance Directive](#)" was published. The Directive aims to improve the gender balance among directors of listed companies and related measures and introduces requirements as a result of which listed companies are subject to either of the following objectives, to be reached by 30 June 2026:
 - members of the underrepresented sex hold at least 40% of non-executive director positions;
 - members of the underrepresented sex hold at least 3% of all director positions, including both executive and non-executive directors.

Listed companies that do not meet such thresholds shall adjust the process for selecting candidates for appointment or election to director positions. The candidates shall be selected through a comparative assessment of qualifications of each candidate by means of clear, neutrally formulated and unambiguous criteria. Such criteria shall be applied in a non-discriminatory manner throughout the entire selection process.
- **Who?** Listed companies. Micro, small and medium-sized enterprises (SMEs) are excluded from the scope of the Directive.
- **When?** The Directive was published on 7 December 2022 and entered into force 27 December 2022. The Directive shall expire on 31 December 2038. Member States shall adopt and publish, by 28 December 2024 the laws, regulations and administrative provisions necessary to comply with this Directive. The thresholds expressed in the Directive shall be met by the listed companies by 30 June 2026.

EC Report on consultation re. functioning of the ESG ratings

- **What?** On 4 April 2022, the European Commission launched a [consultation](#) on ESG ratings and sustainability factors in credit ratings. The consultation period ended on 10 June 2022. ESG ratings generally assess the impact of environmental, social, and governance factors on a company and a company's impact on the outside world. Credit ratings assess the creditworthiness of companies or financial instruments by providing an opinion on the risk of default of a company. On 3 August 2022, the European Commission has issued a [summary report](#) and provides the overview of the results of the targeted consultation. This consultation helped the European Commission gain


a better insight on the functioning of the market for ESG ratings, as well as to better understand how credit rating agencies (CRAs) incorporate ESG risks in their creditworthiness assessment and to further evaluate whether a possible policy initiative on ESG ratings and on sustainability factors in credit ratings is needed. The couple of takeaways from the Report are that:

- a legislative intervention is necessary and should focus on improving the transparency on the methodology, potential conflicts of interest and reliability and comparability of ratings;
- ESG rating providers should be subject to minimum disclosure requirements in relation to their methodologies, and should be using standardised templates;
- information about the extent to which credit rating agencies' methodologies or the rating process incorporate sustainability factors is not sufficiently well disclosed, even though the level of disclosure differs depending on individual credit rating agencies; and
- market trends and ESMA guidance is not sufficient to enable users of credit ratings to determine how ESG factors influence credit ratings.
- **Who?** Credit rating agencies.
- **When?** The results of the targeted consultation have been processed and will be reflected accordingly in the preparation of any further Commission's initiative in this regard. A summary of all consultation activities will be included in the impact assessment of any further Commission's initiative.

EU Emissions Trading Scheme (ETS)

- **What?** On 14 July 2021, the European Commission adopted various legislative proposals setting out how it intends to achieve the climate neutrality in the EU by 2050, which proposals also included the revision of the EU Emissions Trading Scheme (ETS). The European Commission's [proposal](#) to amend Directive 2003/87/EC concerns the ongoing [phase 4 of the ETS \(2021-2030\)](#). The revised EU ETS Directive provides predictable, robust and fair rules to address the risk of carbon leakage. It consists of five main elements:
 - a reduced cap and a more ambitious linear reduction factor for GHG emissions;
 - revised rules for free allocation of allowances and the market stability reserve;
 - extension of the ETS to maritime transport;
 - a separate new ETS for buildings and road transport; and
 - increase of the Innovation and Modernisation Funds and new rules on the use of ETS revenues.

The proposal would extend the EU ETS to cover CO₂ emissions from maritime transport, specifically from large ships above 5000 gross tonnage. The



requirement to surrender allowances would be gradually phased-in during 2023-2025.

- **Who?** This development is relevant to parties that hold a position in European emission allowances or hold derivative positions on such emission allowances.
- **When?** In the Council, environment ministers held a first exchange on the 'Fit for 55' package at an informal meeting on 20 July 2021. The Council adopted its general approach on 29 June 2022, maintaining the overall ambition proposed by the European Commission. We would expect further developments on this topic in 2023.

EBA Call for advice on green mortgages

- **What?** The European Commission [issued](#) a Call for Advice from the European Banking Authority (EBA) on green retail lending. The advice from the EBA should (i) provide an overview of current market practices and the prevalence of green loans in the banking market, (ii) propose and consider the merits of an EU definition of green loans and mortgages, and (iii) consider measures to encourage the uptake or access to green finance by retail and SME borrowers. The EBA's advice will allow the European Commission to consider measures to encourage the development of the green loans and mortgages market.
- **Who?** Banks, brokers and other financial market parties providing such green loans and mortgages.
- **When?** The Call for Advice is requested to be delivered until 29 December 2023.

ESMA Guidelines on MiFID II suitability requirements

- **What?** ESMA has [published](#) its final [guidelines](#) on certain aspects of the MiFID II suitability requirements. The final report and Guidelines build upon the text of the 2018 ESMA guidelines, which have now been reviewed following the adoption by the European Commission of the changes to the MiFID II Delegated Regulation to integrate sustainability factors, risk and preferences into certain organisational requirements and operating conditions for investment firms. The main amendments introduced to the MiFID II Delegated Regulation and reflected in the Guidelines on the topic of sustainability are:
 - *Information to clients on the sustainability preferences:* Investment firms will need to help clients understand the concept of sustainability preferences and explain the difference between products with and without sustainability features in a clear manner and avoiding technical language;
 - *Collection of information from clients on sustainability*

preferences: Investment firms will need to collect information from clients on their preferences in relation to the different types of sustainable investment products and to what extent they want to invest in these products;

- *Assessment of sustainability preferences:* Once the investment firm has identified a range of suitable products for the client, in accordance with the criteria of knowledge and experience, financial situation and other investment objectives, the investment firm shall identify the product(s) that fulfil the client's sustainability preferences; and
- *Organisational requirements:* Investment firms will need to give staff appropriate training on sustainability topics and keep appropriate records of the sustainability preferences of the client (if any) and of any updates of these preferences.
- **Who?** Investment firms.
- **When?** The publication of the translations will trigger a two-month period during which national competent authorities must notify ESMA whether they comply or intend to comply with the guidelines. The guidelines will apply six months after the date of the publication on ESMA's website in all EU official languages.

EIOPA Guidance IDD customer's sustainability preferences

- **What?** On 20 July 2022, EIOPA published [guidance](#) on the integration of customer sustainability preferences in the suitability assessment under the Insurance Distribution Directive (IDD). To facilitate the implementation of recent changes, the Guidelines on integrating customer sustainability preferences under the IDD was consulted in early 2022. The guidelines contain tools to better understand customers' sustainability preferences and investment choices and to arrive at a choice for a product that meets customer sustainability preferences and the SFDR. In addition, the guidelines address the training and competence expected of insurance intermediaries and insurers advising on sustainable finance insurance-based investment products.
- **Who?** Insurers, insofar as they fall within the scope of the IDD.
- **When?** The Guidelines apply from 20 July 2022. From 1 January 2023, it must be assessed in accordance with the guidelines whether an Insurance-Based Investment Product (IBIP) is in line with the customer's sustainability preferences.

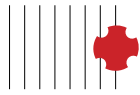


PSF Introduction of new social taxonomy targets

- **What?** The Platform on Sustainable Finance (PSF) indicated during its first [Working Conference](#) in 2022 that next year it aims to initiate new initiatives focussing more on the social angle of ESG, such as social risks in respect of investments, 'just transition' in respect of liabilities and 'blended finance'.
- **Who?** All financial market parties.
- **When?** This is likely to further develop into more concrete guidance for market parties during 2023.

BNC-Fiche Announcement Youth Action Plan EU 2022-2027

- **What?** On 11 November 2022, the [BNC-fiche](#) was presented addressing the presented strategy of the European Commission and European Service for External Participation (ESEP) to incentivise the meaningful participation of youth in the external participation of the EU with sustainable development, equality and peace as its goals. This is also linked to the European Gender Action Plan (GAP) III.
- **Who?** The engagement of the Netherlands in this respect is relevant for all market parties involved in the Dutch financial market.
- **When?** These developments may lead to further guidance and more specific requirements regarding social and governance systems in 2023.



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