FINNIUS

Outlook 2021

Finnius Outlook 2021

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Introduction outlook 2021

2020 in retrospect

From a financial perspective, 2020 began like any other year. Stock markets were breaking records. However, this quickly changed with the outbreak of the COVID-19 pandemic. Stock prices dropped rapidly and dramatically. Supervisory authorities DNB and the AFM both drew immediate attention to the consequences of this crisis. At the end of February, they sent an e-mail to various financial market parties who play an important role in payment transactions and securities transactions in the Netherlands asking them, briefly put, whether their business continuity plan provided for the various realistic risks that the COVID-19 crisis could trigger.

The pandemic dominated the news in the months that followed. It had direct consequences for financial market parties as well. DNB, following the footsteps of various European supervisory authorities, called on banks, insurers, investment firms, and investment funds to temporarily refrain from paying out dividends and repurchasing own shares, and urged caution when giving consideration to paying out variable remuneration. Minister Hoekstra – temporarily, for the time being until 1 March 2021 – lowered the maximum interest fee from 14% to 10% to enable consumers to be able to borrow at reasonable rates during the COVID-19 era. The AFM temporarily suspended various investigations and requests for information, some of which were ongoing, with one exception: compliance with the Anti-Money Laundering and Anti-Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme, Wwft*) and the Sanctions Act. Following the example of EBA, the AFM called on financial undertakings to continue to closely monitor proceedings against money laundering and terrorist financing during the COVID-19 crisis and to draw attention to new forms of money laundering. This also illustrates regulators' and supervisory authorities' unwavering focus on compliance with integrity rules.

Various other issues that are very relevant for the financial sector have fallen somewhat by the wayside thanks to the COVID-19 crisis. Examples of these issues include persistently low interest rates, the housing market shortage, pensions and potential pension cuts, digitisation and sustainability. These are issues that we will no doubt see again in 2021. The COVID-19 crisis also drew nearly all of the financial markets' attention away from a development on which they have frequently been laser-focused in recent years: Brexit. The European Union and the United Kingdom negotiated – at a safe distance – throughout the year, missing deadline after deadline, and the negotiations had long been thought of as a lost cause until an eleventh-hour deal was struck on 24 December. That noted, the deal does not differ much from a hard Brexit as far as the financial sector is concerned.

Outlook 2021

2021 will be the year of sustainability rules for the financial sector. With the Green Deal, the European Union's has set an ambitious course for sustainability and the financial sector is a key element of that master plan. Compliance with these sustainability rules will impose substantial demands on market parties in the coming years.

We will be kicking off 2021 with the entry into force of the Sustainable Finance Disclosure Regulation (SFDR) on 10 March 2021. From that date forward, various market parties, and asset managers in particular, will be obliged to provide sustainability information about the products they offer, although much remains unclear and the Level 2 regulations will not enter into force until later. We are curious about what this will entail. Will investors and market parties be thinking more in terms of impact than return on investment? And will return on investment follow impact?

Within the sustainability rules, we can also see the bolstering of another trend in financial supervision: more and more European supervisory rules are being laid down in regulations, which gives them direct effect in all Member States.

This will also be a busy year in terms of integrity. The Netherlands will be evaluated by the Financial Action Task Force and intends – partly in that context – to play a pioneering role in the fight against money laundering and terrorist financing. We expect this intention to be expressed in 2021 with the implementation of the Anti-money Laundering Action Plan Act (*Wet plan van aanpak witwassen*).

Also relevant, of course, is how the global economy will recover in 2021 after the COVID-19 crisis and how the consequences of Brexit will play out over the course of time. That is something that is quite difficult to predict.

About the Finnius Outlook 2021

In the sixth edition of the Finnius Outlook, we continue our tradition of providing you with our expectations relating to

financial supervision law in the coming year. This Outlook is based on important developments and proposals that were already known as we rang in the new year. As always, we present you with both new legislation and the areas on which the supervisory authorities and legislatures that affect your institution will be focusing. This year, we are doing things a little differently. We identify each new development by indicating 'what' the development entails, the parties 'who' it is relevant for and 'when' you, as an institution, will be affected. More detailed information is provided for the developments which strike us as having the greatest potential impact. This provides you at a glance with both an overview of all developments and which areas are likely to be a focus of attention in 2021. In addition to the sections devoted to the various institutions, this Outlook contains a cross-sectoral section entitled General Developments, as well as cross-sector specials relating to Integrity and Sustainability. We hope that this Outlook will again provide you with a basic foundation as we move into 2021.

What are you interested in?

Go directly to a specific section of this Outlook by clicking on one of the links above.

GENERAL DEVELOPMENTS

In this section we address developments that do not fall under any specific sector. Of the cross-sector developments, only the overarching aspects are covered here. Any sector-specific aspects of these developments are covered in the individual sector sections of this Outlook. Also note that the developments in the areas of Integrity Legislation (Money Laundering and Terrorist Financing (Prevention) Act) and Sustainability are addressed in separate sections (specials) of this Outlook.

SUPERVISION, ENFORCEMENT & PROCEDURES

AFM Trend Monitor 2021

On 3 November 2020, the AFM presented its vision of the trends in the supervision of the financial markets for 2021: Trend Monitor 2021. It identifies important trends and associated risks in the financial sector. Of course, as part of this the AFM devotes a great deal of attention to the coronavirus pandemic. Trend Monitor 2021 reflects the AFM's priorities in supervision. The concrete implication of the trends and risks for the AFM's supervisory activities are set out in detail in its Agenda 2021, which the AFM will publish in early 2021.

Before the AFM addresses the trends it sees, it first reflects on the impact of the coronavirus. The pandemic has, in the AFM's view, not only set back any potential return to higher interest rates by a few years, but also seems to have accelerated the digitisation trend (by putting more distance in the processes of working and consumption), and for governmental institutions presents opportunities to make new sustainability arrangements with the sectors that have been hit by the crisis. The AFM goes on to assert that in the long term, we need to be taking an increased risk of new epidemics into account due to the increasing intensity of our travel habits and because people and animals are coming to live closer and closer together. This, according to the AFM, is giving new impetus to the idea that the financial system has to be more resilient, even if that comes at the cost of other goals to be strived for.

In Trend Monitor 2021, the AFM identifies the following five trends:

- **Macro-economic developments**: the AFM observes that as a result of the coronavirus pandemic the economy is going through a period of unprecedented recession coupled with fast-rising unemployment, and understands that this crisis is putting the financial resilience of not only households but financial institutions to the test. In combination with the impact of persistently low interest rates, this economic climate is increasing the pressure on the profitability and solidity of financial institutions, which in turn brings a risk that these institutions will begin acting less in the customer's interest and more in their own. Meanwhile, vast numbers of households are facing a sudden drop in income, which can lead to payment problems. The AFM specifically identifies "ZZP" workers (freelancers) and employees with flexible contracts as particularly vulnerable groups. Lastly, persistently low interest rates are making investors and financial institutions alike increasingly inclined to take more risks in the search for yield.
- **Geopolitical developments**: here the AFM notes the possibility of a hard Brexit as a risk to stability that continues to cast a pall over the financial markets. At the global level, international partnerships are under increasing pressure, and this is beginning to express itself in protracted trade wars.
- **Developments in legislation and regulations**: firstly, the AFM points out that as a result of the pensions accord established in 2020, there are no more 'guaranteed claims', and pensions are more directly dependent on investment results. secondly, the AFM notes that new policies in digitisation (specifically, the Digital Finance Package) and sustainability (specifically, the EU Action Plan for Financing Sustainable Growth) figure prominently in the European legislative agenda.
- **Digitisation**: within the financial sector, the AFM sees growth in the availability and use of digital data. The coupling of this data to new tech applications such as AI is creating new earning models. The legislature's policy-based stimulus towards 'open banking', and in the future towards 'open finance', is only contributing to this trend, according to the AFM. And it is driving more and more newcomers, including players in the 'big tech' industry, to make forays into the financial sector. Further, the AFM sees a worldwide trend of both established players and new parties investing in blockchain technology in a search for ever-smarter and more efficient ways of handling transactions and data storage.
- **Transition to a sustainable economy and society**: the last trend identified by the AFM is that the market for sustainable financial products and investments is growing. According to the AFM, the biggest challenge is the availability and quality of information on sustainability risks and performances. The AFM expects the upcoming new European legislation in this area to improve the reliability and comparability of this kind of information.

In view of these trends, the AFM identifies three themes for financial supervision in 2021: responsible mortgage lending, competition between exchanges and trading platforms within a single European capital market, and the impact of data applications on the structure of the financial market. These themes seem set to be central to the AFM's supervisory activities in 2021, although the AFM is quick to point out that this will not come at the cost of attention to the way in which institutions are meeting their obligations under the Wwft. Additional attention to these themes is given in the specific sections of this Outlook.

DNB Supervisory Strategy 2021-2024

- ***What?*** On 24 November 2020 DNB published its updated Supervisory Strategy 2021-2024. In this document, DNB sets the course for supervision in the coming years. The objective is to inform financial

institutions about the aim of supervision and thus to function as a point on the horizon. The Supervisory Strategy 2021-2024 provides insight into DNB's risk-based approach to supervision and elaborates on the three key objectives in the previous Supervisory Strategy (2017). The three key objectives are: i) responding to technological innovation, ii) focusing on sustainability and future-orientedness, and iii) clamping down on financial and economic crime. DNB draws extra attention to four structural challenges whose impact only gradually becomes visible but which require strategic-level responses from financial institutions. These four challenges are (i) changing business models, (ii) increasing the sustainability of the economy, (ii) long-term low interest rates, and (iv) changing laws and regulations. The Supervisory Strategy 2021-2024 is given additional attention in the specific sections of this Outlook.

- ***Who?*** The Supervisory Strategy 2021-2024 is relevant for financial institutions that are under the supervision of DNB.
- ***When?*** The Supervisory Strategy 2021-2024 describes the course for supervision which DNB has set for the next four years.

Updated DNB Supervisory Strategy

- ***What?*** In December 2020, DNB published a document containing a summary of its updated supervisory strategy as of 1 January 2021. With its updated strategy, DNB, even more so than before, seeks to utilise the available supervisory capacity wherever the most significant prudential and integrity risks are observed. The greater the negative impact of these risks on confidence, the more intense the supervision must be. The updated supervisory strategy is also, even more so than before, data-driven and aimed at greater uniformity in supervision, according to DNB. In outline, the supervisory strategy for planned supervision (as opposed to 'unplanned supervision', which includes the imposition of sanctions) is as follows:
  - Prior to carrying out the risk analysis, institutions will be assigned to an impact class on a yearly basis. Each impact class has its own level of intensity in terms of supervision. The impact classes are a translation of the Supervisory Statement on Risk Appetite that will be drawn up. At the heart of this is that the purpose of supervision is to mitigate the risk and impact of a failing institution.
  - The basic programme constitutes the starting level of supervision and is always performed for institutions in the 'basic' impact classes (I1, I2, I3). The purpose of the basic programme is to identify and establish the risk profile of an institution.
  - The risk-based programme comprises the activities aimed at 'intensification' and 'mitigation'. Intensification is aimed at further exploring the risks identified in the basic programme. Mitigation is aimed at bringing an institution's risk scores that are too high back within the boundaries of the supervised risk appetite.
- ***Who?*** DNB's updated supervisory strategy is relevant to all financial undertakings under DNB supervision.
- ***When?*** Ongoing, from 1 January 2021.

Updating of AFM and DNB enforcement policy

On 2 November 2020, the AFM and DNB published their updated joint enforcement policy. The previous enforcement policy dated from 2008. The most significant changes in the updated enforcement policy are, according to the AFM and DNB:

- expansion of the description of the regular supervision by the AFM and DNB, including the interconnections with European-level supervision;
- a clearer distinction between the AFM and DNB's basic assumptions in enforcement on the one hand and the factors that play a role in the decision to employ enforcement instruments in specific cases;
- a brief addition on the choice between informal and formal measures and the penalisation of institutions and policymakers actually involved in misconduct; and
- the addition of an informative paragraph on disclosure of administrative sanctions, this due to the expansion of the disclosure regime in several acts of supervisory legislation.

Alongside the updated enforcement policy itself, the AFM and DNB also published a feedback statement on their respective websites. In this statement, the AFM and DNB reply to the responses they received following the consultative discussions of the new enforcement policy (held earlier in 2020). One of the responses called attention to the continuing lack of an official avenue for settlement or similar alternative form of resolution. In the feedback statement, the AFM and DNB indicated that exploring possible official options for settlement is (once again) something the AFM is focusing on, but that at present this subject does not lend itself to being codified in the enforcement policy because the enforcement policy is itself a codification of the currently existing and proven practice of supervision.

The enforcement policy qualifies as a policy rule within the definition of the General Administrative Law Act (*Algemene wet bestuursrecht*). This means that in the practice of enforcement, the AFM and DNB must act in accordance with the enforcement policy unless this would have a disproportionately negative impact on one or more parties involved due to particular circumstances of the specific case.

In last year's Outlook, we wrote that whereas in previous years the trend seemed to be that in the violations of norms that they observed, DNB and the AFM more often sufficed with informal enforcement measures such as norm discussion sessions and warning letters, that trend seems to have been reversed. We saw the evidence of this in 2020. DNB and the AFM have focused fully on the formal enforcement of anti-money laundering and sanction laws as set out in legislation such as the Financial Supervision Act (*Wet op het financieel toezicht*, Wft), the Money Laundering and Terrorist Financing (Prevention) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*, Wwft), the Supervision of Trust Offices Act 2018 (*Wet toezicht trustkantoren 2018*, Wtt 2018) and the Sanctions Act 1977 (*Sanctiewet 1977*). Along with advising on these rules and brainstorming on and answering strategic questions, we saw our involvement in objection and appeal proceedings steadily increasing.

Likewise, we also expect for 2021 that the AFM and DNB will, with the updated enforcement policy in hand, be imposing formal enforcement measures, and in particular instructions, orders subject to penalties, and fines, on supervised institutions more often. One particular aspect of attention is the disclosure of the measure imposed. Not only pursuant to the Wft, but for example also under the Wwft and the Wtt 2018, the AFM and DNB are in principle required to make formal measures public. In this light, too, we expect the number of proceedings against the AFM and DNB to increase, because a consequence of objections and appeals is that publication of the sanction is suspended (apart from certain exceptions, such as penalties for severe violations).

DNB policy on fines

- ***What?*** On 11 December 2020, DNB's 'General Policy on Fines' was published in the Government Gazette. In this document, dated 19 November 2020, DNB adopted its policy with regard to setting the amount of administrative fines for violations of legislation for the financial sector. To date, DNB only had Guidelines on the Calculation of Administrative Fines. Those guidelines, drafted by DNB in July 2010, are quite general in nature, however. For instance, they contain little specific information on how DNB, in imposing fines, takes into account the size of the undertaking or the extent of the undertaking's focus on compliance. In the General Policy on Fines now published, more in particular Annexes 1 and 2 thereto, DNB discuss those factors in more detail. DNB has stated that it will, at its own initiative, reconsider the fines already imposed that are still under objection or appeal in light of the new policy.
- ***Who?*** The new policy on fines applies to all market parties and natural persons fined by DNB.
- ***When?*** On a continuing basis.

Climate-related risks in fit and proper assessments

- ***What?*** In November 2020, DNB published a news report announcing that starting in 2021, climate-related and environmental risks will become a standard part of the fit and proper assessments at banks, insurers and pension funds. A candidate management board member or supervisory board member may be asked, for instance, about his or her knowledge of climate-related and environmental risks, relevant legislation in this area, and the impact thereof in the context of the institution. Additionally, DNB will ask the institution to, when submitting the assessment request, include an explanation of the candidate's knowledge and experience in the area of climate-related and environmental risks, for example, in describing the decision-making process and considerations in respect of the appointment and/or in the notes to the suitability matrix.
- ***Who?*** The news report pertains directly to banks, insurers and pension funds. However, in our view the news report is relevant to the entire financial sector.
- ***When?*** Starting 1 January 2021. We advise including the climate-related and environmental risks, the relevant legislation, and the impact of the legislation on the institutions in the preparation for the assessment meetings.

Follow-up on Ronnes et al.'s motion on inquiry into standard reassessment for policymakers

- ***What?*** By letter of 28 October 2020, the Minister of Finance informed the House of Representatives concerning the follow-up to the motion by Ronnes et al. requesting the government to investigate whether it would be possible to establish in the law that certain settlements, penalties and orders imposed on a financial institution would automatically lead to a reassessment of the policymakers involved. The minister responded that his investigation into the question showed that DNB and the AFM were already operating in the spirit of that motion, and this approach is based on a shared policy line. According to the minister, direct reassessment without a 'reasonable cause' first being established reduces the effectiveness, and therefore also blunts the 'edge', of the instrument of reassessment.
- ***Who?*** Policymakers of financial institutions that are subject to supervision.
- ***When?*** In response to the motion, DNB and the AFM responded that they would be calling more attention to the current embedding of the reassessment framework in their Suitability Policy Rule, in part via DNB's Open Book Supervision and the AFM's web page.

AFM Cost Framework 2021-2024

- ***What?*** By letter of 18 September 2020, the Minister of Finance informed the House of Representatives of the AFM's new cost framework established for the 2021-2024 period. In drafting its budget, the AFM is bound by the amount of the cost ceiling set out in the cost framework. The new cost framework reveals, firstly, that in 2021 the ceiling is being raised by EUR 3 million in order to enable the AFM to prepare itself for (i) new regulations in the areas of financial and economic crime, capital markets and pensions; and (ii) the expansion of its supervisory task in the area of accountancy supervision. Secondly, in 2021 the cost framework is being expanded by a further EUR 3.5 million to facilitate the AFM's development into a data-driven supervisory authority. To achieve this, the AFM will be investing in IT systems, data management, and employee training and recruitment.
- ***Who?*** The cost framework is relevant to the resources, and thereby the capacity, of the AFM to maintain supervision of the institutions falling under its remit, and accordingly is, ultimately, relevant to all institutions falling under AFM supervision.
- ***When?*** The cost framework relates to the maximum budget of the AFM for the years 2021 through 2024.

DNB Cost Framework 2021-2024

- ***What?*** By letter of 30 November 2020, the Minister of Finance informed the House of Representatives of DNB's new cost framework for the 2021-2024 period. Like the AFM, DNB is also bound by the amount of the cost ceiling set out in the cost framework. The new cost framework shows that in 2021, the ceiling is being increased by EUR 4.1 million as the result of an expansion and intensification of the supervisory tasks, and specifically integrity supervision (Wwft), and in further implementation of DNB's digital strategy. Striking, but at the same time in line with our experience in 2020, is the passage on the long turnaround times with DNB when it comes to orders subject to penalties, fines and objection procedures: '*As a result of the intensification of integrity supervision, complex national and international legislation and regulations, and the publication obligation, the turnaround times on orders subject to penalties, fines and objection are longer than is considered desirable, and in a number of cases even exceed the time period required by law. In an effort to reduce turnaround times, an expansion of DNB's capacity for legal affairs will be necessary.*' Additionally, a line item of EUR 2.5 million for 'unforeseen' is being added for 2021. This is intended to give DNB the headroom to absorb unforeseen or irregular costs and reduce the risk of being in a position in which unexpected costs can only be dealt with by increasing the cost framework or making compromises on the scope or quality of the supervision. Finally, it is interesting to note that the letter also says that DNB has decided to sell its visitor centre. According to the minister, the sale of the visitor centre is still to be completed in 2020, and is expected to be finalized at much higher than budgeted. This means a financial windfall for 2020, which will be offset against the levies in 2021.
- ***Who?*** The cost framework is relevant to the resources, and thereby the capacity, of DNB to maintain supervision of the institutions falling under its remit, and accordingly is ultimately relevant to all institutions falling under DNB supervision.
- ***When?*** The cost framework relates to the maximum budget of DNB for the years 2021 through 2024.

FINANCIAL SUPERVISION ACT (WFT)

Consultation on the Financial Markets Amendment Act 2022

- ***What?*** On 6 November 2020, the Ministry of Finance published its draft bill Financial Markets Amendment Act 2022 for consultation. The bill is, in part, intended to enable DNB and the AFM to maintain a reserve for irregular costs within the funding system provided for the supervisory task. This reserve, which is built up from the income from orders subject to penalties and fines forfeited, is meant to cover costs that cannot be charged to the financial institutions for which the costs are incurred or which would lead to disproportionately high charges. The sector-specific aspects of the draft bill will be addressed in the specific sections of this Outlook.
- ***Who?*** The bill is relevant for financial institutions subject to supervision.
- ***When?*** The consultation round ended on 18 December 2020. We expect that the act will go into effect on 1 January 2022.

Consultation on the Financial Markets Amendment Act 2021

- ***What?*** At the end of 2019, the Ministry of Finance published its draft bill Financial Markets Amendment Act 2021 for consultation. The draft bill makes changes to a number of acts, and in part provides a statutory basis for the Financial Stability Committee. This committee focuses on the stability of the financial system and related macro-economic developments. It is made up of representatives of DNB, the AFM, the Ministry of Finance and the Netherlands Bureau for Economic Policy Analysis. The sector-specific aspects of the draft bill will be addressed

in the specific sections of this Outlook.
- ***Who?*** The bill is relevant for the financial institutions subject to supervision.
- ***When?*** The government's goal is to have the amending act go into effect in mid-2021.

EUROPEAN COMMISSION

Digital Finance Package

- ***What?*** On 24 September 2020, the European Commission published its 'Digital Finance Package', consisting of:
  - a description of the European Commission's strategy with respect to a digital financial sector;
  - a proposal for a regulation with respect to markets for crypto-assets;
  - a proposal for a regulation on a pilot regime for market infrastructures based on distributed ledger technology;
  - a proposal for a regulation and a directive on digital operational resilience for the financial sector; and
  - a renewed strategy for retail payments in the European Union.

  The Digital Finance Package is covered in more detail in the Fintech & Alternative Financing section of this Outlook.
- ***Who?*** The proposals with respect to digital operational resilience are relevant to most financial institutions subject to supervision. The proposals regarding crypto-assets and distributed ledger technology are relevant to the parties that are or will be active in these areas. The renewed strategy on retail payments is relevant to the payment sector.
- ***When?*** The European Commission's proposals for the new regulations and a new directive must first be approved by the European Parliament and the Council. This process will take a certain amount of time, and at the moment of this writing it is not clear whether that process will be completed by the end of 2021.

New Capital Market Union Action Plan

- ***What?*** On 24 September 2020, the European Commission also published its new and ambitious Capital Markets Union Action Plan. In this Action Plan, the European Commission presents no fewer than sixteen measures to be implemented in the pursuit of the achievement of a single European Capital Market Union (CMU). With this the European Commission is building on its former CMU action plan, which it published in 2015 and updated in 2017. The goal of the CMU is the creation of a single European market under which supply of and demand for capital can be brought together in an effective way, to benefit individuals, investors and companies throughout the entire European Union and to make the European economy as a whole stronger. The European Commission points out that the achievement of this goal has only been made more urgent as a result of the coronavirus pandemic. The sixteen measures that the European Commission has now presented cover some broad aspects, including changes in various European sectoral directives, and can be grouped around three core objectives: (i) supporting a green, digital, inclusive and resilient economic recovery by making financing for companies more accessible; (ii) making saving and investment safer for individuals; and (iii) integrating the national capital markets into one capital market. The content of the Action Plan is discussed in more detail in the section Issuing Institutions & Capital Markets and the sections on the individual relevant players.
- ***Who?*** The proposals are varied and broad in scope. As such, they are relevant to essentially the entire financial sector.
- ***When?*** The European Commission has published a summary of the sixteen measures and their respective timelines. This shows that the measures will be implemented starting in Q1 2021 and the process will continue up until 2023, including the process of making proposals for the amendment of existing European directives.

EUROPEAN SUPERVISORY AUTHORITIES

ESA's Joint Committee Work Programme 2021

- ***What?*** In 2020, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA, collectively the ESAs) once again published its Work Programme for the coming year. According to the Work Programme, in 2021 the Joint Committee will maintain its focus on issues of consumer protection, sustainable finance and financial innovation.
- ***Who?*** Via the Joint Committee, the ESAs will be coordinating their activities to improve consistency in EU rules and their monitoring by local supervisory authorities. In view of the work areas of the ESAs and the nature of the subjects identified, the Work Programme is relevant to a large segment of the Dutch financial sector.
- ***When?*** The Work Programme describes the focus areas of the ESAs in 2021.

ESMA Work Programme 2021

- ***What?*** On 2 October 2020 ESMA published its Annual Work Programme for the year 2021. In it, ESMA describes its priorities for its supervision in 2021. ESMA identifies four primary activities: (i) the promotion of consistency in the supervision across the various local supervisory authorities in the EU, in part by performing centrally selected thematic supervisory activities; (ii) the performance of risk assessments in the area of investors, financial markets and financial stability; (iii) further contributions towards a single rulebook for financial markets, specifically by drafting and reviewing technical standards and technical advice on (among other areas) central counterparties, the Market Abuse Regulation, AIFMD and MiFID II/MiFIR; and (iv) the performance of direct supervision of credit rating agencies, trade repositories and securitisation repositories. The ESMA Work Programme is addressed in more detail in the specific sections of this Outlook.
- ***Who?*** In view of the nature of the supervisory activities of ESMA, the Annual Work Programme is particularly relevant for banks, investment institutions, and managers of investment institutions and UCITS.
- ***When?*** The Annual Work Programme 2021 describes the focus areas of the ESMA in 2021.

EBA Work Programme 2021

- ***What?*** On 30 September 2020 EBA published its Annual Work Programme for the year 2021. In it, EBA describes its six most important priorities for 2021, and also addresses the coronavirus crisis and the approach to dealing with it. The six most important priorities are: (i) support for the enforcement of the Capital Requirements Directive and Regulation, the Recovery and Resolution (Banks) Directive, and the Regulation for a Prudential Framework for Investment Institutions, (ii) evaluation and improvement of the EU framework for EBA stress tests, (iii) the creation of an integrated EU data hub, utilizing improved technical capabilities for the performance of analyses, (iv) contributing to a healthy development of financial innovation and operational resilience in the financial sector, (v) development of the European infrastructure to lead, coordinate and monitor the AML/CFT supervision, and (vi) the establishment of policy for consideration and management of ESG risks. The EBA Work Programme is addressed in more detail in the specific sections of this Outlook.
- ***Who?*** In view of the nature of the supervisory activities of EBA, the Annual Work Programme is particularly relevant for banks and investment institutions.
- ***When?*** The Annual Work Programme 2021 describes the focus areas of the EBA in 2021.

EIOPA Work Programme 2021

- ***What?*** Also on 30 September 2019, EIOPA published its Annual Work Programme for the year 2021. In the Work Programme, EIOPA describes its areas of attention for the 2021-2023 period and reflects on the impact of the coronavirus crisis. EIOPA based its development of these areas of attention on four strategic objectives: (i) support of legislation and supervision in the interests of consumers, (ii) promoting convergence of supervision in order to achieve the highest possible level of prudential supervision throughout Europe, (iii) strengthening the financial stability of the insurance and pension sector, and (iv) maintaining the best possible performance of the mandates charged to EIOPA on an ongoing basis, but at the same time remaining alert for new priorities. The EIOPA Work Programme is addressed in more detail in the specific sections of this Outlook.
- ***Who?*** In view of the nature of the supervisory activities of EIOPA, the Annual Work Programme is particularly relevant for the insurance and pension sector.
- ***When?*** The Annual Work Programme 2021 describes the focus areas of the EIOPA for the 2021-2023 period.

CONSUMER PROTECTION

Consultation on the act implementing the Modernisation of Consumer Protection Directive

- ***What?*** On 23 October 2020 the Ministry of Economic Affairs and Climate Policy and the Ministry of Justice and Security published a draft bill for consultative purposes, for the implementation of Directive (EU) 2019/2161 as regards the better enforcement and modernisation of Union consumer protection rules. This directive amends four existing directives: the unfair contract terms directive, the indication of consumer prices directive, the unfair commercial practices directive, and the protection of consumer interests directive. The proposed changes are firstly intended to develop more effective enforcement of the European consumer protection rules through the instrument of sanctions. Secondly, the changes are intended to regulate trends in the online shopping environment in particular. One example is the consumer review: an undertaking that offers access to consumer reviews will have to provide information on whether and how the undertaking ensures that published consumer reviews originate from consumers who actually purchased/used the product/service. The changes will be implemented, in part, in Book 6 of the Dutch Civil Code and the Consumer Protection (Enforcement) Act. The

AFM is the competent supervisory authority in matters involving financial services or activities.
- ***Who?*** Technically, the proposed new rules with respect to enforcement are relevant to all financial institutions that serve consumers in any way. The extent to which the proposed rules with respect to the online purchasing environment will apply to financial institutions depends on the services that the undertaking offers to the consumer.
- ***When?*** The consultation period ended on 22 November 2020. The directive must be transposed into Dutch law in the form of the Implementing Act no later than on 28 November 2021. The provisions of the Implementing Act must be complied with as from 28 May 2022.

European Commission New Consumer Agenda

- ***What?*** On 13 November 2020, the European Commission published its new Consumer Agenda. The previous agenda dated from 2012. The new Consumer Agenda is a renewed strategic framework for European consumer policy for the years 2020-2025 and has the goals of (i) addressing new challenges in consumer rights and opportunities as a result of the 'green' transition, digital transition and coronavirus crisis, (ii) protecting consumers more effectively in the new post-coronavirus economic reality, and (iii) better taking advantage of increasing globalisation and the role of international cooperation and effective enforcement in this environment. In the Consumer Agenda, the European Commission has announced that it will be making a number of proposals for new consumer protection rules.
- ***Who?*** The new Consumer Agenda is relevant for all financial institutions that offer services to consumers.
- ***When?*** The new Consumer Agenda is an interpretation of the European Commission's vision for the coming five years, and is expected to lead to proposals for new European consumer rules.

CCPS

European law framework for recovery and resolution of CCPs

- **What?** In view of their systemic importance in the financial sector, the enormous sums involved in clearing and their relatively small number (13 players in the EU), central counterparties (CCPs) are seen by policymakers as a new category of 'too big to fail'. In 2016 this was already reason for the European Commission to publish a proposal for a regulation introducing a recovery and resolution framework for CCPs. In the summer of 2020 the Council and the European Parliament reached an agreement on the text of this regulation.
- **Who?** CCPs.
- **When?** We expect the regulation to be published in the Official Journal of the European Union by the end of 2021. The regulation will, in principle, apply directly in all member states 18 months after its effective date, with the exception of specific articles defined as having a different introduction date.

Publication of EMIR 2.2 delegated regulations by European Commission

- **What?** As from 1 January 2020, under 'EMIR 2.2' CCPs are subject to more restrictive rules. In July and September 2020, the European Commission published a number of delegated regulations and decrees in performance of EMIR 2.2. These pertain, in part, to the activities of ESMA with regard to non-EU CCPs.
- **Who?** CCPs.
- **When?** The delegated regulations and decrees have various different effective dates. Most already came into effect in 2020.

ESMA consultation draft RTS regarding change of activities

- ***What?*** On 23 October 2020 ESMA published a consultation paper setting out draft technical standards (RTS) on aspects such as the conditions under which a CCP's expanding its activities or services would require an expansion of the permit under Article 15 EMIR.
- ***Who?*** CCPs.
- ***When?*** The consultation period ended on 16 November 2020. ESMA expects to finalize the draft RTS and send it to the European Commission for approval in the first quarter of 2021.

ESMA consultation on draft guidelines regarding supervisory review and evaluation process

- ***What?*** On 23 October 2020 ESMA also published a consultation paper containing draft guidelines for further development of the supervisory review and evaluation process for supervisory authorities with regard to CCPs as referred to in Article 21 EMIR. This pertains to, on the one hand, a review of the operations of CCPs and on the other an evaluation of the risks to which CCPs are or may be exposed.
- ***Who?*** CCPs.
- ***When?*** The consultation period ended on 16 November 2020. ESMA expects to be able to finalize the draft guidelines in the first quarter of 2021.

EMIR

ESA proposed changes regarding risk mitigation techniques and clearing obligation

- ***What?*** On 23 November 2020 the ESAs published two final reports with draft technical standards (RTS). The first proposes changes in EMIR delegated regulation 2016/2251 with respect to risk mitigation techniques for OTC derivatives not cleared by a CCP, and more specifically with regard to margin obligations and derivatives contracts novated from a counterparty in the UK to a counterparty in the EU as a result of Brexit. The second report introduces changes to the three EMIR delegated regulations regarding the clearing obligation, and more specifically relating to certain intra-group transactions and derivatives contracts novated from a counterparty in the UK to a counterparty in the EU as a result of Brexit.
- ***Who?*** All parties that fall under the scope of application of EMIR and have Brexit-related issues.
- ***When?*** The delegated regulations are now in the hands of the European Commission awaiting approval. After that, the European Parliament and the Council can still object.

ESMA published draft technical standards EMIR REFIT

- ***What?*** On 17 December 2020, ESMA published a final report with draft technical standards (RTS and ITS) regarding EMIR REFIT. The RTS and ITS pertain to the data that parties to derivatives transactions must report to Trade Repositories, as well as the processing of that data by Trade Repositories and the access to that data for supervisory authorities.
- ***Who?*** All parties that must report derivatives transactions under EMIR, as well as Trade Repositories.
- ***When?*** ESMA has submitted the draft technical standards to the European Commission for approval. According to ESMA's proposal, parties and Trade Repositories must implement the technical standards in their business operations within 18 months of the publication in the Official Journal of the European Union. In the meantime, ESMA will draw up guidelines to further clarify the reporting requirements.

ESMA postponement of applicability date of updated EMIR validation rules to 8 March 2021

- ***What?*** On 26 October 2020 ESMA announced in a press release that in light of the situation surrounding Brexit, the date of application of the updated EMIR validation rules would be postponed until 8 March 2021. The validation rules pertain to the obligation under Article 9 EMIR to report derivatives transactions to the Trade Repositories.
- ***Who?*** All parties that must report derivatives transactions under EMIR, as well as Trade Repositories.
- ***When?*** The new applicability date of the updated EMIR validation rules is 8 March 2021.

ESMA statement regarding impact of Brexit on reporting obligation

- ***What?*** On 10 November 2020 ESMA published a statement on the impact of the expiry of the Brexit transition period on 31 December 2020 on the reporting of derivatives transactions pursuant to Article 9 EMIR. In the document ESMA endeavours to offer market parties clarity about the application of the reporting obligation as from 2021.
- ***Who?*** All parties that must report derivatives transactions under EMIR, as well as CCPs and Trade Repositories.
- ***When?*** Ongoing.

BENCHMARKS

AFM and DNB: still a lot to do on interest rate benchmark transition

- ***What?*** On 25 November 2020 the AFM and DNB published a press release and feedback report calling on parties to continue to work on transitioning the IBORs, and in particular EONIA and LIBOR, into alternative interest rate benchmarks. The alternative benchmarks are different for each jurisdiction, and include (among others) €STR, SONIA and SOFR. Additionally, EURIBOR also qualifies as an alternative benchmark. Market parties must convert their contracts to an alternative benchmark in a timely manner. For those using EURIBOR, they must also include fallback options in contracts for the eventuality that EURIBOR disappears. The AFM and DNB have observed that while many contracts are now based on future-proof benchmarks, including EURIBOR, there are still many issues outstanding, such as including the fallback options in financial contracts for the event that the benchmark used disappears. According to the AFM and DNB, market parties are having difficulty incorporating good fallback options, and in some cases are still waiting for standards from working groups like the Working Group on EU Risk-Free Rates or international sector organisations. The AFM and DNB take the position that market parties must show their own initiative on this point.
- ***Who?*** All market parties that are active on financial

markets and deal with benchmarks.
- ***When?*** Under the Benchmark Regulation, there is a transition deadline of 31 December 2021. On 30 November 2020, the deadline for non-EU benchmarks was postponed to 31 December 2023 (see item below).

Changes in Benchmark Regulation – replacement benchmark and further postponement of transition for non-EU benchmarks

- ***What?*** On 24 July, the European Commission published a proposal for a change to the Benchmark Regulation (applicable since 1 January 2018). The proposed change is intended to keep the phaseout of a commonly used and important (in the terminology of the regulation: 'critical') benchmark from disrupting the economy and causing financial instability. With this, the European Commission is addressing the developments relating to LIBOR, which is expected to be phased out by the end of 2021. In a new article 23a, the European Commission proposes that it be given the authority to designate a replacement benchmark in the event an existing benchmark is eliminated and this elimination could lead to a significant disruption in the functioning of the financial markets. If the European Commission designates a replacement benchmark, then on the basis of the proposed article all references in financial instruments, financial contracts and standards for the performance of an investment institution to that defunct benchmark would (under certain conditions) by law be understood to be references to the replacement benchmark. On 30 November 2020, the European Parliament and the Council reached agreement on this proposal of the European Commission. Also on 30 November 2020, an agreement was reached on postponing the applicability of the transitional rules in regard to non-EU benchmarks further, until 31 December 2023, with the option for the European Commission to further extend this period. The Council published the final text on 9 December 2020.
- ***Who?*** The changes are relevant to all market parties that are active on financial markets and deal with benchmarks.
- ***When?*** The changes to the Benchmark Regulation discussed above will apply as from the date after publication of the changes in the Official Journal of the European Union.

ESMA publishes draft technical standards

- ***What?*** On 29 September 2020 ESMA published a final report containing draft technical standards (RTS) for the implementation of a number of provisions of the Benchmark Regulation. The RTS pertain to five subjects: (i) governance and monitoring by managers of benchmarks (Article 4 of the regulation), (ii) the methodology to be applied by the managers (Article 12 of the regulation), (iii) the reporting of violations by managers (Article 14 of the regulation), (iv) mandatory management of a critical benchmark by a manager (Article 21 of the regulation) and (v) non-significant benchmarks (Article 26 of the regulation).
- ***Who?*** The draft RTS are relevant to all market parties that are active on financial markets and deal with benchmarks, and in particular for managers of benchmarks.
- ***When?*** ESMA has submitted the draft RTS to the European Commission for approval. At the time of this writing it is not yet clear when they can be expected to go into effect.

ESMA consultation fees for certain benchmark managers

- ***What?*** On 25 September 2020 ESMA published a consultation paper containing draft technical advice for the fees that certain managers of benchmarks must pay in the event that they come to find themselves under ESMA supervision on or after 1 January 2022.
- ***Who?*** Managers of critical benchmarks as referred to in Articles 20(1)(a) and (c) of the Benchmark Regulation and non-EU managers of benchmarks within the definition of Article 32 of the Benchmark Regulation.
- ***When?*** The consultation period ended on 6 November 2020. On the basis of the responses received, ESMA will draft final technical advice that will be sent to the European Commission no later than 31 January 2021. On the basis of the technical advice, the European Commission will draft a delegated regulation.

ESMA publishes Brexit impact statement

- ***What?*** On 1 October 2020 ESMA published a statement on its website giving information on the application of certain core provisions of the Benchmark Regulation in light of Brexit. In it ESMA particularly addressed the use of benchmarks of managers in the UK who after the expiry of the transition period on 31 December 2020 will be qualified as non-EU managers.
- ***Who?*** All market parties that are active on financial markets and deal with benchmarks.
- ***When?*** Ongoing.

CSDR

CSDR review

- ***What?*** The Central Securities Depositaries Regulation (CSDR) defines rules for the settlement of (certain) financial instruments in the EU. On 8 December 2020, the European Commission published a consultation for a planned review of the CSDR. The consultation comprises questions on eight different topics, including the authorisation process for CSDs, internalised settlement, technological innovation and settlement discipline.
- ***Who?*** CSDs, CCPs, trading platforms and market participants such as banks and investment firms.
- ***When?*** The consultation period will run until 2 February 2021.

Postponement of rules on settlement discipline

- ***What?*** One of the subjects in the CSDR is 'settlement discipline'. The CSDR provides instructions for parties to prevent failures in the settlement of transactions and, for the situation in which a settlement does nonetheless fail, rules that govern monitoring and sanctioning and indicate when a buy-in is obligatory. An obligatory buy-in is, simply put, a situation in which a buyer of non-settled securities can be required to purchase securities of the same type elsewhere in the market. If the price of this new transaction is higher than the price of the original (failed) transaction, then the original (defaulting) seller must reimburse the buyer for the difference. These rules, as further detailed in delegated regulation 2018/1229, were originally to go into effect on 18 September 2020, but this has been postponed to 1 February 2021. On 26 August 2020 ESMA published a report with draft RTS recommending further postponement of these rules until 1 February 2022. ESMA considers further postponement appropriate in view of the impact of the coronavirus pandemic on market participants, as a result of which they have been unable to adequately prepare for these rules coming into effect.
- ***Who?*** CSDs, CCPs, trading platforms and market participants such as banks and investment firms.
- ***When?*** ESMA has sent the proposal for postponement to the European Commission for approval, and it will go into effect a few days after publication in the Official Journal of the European Union.

BREXIT

Brexit deal

- ***What?*** On 24 December 2020, the negotiators of the EU and the United Kingdom concluded a Brexit agreement, thereby still managing to avoid a 'hard' no-deal Brexit. As far as the financial sector is concerned, however, it is questionable to what extent the deal concluded differs from a no-deal Brexit. After all, the agreement contains hardly any agreements on the financial sector, leaving considerable uncertainties. For instance, the agreement does not offer any solution for the loss of the European passport as of 1 January 2021, which would allow UK institutions to operate in the EU and EU institutions to operate in the United Kingdom. It is now up to both the EU and the United Kingdom to decide unilaterally for each subsector within the financial sector, to regard the other's supervision of the financial sector as equivalent and to give UK and EU institutions, respectively, access to their own markets. To date, the EU has only issued such equivalence decisions for Central Counterparties (CCPs) and Central Securities Depositories (CSDs) from the United Kingdom(in both cases, the decisions are limited in time). As long as the EU has not adopted such equivalence decisions for the various other subsectors, institutions from the United Kingdom must rely on the third-country regime of each separate EU Member State. In this Outlook, the impact of Brexit will be considered in more detail for each type of player (where relevant).
- ***Who?*** All financial undertakings that are impacted by Brexit by virtue of their activities and/or client base.
- ***When?*** The Brexit agreement entered into force on 1 January 2021.

PAYMENT PROCESSING INSTITUTIONS

Please note: The cross-sectoral sections Fintech & Alternative financing, Integrity and Sustainability may also be relevant to payment processing institutions.

ECB

Oversight framework for electronic payment instruments, schemes and arrangements (PISA framework)

- ***What?*** On 27 October 2020, the ECB (the monetary authority for the euro area) opened a consultation on a draft supervisory framework that would, in part, set new requirements on the oversight of electronic payment instruments (the 'PISA framework'). This PISA framework replaces the existing harmonised oversight approach and oversight standards for payment instruments of the Eurosystem and is particularly relevant for entities that handle a payment scheme or payment arrangement. It covers the performance of functionalities like the initiation and acceptance of payment instructions and clearing and settlement of payments. These are precisely the payment services that qualify an undertaking as a payment processing institution under the Financial Supervision Act (*Wet op het financieel toezicht*, Wft). The PISA framework applies anywhere payments are conducted via electronic payment instruments issued to end users and denominated in or funded in euro, partly or fully backed by euro, or redeemable in euro. This means that the framework applies to payment schemes and arrangements that enable the use of payment instruments. With the new PISA framework, the ECB also intends to address the ongoing developments within the retail payment ecosystem as it continues to be driven forward by innovation (as well as technological and regulatory advancements). In an exemption policy for the PISA framework the ECB defined criteria to identify the payment schemes and arrangements that must be supervised. This policy takes into account the relevance of the payment schemes and arrangements for the overall payment system within the euro system. This policy also includes exemption criteria for such payment schemes and arrangements in order to determine based on that whether an exemption is applicable to these schemes and arrangements. The oversight is based on the principles of the CPSS-IOSCO Principles for Financial Market Infrastructures. If a payment scheme or arrangement with certain functionalities qualifies as a payment system

under the oversight of the euro system or falls under DNB supervision as a payment institution, the PISA framework for monitoring compliance with the principles will make use of the earlier findings of these supervisory authorities.
- ***Who?*** Payment processing institutions that run payment schemes and/or arrangements.
- ***When?*** Interested parties had until 31 December 2020 to respond to the consultation. The ECB will then review all feedback and incorporate it where necessary and appropriate. The definitive version of the PISA framework will then be published, and take effect one year after its date of publication. We expect this to be in Q1 or Q2 of 2022.

Scope of SIPS Regulation

- ***What?*** The ECB has implemented the international Principles for Financial Market Infrastructures (PFMIs) for 'systemically important payment systems' (SIPS) in the ECB SIPS Regulation (Regulation (EU) No. 795/2014). SIPS are payment systems that are of such importance in the euro area that it is considered necessary to place them directly under this ECB regulation. At present, this is only a handful of institutions in the EU (TARGET2, EURO1, STEP2-1, CORE (FR) and Mastercard Europe). On 27 November 2020 the ECB published a bill for amendment of the SIPS Regulation and its related decrees. The most fundamental of these amendments concerns the criteria under which a payment system can be designated a SIPS. Right now the criteria are purely quantitative and require that the system be established in the euro area or governed by the law of a euro zone country. The bill entails, in part, that the ECB may go against these criteria in designating an institution as a SIPS if doing so would be appropriate in consideration of the nature, size and complexity of that system, the nature and importance of the participants, the replaceability of the system, and the system's relationship to the larger financial system.
- ***Who?*** Payment processing institutions that are important enough to have been designated, or could potentially be designated, as a SIPS by the ECB.
- ***When?*** The consultation period ended on 8 January 2021. We expect that the amended SIPS Regulation will take effect in the first quarter of 2021.

Announcement of evaluation of crash of payment system

- ***What?*** The ECB has announced that on 23 October 2020 an independent evaluation was launched into an incident that affected its TARGET2 payment system. That incident brought the system down for nearly ten hours. The ECB indicates that it will be drawing lessons from this evaluation and using them to improve the system. We expect that DNB will be incorporating these findings with regard to the operational functioning and payment system incidents (and their impact on payment processing institutions) in its oversight.
- ***Who?*** Payment processing institutions, particularly those that as payment systems also fall under the oversight of the euro system.
- ***When?*** Findings of the evaluation will be published in the second quarter of 2021.

Survey of Central Bank Digital Currency (CBDC)

- ***What?*** After DNB published a detailed report on 'central bank digital currency' (CBDC) in April 2020, the European Central Bank followed with its own extensive report on CBDC in October 2020. In this report the ECB outlined the possible formats and minimum requirements of CBDC and invited the public to respond. CBDC might best be described as (i) fiat currency (ii) that is maintained in digital form on accounts with central banks and (iii) is accessible to everyone, both individuals and companies. CBDC essentially boils down to being able to maintain a current account directly with a central bank (in the Netherlands, that is DNB). The introduction of CBDC would represent a major change in the current payment system landscape, including the way in which payments are made, processed, accepted and settled.
- ***Who?*** All payment processing institutions.
- ***When?*** In the report, the ECB notes that it will be deciding in mid-2021 whether it will be launching a 'digital euro project' that would explore at least one variant of CBDC that might meet the minimum requirements as described in the ECB report.

NEW LEGISLATION AND REGULATIONS

Financial Markets Amendment Act 2022 – asset separation of clients' funds via clients' account

Clients' account for clients' funds

The protection of clients' funds in the event of bankruptcy of the party holding these funds is one of the most important objectives of financial supervision. For this reason, there are regulations governing the separation of clients' assets. But wouldn't the simplest solution be for clients' money to be legally separated from the assets of the undertaking to which they are entrusted?

With this in mind, the Minister of Finance presented the Financial Markets Amendment Act 2022 for consultation on 6 November 2020. This bill amends the Wft, dictated partly at the request of DNB and the AFM, in order to provide an option for payment processing institutions (and investment institutions, payment institutions and e-banking institutions) to make use of a clients' account to keep assets separated. These institutions would then no longer require a solution like a clients' funds trust to keep their clients' assets separated from their own.

TARGET2-NL

On the basis of these bills, payment processing institutions must maintain their clients' funds account in a TARGET2-NL with DNB. DNB will require that the payment processing institution meet the TARGET2-NL admission requirements, as would be required to open a TARGET2 account with DNB. TARGET2 is an interbank payment system for the real-time processing of cross-border payments within the European Union. A payment processing institution can maintain a TARGET2-NL account if it also manages an ancillary system (as defined in the TARGET2 guidelines) and acts in that capacity. Thus, a payment processing institution that qualifies as an ancillary system and is admitted to TARGET2-NL can maintain a clients' funds account with DNB, to keep the clients' assets entrusted to it legally separated from its own assets.

How does it work?

The account with the separated assets is registered in the name of the payment processing institution (the account holder), with the name on the account indicating that this account is being held by the account holder in its own name but for the purposes of one or more third parties (i.e., clients), indicating the account holder's capacity (the "Re:" account). The funds on this account then constitute legally separated assets that can only serve to fulfil the claims of (i) the clients for which funds have been deposited to the account with the separated assets insofar as these claims are related to the entrusting of those assets to the institution, and (ii) DNB, insofar as these are claims relating to the management of the account (the interested parties). The exclusivity of recovery as set out in the bill entails that in the event of a bankruptcy the receiver for the payment processing institution must acquiesce to the position of the parties with the interest in the separated assets. The other creditors of the payment processing institution cannot recover against the balance of the account with the separated assets.

And then what?

This bill also significantly impacts the payment processing institutions and their clients. When it takes effect, their clients' money (the clients of the banks and payment institutions) are legally protected from the failure of the institution. This does require that the payment processing institution settle these funds with DNB (meaning, in central bank funds) and meet the TARGET2-NL requirements – something that is not at all a given. The bill will in all likelihood close the door to the option of settlement via a commercial bank.

The consultation round ended on 18 December 2020. We expect that the goal is to have the act take effect on 1 January 2022.

Further Remuneration Measures for Financial Undertakings Act in preparation

- ***What?*** On 2 July 2020, the Minister of Finance submitted a bill on the Further Remuneration Measures for Financial Undertakings Act to the House of Representatives. The bill is intended to introduce a number of changes to the current rules of remuneration as set out in the Wft, including the introduction of a statutory retention period of five years for shares that are paid out as a component of fixed salary, and a tightening of the averaging scheme for employees not subject to collective labour agreements, which under certain conditions can lead to bonuses in excess of 20%.
- ***Who?*** Payment processing institutions with seat in the Netherlands.
- ***When?*** The intended effective date of most of the tightened rules is 1 July 2021. Certain other changes have an intended effective date of 1 July 2022.

Financial Markets Amendment Act 2021 – group certificates of no objection

- ***What?*** At the end of 2019, the Ministry of Finance published its draft bill for the Financial Markets Amendment Act 2021 for consultation. One proposed change relevant to banks is bringing the 'group CNO' (group certificate of no objection) further in line with the ESA Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings (December 2016). It has become clear that the Dutch legal framework with respect to the granting of group CNOs can be made more in conformity with the joint guidelines pertaining to the prudential review of qualifying participations and intended qualifying participations in financial undertakings.
- ***Who?*** Payment processing institutions with seat in the Netherlands.
- ***When?*** The government's goal is to have the amending act take effect in mid-2021.

BANKS

For banks, we expect that 2021 will be the year of, among other things, the financial and economic consequences of the coronavirus pandemic, the further implementation of climate risk control measures, and increasingly harmonised rules under CRD V and CRR II. Also in 2021, banks will be subject to many new regulatory requirements. This concerns statutory regulations, but also more detailed technical standards and interpretations by regulators and supervisory authorities alike. At global, European and national level. In order to be able to limit the scope of this chapter, we had to make a selection. For example, in this Outlook 2021, we will only discuss developments in supervisory legislation that are important specifically for the banking sector. For banks providing multiple types of services, other sections of this Outlook may be relevant as well, such as the section for Investment Firms, Payment Institutions and/or Credit Providers. The cross-sectoral sections Integrity and Sustainability are also very relevant for banks. We therefore refer to those sections as well. This section includes only the most notable sustainability developments for banks.

ECB SUPERVISION

Supervision of climate-related and sustainability risks

- ***What?*** On 27 November 2020, the European Central Bank (ECB) published the final guide on climate-related and environmental risks for banks. In this guide, the ECB explains what it expects from banks with regard to controlling climate-related and environmental risks within the existing prudential framework. These risks must furthermore be disclosed in a transparent manner. In addition, the ECB specifies how banks are to take climate-related and environmental risks (as determining factors for existing risk categories such as credit, market and operational risks) into account in, among other things, their governance, risk management and business strategy. In its November 2020 newsletter, the ECB communicated that it will enter into a dialogue with the banking sector in 2021 to see to what extent current practice diverges from the supervisory expectations. This dialogue also serves to identify key areas for improvement. In this context, the ECB also published a report revealing that banks are lagging behind in terms of the information they are providing on climate-related and environmental risks. The ECB intends identifying the remaining lacunas in the second half of 2021 and to discuss these with the banks.
- ***Who?*** All banks. The ECB mainly prepared the Guide for the major banks under its immediate supervision. Moreover, DNB has decided to apply the ECB guide in the context of its supervision of less significant banks.
- ***When?*** The guide entered into effect on 27 November 2020. The ECB will enter into a dialogue with banks in 2021 and will start conducting active supervision in 2022 by carrying out targeted investigations.

Enhancement and harmonisation of assessment of suitability and trustworthiness

- ***What?*** In 2021, the ECB will conduct stricter and more invasive supervision of the assessment of suitability and trustworthiness for management board members and supervisory board members (hereinafter: board members) of banks. The ECB and the national competent authorities (NCAs, in the Netherlands DNB) are responsible for this fit and proper assessment. This assessment may still vary across countries, in spite of the far-reaching harmonisation consequent to the Banking Union. That is why the ECB has compiled a comprehensive package of measures for the purposes of improving the assessment of suitability and of trustworthiness and accomplishing a better assessment of these persons. First, the ECB will publish a revised

handbook in 2021 to replace the current Guide to fit and proper assessments. With this guide, the ECB wants to be more transparent about its expectations regarding the quality of board members. Second, the scope of assessments of these persons will be enhanced. These new measures will also consider the individual accountability of the person in question at board level in respect of the weighing and assessment of supervisory measures. Third, the process for reassessments will be clarified. This also covers the time of a possible reassessment, for example, in the event of violations of anti-money laundering regulations.

- ***Who?*** Significant banks and their management board members and supervisory board members.
- ***When?*** The package of measures was approved in 2020 and is currently being implemented. The ECB plans to publish the new handbook in 2021.

The ECB warns banks regarding Brexit

- ***What?*** The ECB warns about the risks associated with the end of the Brexit transition period. The ECB will also incorporate improvement measures in its current SREP. The ECB expects banks to take account of a number of matters. First, in cases where national regimes allow the provision of cross-border services from a third country, the ECB expects banks not to use such set-ups as a means to carry out large volumes of activities in the EU in a business-as-usual environment. Activities and services involving EU clients are to be carried out predominantly within the EU. Second, the objective of the ECB is for banks to be operationally self-standing and not overly reliant on group entities outside of the EU. Each bank directly supervised by the ECB must therefore have the requisite infrastructure, processes, staff and knowledge to independently identify, monitor and manage all risks at the local level within in the EU. Third, banks should be mindful that the European Commission's decision regarding UK central counterparties is valid for only 18 months.
- ***Who?*** Significant banks within the EU must have a sustainable construction to manage risks at local level. All banks must take into account the risks resulting from the end of the Brexit transition period.
- ***When?*** The ECB's warning will continue to be relevant even after the United Kingdom's withdrawal from the EU.

Guide on assessment methodology counterparty credit risk

- ***What?*** Banks can use internal models to calculate the value for the counterparty credit risk (CCR). However, these models must comply with the statutory requirements. The guide published by the ECB outlines the methodology used by the ECB to assess and calculate the validity of these models.
- ***Who?*** All banks trading in derivatives or entering into transactions in which securities are used for borrowing or lending money.
- ***When?*** The ECB published its guide on 18 September 2020 and this guide also entered into effect as from this date.

New requirements market risk

- ***What?*** In light of the fundamental review of the trading book (FRTB), the Basel Committee formulated two revised approaches to calculating the market risk in 2019. This concerns both a revision of the internal models approach and the standardised approach. The ECB states that the FRTB will be implemented in the EU in two stages. First, CRR II requires banks to report the capital requirements for the market risks under the new rules to the supervisory authority. Second, a bill will be submitted requiring banks to comply with the relevant capital requirements under the new rules.
- ***Who?*** Significant banks.
- ***When?*** The reporting requirement relating to the standardised approach will become binding in the third quarter of 2021.

Good Practices on benchmark interest rate reforms

- ***What?*** The Benchmark Regulation entered into force on 1 January 2018. As part of this regulation, benchmark interest rates must comply with new rules. For instance, the euro overnight index average (EONIA) will be replaced by the euro short-term rate (€STR). The euro interbank offered rate (EURIBOR) is also subject to change and is now calculated by means of a hybrid approach. The implementation of these rules entails risks for banks. To provide banks with direction in this regard, the ECB published a report formulating good practices relating to benchmark interest rate reforms. The report addresses the legal and operational challenges and the governance relating to identifying risks and drawing up an action plan in more detail. Banks themselves must assess whether they need to take additional measures.
- ***Who?*** All banks.
- ***When?*** The good practices apply from August 2020.

Guidelines on discretion for NCAs for establishing materiality of overdue credit obligations

- ***What?*** In these guidelines, the ECB has detailed how the NCA can exercise the discretion afforded to them on the

basis of Article 178(2) CRR by establishing the threshold for assessing the materiality of overdue credit obligations. The details are tailored to the exercise of this discretion by the ECB.
- ***Who?*** Less significant banks.
- ***When?*** The NCAs had to comply with the guidelines by no later than 31 December 2020.

Consultation on supervisory approach to consolidation banking sector

- ***What?*** On 1 July 2020, the ECB published its Guide on the supervisory approach to consolidation in the banking sector. This guide serves to clarify the ECB's supervisory approach to consolidation of institutions in the banking sector as a consequence of mergers and acquisitions. In the guide (and in other communication), the ECB explicitly advocates the creation of large cross-border banks through the consolidation of banks. After all, consolidation may help banks achieve economies of scale, become more efficient, and improve their capacity to face digitisation challenges. The ECB will facilitate sustainable consolidation projects where it can:
  - Sustainable integration plans will not be penalised with higher capital requirements.
  - The use of badwill by banks for risk reduction and value-added investment will be considered.
  - If there is a good plan, the ECB will accept the temporary use of existing internal models.
- ***Who?*** The banking sector.
- ***When?*** The ECB is expected to publish the final guide after the end of the consultation period (1 October 2020).

Amended Annexes to the Public Guidance qualification of Tier 1 and Tier 2 capital

- ***What?*** The ECB has published updated templates that institutions can use in the assessment of whether instruments qualify as Additional Tier 1 and Tier 2 instruments. This amendment brings the public guidance and its annexes in line with the amended Capital Requirements Directive (CRD V), with several provisions regarding the qualification of Tier 1 and Tier 2 instruments having been amended. The amendments in the templates are bold; the remainder of the public guidance remains unchanged.
- ***Who?*** All banks.
- ***When?*** The amendments were published on 30 September 2020 and apply from that date.

DNB SUPERVISION

Supervisory Strategy 2021-2024

- ***What?*** On 24 November 2020, DNB published its updated Supervisory Strategy 2021-2024. In this document, DNB sets the course for supervision in the coming years. The objective is to inform financial institutions about the aim of supervision and thus to function as a point on the horizon. The Supervisory Strategy 2021-2024 provides insight into DNB's risk-based approach to supervision. The intensity of the supervision of an individual bank depends on the impact category it has been classified in. In the document, DNB develops the three key objectives of the previous Supervisory Strategy (from 2017) in more detail. The three key focus areas are: (i) responding to technological innovation, (ii) fostering a forward-looking and sustainable sector, and (iii) taking a hard stance against financial and economic crime. DNB draws extra attention to four structural challenges whose impact only gradually becomes visible but which require strategic-level responses from financial institutions. These four challenges are (i) changing business models, (ii) increasing the sustainability of the economy, (ii) long-term low interest rates, and (iv) changing laws and regulations.
- ***Who?*** All banks. For the less significant banks, the entire document is relevant. For the significant banks, mainly the section on financial and economic crime is relevant.
- ***When?*** The Supervisory Strategy 2021-2024 describes the course for supervision which DNB has set for the next four years.

Good Practice climate-related risks

Climate-related risks

De Nederlandsche Bank (DNB) has been expressing its concerns about the impact of climate-related risks on the financial system ever since 2017. Banks are sensitive to climate-related risks and these risks are increasingly given a place within prudential supervision. To an increasing extent, DNB imposes requirements on the way in which banks incorporate the climate-related risks in their risk management. An important milestone in this respect is the publication by DNB on 1 April 2020 of its final Good Practice: Integration of climate-related risk considerations into banks' risk management and a related Q&A.

Climate-related risks must be understood to include both physical risks (e.g. damage caused by extreme weather conditions) and transition risks (e.g. change of business models and amendment of regulations for the benefit of a carbon-neutral economy). The exposure to these risks at clients and assets of the bank and at the bank itself can

lead to an impact on risks to which the prudential rules of banks pertain: credit risk, market risk, operational risk, concentration risk, liquidity risk, etc.

Good practices

DNB requires banks under its direct supervision (less significant banks) to integrate climate-related risks in its risk management procedures and processes. With the Good Practice, DNB provides guidelines to do so. In a nutshell, DNB expects banks to give substance to the following three subjects, which it illustrates on the basis of examples of good practices:

- Governance: examples of governance measures that demonstrate a clear organisational structure with well-defined and transparent lines of responsibility relating to the management of climate-related risks and that also contribute to organisation-wide awareness.
- Risk management process: concrete examples of policy on climate-related risks and ways to make climate-related risks more measurable and to contribute to better risk identification, risk assessment, risk mitigation and risk monitoring in relation to climate-related risks.
- Disclosure: examples of how the collection and disclosure of climate-related information can create a degree of transparency essential for an effective risk management system, shareholder involvement, and ultimately more efficient allocation of capital.

DNB has bundled the responses that it received in its consultation in a feedback statement. It is clear from the responses provided that banks are still struggling with integrating climate-related risks in their risk management. In order to accommodate these concerns, DNB has, among other things, mentioned the challenges more specifically in the Good Practice and has encouraged institutions to take a holistic approach where possible.

Further steps to be taken

DNB emphasises that its supervisory expectations are in line with the legal framework based on CRD IV and the Financial Supervision Act (*Wet op het financieel toezicht*, Wft) and keep pace with the developments at the European and international level. DNB expects banks to assess whether they are exposed to material climate-related risks and to record this identification analysis. If banks are indeed exposed to such material risks, DNB expects that these will be integrated in line with the Good Practices and that this will be recorded in the Internal Capital Adequacy Assessment Process (ICAAP). DNB in turn will take this ICAAP into account in its annual supervisory review and evaluation process (SREP) in 2021.

DNB's Good Practices supplement and are consistent with the ECB Guide on climate and environmental risks and contain expectations relating to climate-related risks (see above). DNB has indicated that it will apply the ECB Guide in its supervision of less significant banks. In doing so, DNB will follow the approach adopted by the ECB in respect of the large, significant banks under the direct supervision of the ECB.

See also the Sustainability section in this Outlook. We expect that in the coming years the approach to climate-related risks on the part of banks will become a supervisory dossier of the same depth, scope and enforcement risk as the integrity dossier.

Climate-related risks to be part of fit and proper assessments

- ***What?*** DNB will not only be incorporating climate-related risks into its assessment of a bank's risk management at the institution level. DNB also considers it important for the individual management board members and supervisory board members of the bank to be familiar with the climate-related risks to which banks are exposed. To that end, in November 2020 DNB published a news report announcing that starting next year, climate-related and environmental risks will become a standard part of the fit and proper assessments to which board members of banks will be subjected. A candidate management board member, supervisory board member or regulatory official may be asked, for instance, about his or her knowledge of climate-related and environmental risks, relevant legislation in this area, and the impact thereof in the context of the institution. Additionally, DNB will ask the institution to, when submitting the assessment file, include an explanation of the candidate's knowledge and experience in the area of climate-related and environmental risks, for example in describing the decision-making process and considerations in respect of the appointment and/or in the notes to the suitability matrix.
- ***Who?*** Less significant banks.
- ***When?*** Effective 1 January 2021 on assessments of new management board members and supervisory board members and reassessments of existing ones.

SRB

Multi-Annual Programme 2021-2023

- ***What?*** On 30 November 2020, the SRB published its Multi-Annual Programme (MAP) for 2021-2023. The MAP emphasises the SRB's supervisory priorities for the next three years. The 2021 work programme has been included as well, stating how supervisory priorities are implemented in 2021.

- ***Who?*** All banks.
- ***When?*** The MAP covers the priorities for 2021-2023, the specific 2021 work programme discusses the priorities for 2021.

'Expectations for Banks' policy document

- ***What?*** On 1 April 2020, the SRB published its 'SRB Expectations for Banks' (EfB). The EfB describes the requirements that banks must meet with regard to resolvability and the actions that banks must take in order to demonstrate such. In addition, it describes best practices and sets benchmarks for a proper assessment of the resolvability of a bank.
- ***Who?*** Significant banks, but DNB will probably use this document as well as national resolution authority for less significant banks.
- ***When?*** The EfB will be phased in. All requirements from the EfB must be implemented by the end of 2023.

Guidance on implementation bail-in instrument

- ***What?*** On 10 August 2020, the SRB published the guidance for banks seeking to implement the bail-in tool in their organisation. This documentation is a supplement to the aforementioned 'Expectations for Banks' document that the SRB published on 1 April 2020. The bail-in instrument is a crucial resolution tool that can only be deployed properly if banks have set up their organisation accordingly. The new documents guide banks in taking the necessary operational steps to become prepared for a potential bail-in event. The documentation reflects the SRB's expectations with regard to the bail-in playbook. The bail-in playbook must discuss all internal and external processes that banks go through in the implementation of the bail-in tool. In addition, banks must provide data if they want to use the bail-in tool. The SRB has published an explanatory note for this purpose.
- ***Who?*** Significant banks.
- ***When?*** Banks must provide the information and data in the short term in order to use the bail-in tool.

Guidance OCIR and FMIs

- ***What?*** On 29 July 2020, guidance relating to 'operational continuity in resolution' (OCIR) and 'FMI contingency plans' (FMIs) was published by the SRB. This documentation also constitutes a supplement to the aforementioned 'Expectations for Banks'. The guidelines for OCIR set out the SRB's expectations, clarifying how banks are to identify and map services and how they are to assess operational risks. In addition, they set out the expectations with regard to measures for resolution-resilient contacts, adequate management information systems, and governance. The FMI guidelines set out the minimum standards relating to the FMI contingency plans. Banks must comply with the Financial Stability Board (FSB)'s guidance. The SRB's guidance sets out in more detail what the contingency plan may look like and discusses a phase-in implementation.
- ***Who?*** The OCIR and FMIs guidance apply to significant banks.
- ***When?*** The expectations with regard to the OCIR and FMIs are phased in over the years 2020-2023.

MREL policy

- ***What?*** On 20 May 2020, the SRB published its final 'Minimum Requirements for Own Funds and Eligible Liabilities' (MREL) policy. The new MREL policy implements the new conditions from the 2019 banking package. In addition, the standard for total loss-absorbing capacity (TLAC) is integrated.
- ***Who?*** Significant banks.
- ***When?*** MREL will be phased in. Resolutions on the implementation of the new framework will be communicated in early 2021. For each decision, there will be two binding MREL targets. The deadline for the intermediate target is 1 January 2022 and the final deadline is 1 January 2024.

Guidance on bank mergers and acquisitions

- ***What?*** On 7 December 2020, the SRB published its guidance on mergers and acquisitions. The 'SRB Expectations for Banks' set out the requirements with regard to the resolvability of banks. Transactions leading to consolidation in the banking sector, such as mergers and acquisitions, have consequences for the solvency and resolvability of banks. That is why the SRB expects banks to draw up revised plans for their resolvability as a consequence of such a transaction. The requirements for this plan will be elaborated upon in the guidelines for mergers and acquisitions.
- ***Who?*** Significant banks.
- ***When?*** At the time of a transaction, banks must share additional information with the SRB. Furthermore, they must comply with the deadlines as set out in the EfB and not exceed these deadlines by more than 18 months.

EBA

Work Programme 2021

- ***What?*** EBA will remain fully relevant in the formation and further refinement of the EU Single Rulebook that contains all harmonised supervisory rules for banking. On 30 September 2020, EBA published its annual work programme 'Work Programme 2021'. In addition, in a separate document EBA describes the strategic priorities of its duties for the coming year. EBA's activities for 2021 have been divided into six strategic areas, in which, among other things, the management of ESG risks, data and financial innovation play a leading role.
- ***Who?*** All banks.
- ***When?*** The programme describes the EBA's objectives for the entire year 2021.

Consultation to revise Guidelines on Internal Governance

- ***What?*** The EBA is mandated to issue guidelines regarding the internal governance arrangements, processes and mechanisms of banks. In that context, EBA launched a consultation to revise its Guidelines on Internal Governance. This contains only a few changes compared to the current version (see also the track changes document published by the EBA). Three important changes have been made. In connection with the combating of money laundering and terrorist financing, it is now clarified that identifying, controlling and limiting money laundering must be an important part of the internal governance of banks. Furthermore, the EBA adds guidelines relating to the prevention of conflicts of interests through the provision of loans to management board members and supervisory board members of the bank and persons related to them. Lastly, guidelines have been added that require credit institutions to pursue policy that ensures that there is no discrimination of staff on the basis of, among other things, gender, race, colour, ethnic or social origin, genetic features, religion, age or sexual orientation. The remuneration policy must be gender neutral as well. With these changes, the revised Guidelines on Internal Governance are brought in line with CRD V.
- ***Who?*** All banks.
- ***When?*** The consultation was closed on 31 October 2020. EBA aims to finalise the revised guidelines following consultation and expects that the guidelines will enter into effect on 26 June 2021.

Guidelines on loan origination and monitoring

- ***What?*** On 29 May 2020, the EBA published its Guidelines on loan origination and monitoring. These guidelines will be of major importance to banks in setting up the core business; credit granting. The objective of these guidelines is to improve arrangements, processes and mechanisms in relation to credit granting to both enterprises and consumers. Institutions must maintain robust and prudent standards in credit risk taking, managing and monitoring. Newly originated loans must be of high credit quality. The guidelines must be in line with the European consumer protection rules. Through these objectives, the EBA aims to improve the financial stability and resilience of the EU banking system. EBA introduces requirements to be used by credit institutions in assessing the creditworthiness of borrowers. The guidelines focus specifically on the following five points: 1) clarifying the governance and control mechanisms for credit granting, building on the requirements of the EBA guidelines on internal governance; 2) specifying requirements that must be used for the creditworthiness assessment of borrowers; 3) setting out supervisory expectations in the context of risk-based pricing of loans; 4) providing guidance on approaches that may be used for the valuation of immovable and movable property collateral at the point of credit granting, and the ongoing monitoring of the value of that collateral; and 5) specifying the rules regarding the ongoing monitoring of credit risk and credit exposures, including regular credit reviews of borrowers. In the development of the guidelines, account has been taken of the growing importance of the ESG factors and the combating of money laundering and terrorist financing.
- ***Who?*** All banks.
- ***When?*** The guidelines will become applicable from 30 June 2021.

Discussion paper ESG risks banks and investment firms

- ***What?*** On 3 November 2020, EBA published a discussion paper on the management and supervision of ESG risks for banks. In the paper various ESG factors and ESG risks are identified and explained by EBA, giving particular consideration to risks stemming from climate change. EBA also reflects on the ongoing progress that banks and supervisory authorities achieved on this particular topic over the recent years. EBA also considers social and governance factors in its analysis and also explores why and how these factors can also be sources of risk for institutions. The feedback will ultimately inform the EBA's final report on management and supervision of ESG risks for banks and investment firms. The feedback will also

be taken into account in the development by EBA of a technical standard in the context of the implementation of ESG risks in the disclosure requirements belonging to the Pillar 3 and CRR2 requirements. In addition, EBA will assess whether a dedicated prudential treatment of exposures related to assets or activities associated substantially with environmental and/or social objectives would be justified as a component of Pillar 1 capital requirements. Reference is made here to the EBA's Action Plan on Sustainable Finance.
- ***Who?*** Banks.
- ***When?*** The consultation runs through 3 February 2021. EBA expects to publish its final report in June 2021.

Consultation on revised Guidelines on sound remuneration policies

- ***What?*** EBA launched a consultation on revised Guidelines on sound remuneration policies. This revised version takes into account the amendments introduced by CRD V, in particular the requirement that remuneration policies should be gender neutral. Experiences of supervisory authorities with, for instance, retention bonuses and severance payments have been incorporated therein as well.
- ***Who?*** All banks.
- ***When?*** The consultation period will run until 29 January 2021. EBA aims to finalise the revised guidelines following the consultation and expects that the guidelines will enter into effect in the first half of 2021.

Consultation on RTS for calculating risk-weighted items relating to investment institutions

- ***What?*** The EBA has published a consultation regarding technical regulation standards to determine in more detail how banks must calculate risk-weighted items relating to units they hold in investment firms (*collective investment undertakings* (CIUs)) if one or more of the inputs required for that calculation is unavailable. By way of background: the method of calculating these exposures stems from the Basel framework for calculating capital requirements for equity investments. If insufficient data are available for a "look-through approach" (LTA) — in which respect each exposure must be examined individually at the level of the investment firm's underlying investment — the "mandate-based approach" (MBA) will be used.
- ***Who?*** All banks.
- ***When?*** The consultation period will run until 16 March 2021. According to Article 132(a) CRR, the EBA must submit the draft RTS to the Commission by no later than 28 March 2020.

Methodology for 2021 EU-wide stress test

- ***What?*** To assess the resilience and solidity of financial institutions in the event of adverse economic developments, EBA coordinates a EU-wide stress test every year. For the 2021 stress test, the EBA has published a number of relevant documents: (i) a document describing the common methodology that determines how banks are to calculate the impact of certain scenarios, (ii) draft Excel templates in which banks can enter relevant data, and (iii) a document that offers technical guidance on entering data into the Excel templates.
- ***Who?*** All banks.
- ***When?*** The stress test will start in January 2021. The final results of the stress test will be published by no later than 31 July 2021.

Opinion addressed to the Commission on the definition of 'credit institution'

- ***What?*** A harmonised definition of the term 'credit institution' is of major importance to creating the Single Rulebook, and uniform market access and a level playing field for banks. In previous reports published in 2014 and 2017, EBA already informed the Commission that parts of the definition of credit institution are not uniformly applied by the Member States. On 18 September 2020, EBA published an opinion in which it repeats its position. In this opinion, the EBA once again requested the Commission for clarification of several key words in the definition of the term 'credit institution'.
- ***Who?*** All banks.
- ***When?*** For the time being, it is unclear if (and, if so, when) the Commission will respond to the EBA's opinion, but we expect that more will become clear in this regard in 2021.

Other publications

With a view to further harmonisation of the Single Rulebook for banks, EBA in 2020 published a large number of guidelines, opinions, surveys, and draft technical standards that will be very important to all banks in 2021. Among other things, this concerned:

- A consultation on draft Guidelines on conditions for the application of the alternative treatment of institutions' exposures related to tri-party repurchase agreements. The guidelines will enter into effect in June 2021.

- A consultation of Regulatory Technical Standards (RTS) with regard to the calculation of default probabilities (PDs) and losses given default (LGDs), in the context of

the internal model approach (IMA) to the computation of the own funds requirements for market risk.

- A consultation on Regulatory Technical Standards (RTS) with regard to the inclusion in the balance sheet of indirect exposures arising from derivatives contracts. The draft technical standards have been submitted to the European Commission for approval.

- A consultation on Implementing Technical Standards (ITS) relating to the competent resolution authorities' reporting to the EBA of data on minimum requirements for own funds and eligible liabilities (MREL) capital.

- A consultation on Regulatory Technical Standards (RTS) with regard to methods for the calculation of MREL capital within groups in the context of the resolution strategy.

- A consultation on Regulatory Technical Standards (RTS) and on Implementing Technical Standards (ITS) with regard to the impracticability of contractual recognition of bail-in.

- The EBA launched a survey on the use of RegTech solutions and ways to support the implementation of RegTech throughout the EU. To this end, the EBA prepared two separate questionnaires, one of which to be completed by financial institutions, and the other one by ICT third party providers. The EBA expects to report on the use of RegTech solutions in the first half of 2021.

- Final Guidelines (RTS) on the treatment of structural FX positions. The guidelines will apply from 1 January 2022, a year later than originally planned.

- Final revised Guidelines (RTS) specifying how global systemically important banks can be identified on the basis of indicators and on their disclosure. The revised guidelines will be applicable in 2022, based on data collected in 2021.

- A monitoring report on the minimum requirement for own funds and eligible liabilities (MREL) and total loss-absorbing capacity (TCAL) instruments. In addition, the report contains recommendations that are relevant to determine the quality of the TCAL/MREL instruments. EBA will continue to monitor the quality of TCAL/MREL instruments in the future.

- Final Guidelines (RTS) specifying the prudential treatment of software assets. The final Guidelines have been sent to the European Commission for their adoption as EU Regulations that will be directly applicable throughout the EU.

- Final Guidelines on Credit Risk Mitigation for A-IRB banks. These guidelines serve to harmonise the application of credit risk mitigation (CRM) at banks. The guidelines will apply from 1 January 2022.
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- Final Guidelines on determining the appropriate subsets of sectoral exposures to which competent or designated authorities may apply a systemic risk buffer. The guidelines will apply from 29 December 2020. The relevant authorities must notify the EBA by 10 January 2021 as to whether they comply or intend to comply with the obligations under the guidelines. If they do not comply with the guidelines, they must state reasons for the non-compliance.

AFM

Trend Monitor 2021

- ***What?*** In AFM's Trend Monitor 2021, the AFM points out developments in five specific areas that are also relevant to banks: (i) macroeconomic developments, (ii) geopolitical developments, (iii) developments in legislation and regulation, (iv) digitisation; and (v) the transition to a sustainable economy and society. Based on these developments, the AFM identifies responsible mortgage lending as one of the supervisory themes. For more information on Trend Monitor 2021, see sections General Developments and Credit Providers of this Outlook.
- ***Who?*** All banks, in particular banks offering products to consumers or non-professional investors.
- ***When?*** The trends identified by AFM have its attention in 2021. It will then investigate in which cases these trends bring risks for consumers and what the implications of those risks are. To this end, the AFM will enter into discussions with providers, government and other stakeholders.

GENERAL REGULATIONS

EBA Cost of compliance; questionnaire and call for case studies banks

- ***What?*** To gain insight into the costs of supervisory reporting and to investigate to what extent the reporting burden for banks can be reduced by 10%-20%, the European Commission has set up the Cost of Compliance Study (CoC Study).
- ***Who?*** All banks.
- ***When?*** The submission deadline for the case study ended on 31 October 2020. The findings from the study will be reported to the European Commission and the European Parliament in 2021.

BANKING PACKAGE

Entry into force CRD V and CRR II

CRD V and CRR II

At the end of 2016, the European Commission introduced its proposals for CRD V and CRR II, completing the implementation of Basel III. On 7 June 2019, the final CRD V (Directive (EU) 2019/878) and CRR II (Regulation (EU) 2019/876) were published in the Official Journal of the European Union. CRD V was implemented in the Wft and further regulations on 28 December 2020 by means of the Capital Requirements Implementation Act 2020 and the Capital Requirements Implementation Decree 2020. The majority of CRR II is directly applicable as of 28 June 2021.

Important changes

Below, we will briefly discuss a number of important changes resulting from CRD V and CRR II.

CRD V

- **SREP and Pillar 2 capital add-ons**: The conditions under which supervisory authorities may require further Pillar 2 capital add-ons on the basis of their Supervisory Review and Evaluation Process (SREP) will be further harmonised and tightened. A distinction is made between Pillar 2 capital add-ons and macro-prudential instruments. New rules offer authorities more clarity and flexibility with regard to macro-prudential tools (such as the systemic risk buffer and the leverage ratio buffer). Furthermore, the new regulations codify, among other things, the already existing practice of the Pillar 2 Requirement and the Pillar 2 Guidance. In the event of non-compliance with the Pillar 2 Requirement, the maximum distributable amount is to be calculated. This is the maximum amount that such a bank may distribute in dividend, AT1 coupons and variable remunerations.
- **Proportionality**: The new rules offer room for a proportional approach for non-complex, small banks in respect of various subjects, including the rules in the field of remuneration and reporting. See also below ('Amendment of Regulation on Restrained Remuneration Policies – proportionality').
- **Approval requirement financial holdings**: Until recently, consolidated supervision was conducted of the highest bank in a banking group. However, after the entry into force of CRD V, the mixed financial holdings of these groups above these banks were brought directly into the scope of application of the supervisory powers applicable under CRD V and CRR II. This way, such holdings can be held directly responsible for the compliance with consolidated prudential requirements. In addition, these holdings must have the approval of the competent supervisory authority or be exempted from this approval requirement. The approval incorporates, among other things, the internal group governance and procedures and the structure and suitability and trustworthiness of the management board of the holding. DNB applies a six-month decision-making period for decisions on approval.
- **New rules for non-EU banking groups**: Banking groups from outside the EU having at least two entities and over EUR 40 billion in assets in the EU must have a European holding company (intermediate EU parent undertaking). For the calculation of total assets, the assets of subsidiaries and branches of those groups within the European Union must be taken into account. A transitional regime will be in place until 30 December 2023.

CRR II

- **Net Stable Funding Ratio**: The Net Stable Funding Ratio (NSFR) will be implemented as a requirement in slightly amended form. This is in line with EBA's recommendations (in order to impede the financing of the European economy as little as possible and have the NSFR tie in with the EU liquidity coverage ratio (LCR) as well as possible).
- **Leverage ratio**: A binding leverage ratio (LR) of 3% will apply as from 28 June 2021. In addition, an additional leverage ratio buffer add-on will apply for global systemically important banks (G-SIBs) as of 1 January 2022. The European Commission will also deliberate on the desirability of broadening this add-on to national systemically important banks (O-SIIs, short for other systemically important institutions).
- **Credit risk**: The large exposures regime will change. The capital to be considered in the calculation of the large exposure limits will be reinforced (Tier 1 capital only) and the rules will also be adjusted specifically for G-SIBs.
- **Fundamental Review of the Trading Book**: In light of the fundamental review of the trading book (FRTB) by the Basel Committee, new capital requirements for market risk have been implemented as a reporting requirement (see also above: 'New reporting requirements market risk').
- **SME financing**: For SME financing, lower capital requirements are implemented with regard to such loans.

To do's

The changes resulting from CRD V and CRR II bring about a large number of important and urgent action points for banks. We will mention three below:

- **Monitor and implement detailed further requirements**: Banks must closely monitor the further technical supervisory standards and guidelines of EBA that will flesh out specific rules in CRD V and CRR II. In this context, see also the EBA Roadmap of November 2019 and the EBA Work Programme 2021. In this respect, one may think of further rules with regard to gender-neutral remuneration policies, the development of a standardised and the simplified standardised method for interest rate risk in the banking book, and the incorporation of ESG risks (environmental, social and governance risks) in the SREP.
- **Apply for holding approval in time**: Financial holdings in a banking group that on 27 June 2019 already had a registered office in the Netherlands must apply for approval, or an exemption, by no later than 28 June 2021. Otherwise DNB or the ECB will take enforcement action. Therefore, it is of major importance for all banks in the Netherlands to analyse whether they have one or more financial holdings in the group to prepare an application for approval, or an application for exemption, in good time.
- **Proportionality adjustments**: Banks can analyse in which respects they can reduce their regulatory burden by using the proportionality provisions of CRD V. The bank can then adjust its policy and practices accordingly.

Entry into force BRRD II and SRMR II

- ***What?*** On 7 June 2019, the final BRRD II (Directive (EU) 2019/879) and SRMR II (Regulation (EU) 2019/877) were published in the Official Journal of the European Union. The most important changes relate to, among other things, the MREL and TLAC framework. On 2 December 2020, the European Commission published a notice responding to questions raised by Member States on the interpretation of certain provisions and definitions from BRRD II and SRMR II.
- **Who?** All banks.
- **When?** The SRMR II has applied since 28 December 2020. As regards the implementation of the BRRD II: the deadline for implementation is 28 December 2020, but the Ministry of Finance is not on schedule for this implementation. For the legislative process, see the legislation calendar. The consultation on the implementation act will continue to run until 22 January 2021 (see 'Consultation on the Loss-absorption and Recapitalisation Capacity Implementation Act (BRRD II)', below.

Amendment of Regulation on Restrained Remuneration Policies – proportionality

- ***What?*** On 8 October 2020, DNB published a draft Regulation on Restrained Remuneration Policies for consultation. In it, DNB proposes several amendments relating to the Regulation on Restrained Remuneration Policies of banks (Rbb 2017). These amendments were published in the Government Gazette on 21 December. These amendments are being prompted by the entry into force of the CRD V, which changes the provisions in the CRD IV relating to remuneration policy. The most important amendment in this context is the proportionality provision on the basis of which certain smaller banks (with less than EUR 5 billion in assets) are exempt from certain remuneration provisions (such as the deferral and the obligation to distribute partly in instruments). However, using a Member State option, DNB limits the group of employees to whom this exemption would apply by introducing a EUR 50,000 cap on the annual variable remuneration, which amounts to no more than 10% of the total annual remuneration of the staff member.
- ***Who?*** All banks.
- ***When?*** The revised Rbb 2017 applies as of 29 December 2020.

CRR – Commission Delegated Regulation on specialised lending exposures

- ***What?*** The EC has finalised technical regulation standards (RTS) as a supplement to the capital requirements regulation (CRR) regarding the allocation of risk weights to specialised lending exposures. They also published the Annexes to the RTS describing the various factors that must be taken into account when allocating risk weights to specialised lending exposures.
- ***Who?*** All banks.
- ***When?*** The Regulation was finalised on 14 December 2020 and has not yet been published in the Official Journal. The Regulation will enter into force one year after the date of publication.

EXISTING LAWS AND REGULATIONS

One-year deferral Basel 3.5

- ***What?*** In December 2017, after years of negotiations, agreement was reached on the final elements of the Basel III framework, which, due to its scope, is also referred to as Basel 3.5 (or Basel 4). The original intention was for this package to be phased in starting January 2022. In view of the coronavirus crisis, the Basel Committee announced in March 2020 that this implementation would be deferred by one year (so starting 2023). This package will have a major impact on Dutch banks on account of the stricter requirements to

the use of internal models for the calculation of risks. For example, there will be a new output floor of 72.5%. This means that, in the risk weighting calculations based on internal models, a bank's capital requirements may never be lower than 72.5% of the capital requirements as calculated according to the standardised approach. This has significant adverse consequences for Dutch banks on account of their substantial mortgage portfolios. Banks that use internal models will have to hold more capital for their mortgage portfolios.
- ***Who?*** All banks, and in particular banks using internal models.
- ***When?*** In accordance with the current proposals, the Basel 3.5 framework will be phased in starting January 2022.

Further Remuneration Measures for Financial Undertakings Act in preparation

- ***What?*** On 2 July 2020, the Minister of Finance submitted a bill on the Further Remuneration Measures for Financial Undertakings Act to the Dutch House of Representatives. The bill aims to introduce a number of changes to the current remuneration measures as included in the Wft, including the introduction of a statutory retention period of five years for shares paid out as part of a fixed remuneration and a tightening of the averaging scheme for personnel not covered by the collective labour agreement, who may be awarded a bonus higher than 20% under certain conditions.
- ***Who?*** All banks.
- ***When?*** The envisaged date of entry into force of most of the tightening measures is 1 July 2021. Certain other changes have an envisaged date of entry into force of 1 July 2022.

Consultation on the Loss-absorption and Recapitalisation Capacity Implementation Act (BRRD II)

- ***What?*** On 11 December 2020, the Ministry of Finance published a draft bill to implement the directive on loss-absorbing and recapitalisation capacity for credit institutions and investment firms (BRRD II) for consultation. The Financial Supervision Act will be amended to implement the BRRD II. The primary objective of the review of the BRRD is to increase the quality of bail-in buffers of banks (the MREL). See also 'Entry into force BRRD II and SRMR II', above. The latest implementation date of BRRD II was 28 December 2020, but the Ministry of Finance is not on schedule with this implementation.
- ***Who?*** All banks.
- ***When?*** The consultation period will run until 22 January 2021.

NEW LAWS AND REGULATIONS

Financial Markets Amendment Act 2021 – group certificates of no objection

- ***What?*** At the end of 2019, the Ministry of Finance published its draft bill Financial Markets Amendment Act 2021 for consultation. A proposed amendment relevant for banks relates to the further alignment of the instrument of the group certificate of no objection to the ESA Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings from December 2016. It has become clear that the Dutch legal framework with regard to the granting of group certificates of no objection can be further aligned with the Joint Guidelines for the prudential assessment of acquisitions of qualifying holdings in financial undertakings.
- ***Who?*** All banks.
- ***When?*** The government's objective is to have the Amendment Act enter into force in mid-2021.

Financial Markets Amendment Decree 2021 - amendments related to intra-group outsourcing

- ***What?*** Outsourcing by banks is an important supervisory theme of DNB and the ECB. On 1 July 2020, the Minister of Finance published a consultation with regard to the Financial Markets Amendment Decree 2021. The amendment decree is a collective decree that, among other things, implements amendments to the Prudential Rules (Financial Supervision Act) Decree *(Besluit prudentiële regels*, Bpr). The decree amends the provisions on intra-group outsourcing, improving alignment with the EBA Outsourcing Guidelines. As a result of this amendment, the rules on outsourcing policy, procedures and agreements will also apply to institutions such as banks whenever they outsource activities to group companies within the EU. As a result of this amendment, exceptions to the outsourcing provisions from the Bpr are no longer possible for such outsourcing.
- ***Who?*** All banks that have outsourced duties within the group.
- ***When?*** The Amendment Decree was consulted on in the summer of 2020. The decree is expected to enter into force in 2021. The precise date is not yet known.

IFD/IFR - New type of bank and mandatory banking licence

- ***What?*** The new prudential framework for investment

firms, the Investment Firms Regulation (IFR) and the Investment Firms Directive (IFD), will lead to an amendment of the definition of credit institution in CRR. A new category of banks will be added. Investment firms dealing on own account in financial instruments or placing financial instruments on a firm commitment basis and whose consolidated assets exceed EUR 30 billion will be covered by the definition of a 'credit institution' and will have to apply for a banking licence. On 23 November 2020, DNB published a news report in which it referred to its fact sheet regarding investment firms' obligation to apply to the DNB (and the ECB) for a banking licence if they will qualify as banks under the IFR/IFD. For more information on IFD/IFR, see the Investment Firms section of this Outlook.

- ***Who?*** Class 1 investment firms which satisfy the CRR definition of 'credit institution' (as it read after the IFR became applicable).
- ***When?*** The application for a banking licence must have been submitted to DNB by no later than the date on which the IFD Implementation Act enters into force. The implementation deadline is 26 June 2021.

Implementation rules for covered bonds

- ***What?*** We already wrote about this European legal framework for covered bonds in our previous Outlook (2020). Covered bonds are debt instruments issued by credit institutions and are secured by a separated pool of assets that bondholders can take direct recourse against as preferential creditors. The framework will consist of a directly applicable Regulation and a Directive that will need to be implemented into Dutch laws and regulations.
- ***Who?*** Credit institutions that also issue securities.
- ***When?*** Both the regulation and the directive were officially published on 18 December 2019 and went into effect on 7 January 2020. The regulation is applicable as from 8 July 2022. National implementing legislation must be adopted and published by no later than 8 July 2021, and must go into effect no later than 8 July 2022.

OTHER DEVELOPMENTS

Integrity

- ***What?*** Integrity, and ensuring compliance with anti-money laundering in particular, continues to be a main priority for DNB. At a European prudential level as well, even more attention is being devoted to the impact of integrity on the internal governance and stability of banks. For an overview of the consequences of AMLD6, the UBO register, and other relevant Dutch and European developments in the area of integrity, we refer to the Integrity section of this Outlook.
- ***Who?*** All banks.
- ***When?*** New developments in this respect are to be expected throughout 2021.

Financial markets

- ***What?*** For banks accessing the financial markets on behalf of clients or in view of their own internal asset and liability management or investments, many specific rules regarding the regulation of those markets will be relevant in the year ahead. Examples include rules on benchmarks, securitisations, OTC derivatives and securities holdings within the chain of custody. For more information on these developments, we refer to the General Developments section in this Outlook.
- ***Who?*** All banks.
- ***When?*** New developments are to be expected throughout 2021.

Brexit deal

- ***What?*** The Brexit deal was concluded on 24 December 2020. This deal, however, barely discusses the financial sector, which means that the loss of the European passport has not been addressed. It is now up to both the EU and the United Kingdom to decide, unilaterally perhaps, to consider the financial sector of the other as equal and to grant full access to its own market, also referred to as equivalence decisions. For the incoming main activities of AIF managers, the EU has not adopted such a decision, based on the CRR, at least not yet. DNB did publish a fact sheet indicating which activities can and cannot be carried out by UK banks in the Netherlands from 2021 onwards. Unlike the EU, the United Kingdom has passed a number of equivalence decisions for banks that wish to perform activities in the United Kingdom from the EU. Moreover, the temporary permissions regime applies to banks. Banks that prior to Brexit engaged in activities in the UK on the basis of a European passport and which submitted an application under the temporary permissions regime in 2020 can partially continue to perform their activities under the same terms and conditions for up to a maximum of three years. Banks that are not availing themselves of this scheme will be afforded the opportunity, on the basis of the Financial Services Contracts Regime to wind down their activities in the United Kingdom in an orderly fashion.
- ***Who?*** Banks that operate in both the Netherlands and the United Kingdom.
- ***When?*** The Brexit deal entered into force on 1 January 2021.

COVID-19

European Commission strategy non-performing loans

- ***What?*** The European Commission has presented a strategy to prevent non-performing loans (NPLs) from piling up as a consequence of the COVID-19 crisis. This strategy is focused on ensuring that households and companies in the EU continue to have access to the financing they need. The strategy consists of four main objectives: 1) the further development of secondary markets for problem assets, 2) reform of EU law on insolvency and debt collection, 3) support of the establishment of, and cooperation between, national Asset Management Companies (AMCs) at EU level, 4) provide government support where necessary so that the financing of the actual economy can continue.
- ***Who?*** All banks.
- ***When?*** The strategy was published on 16 December 2020 and must increase banks' assets for financing economic recovery.

Coronavirus regulations European Commission to facilitate lending

- ***What?*** The coronavirus crisis is a crisis on an unprecedent scale, with banks being considered part of the solution from very shortly after the outbreak. By adopting a broader credit policy, banks would be able to contribute to keeping the economy in the EU going. That is why on 28 April 2020 the Commission adopted a package of measures to help facilitate bank lending to households and businesses throughout the European Union. The package contains an interpretative communication on accounting and prudential frameworks and a number of quick fix amendments to CRR. The main amendments resulting from the CRR quick fix are:
  - deferral of the leverage ratio for global systemically important institutions
  - adjustments concerning a possible exclusion of central bank reserves from the leverage ratio
  - temporary relaxations in the accounting framework so that, under certain conditions, banks do not have to fully fund an increase in provisions using their capital
  - temporary reintroduction of prudential filters whereby volatility in government notes is not translated entirely into higher capital requirements.

  Moreover, a number of requirements that were supposed to enter into effect in mid-2021 were implemented sooner, such as lower risk weights for SME loans.
- ***Who?*** All banks.
- ***When?*** The package was adopted on 28 April 2020 and entered into effect in Q2 2020.

EBA guidelines CRR quick fix

- ***What?*** On 11 August 2020, EBA published a revised version of the Implementing Technical Standards (ITS) and two new sets of Guidelines on disclosures and supervisory reporting requirements to provide clarifications on the adjustments to the CRR quick fix. The 'Guidelines on supervisory reporting and disclosure' guidelines explain how the effect of the adjustments in the CRR is to be reported. The 'Amending Guidelines on disclosure' explain, among other things, the effect of Article 468 of the CRR quick fix, which stipulates that unrealised gains and losses temporarily need not be considered in the calculation of the Common Equity Tier 1 (CET1) capital.
- ***Who?*** All banks.
- ***When?*** The adjustments in the capital requirements framework entered into effect on 27 June 2020.

EBA reactivates Guidelines on moratoria

- ***What?*** In light of the second coronavirus wave in the EU, EBA reactivated its Guidelines on moratoria on 2 December 2020. These guidelines clarify in respect of legislative and non-legislative payment moratoria for loans (the possibility for a borrower to suspend repayment), for example, that the use of such a moratorium does not trigger a customary forbearance classification. EBA hereby emphasises that it is crucial for banks to continue to provide lending to the real economy. At the same time, EBA is continuously monitoring the use of moratoria and requires banks to carefully document their exposures to loans in which moratoria are or can be used. This way, supervisory authorities have a clear picture of potential solvency problems at banks and can take action where necessary.
- ***Who?*** All banks.
- ***When?*** The guidelines will apply until 31 March 2021.

EBA Guidelines on flexible approach to SREP 2020

- ***What?*** On 23 July 2020, the EBA published Guidelines on a pragmatic and flexible approach to the 2020 supervisory review and evaluation process (SREP) in light of the COVID-19 pandemic. The guidelines indicate how the supervisory authorities can adopt a flexible and pragmatic attitude in the SREP evaluation for the year 2020. This prevents disproportionate operational burdens for banks in this period.
- ***Who?*** All banks.
- ***When?*** The guidelines apply to the SREP for the year 2020 and apply from 23 July 2020.

EBA report on implementation COVID-19 policy

- ***What?*** On 7 July 2020, the EBA published a report in which it provides an explanation to the implementation of various guidelines issued in the context of the COVID-19 pandemic. In the report, EBA responds to questions about the adjustments made in the prudential framework, provides clarification about the guidelines on payment moratoria, and sets out common criteria that aim at providing clarity on the supervisory and regulatory expectations regarding the treatment of COVID-19 operational risk losses in the capital requirement calculations. EBA also encourages banks to collect information on potential losses, even when these are not expected to be part of the calculation of the capital requirements.
- ***Who?*** Banks.
- ***When?*** The report was published on 7 July 2020 and provides direct clarification regarding the current prudential framework. EBA expects to update the report at a later stage, given the likelihood of new policy issues in this context arising in the future.

ECB prudential measures COVID-19 crisis

- ***What?*** In December 2020, in the context of the COVID-19 crisis, the ECB extended its recommendation to banks to cease or limit dividend distributions and share repurchases up to and including 30 September 2021. The ECB expects that dividends and share repurchases will be lower than 15% of the accumulated profit for 2019 and 2020 and will not exceed 20 basis points of the tier 1 core capital ratio. In addition, the ECB sent a letter to the CEOs of major banks repeating its expectation that banks will act with extreme restraint with regard to variable remuneration up to and including 30 September 2021. In addition, the ECB allows a temporary relaxation of the leverage ratio of banks.
- ***Who?*** Significant banks. For less significant banks, DNB has taken similar measures, see below.
- ***When?*** The ECB recommends ceasing or limiting dividend distributions and share repurchases up to and including 30 September 2021 and exercising extreme reticence with the payment of variable remuneration up to and including 30 September 2021. The relaxation of the leverage ratio applies until 27 June 2021.

ECB on coronavirus crisis management

- ***What?*** Good governance and effective internal control systems play an important role in responsible decision-making at the time of the coronavirus crisis. In this light, the ECB has identified a number of good and bad practices building on its expectations in the areas of internal governance, internal control functions and risk data aggregation. An example of a good practice among banks is the establishment of new crisis committees with representatives from different areas of expertise, including operational continuity and infectious diseases. In addition, the management body in its management function is expected to take crisis-related decisions on a sound and well-informed basis. Most banks have managed not only to focus on the material aspects of the crisis but also to adjust their strategy in time. An observed bad practice is that some banks appear to have adjusted risk limits solely to avoid breaching certain thresholds. Adjusting their risk profile only in this way hampers banks' ability to monitor risks effectively.
- ***Who?*** All significant banks.
- ***When?*** Immediately.

EBA calls for restraint on capital distributions

- ***What?*** The EBA is calling on banks to exercise extreme restraint with regard to dividend distributions and share repurchases. Banks are also being called on to limit variable remuneration. This is consistent with the ECB's measures in this context (see above).
- ***Who?*** All banks.
- ***When?*** As early as March 2020, the EBA was calling on banks to adopt conservative distribution policies. The uncertain circumstances will persist in 2021.

DNB temporary relaxation of leverage ratio for banks

- ***What?*** DNB has declared that there are exceptional circumstances in view of the coronavirus pandemic. Declaring exceptional circumstances automatically results in a temporary relaxation of the leverage ratio for banks directly supervised by DNB. At an earlier stage, the ECB likewise declared the existence of exceptional circumstances in respect of significant banks. The measure allows banks to temporarily exclude specific central bank exposures (coins and banknotes and, most importantly, deposits held at the central bank) when calculating, reporting and disclosing their leverage ratio. The decision to exclude specific central bank exposures temporarily means that the bank does not have to maintain equity on the balance sheet for such exposures. This benefits banks in terms of their scope for lending. The rule applies until 27 June 2021 (the entry into force of CRR II).
- ***Who?*** Less significant banks directly supervised by DNB.
- ***When?*** The measure was announced on 17 September 2020 and applies until 27 June 2021.

INVESTMENT FUND MANAGERS

In this section, the rules for managers of alternative investment funds (AIFs) and undertakings for collective investment in transferable securities (UCITS) are discussed. Instead of the formal statutory term 'investment institution', we use the term that is commonly used on the market, 'investment fund', as a generic reference to all types of investment vehicles. If a manager is permitted to offer investment services in addition to managing investment funds, those services must be rendered in compliance with a large number of rules that apply to investment firms. This is why we advise managers to review the present section as well as the Investment Firms section of this Outlook. The cross-sectoral sections entitled Integrity and Sustainability are also very relevant for investment funds.

AFM SUPERVISION

Trend Monitor 2021

- ***What?*** In November 2020, the AFM published the Trend Monitor 2021 Report. In this report, the AFM identifies the trends and risks on the financial markets, including persistent low interest rates, the progress of digitisation and the increasing attention being paid to sustainability.
- ***Who?*** Managers of AIFs and UCITS, particularly licence holders.
- ***When?*** Immediately; the report offers insight into issues on which the AFM will focus in carrying out its supervisory duties.

Attention to information security risks

- ***What?*** In May 2020, the AFM asked companies to be particularly alert regarding increased information security risks relating to the COVID-19 crisis (such as the risk of a data breach given the increase in working from home and companies' dependence on external service providers).
- ***Who?*** Managers of AIFs and UCITS, particularly licence holders.
- ***When?*** Immediately; increased information security risks still play a role.

Call to report incidents

- ***What?*** The AFM sent market parties a letter drawing their attention to reporting incidents that could constitute a serious threat to the integrity and management of business operations. Given the current situation in which we are more often working together remotely as a result of the COVID-19 crisis, the AFM requests market parties to be more attentive with regard to integrity and information security incidents. The letter contains an appendix with a non-exhaustive list of examples of incidents.
- ***Who?*** Licensed managers of AIFs and managers of UCITS.
- ***When?*** The AFM is devoting a higher level of attention to the statutory obligation to report incidents. The AFM indicates that it will be able to investigate compliance with this obligation in the future.

ESMA

Report on liquidity risks for investment funds

- ***What?*** On 12 November 2020, ESMA published a report on liquidity and valuation risks for investments funds with substantial exposures to business loans and real estate. ESMA made it clear to fund managers that they will have to be prepared for unfavourable future shocks, keeping in mind the liquidity problems being caused by the COVID-19 crisis. ESMA is promoting more stringent supervision.
- ***Who?*** Fund managers holding an AIFMD or UCITS licence, and specifically if they manage investment funds that have significant exposure to business loans and real estate. The emphasis will be placed on investment funds which invest in illiquid assets while there are regular redemption options. Therefore, investment funds that would run liquidity risks should an unfavourable shock occur (such as those caused by the COVID-19 crisis) will be the primary targets of examination.
- ***When?*** Immediately. ESMA will be promoting more stringent supervision of such investment funds by local supervisory authorities.

Guidelines regarding performance fees for UCITS and certain types of AIFs

- ***What?*** These guidelines regard performance fees for managers of UCITS and certain types of AIFs. The guidelines relate to the following topics: 1) Methods of calculating performance fees must be verifiable; 2) Consistency between the performance bonus model and investment targets; 3) Frequency with which performance-linked bonuses may be paid to the manager; 4) Rectification of negative performance, performance bonuses must only be paid if a positive yield is achieved during the performance reference period and; 5) Publication of the performance fee model.
- ***Who?*** Managers of UCITS and managers of retail AIFs, except for i) closed-end AIFs; and ii) open-end AIFs that are EuVECAs, EuSEFs, private equity AIFs or real estate AIFs.
- ***When?*** With effect from 5 January 2021, two months after publication in the official languages of the Member States.

Consultation on Guidelines on Marketing Communications

- ***What?*** A consultation, published on 9 November 2020, in which ESMA proposes guidelines regarding marketing communications by fund managers as required pursuant to Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings. The draft guidelines impose various requirements on marketing communications by fund managers. A more detailed explanation of these new rules can be found below.
- ***Who?*** AIF managers, UCITS managers, EuVECA managers and EuSEF managers.

- ***When?*** The deadline for responding to the consultation is 8 February 2021. ESMA will issue the guidelines by no later than 2 August 2021.

Costs for fund managers' supervision priorities

- ***What?*** ESMA has designated the costs and fees charged by fund managers, and particularly their fairness and proportionality, as supervisory priorities for local supervisory authorities. Previously, on 4 June 2020, ESMA drew attention to this issue in a briefing to local supervisory authorities. The AFM already applies this briefing in practice.
- ***Who?*** Managers of AIFs and UCITS.
- ***When?*** Immediately.

Final Guidelines on outsourcing to cloud service providers

- ***What?*** On 18 December 2020, ESMA published its final guidelines on outsourcing to cloud service providers. The objectives of the guidelines include providing fund managers with guidance if they outsource services to such providers and to assist them in identifying, addressing and monitoring the associated risks. These guidelines are particularly relevant to fund managers, because this is a group that traditionally tends to outsource a relatively large amount of services (for example, their fund administration). In addition, it was still unclear whether the use of cloud services qualified as outsourcing.
- ***Who?*** All authorised managers of AIFs and UCITS.
- ***When?*** The guidelines will be translated into all of the official EU languages and published on ESMA's website. Within two months after publication, the competent authorities must notify ESMA of whether they are complying with, or intend to comply with, the guidelines. From that time on, they will also formally apply to market parties. Fund managers are encouraged to implement the guidelines in their processes ahead of their formal entry into force.

Final Guidelines on leverage in AFIs

- ***What?*** On 17 December 2020, ESMA published its final guidelines regarding leverage in Alternative Investment Funds (AIFs). ESMA intends to implement a general framework for the competent authorities based on which they can verify the level of leverage at AIFs and, where necessary, ensure that that level is gradually reduced. The guidelines regard the method of assessing the leverage-related system risk and are intended to promote a consistent approach among competent authorities. The guidelines will also be aimed at developing a macroprudential framework relating to leverage limits.
- ***Who?*** Managers of AIFs that use leverage.
- ***When?*** The guidelines will be translated into all of the official EU languages and published on ESMA's website. Within two months after publication, the competent authorities must notify ESMA of whether they are complying with, or intend to comply with, the guidelines. From that time on, they will also apply to market parties. Fund managers are encouraged to implement the guidelines in their processes ahead of their formal entry into force.

Final Guidelines on MMF stress test scenarios 2020

- ***What?*** On 16 December 2020, ESMA published its final guidelines regarding stress test scenarios for Money Market Funds (MMFs). ESMA will annually review these guidelines, thus ensuring that the most recent market developments are included in the stress test scenarios. This year, the guidelines' risk parameters have been adjusted in light of the extreme market movements due to the COVID-19 crisis.
- ***Who?*** All managers of MMFs.
- ***When?*** The guidelines will be translated into all of the official EU languages and published on ESMA's website. The guidelines will enter into force after a period of two months. Managers of MMFs will have to use the new 2020 parameters in the context of the first reporting period. The guidelines will be updated annually in view of new market developments.

Work Programme 2021

- ***What?*** On 2 October 2020, ESMA published its Work Programme for 2021, in which it states what it will focus on in 2021 and what the most important output of its efforts will be. Three of the four main activities ESMA describes are relevant to managers: (i) promoting, and continuing to promote, convergence in European supervision of liquidity risks within funds and the use of instruments relating to funds' liquidity management; (ii) including environmental, social and governance (ESG) factors and financial innovation in ESMA's risk analysis, among other things to facilitate risk-based supervision; and (iii) bolstering the Single Rulebook by contributing to the AIFMD review, but also — where necessary — revising the technical standards that will be part of the revised EMIR regulations.
- ***Who?*** Managers of AIFs and UCITS.
- ***When?*** Immediately.

EXISTING LAWS AND REGULATIONS

Revision of the AIFM Directive

Review by the European Commission

The AIFM Directive is currently being reviewed by the European Commission. Specifically, Article 69(1) of the AIFM Directive required the European Commission to start a review of the application and scope of the AIFMD by 22 July 2017, at the latest. That date is well behind us. The review must include a general overview of the functioning of the AIFM Directive's requirements and of the experience gained with its application. This may ultimately lead to amendment of specific parts of the AIFM Directive.

Where are we now?

- The first step of the review was instructing KPMG to investigate the effect of the AIFM Directive. The European Commission published KPMG's report on 10 January 2019.

- On 17 June 2020, the AFM published its recommendations for reviewing the AIFM Directive. The AFM indicated its general satisfaction with the AIFM Directive and how it has been fleshed out in practice. The AFM has issued six recommendations for improving the AIFM Directive. The AFM is requesting, among other things and partly with a view to the UK's exit from the EU, a renewal of the efforts regarding the third-country passport and continuing the National Private Placement Regime until the third-country passport has proven to be a reliable option in practice.

- Subsequently, on 18 August 2020, ESMA published a letter that is extremely relevant for the market. This letter contained recommendations for changes in 19 areas, including harmonising the AIFM Directive with the UCITS Directive. Fund managers would do very well to read this letter. The recommendations of ESMA, which could have a significant impact on the market if the European Commission were to concur with them, relate to the following topics, among others: (i) scope of additional MiFID services and applicable rules, (ii) delegation and substance and (iii) leverage.

- On 22 October 2020, the European Commission launched its long-awaited public consultation in the context of the review. The consultation consists of 102 questions based on which market parties can provide input for the consultation. The subjects include (i) the European passport and its effect, (ii) small managers, (iii) the MiFID top-up, (iv) client classification (to determine whether a new definition of 'semi-professional investor' is desirable), (v) outsourcing and (vi) leverage. Interested parties may respond to this consultation until 29 January 2021.

- The European Commission intends to publish a bill for reviewing the AIFM Directive in the third quarter of 2021.

What can we expect?

We expect that the AIFM Directive will certainly be tightened in a number of places, but an AIFMD 2 such as MiFID II is not in line with expectations. We are particularly curious about whether the European Commission will adopt ESMA's recommendation and, if so, to what extent. That could have a significant impact on the market. Fund managers may primarily be affected by changes relating to delegation and leverage, as well as any harmonisation with the UCITS framework. Small managers will have to wait and see if the small managers regime will continue to exist in its present form. They may also be affected by a possible change to the definition of 'leverage', which could jeopardise the EUR 500 million threshold for fund managers, such as private equity fund managers and certain real estate fund managers who attract leverage at portfolio level rather than at fund level. In principle, that form of leverage is not yet seen as leverage for the purposes of calculating thresholds.

In short: we will finally get an indication of the course of the AIFM Directive review in 2021.

Changes to PRIIPs/KID?

- ***What?*** On 21 July 2020, the ESAs informed the European Commission about the result of a review of the Key Information Document (KID) under the PRIIPs Regulation. The ESAs are proposing various improvements related to the KID. On 31 December 2021, the exemption which AIFs and UCITS enjoy from the requirement to draw up KIDs will expire. Improved KIDs will be warmly welcomed by the market, particularly in view of the expiry of this exemption.
- ***Who?*** Currently exempt AIF managers and AIF managers who offer participations of EUR 100,000. Starting on 1 January 2022, this will be relevant for all AIF and UCITS managers.
- ***When?*** Still unclear, but the exemption from having to draw up KIDs enjoyed by retail AIFs and UCITS will expire on 31 December 2021.

Consultation on European long-term investment funds

- ***What?*** The European Commission has launched a consultation regarding European long-term investment

funds (ELTIFs), a certain type of AIF that invests in long-term businesses and projects in areas such as energy, transport, subsidised housing, schools and hospitals. Even though rules have been in place since 2015, only some 28 ELTIFs have been launched. The objective of the consultation is to investigate which aspects of the rules can be amended to make ELTIFs more appealing.
- ***Who?*** AIF managers which manage ELTIFs or which intend to do so.
- ***When?*** The consultation period will end on 19 January 2021.

Further Remuneration Measures for Financial Undertakings Act in preparation

- ***What?*** On 2 July 2020, the Minister of Finance submitted a bill on the Further Remuneration Measures for Financial Undertakings Act to the Dutch House of Representatives. The bill aims to introduce a number of changes to the current remuneration measures as included in the Financial Supervision Act (*Wet op het financieel toezicht*, Wft), including the introduction of a statutory retention period of five years for shares paid out as part of a fixed remuneration and a tightening of the averaging scheme for personnel not covered by the collective labour agreement, who may be awarded a bonus higher than 20% under certain conditions.
- ***Who?*** Managers of AIFs and UCITS which fall within the scope of Dutch remuneration measures, and possibly their affiliated group companies as well.
- ***When?*** The envisaged date of entry into force of most of the tightening measures is 1 July 2021. Certain other changes have an envisaged date of entry into force of 1 July 2022.

NEW LAWS AND REGULATIONS

Sustainability for fund managers

New sustainability rules

2021 will be the year of sustainability rules for the financial sector. In the section of this Outlook entitled 'Sustainability', we identify all the developments in this area. Those that will be particularly relevant to fund managers are:
- Sustainable Finance Disclosure Regulation (SFDR)
- ESAs consultation for draft RTS under the SFDR
- ESAs templates for transparency under the SFDR
- Taxonomy Regulation
- Publication of delegated AIFMD and UCITS rules on the integration of sustainability risks in business processes

The new rules ensuing from the Sustainable Finance Disclosure Regulation (**SFDR**) will be discussed in more detail below:

What does the SFDR mean for fund managers?
In short, the SFDR requires investment funds (AIFs and UCITS, but also EuSEFs and EuVECA funds) to provide information on sustainability. Under the SFDR, fund managers must meet the following obligations, among others (this is a high-level summary of the key obligations):
1. They must draft **policy** regarding the integration of sustainability risks into the investment process and publish that policy on their website. This will apply to each manager and will thus not be optional;
2. They must make an explicit choice as to whether the due diligence process will take into account the **principal adverse impacts** of investment decisions **on sustainability factors**, draft a policy in this regard and include a statement on their website *or* provide substantiation for why they do not do so.
3. The **remuneration policy** must describe how the policy is consistent with the integration of sustainability risks and publish this description on their website;
4. The **prospectus** must describe how sustainability risks are integrated and the probable effects this will have on return, *or* provide substantiation for why sustainability risks are irrelevant;
5. Various **additional rules** if (i) an investment fund promotes ESG features ('Article 8 products') or (ii) an investment fund has sustainable investment as its objective ('Article 9 products'), including **additional information obligations** with **publication on the website** and in **the annual report**.

Terms such as 'sustainable investment', 'sustainability risk' and 'sustainability factors' are separately defined in the SFDR. The Taxonomy Regulation will also further affect the provision of information. The SFDR will impact the business of fund managers in various ways and, in principle, is relevant for all investment funds, regardless of whether they are presented as sustainable. The impact of the SFDR is particularly significant for Articles 8 and 9 investment funds.

Level 2 Regulations – Regulatory Technical Standards

Several of the key obligations of SFDR are worked out in more detail in Regulatory Technical Standards. These were presented to the market for consultation on 22 April 2020, but the final RTS have not yet been issued. The RTS will be particularly relevant to (i) the adverse sustainability impacts statement, (ii) Article 8 products and (iii) Article 9 products. The RTS determine the standard for providing information on these subjects. The consultation on these subjects was very detailed.

Are small managers also subject to the SFDR?
It is not entirely clear whether small managers will also fall within the scope of the SFDR. Although a literal reading of the SFDR indicates that this will indeed be the case, it contains no reference whatsoever to small managers. Managers of EuVECA funds and EuSEF funds are explicitly referred to, however, even though they, like small managers, are 'ordinary' managers of AIFs. Conversely, it can be argued that small managers dot not fall under the scope of the SFDR, as otherwise it would not have been necessary to refer specifically to EuVECA and EuSEF managers. In addition, the SFDR refers to various specific obligations pursuant to the AIFM Directive (and the EuSEF and EuVECA Regulations), such as the prospectus obligation, remuneration policy and annual report. Those rules do not apply to small managers. This also seems to indicate that it does not seem to have been the intention for small managers to fall under the scope of the SFDR. We hope that — before the SFDR enter into force (see below) — the European Commission will formulate an opinion on this and communicate it to the market to eliminate uncertainty.

Is there a transitional regime?

Remarkably, no transitional regime has been explicitly provided for. This means that, in principle, the SFDR will apply to existing and new fund managers, and thus to existing funds as well, as soon as it enters into force. This is not so remarkable in relation to open-end funds, because they facilitate continuous issues and redemptions. At the time of offer, they must ensure that the product satisfies all the statutory and regulatory requirements that apply at that time, so they will have to ensure the timely amendment of their fund documentation to comply with the SFDR. This is, however, remarkable in relation to closed-end funds that were already closed — in the sense that issues of participations rights were no longer possible — prior to the entry into force of SFDR. The fund documentation has been finalised, the investment decision has been taken and the fund will be managed in accordance with the agreements made upon closing. For the market, an outcome in which such funds would be compelled to apply the specific rules of SFDR, and particularly those relating to the prospectus, would be undesirable and not make sense. Another remaining question is whether existing fund managers that only manage existing closed-end funds will have to satisfy the fund manager-specific rules of the SFDR (such as those regarding the investment policy, due diligence and remuneration). We hope that the European Commission or ESMA will clarify these and other questions relating to a transitional regime.

Entry into force

Most of the SFDR rules will enter into force on 10 March 2021. Initially, the aforementioned RTS were also supposed to enter into effect on 10 March 2021, but this has since been postponed by the European Commission. It remains unclear when the RTS will enter into force. Fund managers will nonetheless still have to satisfy the Level 1 regulations in the SFDR with effect from 10 March 2021, which will handicap them somewhat given the absence of any substantive interpretation of those standards.

Cross-border distribution of investment funds

We might almost lose sight of this given all the other developments relevant for fund managers, but 2021 will also be the year in which the rules on the cross-border distribution of investment funds will enter into force. The new rules are intended to enhance cross-border marketing of investment funds. Currently, various obstacles apply given that there are different rules or interpretations in the various Member States. Below, we list the most important changes.

For whom is this relevant?

The package consists of a **Directive** that will amend the AIFM Directive and the UCITS Directive and a **Regulation** that will include amendments to the EuVECA and EuSEF Regulations and introduce several other obligations for all types of fund managers.

Definition of pre-marketing

One thing the package will provide is a definition of *'pre-marketing'* (testing interest in a new fund). Based on the new rules, a fund manager may engage in pre-marketing, except where the information provided to the investors:

- is sufficient to enable investors to subscribe to acquiring units (subscription or pre-subscription);
- essentially consists of subscription forms or similar documents, either in draft or finalised form;
- essentially consists of incorporation documents, a prospectus or offering documents regarding a fund that has not yet been incorporated, in finalised form.

If a fund manager wishes to send draft fund documentation, the information contained therein may not be of such nature that an investor could base his or her investment decision on it. Furthermore, a disclaimer must be included that states that (i) the document does not constitute an offer or invitation to register and (ii) that no decision may be taken based on that information because it is incomplete and subject to change.

The rules prescribe that fund managers which have started pre-marketing must notify the Member State of origin of that fact within two weeks after the start date that it is performing pre-marketing activities in one or more Member States, and they must include specific information about

those activities. If an investor subsequently registers with the fund within 18 months after the pre-marketing activities are performed, those activities will be considered to constitute an offer that falls within the scope of the regulations. That means that parties can no longer rely on reverse solicitation. A definition of pre-marketing will put an end to much uncertainty in the market about what is meant by this, although there will be room for interpretation in the application of the new rules.

Rules for marketing communications

The Regulation also provides for harmonised rules for disseminating marketing communications. ESMA will draft Guidelines further supplementing these general marketing rules (see also the section above entitled Consultation on Guidelines on Marketing Communications). Individual Member States may require fund managers to submit marketing communications aimed at retail investors to the supervisory authority of the relevant Member State so the latter can verify whether the marketing communications satisfy the relevant rules. The relevant supervisory authority must inform the fund manager of any changes within 10 business days. Member States which impose such requirements must publish that fact on their websites.

Cross-border distribution rules for UCITS

In UCITS-specific provisions, the Directive requires UCITS managers which offer their funds in another Member State to make certain facilities available, such as those regarding the processing of registration, buy-out and repayment orders. The Member States, however, cannot require local physical presence within the relevant Member State. This is positive for UCITS managers because such national requirements were found to be onerous. The proposed rules will lead to further harmonisation.

Other rules

The Directive also provides for harmonised rules for the de-notification of a European passport in another Member State for both AIFs and UCITS, provided that certain conditions are met, as well as for rules regarding the marketing of AIFs to retail investors in another Member State. The Regulation also requires supervisory authorities to publish on their website any expenses they incur for supervising cross-border activities in their territory.

Entry into force

The Directive must be implemented by no later than 2 August 2021. A draft bill for implementation of the Directive was published for consultation on 8 January; market parties may respond until 14 February 2021. The Regulation will have direct effect in Member States starting on that date.

New prudential framework for investment firms (IFR/IFD) may also affect certain fund managers

- ***What?*** On 10 July 2020, the Minister of Finance published for consultation a draft bill for the implementation of the Investment Firms Directive (IFD) (Directive (EU) 2019/2034). Together, the IFD and the Investment Firms Regulation (IFR) (Regulation (EU) 2019/2033) constitute the new prudential framework for investment firms which are licensed under MiFID II. As it now appears based on the draft bill, the new framework will — although there is some room for legal dispute on this point — apply to fund managers who also provide investment and/or ancillary services (MiFID II top-up). See the Investment Firms section of this Outlook for an overview of the new rules.
- ***Who?*** Managers of AIFs and UCITS which also provide investment services.
- ***When?*** The new prudential framework for investment firms must enter into effect as of 26 June 2021.

UBO register for trusts and funds for joint account

- ***What?*** On 17 April 2020, the consultation on the bill on the UBO register relating to trusts and funds for joint account (*fonds voor gemene rekening*, FGR) was published. That bill proposes that all investors in an FGR qualify as UBOs and that they must be registered with the Chamber of Commerce. This would have an enormous impact on managers which manage investment funds in the form of an FGR, particularly when it comes to closed-end funds with large groups of investors and open-end funds with very frequent issue and redemption options. For a more detailed explanation, see the Integrity section of this Outlook.
- ***Who?*** All investments funds (AIFs and UCITS) that are structured as FGR.
- ***When?*** The most recent progress report on the Anti-Money Laundering Action Plan indicates that the bill will be introduced in the House of Representatives in early 2021.

Financial Markets Amendment Act 2022 — AIFMD light regime for foreign managers

- ***What?*** On 6 November 2020, the Minister of Finance submitted the Financial Markets Amendment Decree 2022 for consultation. One of the changes will ensure that small managers based in another EU Member State will also be able to benefit from the Dutch AIFMD small managers regime. A manager is considered to be a small

manager if the total of the assets managed does not exceed either EUR 100 million or EUR 500 million. Where the EUR 500 million threshold is concerned, investment funds may not use leverage and must be closed-end for a least a period of five years. The Dutch small managers regime is only open to fund managers who offer units to professional investors.
- ***Who?*** Small managers based in another EU Member State that offer units to professional investors.
- ***When?*** Market parties had until 18 December 2020 to respond to the consultation. It is our expectation that the goal is to have the decree enter into force on 1 January 2022.

Financial Markets Amendment Act 2022 — UCITS scheme with foreign managers

- ***What?*** Another proposed change ensures that a UCITS manager based in another Member State may manage a UCITS based in the Netherlands if the UCITS manager has a licence to manage the relevant UCITS in the Member State of origin. The UCITS manager must hold a UCITS licence entitling it to manage the relevant type of UCITS in the country of origin. The AFM must have approved the manager's intention pursuant to Article 2:72(1) and (4) of the Wft. The proposed regulation strikes us as somewhat odd, given that the UCITS regulations impose a double licensing requirement, one on the UCITS manager and one on the UCITS itself. This has been implemented similarly in other Member States.
- ***Who?*** UCITS managers based in another Member State that wish to manage a UCITS based in the Netherlands.
- ***When?*** Market parties had until 18 December 2020 to respond to the consultation. It is our expectation that the goal is to have the decree enter into force on 1 January 2022.

Financial Markets Amendment Decree 2021 — Technical changes to UCITS

- ***What?*** The consultation document on the Financial Markets Amendment Decree 2021 proposes some technical changes relating to UCITS. The most striking is the deletion of the annual obligation to submit an auditor's report to the AFM showing that the UCITS has acted in accordance with the UCITS investment restrictions. That duty to audit also rests on the depositary and is therefore considered to be redundant. A ban on naked short selling will also be introduced.
- ***Who?*** UCITS managers
- ***When?*** The Amendment Decree was consulted on in the summer of 2020. The decree is expected to enter into force in 2021. The precise date is not yet known.

OTHER DEVELOPMENTS

The new action plan for a capital markets union

- ***What?*** On 24 September 2020, nearly five years after the publication of the first action plan, the European Commission published a new action plan intended to create the capital markets union (**CMU**). The objective of the CMU is to offer the option to allow investments and savings to circulate among all Member States, enabling capital to flow to the place where it is needed most, thus creating an economically stronger Europe. The most significant key objectives are (i) to promote a green, digital, inclusive and resilient economic recovery by making financing accessible to European businesses, (ii) to make the EU a safe place for saving and investing and (iii) to integrate national capital markets into a single, harmonised European capital market. The action plan announces in broad terms the proposed actions by the European Commission. Two of these make specific mention of ELTIFs and UCITS. We do not exclude the possibility that the action plan will affect other types of investment funds as well.
- ***Who?*** All fund managers, for the time being primarily managers of ELTIFs and UCITS.
- ***When?*** The first proposals for implementing the action plan are expected in the course of 2021.

Brexit deal

- ***What?*** A Brexit deal was concluded on 24 December 2020. This deal, however, barely discusses the financial sector, which means that the loss of the European passport has not been addressed. It is now up to both the EU and the United Kingdom to decide, unilaterally, to consider the level of financial supervision of the other as equal and to grant full access to its own market, also referred to as equivalence decisions. For incoming activities of AIFMs, the EU has not adopted such a decision, based on the AIFMD, at least not yet. For UCITS managers, such a decision cannot be adopted at all under the UCITS Directive. In some Member States, including the Netherlands, an AIF can continue to be offered on the basis of the national private placement regime under certain conditions. The United Kingdom has also thus far refrained, to the extent possible, from passing an equivalence decision for AIF and UCITS managers who wish to perform activities in the United Kingdom from the EU. The temporary marketing permissions regime is still in effect for fund managers, however. Fund managers who prior to Brexit engaged in activities in the UK on the basis of a European passport and who submitted an application under the temporary

marketing permissions regime in 2020 can partially continue to perform their activities under the same terms and conditions for up to a maximum of three years. Fund managers who are not availing themselves of this scheme will be afforded the opportunity, on the basis of the Financial Services Contracts Regime, to wind down their activities in the United Kingdom in an orderly fashion.

- ***Who?*** Fund managers who operate in both the EU and the United Kingdom.
- ***When?*** The Brexit deal entered into force on 1 January 2021.

COVID-19

ESRB and DNB recommendation on capital distributions of investment institutions

- ***What?*** In agreement with the European Systemic Risk Board (ESRB), DNB is requesting investment firms and investment institutions to take the current crisis, forecasts and other scenarios that could affect business operations, profitability and financial buffers into account when considering possible dividend distributions, share repurchases and payment of variable remuneration.
- ***Who?*** All authorised managers of AIFs and UCITS.
- ***When?*** The ESRB extended its recommendation until September 2021 and DNB is supporting this recommendation.

INVESTMENT FIRMS

Please note: The cross-sectoral parts addressing Integrity and Sustainability are also very relevant for investment firms.

AFM SUPERVISION

Trend Monitor 2021

On 3 November 2020, the AFM published its annual analysis of trends and developments on the financial markets: Trend Monitor 2021. In this report, the AFM signals trends that may influence its supervision in 2021, and the supervisory themes which the AFM will prioritise in 2021. How this will actually affect the AFM's supervisory activities will be published in the Supervision Agenda 2021. That publication is expected to be issued in early 2021.

For investment firms in particular, the AFM is signalling the following important developments:

- The long-term low interest rate has increased investors' and financial institutions' willingness to accept more risk in their search for yield. This has ensured, among other things, high valuations of shares and corporate bonds. According to the AFM, the search for yield seems to be playing out mainly in the institutional segment and is less common among households.
- Currently, European policymakers are reviewing MiFID II, including with regard to the subject of trading venues. The vision underlying the European policy is that trading venues must effectively compete with each other without compromising liquidity or price formulation. Competition demands multiple platforms, but the AFM claims that fragmenting trade may mean that the same share will be subject to multiple prices, each representing only a specific segment of the market. According to the AFM, it is partly due to this contrast that reconciling the two objectives is so difficult. In Trend Monitor 2021, the AFM places the current review in a broader context and explains which measures it believes will need to be taken in the coming time in connection with the trade in both shares and bonds. One issue which the AFM considers important where the trade in shares is involved, is better levelling the legal playing field between trading venues on the one hand and systematic internalisers (which the AFM claims have an approximately 20% share of the European market) on the other, including with regard to the rules on transparency. As far as the bond markets are concerned, the AFM believes that, among other things, policymakers must ascertain which regulations best support the innovations that *do* improve the functioning of bond markets.

Follow-up investigation into transaction monitoring by investment firms

- ***What?*** Among its requirements, the Money Laundering and Terrorist Financing (Prevention) Act *(Wet ter voorkoming van witwassen en financieren van terrorisme,* Wwft) obliges investment firms to monitor transactions and report unusual transactions. According to the AFM, previous investigation has shown that investment firms are still making insufficient efforts to combat money laundering and terrorist financing, which is why the AFM initiated an in-depth follow-up investigation in June 2020. Among the issues the AFM will focus on in the follow-up investigation, is the question of whether investment firms prepare transaction profiles for their clients, enforce detection rules to signal 'conspicuous' transactions, and whether they report unusual transactions adequately and in good time to the Netherlands Financial Intelligence Unit.
- ***Who?*** All investment firms.
- ***When?*** The AFM is expected to publish the general findings of the follow-up investigation in 2021. We also refer the reader to the Integrity section of this Outlook.

Investment firms manage AML/CFT risks better but transaction monitoring still needs improvement

- ***What?*** At the end of 2020, based on the annual survey among investment firms pursuant to the Money Laundering and Terrorist Financing (Prevention) Act *(Wet ter voorkoming van witwassen en financieren van terrorisme,* Wwft)) and the Sanctions Act 1977, the AFM published its market overview on compliance with the Wwft and Sanctions Act 1977 by the sector. The AFM is seeing investment firms taking more measures to manage AML/CFT risks, for example, by offering internal training and preparing client risk profiles, but it also has identified shortcomings. For example, the AFM indicates that too few unusal transactions are being reported to the FIU-NL and that approximately half of all investment firms are still not registered with the FIU-NL as reporters.
- ***Who?*** Investment firms that fall within the scope of the AFM's supervision under the Wwft.
- ***When?*** The AFM published its findings on 16 December 2020. Where necessary, investment firms must amend their policies in this respect. We expect the AFM to continue its supervision in these areas in 2021. We also refer the reader to the Integrity section of this Outlook.

Call to report incidents

- ***What?*** On 23 December 2020, the AFM sent a letter to investment firms, among others, drawing their attention to reporting incidents that could constitute a serious threat to the integrity and management of business operations. Given the current COVID-19 crisis, as a result of which people are more often working together remotely, the AFM has issued a call to be more

attentive with regard to integrity and information security incidents. The letter contains an appendix with a non-exhaustive list of examples which the AFM qualifies as incidents.
- ***Who?*** All licensed investment firms.
- ***When?*** The AFM is devoting a higher level of attention to the statutory obligation to report incidents. The AFM indicates that it may investigate compliance with this obligation in the future.

Recommendations for MiFID II/MiFIR review

- ***What?*** The European Commission and ESMA are currently reviewing the current MiFID II/MiFIR framework (see the developments in this regard, below). The expectation is that this process will lead to section-by-section revisions of the current rules. Against this backdrop, on 19 May 2020 the AFM published an impact analysis including several recommendations for a revision of MiFID II/MiFIR. The AFM's recommendations regard, among other things, the rules for position limits, cost transparency and the appropriateness test.
- ***Who?*** All investment firms.
- ***When?*** ESMA and the European Commission are continuing their work on reviewing MiFID II/MiFIR.

Consultation on restricting sale of turbos to retail investors

- ***What?*** On 9 December 2020, the AFM published measures entailing restrictions on marketing, distributing and selling turbos to retail investors for consultation. The AFM's view is that retail investors' protection against turbo-related risks is insufficient. The AFM's proposal is consistent with the restrictions that already apply to the sale of contracts for difference (CFDs). More specifically, it concerns the following restrictions:
  1. Leverage restriction: the turbo offeror may not indicate an offer price for a turbo if the turbo is leveraged beyond the prescribed maximum;
  2. Ban on trading bonus: the turbo offeror may not pay the retail investor or offer the latter any benefit in connection with marketing, distributing or selling a turbo other than the price for which the retail investor sold the turbo or the distribution of the residual value upon the liquidation of the turbo; and
  3. Mandatory risk warning: the turbo offeror may not notify retail investors of, or publish any, information which is accessible to retail investors in connection with marketing, distributing or selling a turbo, unless that notification or information contains the prescribed risk warning.
- ***Who?*** Offerors of turbos for retail investors.
- ***When?*** The parties can respond to the AFM's proposal before 24 January 2021. The AFM's objective is to have the measures enter into force in 2021.

DNB SUPERVISION

Supervisory Strategy 2021-2024

- ***What?*** On 24 November 2020 DNB published its updated Supervisory Strategy 2021-2024. In this document, DNB sets its course for supervision in the coming years. The objective of the document is to inform financial institutions, including investment firms, about the aim of supervision and thus to function as a point on the horizon. Naturally, DNB is taking the current COVID-19 pandemic into account and is also drawing extra attention to structural challenges whose impact only gradually becomes visible but which do require strategic-level responses from financial institutions. One of these challenges is the changing legal and regulatory landscape. In that context, DNB is demanding express attention to the upcoming amendments to prudential regulations for investment firms resulting from the introduction of the IFD and IFR.
- ***Who?*** The Supervisory Strategy 2021-2024 is relevant for all investments firms which are subject to supervision, particularly those on whom the IFD and IFR have a major impact.
- ***When?*** The Supervisory Strategy 2021-2024 describes the course for supervision which DNB has set for the next four years.

ESAS

Changes to PRIIPs/KID?

- ***What?*** On 21 July 2020, the ESAs informed the European Commission about the result of a review of the Key Information Document (KID) under the PRIIPs Regulation. The ESAs are proposing various improvements related to the KID.
- ***Who?*** Investment firms who manufacture, sell or advise on investment products as meant in the PRIIPs Regulation.
- ***When?*** Uncertain as of this writing.

ESMA & EBA

ESMA Work Programme 2021

- ***What?*** In October 2020, ESMA published its Annual Work Programme for 2021. In this programme, ESMA describes its supervisory priorities for 2021. In this respect, ESMA sets out four key priorities, three of which

are relevant to investment firms: (i) advancing supervisory consistency between local supervisory authorities in the EU, including by conducting investigations based on a centrally chosen themes, (ii) performing risk assessments of investors, financial markets and financial stability and (iii) contributing further to a single rulebook for financial markets, particularly by drafting and reviewing technical standards (RTS/ITS) and technical advice, including with regard to MiFID II/MiFIR.
- ***Who?*** All investment firms.
- ***When?*** The Annual Work Programme 2021 will be relevant to the supervision of investment firms in 2021.

EBA Work Programme 2021

- ***What?*** On 30 September 2020, the EBA published its Annual Work Programme for 2021. In this programme, the EBA describes its six strategic areas for 2021. One of these key strategic areas regards supporting the implementation of the new IFR/IFD framework. The EBA will also draft technical standards, guidelines and reports in 2021 in order to support the timely implementation of the new prudential requirements for investment firms.
- ***Who?*** All investment firms.
- ***When?*** The Annual Work Programme 2021 describes the EBA's focus areas for 2021.

ESMA consultation on evaluation of SME growth markets

- ***What?*** On 6 May 2020, ESMA published a Consultation Paper to facilitate the evaluation by ESMA and the European Commission of the functioning of the regime for SME growth markets, taking into account the number of MTFs registered as SME growth markets, numbers of issuers present thereon, and relevant trading volumes.
- ***Who?*** The evaluation is relevant to issuing SME institutions, investment firms and trading venues.
- ***When?*** The deadline for submitting responses was 15 July 2020. ESMA will use the responses received to draft a final evaluation report. ESMA expects to submit this report to the European Commission in the first quarter of 2021.

ESMA 'call for evidence' on evaluation of transparency regime

- ***What?*** On 1 September 2020, ESMA published a 'call for evidence' to facilitate the evaluation by ESMA and the European Commission of the two Commission Delegated Regulations (RTS 1 and RTS 2) in respect of the MiFID II/MiFIR transparency regime for equity and non-equity instruments.
- ***Who?*** The evaluation of the transparency regime is relevant to all investment firms which are subject to the MiFID II/MiFIR transparency regime, and in particular to trading venues and systematic internalisers.
- ***When?*** The deadline for submitting responses was 31 October 2020. ESMA will use the responses received to draft a final consultation paper for the review of RTS 1 and RTS 2. ESMA will publish this consultation paper in 2021.

ESMA consultation on evaluation of transaction reporting obligation

- ***What?*** On 24 September 2020, ESMA published a Consultation Paper to facilitate the evaluation by ESMA and the European Commission of the transaction reporting obligation laid down in Article 26 MiFIR.
- ***Who?*** The evaluation is relevant for all investment firms which must satisfy the requirements of Article 26 MiFIR.
- ***When?*** The deadline for submitting responses to ESMA's evaluation was 20 November 2020. ESMA intends to present the final report to the European Commission in the first quarter of 2021. Afterwards, the European Commission will assess whether the current transaction reporting framework needs adjustment.

ESMA consultation on evaluation of OTF regime

- ***What?*** On 25 September 2020 ESMA published a Consultation Paper to facilitate the evaluation of the MiFID II/MiFIR OFT regime. In the report, ESMA describes the current OTF landscape and discusses, among other things, the definition of OTFs.
- ***Who?*** The evaluation is particularly relevant for investment firms which operate OTFs.
- ***When?*** The consultation term closed on 25 November 2020. Based on the responses, ESMA will draft a final evaluation which it will submit to the European Commission.

ESMA consultation on evaluation of requirements for algorithmic trading

- ***What?*** On 18 December 2020, ESMA published a consultation document regarding the evaluation to be performed by ESMA and the European Commission of the effect of the MiFID II/MiFIR requirements on algorithmic trading. Among the topics ESMA discusses in the report are the authorisation regime in this context, the requirements for traders who use high-frequency algorithmic techniques and the requirements for trading venues that permit or facilitate these techniques.

- ***Who?*** The evaluation is relevant for investment firms or trading platforms which engage in high-frequency algorithmic trading or which permit or facilitate this, respectively.
- ***When?*** The consultation period ends on 12 March 2021. Based on the responses, ESMA will draft a final evaluation which it will submit to the European Commission by no later than July 2021.

ESMA and EBA consultation on joint guidelines for assessing the suitability of policymakers and key function holders

- ***What?*** On 31 July 2020, ESMA and the EBA published for consultation their new draft joint guidelines for assessing the suitability of policymakers and key function holders at banks and investment firms. The proposed changes in comparison to the current guidelines, which date to 2017, reflect adjustments to existing suitability rules resulting from the amended Capital Requirements Directive (CRDV) and the Investment Firms Directive (IFD).
- ***Who?*** All investment firms.
- ***When?*** The consultation period ran until 30 October 2020. The new guidelines are expected to enter into force six months after ESMA and the EBA publish the final version of the guidelines. As of this writing, it is unclear when the final guidelines will be published.

ESMA consultation on guidelines regarding the publication of market data

- ***What?*** On 6 November 2020, ESMA published for consultation draft guidelines on the publication of market data. The draft guidelines are aimed at clarifying the MiFID II/MiFIR obligations on the publication of market data.
- ***Who?*** The guidelines are particularly relevant for trading venues and systematic internalisers which are required to publish market data.
- ***When?*** The consultation period will run until 11 January 2021. ESMA expects to publish the final guidelines by no later than the second quarter of 2021.

ESMA publishes draft RTS/ITS regarding investment firms from third countries

- ***What?*** On 28 September 2020, ESMA published draft technical standards (RTS and ITS) regarding the provision of investment services and activities by third-country investment firms. The publication was prompted by the Investment Firms Regulation (IFR) and IFD, which amended the third-country regime laid down in MiFID II/MiFIR. The draft RTS and ITS provide, among other things, more detailed rules for the information that must be provided to ESMA by third-country investment firms in order to be eligible for ESMA registration.
- ***Who?*** Third-country investment firms.
- ***When?*** ESMA has submitted the draft RTS and ITS to the European Commission. It is now up to the European Commission to finalise the RTS and ITS. As of this writing, the date these will enter into force is unknown.

EXISTING LAWS AND REGULATIONS

MiFID II/MiFIR evaluation by ESMA and the European Commission

Article 90 MiFID II and Article 52 MiFIR require the European Commission (EC) to evaluate specific sections of MiFID II/MiFIR. The EC will then have to submit a report on these matters to the European Parliament and the Council. ESMA will assist the EC in this endeavour by delivering evaluation reports. ESMA will first publish those evaluation reports in draft form for consultation, in order to be able to take public responses to those drafts into account when finalising the reports and sending them to the EC.

The topics covered in the evaluation include:

1. the effect of the transparency obligations laid down in Articles 3 through 13 MiFIR;
2. the functioning of the transaction reporting obligation laid down in Article 26 MiFIR;
3. the progress made with relocating the trade in standardised OTC derivatives to exchanges or trading venues;
4. the operation of the OTF regime;
5. the functioning of the regime for SME growth markets;
6. the effect of requirements for algorithmic trades, including high-frequency algorithmic trading;
7. the experience gained with product-intervention measures;
8. the application of administrative- and criminal-law sanctions;
9. the effect of applying position limits and position management to commodities derivatives markets;
10. the price developments related to prices for pre-trade and post-trade data on regulated markets, MTFs, OTFs and APAs; and
11. the effect of the provision transparency obligation referred to in Article 24(9) MiFID II.

ESMA sent the first reports to the European Commission on 5 December 2019, 4 February 2020, 1 April 2020, 1 April 2020, 13 July 2020, 16 July 2020, 25 September 2020 and 18 December 2020. These reports regarded the subjects listed above under 1, 3, 6, 7, 8, 9, 10 and 11.

ESMA's evaluation is currently still ongoing regarding the subjects listed under 2, 4 and 5. We can expect ESMA's evaluation reports on these subjects in 2021, as well as the reports from the EC to the European Parliament and the Council prescribed in Article 90 MiFID II and Article 52 MiFIR. We expect that this evaluation, viewed in tandem with the consultation by the European Commission (see the alert below) and the Capital Markets Union Action Plan (see the alert further down in this section), will lead to significant changes to the existing MiFID II/MiFIR framework. We hope to have more clarity on this in 2021.

Consultation regarding MiFID II/MiFIR review by the European Commission

- ***What?*** On 17 February 2020, the European Commission started a consultation procedure to facilitate a review of MiFID II/MiFIR; the consultation looks to the period from 3 January 2018 up until 31 December 2019. This consultation, which runs parallel to the above-described evaluation work which ESMA is performing for the European Commission in respect of sections of MiFID II/MiFIR, consists of two parts. The first involves a set of general questions posed to the public regarding the functioning of the existing MiFID II/MiFIR framework. The second encompasses a series of specific questions regarding four subjects identified by the European Commission as requiring improvements, specifically: (i) the absence of a consolidated tape (a single consolidated source of trading information for a certain financial instrument), (ii) various investor protection provisions, (iii) the rules on research and (iv) the requirements related to position limits and pre-trade transparency regarding commodities derivatives markets. The European Commission has indicated that it will involve the actions from its Capital Markets Union Action Plan (see the alert further down in this section) in the MiFID II/MiFIR revision.
- ***Who?*** The review of MiFID II/MiFIR is relevant to all investment firms which fall within the scope of MiFID II/MiFIR.
- ***When?*** The consultation period ran until 18 May 2020. As of this writing, it remains uncertain what next steps and proposals for amendments to MiFID II/MiFIR the European Commission will present.

European Commission proposal for MiFID II Quick Fix

- ***What?*** On 24 July 2020, in response to the COVID-19 crisis, the European Commission proposed several changes to MiFID II. This proposal is also referred to as the 'MiFID II Quick Fix'. The objective of the changes is to eliminate unnecessarily onerous obligations for investment firms (possibly on a temporary basis) with a view to mitigating as much as possible the harmful economic consequences of the COVID-19 crisis. The subjects for which the European Commission is proposing adjustments are (i) information-related obligations to professional investors, including with regard to cost transparency, best execution and product governance and (ii) commodities markets.
- ***Who?*** The revision MiFID II/MiFIR Quick Fix is relevant to all investment firms which fall within the scope of MiFID II/MiFIR.
- ***When?*** The European Commission's objective is to have the MiFID II Quick Fix enter into force as quickly as possible, although this will be subject to the prior approval of the European Parliament and the Council. On 8 December 2020, the European Parliament and the Council reached agreement on the text. After the changes are published in the Official Journal of the European Union, the Member States will, in accordance with the proposal, be afforded a period of 9 to 12 months to implement the changes in their national legislation.

The new action plan for a Capital Markets Union

- ***What?*** On 24 September 2020, the European Commission published its new action plan on the creation of the Capital Markets Union (**CMU**). In the action plan, the European Commission presents no less than 16 measures to be taken in order to arrive at a single European capital markets union. Several of the 16 measures proposed by the European Commission relate to MiFID II/MiFIR. In that context, the Commission announced that:
  1. It will analyse the applicable MiFID II rules related to commissions and the provision of information and, where necessary, it will present proposals for changing the existing legislative framework for retail investors so that they receive fair advice and clear and comparable product information;
  2. It will propose an amendment to MiFID II to ease the regulatory burden and information obligations which investment firms have in respect of retail investors who may not be professional investors, but who have thorough knowledge of financial markets and products. To that end, the existing distinction between retail investors and professional investors will be examined to determine whether a new category of qualified investors should be implemented;
  3. If the impact assessment related to the MiFID II revision is positive, the Commission will introduce a certification requirement for investment advisers, as well as a continuing-education requirement; and
  4. It will make a proposal for a post-trade consolidated tape for equity and non-equity instruments.

- ***Who?*** The proposals are relevant to investment firms which fall within the scope of MiFID II/MiFIR.
- ***When?*** The overview published by the European Commission indicates that action '1' may be expected in Q1 2022, action '2' in Q4 2021 or Q1 2022, and the actions mentioned under '3' and '4' in Q4 2021.

Consultation on the Financial Markets Amendment Act 2021

- ***What?*** At the end of 2019, the Ministry of Finance published for consultation the draft bill for the Financial Markets Amendment Act 2021. The draft bill amends various laws and, among other things, introduces a reporting obligation related to changes occurring within a group after DNB has granted a group declaration of no objection as meant in Section 3:102(2) Financial Supervision Act (*Wet op het financieel toezicht*, Wft).
- ***Who?*** If the bill is enacted, it will affect group companies who have obtained a group declaration of no objection from DNB in relation to an investment firm.
- ***When?*** The government's objective is to have the Amendment Act 2021 enter into force in mid-2021.

Consultation on the Financial Markets Amendment Decree 2021

- ***What?*** On 1 July 2020, the Ministry of Finance published for consultation a draft proposal for the Financial Markets Amendment Decree 2021. The document in question is a draft collective decree that also includes amendments to the Market Conduct Supervision of Financial Institutions Decree (*Besluit Gedragstoezicht financiele ondernemingen*; BGfo) and the Prudential Rules Decree on the Financial Supervision Act (*Besluit prudentiële regels Wft*; Bpr). For example, it elaborates on the declaration of no objection reporting obligations in the event of changes within a group.
- ***Who?*** If the proposal for the decree is adopted, it will affect group companies who have obtained a group declaration of no objection from DNB in relation to an investment firm.
- ***When?*** Market parties had until 13 August 2020 to respond to the consultation. The decree is expected to enter into force in 2021. The precise date is not yet known.

Consultation on the Financial Markets Amendment Act 2022

- ***What?*** On 6 November 2020, the Ministry of Finance published for consultation the draft bill Financial Markets Amendment Act 2022. The provisions in the draft bill contain, among other things, various amendments to the Wft, including the introduction of an option — one that will be important in practice — for non-bank investment firms to ensure that clients' funds are kept segregated via a 'separated assets account'. This is a bank account which an investment firm holds in its own name, but which is legally segregated from the investment firm's own assets.
- ***Who?*** Investment firms which, by the nature of the services they provide, are subject to asset segregation rules.
- ***When?*** The consultation was closed on 18 December 2020. We expect the government's objective will be to have the act enter into force on 1 January 2022.

Bill for the Capital Requirements Implementation Act 2020 (CRDV)

- ***What?*** On 8 September 2020, the Minister of Finance sent the bill for the Capital Requirements Implementation Act 2020 (CRDV) to the House of Representatives. The bill implements the CRDV in the Wft. The implementation will include, among other things, new provisions regarding the approval of mixed financial holdings, a new regime for groups with a parent company domiciled in a third country but active in the EU with two or more banks or investment firms as meant in the CRR, amendments of the Pillar 2 requirements (institution-specific supervision requirements) and changes to the remuneration policy.
- ***Who?*** All investment firms which fall within the scope of the CRR/CRD. After the IFR/IFD become applicable — the implementation deadline is 26 June 2021 — the CRVD/CRR regime will only still apply to Class 1 investment firms (see also below: 'IFR/IFD: New European-law prudential framework for investment firms').
- ***When?*** The bill was passed by the House of Representatives on 12 November 2020 and by the Senate on 1 December 2020. The last step will be publishing the act in the Official Gazette, which had not yet been done as of this writing. The implementation deadline is 29 December 2020.

Consultation on the Capital Requirements Implementation Decree 2020 (CRDV)

- ***What?*** On 6 October 2020, the Ministry of Finance published for consultation a draft proposal for the Capital Requirements Implementation Decree 2020 (CRDV). The draft proposal implements the CRDV in subordinate regulations and amends the Bpr, the Prudential Supervision of Financial Undertakings under the Financial Supervision Act Decree and the Administrative Fines in the Financial Sector Decree.
- ***Who?*** All investment firms which fall within the scope of the CRR/CRD. After the IFR/IFD become applicable,

the CRVD/CRR regime will only still apply to Class 1 investment firms (see also below: 'IFR/IFD: New European-law prudential framework for investment firms').
- ***When?*** The consultation period ran until 3 November 2020. The CRDV implementation deadline is 29 December 2020 and the government's objective is therefore to have the decree enter into force on the same date.

Consultation on the Capital Buffers Implementation Decree 2020 (CRDV)

- ***What?*** On 29 May 2020, the Ministry of Finance published for consultation a draft proposal for the Capital Buffers Implementation Decree 2020 (CRDV). The draft proposal implements the CRDV by amending the Bpr, the EU Financial Markets Regulations Implementation Decree and the Special Prudential Measures, Investor Compensation and Deposit Guarantees in the Financial Supervision Act Decree.
- ***Who?*** All investment firms which fall within the scope of the CDR/CRR. After the IFR/IFD become applicable, the CRVD/CRR regime will only still apply to Class 1 investment firms (see also below: 'IFR/IFD: New European-law prudential framework for investment firms').
- ***When?*** The CRDV implementation deadline is 29 December 2020 and the government's objective is therefore to have the decree enter into force on the same date.

Consultation on the Loss-absorption and Recapitalisation Capacity Implementation Act (BRRD II)

- ***What?*** On 11 December 2020, the Minister of Finance published, for consultation, a draft bill to implement the directive on loss-absorbing and recapitalisation capacity for credit institutions and investment firms (BRRD II). BRRD II amends the directive on the recovery and resolution of credit institutions and investment firms and will be implemented in the Netherlands in the Financial Supervision Act (particularly in Part 3A thereof) and the Bankruptcy Act. The primary objective of BRRD II is to increase the quality of bail-in buffers of credit institutions and investment firms.
- ***Who?*** Investment firms.
- ***When?*** The consultation period runs until 22 January 2021.

NEW LAWS AND REGULATIONS

IFR/IFD: New European-law prudential framework for investment firms

The Investment Firms Regulation (IFR) and the Investment Firms Directive (IFD) provide a new prudential framework for investment firms which hold MiFID II licences. The IFR will apply directly in all Member States with effect from 26 June 2021. The IFD must first be transposed in national legislation. To that end, on 10 July 2020, the Ministry of Finance published a draft bill for consultation. As of this writing, the bill has been submitted to the Council of State for an opinion and is expected to be submitted to the House of Representatives in Q1 2021.

The new framework is intended to address specific vulnerabilities and risks inherent in each type of investment firm and to do so better than the current prudential framework for investment firms based on the CRD IV/CRR does. In order to determine which requirements a certain type of investment firm must meet, a new classification system will apply to these investment firms. In short, investment firms will soon be placed in one of the following three categories:

- Class 1: systemically important and large investment firms. This group of the largest investment firms (more than EUR 15 billion in assets) will continue to fall within the scope of CRD/CRR. Investment firms in this group that deal on own account or that perform placement activities on a firm-commitment basis and that exceed the EUR 30 billion threshold detailed in the CRR (as it reads after the IFR becomes applicable) will furthermore have to apply for a banking licence.
- Class 2: midsize/large and interconnected investment firms that do not fall within the scope of Class 1. Class 2 investment firms will soon fall within the scope of the IFR/IFD regime. Based on the IFR/IFD, they will have to calculate their own funds requirement based on the highest of the following three capital requirements:
  i. starting capital requirement (minimum own funds requirement);
  ii. the fixed overheads requirement; and
  iii. the sum of applicable K factors. The K factors are what make the IFR/IFD genuinely novel. The K factor requirement is intended to allow an investment firm to maintain a capital buffer suitable for the types of risks it runs. There are three main risks in this regard: risks in relation to investors ('Risk-to-Client', RtC), risks in relation to the market ('Risk-To-Market', RtM) and risks in relation to the investment firm itself ('Risk-to-Firm', RtF). The definitions of the relevant K factors in the IFR

indicate what does and does not fall within the scope of these factors.

- Class 3: small and non-interconnected investment firms that satisfy the specific cumulative criteria laid down in Article 12 IFR. This group of investment firms will soon also not be subject to the CRD/CRR anymore, but to the IFR/IFD, albeit to a lesser extent. For Class 3 investment firms, those investment firms' own funds requirement based on the IFR/IFD will simply be the higher of (i) the fixed overheads requirement and (ii) the starting capital requirement. The K factors will thus not apply. This means that investment firms which are still exempt from solvency requirements on the basis of Article 3 Bpr will become subject to capital requirements under the IFR/IFD.

The IFR/IFD also require Class 2 and Class 3 investment firms to ensure at all times that a least one third of their fixed overheads requirement is in the form of liquid assets to ensure that they can continue to function properly even in times of stress. In principle, therefore, this also applies to small and non-interconnected investment firms, although supervisors have the option of granting an exemption. The liquid assets must be of sufficient quality, in which respect an investment firm's own unencumbered cash, among other things, will be considered suitable.

With regard to the aforementioned prudential requirements, we also note that in some cases these requirements will not only apply to licensed investment firms at solo level, but also to those investment firms' holding companies and subsidiaries. As a consequence of the IFR/IFD, such consolidated group supervision would sooner apply.

In addition to the aforementioned prudential requirements, the IFR/IFD also contain governance requirements and remuneration rules. For more on the topic of remuneration, see the information under the heading *'Remuneration Rules'* elsewhere in this section.

Starting on 26 June 2021, Class 2 and Class 3 investment firms will, in principle, have to satisfy the IFR and the IFD (as implemented in Dutch law). However, the IFR/IFD does include transitional provisions that is intended to ensure a smooth transition to the new regime. We recommend that investment firms which have not yet begun implementing the IFR/IFD should begin doing so as soon as possible in the new year.

IFR/IFD: Applying for a banking licence for investment firms

- ***What?*** On 23 November 2020, DNB published a news report in which it referred to its fact sheet regarding investment firms' obligation to apply to DNB for a banking licence if they qualify as banks following the entry into force of IFR/IFD.
- ***Who?*** Class 1 investment firms which satisfy the CRR definition of 'credit institution' (as it reads after the IFR becomes applicable).
- ***When?*** The application for a banking licence must have been submitted to DNB by no later than the date on which the IFD Implementation Act enters into force. The implementation deadline is 26 June 2021.

IFR/IFD: EBA roadmap

- ***What?*** In June 2020, the EBA published a roadmap in which it describes which work it will perform pursuant to the IFR/IFD. This work can be divided into six different themes: (i) thresholds and criteria for investments firms to determine whether or not they will continue to fall within the scope of the CRR, (ii) capital requirements and composition, (iii) reports and transparency, (iv) remuneration policy and governance, (v) supervisory convergence and the Pillar 2 requirements and (vi) mandates related to ESG aspects.
- ***Who?*** The EBA's roadmap is relevant to all investment firms which fall within the scope of IFR/IFD.
- ***When?*** The roadmap describes the actions which the EBA will take between 2020 and 2025 in the context of the IFR/IFD.

IFR/IFD: Publication of draft technical EBA standards

- ***What?*** On 4 June 2020, the EBA published for consultation the first draft technical standards (RTS/ITS) pursuant to the IFR/IFD. Among other things, these draft standards specify the IFR/IFD requirements related to capital, reports and remuneration policy. This is part of the ongoing work the EBA is doing to carry out the IFR/IFD and as described in its roadmap. On 16 December 2020, EBA published seven final draft technical standards.
- ***Who?*** All investment firms which fall within the scope of the IFR/IFD.
- ***When?*** The consultation period ran until 4 September 2020. The various technical standards are expected to enter into force at different times, depending on the standard. The standards must always first be approved by the European Commission.

IFR/IFD: EBA consultation on internal governance guidelines

- ***What?*** On 17 December 2020, EBA published a consultation document containing draft guidelines specifying the governance provisions in the IFD which

Class 2 investment firms must satisfy. The guidelines flesh out the tasks, responsibilities and organisation of the management body, and the organisation of investment firms, including the need to create transparent structures that allow for supervision of all their activities. In addition, the guidelines specify requirements aimed at ensuring the sound management of risks across all three lines of defence and, in particular, set out detailed requirements for the second line of defence (the independent risk management and compliance function) and the third line of defence (the internal audit function).

- ***Who?*** Class 2 investment firms.
- ***When?*** Interested parties may respond to this consultation until 17 March 2021. EBA expects the final guidelines to become applicable on 26 June 2021, the same date on which the IFD and IFR will become applicable.

Remuneration rules

Investment firms have to deal with both European remuneration rules (originating from the CRD IV/CRR framework and MiFID II) and national remuneration rules (the Remuneration Policy of Financial Undertakings Act, primarily known for its 20% bonus cap). Changes are on the horizon for both.

European remuneration rules

For Class 1 investment firms, the rules from the CRD/CRR and MiFID II will continue to apply. For Class 2 investment firms, the European remuneration rules ensuing from the IFR/IFD and MiFID II will apply with effect from 26 June 2021 (see also the draft guidelines which the EBA published for consultation in this context on 17 December). For Class 3 investment firms, a less stringent European remuneration regime will apply with effect from 26 June 2021; from that date forward, only the remuneration rules laid down in MiFID II will apply. Neither the IFR/IFD nor MiFID II prescribe a bonus cap. This means, among other things, that the European bonus cap for Class 2 and Class 3 investment firms will lapse when the IFR/IFD become applicable. For the time being, however, it does not seem as if these European-level changes will lead to fewer remuneration rules for Class 2 and Class 3 investment firms in the Netherlands, or that the current Dutch 20% bonus cap will be scrapped. Specifically, the legislature noted in the draft Explanatory Memorandum to the draft proposal IFD Implementation Act that was published for consultation:

> *"The [IFD] allows leeway for maintaining the existing Dutch remuneration model. While it is true that the directive does not contain a bonus cap, it does offer Member States the leeway for deviating from this at national level. As a result, the bonus cap of 20% of the fixed remuneration (Article 1:121 Wft) can be allowed to stand and the rest of the Dutch statutory remuneration rules can also be maintained for all employees of all financial undertakings."*

This begs the question, however, of whether the IFD does actually offer a proper legal basis for maintaining the Dutch remuneration rules, and in particular the 20% bonus cap, when it comes to investment firms. Regardless, the draft Explanatory Memorandum devotes scant attention to the alleged ground for this deviation from the IFD, even though the level playing field in the EU means that it would have significant consequences for Dutch investment firms. Several new remuneration rules and a few exceptions from the IFD will be incorporated in a supervisory measure.

Dutch remuneration rules

The existing Dutch remuneration regime (Remuneration Policy of Financial Undertakings Act) is included in the Wft. On 2 July 2020, the Minister of Finance submitted a proposal on the Further Remuneration Measures for Financial Undertakings Act to the Dutch House of Representatives. The proposal is intended to implement several changes to the remuneration rules contained in the Wft. These will involve, first, the introduction of a five-year statutory retention period for, among other things, shares transferred as fixed remuneration to directors and employees of financial undertakings. Second, the remuneration policy will require certain financial undertakings to account for the proportionality of the remuneration to the societal function of the undertaking and how the remuneration was determined. Third, the existing option for deviating from the 20% bonus cap for staff who are not covered by collective bargaining agreements (CBAs) will be further codified. The retention obligation and the further codification of the CBA are intended to enter into force on 1 July 2021. The bill provides for a transitional law for persons who are already employed at the financial undertaking. The obligation for certain undertakings to account for the proportionality of the remuneration to the societal function of the undertaking and how the remuneration was determined is intended to enter into force on 1 July 2022.

Finally, on 8 October 2020, DNB published draft Restrained Remuneration Policy Regulations for consultation. In these regulations, DNB proposes several amendments relating to the Restrained Remuneration Policies of banks and investment firms Regulations (Rbb 2017). These amendments are being prompted by the entry into force of the CRDV, which changes the provisions in the CRD IV relating to remuneration policy. These regulations will be relevant for investment firms until the IFR/IFD enter into force. Afterwards, the regulations will only be relevant to Class 1 investment firms, and then only to the extent the implementation of the remuneration rules from the

CRDV are concerned. The consultation period ran until 6 November 2020. The CRDV must already have been implemented in national legislation by 29 December 2020.

BREXIT

Brexit deal

- ***What?*** On 24 December 2020, the negotiators of the EU and the United Kingdom concluded a Brexit agreement, thereby still managing to avoid a 'hard' no-deal Brexit. As far as the financial sector is concerned, however, it is questionable to what extent the deal concluded differs from a no-deal Brexit. After all, the agreement contains hardly any agreements on the financial sector, leaving considerable uncertainties. For instance, the agreement does not offer any solution for the loss of the European passport as of 1 January 2021, which would allow UK investment firms to operate in the EU and EU investment firms to operate in the United Kingdom. Already in 2019, keeping the possibility of a no-deal Brexit in mind, the Dutch government provided for a temporary exemption from the licensing obligation for UK-based investment firms operating in the Netherlands. Surprisingly enough, however, the government sees no reason to have the temporary exemption enter into force because, since then, financial undertakings have had more time to amend contracts and/or modify activities, according to letters to the House of Representatives dated 21 August 2020 and 27 December 2020. For this reason, UK-based investment firms will — at least provisionally — be subject to the Netherlands' existing third-country regime with effect from 1 January 2021. Conversely, the UK national regime may apply to Netherlands-based investment firms operating in the United Kingdom with effect from 1 January 2021.
- ***Who?*** All investment firms that are impacted by Brexit either by virtue of their activities and/or client base.
- ***When?*** The Brexit agreement entered into force on 1 January 2021.

ESMA Update impact of Brexit on MiFID II/ MiFIR

- ***What?*** On 1 October 2020, ESMA published an update regarding the impact Brexit will have on the MiFID II/ MiFIR framework. In this update, ESMA discusses the application of requirements relating to the C(6) carve-out (exemption for certain energy derivatives contracts), post-trade transparency and position limits with effect from 1 January 2021.
- ***Who?*** All investment firms who will be impacted by Brexit either by virtue of their activities and/or client base.
- ***When?*** Continuous.

ESMA View on the application of trading obligations involving shares after the Brexit transition period

- ***What?*** On 26 October 2020, ESMA published its View on Brexit in terms of the application of the trading obligation for shares (Article 23 MiFIR) with effect from 1 January 2021.
- ***Who?*** All investment firms who will be impacted by Brexit either by virtue of their activities and/or client base.
- ***When?*** Continuous.

ESMA View on the application of trading obligations involving derivatives after the Brexit transition period

- ***What?*** On 25 November 2020, ESMA published its View on Brexit in terms of the application of the trading obligation for derivatives (Article 28 MiFIR) with effect from 1 January 2021.
- ***Who?*** All investment firms who will be impacted by Brexit either by virtue of their activities and/or client base.
- ***When?*** Continuous.

ESMA will add UK-based trading venues to opinions on third-country trading venues (TCTV)

- ***What?*** On 27 October 2020, in connection with Brexit, ESMA updated the list of TCTV advisory opinions to include UK-based trading venues. The advisory opinions regard the application of post-trade transparency rules and position limits pursuant to MiFID II/MiFIR.
- ***Who?*** All investment firms who will be impacted by Brexit either by virtue of their activities and/or client base.
- ***When?*** Continuous.

COVID-19

AFM expects extra attention to client actualisation

- ***What?*** On 20 May 2020, the AFM called on investment firms to update client profiles in connection with the changes that the COVID-19 crisis has wrought in their personal situations. The AFM noted that such crises can result in client data rapidly becoming obsolete, which could translate into investment risks becoming unsuitable for a given client. According to the AFM, ensuring that the data on vulnerable groups of clients is updated in a timely fashion will prevent foreseeable investor disappointment.

- ***Who?*** Investment firms who provide investment advice and asset management services.
- **When?** Continuous throughout the COVID-19 crisis.

ESRB and DNB recommendation on the impact of COVID-19 on investment firms

- ***What?*** On 15 December 2020, the European Systemic Risk Board (ESRB) extended its recommendation on distributions by investment firms, among others, during the COVID-19 crisis until 30 September 2021. In its news report of 18 December 2020, DNB supported this extension and again requested investment firms to take the current crisis, forecasts and other scenarios that could affect business operations, profitability and financial buffers into account when considering possible dividend distributions, share repurchases and payment of variable remuneration. DNB expects investment firms to safeguard their own financial buffers carefully in these uncertain times. If an investment firm sees a development that could lead to prudential shortfalls, it must report this to DNB as quickly as possible.
- ***Who?*** All investment firms.
- ***When?*** Continuous throughout the COVID-19 crisis.

PAYMENT SERVICE PROVIDERS AND EMIS

Please note: The cross-sectoral sections Integrity and Sustainability are also relevant to payment service providers and EMIs.

DNB SUPERVISION

The provision of payment services to providers of online games of chance

- ***What?*** Earlier this year, in its newsletter, DNB stated that it had received signals that payment and electronic money institutions (EMIs) are involved in providing payment services to (often foreign) providers of online games of chance. DNB warns that these institutions must ensure that they do not become involved in or provide services to parties that could harm their reputation. In light of the new Remote Gambling Act (*Wet Kansspelen op afstand*), which is expected to enter into force on 1 March 2021, DNB will consult with the Netherlands Gambling Authority (*Kansspelautoriteit*) regarding the approach to the unpermitted provision of payment services to providers of online games of chance. DNB indicated that it will devote additional attention to this topic during its investigations.
- ***Who?*** Payment institutions and EMIs.
- ***When?*** The Remote Gambling Act is expected to enter into force on 1 March 2021. We can imagine that parallel to that, DNB will also provide further guidance regarding how and what precisely it expects of payment institutions and EMIs in this area. In 2021, DNB will enhance its supervision of the offering of payment services to providers of online games of chance.

Amendment of input template for fraud reporting

- ***What?*** On 1 July 2019, the EBA Guidelines on reporting fraud under PSD2 entered into force in the Netherlands. Based on these guidelines, payment service providers first submitted statistical data about the fraud they detected for the second half of 2019 via the Digital Reporting Portal. With effect from 1 July 2020, amended guidelines apply for reporting fraud statistics, with the deadline for submission being 31 March 2021. In response to these amended guidelines, DNB modified its input template in respect of fraud reporting and this can be found on its

website. This template contains two additional reporting fields. Payment institutions, exempted payment service providers and exempted EMIs must have submitted their fraud report to DNB by 31 March 2021. This means that they must bear in mind that the correct template must be used for this.
- ***Who?*** Payment institutions, exempted payment service providers and exempted EMIs.
- ***When?*** The EBA's Guidelines on reporting fraud statistics were amended with effect from 1 July 2020 and the DNB has been using an amended input template since October 2020. The aforementioned parties must immediately take the amended input template into account, which must be sent to DNB no later than 31 March 2021.

Investigation of the infrastructure for cash in the medium to long term

- ***What?*** DNB has given as instruction for an independent inquiry into the Dutch cash infrastructure. In light of the decreasing use of cash, the question is being considered as to what the cash infrastructure should be in the medium to long term. The outcomes of this inquiry are expected in the summer of 2021. At present, we are unable to determine whether and if so, to what extent, this may impact the provision of payment services in which cash still plays a role.
- ***Who?*** Payment institutions that perform payment services in which cash does still play a role.
- ***When?*** The results of this inquiry are expected in the summer of 2021.

Modified supervisory approach of DNB

- ***What?*** In its December 2020 newsletter for payment institutions, DNB announced that it would be performing its supervision in accordance with the Updated Supervision Methodology. DNB wants to put its available capacity to use where the biggest prudential and integrity risks are observed. The premise in that context is that a stable and reliable financial system benefits from the public's trust that payment institutions, among others, will comply with their obligations and act with integrity. The greater the negative impact of these risks on confidence, the more intense the supervision will be. According to DNB, institutions will notice that supervision will become more dynamic. The number of conversations with the account supervisor will decrease and DNB will act increasingly on the basis of collected data. The supervision category in which DNB classifies the institution determines the intensity of supervision. There are three categories, from small and not too complex to large and complex.
- ***Who?*** Payment institutions.
- ***When?*** Starting 1 January 2021.

EBA, ECB & EPC

EBA Work Programme 2021

- ***What?*** On 30 September 2020, the EBA published its Annual Work Programme for 2021. In that document, EBA describes its six main supervision priorities for 2021, and it also discusses the approach to the pandemic. Despite the fact that this document is particularly relevant for banks and investment firms, we also briefly discuss payment institutions. It is interesting to note here that EBA intends to publish a report in Q2 2021 from the EBA working group on APIs (Application Programming Interfaces) under PSD2. Revised guidelines on major incidents reporting are also expected in that same period. In addition, it is EBA's goal to issue guidelines in Q3 2021 regarding the 'limited network' exemption. This will most likely be a very welcome addition for market parties that (intend to) utilise this exemption, because the precise scope of the use thereof is not always as clear due to the lack of a clear delineation. EBA will also continually update, among other things, its Q&A related to PSD2 and continue to perform its monitoring function in respect of payment services.
- ***Who?*** Payment institutions, payment service providers, EMIs.
- ***When?*** The Annual Work Programme 2021 describes the EBA's focus areas for 2021. Various input is expected in 2021 that is relevant for the aforementioned market parties.

EBA consultation on the revision of the guidelines on major incident reporting under PSD2

- ***What?*** The EBA Guidelines on major incident reporting under PSD2 entered into force on 13 January 2018. Under these guidelines, criteria, thresholds and methodology are set out which payment service providers must use to determine whether an operational or security incident should or should not be considered major and how that incident should be reported to the competent supervisory authority. On 14 October 2020, EBA opened a public consultation in which it proposes a revision of the existing guidelines. The proposal to amend the guidelines on major incident reporting under PSD2 is aimed at optimising and simplifying the reporting process, capturing additional relevant security incidents, reducing the number of operational incidents that will be reported and improving the meaningfulness of the incident reports received. The revision of the guidelines

is also intended to reduce the reporting burden for payment service providers.
- ***Who?*** Payment institutions, and to a more limited extent, exempted payment service providers and exempted EMIs.
- ***When?*** The consultation for the EBA's proposal to amend these guidelines ended on 14 December 2020. It is not yet clear when the new guidelines are expected to enter into force.

Oversight framework for electronic payment instruments, schemes and arrangements (PISA framework)

- ***What?*** On 27 October 2020, the ECB (the monetary authority for the euro area) opened a consultation on a draft supervisory framework that would, in part, set new requirements on the oversight of electronic payment instruments (the 'PISA framework'). This PISA framework replaces the existing harmonised oversight approach and oversight standards for payment instruments of the Eurosystem and is particularly relevant for payment institutions that issue (electronic) payment instruments to end-users and which are denominated in or funded in euro, partly or fully backed by euro, or redeemable in euro. The framework is also applicable to payment schemes and arrangements that enable the use of payment instruments. With the new PISA framework, the ECB also intends to address the ongoing developments within the retail payment ecosystem as it continues to be driven forward by innovation (as well as technological and regulatory advancements). In an exemption policy for the PISA framework, the ECB defined criteria to identify the payment schemes and arrangements that must be supervised, taking into account their relevance for the overall payment system in the Eurosystem. This policy also includes exemption criteria for such payment schemes and arrangements in order to determine based on whether an exemption applies to these schemes and arrangements. In addition to the transfer of digital currency, e-tokens (such as stable coins) will also fall under the PISA framework. The oversight is based on the principles of the CPSS-IOSCO Principles for Financial Market Infrastructures.
- ***Who?*** Among other things, for payment institutions and EMIs that issue (electronic) payment instruments.
- ***When?*** Interested parties had until 31 December 2020 to respond to the consultation. The ECB will then review all feedback and incorporate it where necessary and appropriate. The definitive version of the PISA framework will then be published, and take effect one year after its date of publication. We expect this to be in Q1 or Q2 2022.

European Payments Council publishes a report on payment threats and fraud trends

- ***What?*** On 4 November 2020, the European Payments Council published its annual report on payment threats and fraud trends. The object of the report is to contribute to awareness of payment threats and fraud trends, and to assist interested parties in payments (such as payment institutions) when taking decisions about the correct measures for preventing fraud. The report discusses various types of fraud that are related to specific payment instruments. For example, malware, in particular ransomware, continues to be a significant threat. In addition, the European Payments Council concludes that 'Advanced Persistent Threats' (APTs) are now, but will also be in the future, one of the most lucrative types of payment fraud. An ATP is a lengthy and targeted cyberattack in which an unauthorised individual gains access to a network unobserved and for a lengthy period.
- ***Who?*** Payment institutions in particular, but it is also relevant for EMIs that perform payment services.
- ***When?*** The report by the European Payments Council was published on 4 November 2020 and reflects on 2020. In particular, the report is intended to increase the awareness of payment threats and fraud trends at the aforementioned payment institutions, to enable them to take advantage of that in the future, for example by investing in the correct adequate security measures and monitoring technologies.

EXISTING LAWS AND REGULATIONS

Financial Markets Amendment Decree 2021 - amendments related to intra-group outsourcing

- ***What?*** On 1 July 2020, the Minister of Finance submitted the Financial Markets Amendment Decree 2021 for consultation. Among other things, this decree amends the Prudential Rules (Financial Supervision Act) Decree (*Besluit prudentiële regels*, Bpr) for payment institutions and EMIs in the area of intra-group outsourcing. When this decree enters into force, these institutions must also comply with Articles 29 through 31 Bpr when outsourcing activities within its group. Among other things, these articles provide that an institution must have an adequate policy, adopted 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 EMIs.

- ***When?*** Market parties had until 13 August 2020 to respond to the consultation. The decree is expected to enter into force in 2021. The precise date is not yet known.

Further Remuneration Measures for Financial Undertakings Act in preparation

- ***What?*** On 2 July 2020, the Minister of Finance submitted a bill on the Further Remuneration Measures for Financial Undertakings Act to the Dutch House of Representatives. The bill aims to introduce a number of changes to the current remuneration measures as included in the Financial Supervision Act (*Wet op het financieel toezicht*, Wft), including the introduction of a statutory retention period of five years for shares paid out as part of a fixed remuneration and a tightening of the averaging scheme for personnel not covered by the collective labour agreement, who may be awarded a higher bonus than 20% under certain conditions.
- ***Who?*** Payment institutions and EMIs, among others.
- ***When?*** The envisaged date of entry into force of most of the tightening measures is 1 July 2021. Certain other changes are intended to take effect on 1 July 2022.

NEW LAWS AND REGULATIONS

Consultation on the Financial Markets Amendment Act 2022 - statutory client account

On 6 November 2020, the Minister of Finance submitted the Financial Markets Amendment Act 2022 for consultation. This bill is intended for the implementation of various legislative amendments in financial supervisory law. In particular, this bill amends the Wft to provide the opportunity for, among others, payment institutions and EMIs to use a cash account with segregated capital (the 'statutory client account'). Such a client account will be in the financial undertaking's name. The bill provides that the funds in this account constitute segregated capital that serves solely to pay receivables from third parties for whom funds were deposited into the account with segregated capital and the bank where the account with segregated capital is held, in so far as the receivables are related to the management of the account and in so far as those receivables are related to the entrustment of the funds to the account holder. Briefly put, this client account offers recourse exclusivity in the event of the bankruptcy of the relevant financial undertaking.

The Dutch supervisory authorities DNB and the AFM have already argued in favour of the introduction of the statutory client account, in part because of demand in practice. This way, payment institutions and EMIs no longer need a third-party account to segregate client funds that they hold. Such constructs are not always understood abroad, as a result of which foreign parties sometimes refuse to pay to a third-party account because they fear that a payment to a party other than the financial institution will not discharge them from the debt. As a result, cross-border transactions are thus hampered in practice. In addition, the figure of the account with segregated capital promotes cross-sectoral uniformity of financial regulations related to securing funds of clients of financial undertakings, which then contributes to the transparency of those regulations.

The bill also introduces a compulsory audit of financial statements of payment institutions and EMIs. In previous years, DNB has observed that the financial data in financial statements of the aforementioned institutions were not always reliable. A compulsory audit must increase the reliability, upon which DNB can then again rely when performing its prudential supervision.

In practice, the introduction of this statutory client account will, in particular, be relevant for payment institutions, exempted payment service providers and exempted EMIs. Market parties had until 18 December 2020 to respond to the consultation. We expect that the goal is to have the act enter into force on 1 January 2022.

Obligation to register cross-border payments

- ***What?*** In particular, the amending directive as regards introducing certain requirements for payment service providers pertains to e-commerce, with cross-border sales of goods and services to end-users in Member States, with payments going via payment service providers. To combat VAT fraud, it is important to require these payment service providers to keep sufficiently detailed records and to report certain cross-border payments that can be qualified as such by the location of the payer and the location of the payee. Under this directive, a payment is qualified as a 'cross-border payment' if the payer is located in one Member State and the payee is located in a different Member State, a third territory or a third country. This directive introduces the obligation for payment institutions and EMIs, but also exempted payment service providers, to keep sufficiently detailed records of payees and to provide information about such cross-border payments that they provide every calendar quarter. This means that, as a result of the implementation of the amending directive, payment service providers will have to comply with additional (reporting) rules. The amending directive prescribes what data must be included in the records.

- ***Who?*** Payment institutions and EMIs, but exempted payment service providers as well.
- ***When?*** The amending directive entered into force in March 2020. The deadline for implementation for Member States is 31 December 2023. It will thus very likely take some time before these rules are implemented and become applicable in the Netherlands.

OTHER DEVELOPMENTS

Renewed strategy of the European Commission regarding retail payments in the EU

- ***What?*** On 24 September 2020, the European Commission published its renewed strategy for retail payments in the European Union, addressing, among other parties, the European Parliament and the Council of Ministers. In the renewed strategy, the European Commission departs from the following four strategic pillars: (i) the digital and instant payment solutions with a pan-European scope, (ii) innovative and competing retail payment markets, (iii) efficient and interoperable retail payment systems and other supporting infrastructures and (iv) efficient international payments. Per pillar, the European Commission formulated a number of key actions which it believes should be taken in order to achieve the goals related to the pillars. In addition, it is important to note that the European Commission will launch an extensive assessment of the application and impact of PSD2 at the end of 2021.
- ***Who?*** The renewed strategy is relevant for all parties that are active in the area of payment solutions in Europe.
- ***When?*** The renewed strategy describes the European Commission's ambitious plans for the European payment sector for the years ahead. In 2020, the European Commission took measures that will make pan-European instant payment solutions a reality starting at the end of 2021.

Request by FATF regarding improving cross-border payments

- ***What?*** On 1 December 2020, the Financial Action Task Force (**FATF**) published a questionnaire in which its requests input from the market with a view to improving cross-border payments. Cross-border payment service providers face a number of challenges, including high costs, limited access, low speed and insufficient transparency that need to be tackled. The FATF recognises the advantages of faster, cheaper and broader, more accessible possibilities in terms of cross-border payments, but also notes that there are still a number of impediments to this, including in the area of anti-money laundering regulations.
- ***Who?*** Banks and payment service providers in particular.
- ***When?*** The consultation period will run until 15 January 2021. It is our expectation that, in part based on the input, the **FATF** will prepare various recommendations that will be relevant for, among others, the aforementioned parties.

Brexit deal

- ***What?*** A Brexit deal was concluded on 24 December 2020. This deal, however, barely discusses the financial sector, which means that the loss of the European passport has not been addressed. It is now up to both the EU and the United Kingdom to decide, unilaterally perhaps, to view the financial sector of the other as equal and to grant full access to its own market, also referred to as equivalence decisions. DNB has published a fact sheet showing that UK-based payment service providers and EMIs will be precluded from doing business in the Netherlands starting in 2021. The United Kingdom has also thus far refrained, to the extent possible, from passing an equivalence decision for payment service providers and EMIs who wish to perform activities in the United Kingdom from the EU. The *temporary permissions regime* is still in effect for payment service providers and EMIs, however. Payment service providers and EMIs who prior to Brexit performed activities in the UK based on a European passport and who submitted an application under the temporary permissions regime in 2020 can partially continue to perform their activities under the same terms and conditions for up to a maximum of three years. Payment service providers and EMIs who are not availing themselves of this scheme will be afforded the opportunity, on the basis of the *Financial Services Contracts Regime* to wind down their activities in the United Kingdom in an orderly fashion.
- Who? Payment service providers and EMIs who operate in both the EU and the United Kingdom.
- When? The Brexit deal entered into force on 1 January 2021.

FINANCIAL SERVICE PROVIDERS

This section deals with important developments in 2021 for financial service providers. This category includes advisors and intermediaries in financial products, such as credit and insurance. Consumer credit providers and insurers are also deemed financial service providers under the terms of the Dutch Financial Supervision Act (Wet op het financieel toezicht, Wft). Developments for these financial service providers are included in a separate section of the Outlook (Credit providers and Insurers). In addition, the section Integrity in this Outlook is relevant for life insurance intermediaries. Lastly, the section Sustainability may also be relevant for certain financial service providers.

AFM SUPERVISION

Market Impressions Report: specialisation and digitisation - bear diploma requirement in mind

- ***What?*** In its 'Market Impressions' report of December 2020, the AFM describes the market development for intermediaries between providers of financial products and consumers. Market developments call for specialisation, meaning clear choices in the offer of the services and the cooperation with other firms. In addition, further digitisation for intermediaries seems unavoidable, in part in view of the accelerated digitisation as a result of the coronavirus pandemic. It also follows from the report that the AFM has performed checks of, among other things, the diploma requirement. The AFM urgently calls on advisors to check the permits register to make sure that no activities are performed for which there is no diploma. The AFM will continue to devote additional attention to that in the period ahead. Take the diploma requirement into account!
- ***Who?*** Advisors and intermediaries.
- ***When?*** During 2021.

Knowledge and experience assessment of work incapacity insurance needs improvement

- What? The AFM believes that the knowledge and experience assessments when taking out work incapacity insurance should be better. For example, the AFM's investigation revealed that market parties perform the knowledge and experience assessments in various ways. Some assessments primarily ask the client whether

they themselves believe they have sufficient knowledge of the product. For example: 'Do you understand the policy conditions: yes/no'. In the AFM's opinion, this 'self-reporting' is not reliable, unlike assessing material questions such as 'Which of the following statements is correct?'. The AFM states that the items to be addressed are also useful for other market parties to reinforce the knowledge and experience assessment in the case of other impactful financial products.
- ***Who?*** Intermediaries in work incapacity insurance.
- ***When?*** In 2021, we expect that the AFM will examine whether the intermediaries have improved the knowledge and experience assessment.

Legislative letter: duty of care control stage financial products

- ***What?*** In its annual legislative letter of 30 March 2020 to the Minister of Finance, the AFM also explains a few general developments. The AFM notes that the specific standardisation in the area of the control stage, that is to say, the period after the sale of the financial products, is clearly more limited than the stage that precedes it. The general duty of care in Article 4:24a of the Wft does not specifically state the obligations that are applicable during the term of an agreement. In the coming year, the AFM will therefore take stock of where there is a need to concretise the legal framework.
- ***Who?*** Intermediaries and advisors.
- ***When?*** The AFM is taking stock of the duty of care in the control stage after the sale of the financial product (after-sales service). More may be known about this in 2021.

Basic principles for insurance product information document

- ***What?*** The AFM has found that important information is often missing from the Insurance Product Information Document (IPID), the document which informs consumers on what an insurance product does and does not cover and what the obligations are. That is why the AFM provides a number of basic principles and calls upon developers to critically examine their IPIDs on the basis of the findings.
- ***Who?*** Advisers, intermediaries and authorised agents who develop financial products and must prepare IPIDs.
- ***When?*** We expect the AFM to focus on the quality of the IPID in 2021.

Fact sheet on trends relating to authorised agents

- ***What?*** At the end of last year, the AFM published a fact sheet setting out the trends which authorised agents had to deal with. The sheet is based on interviews with insurers, authorised underwriters and experts, along with data analyses conducted at authorising insurers. The AFM's research showed, among other things, that authorised agents who develop products are not always aware that they must also satisfy the PARP standards that apply to product developers.
- ***Who?*** Authorised insurance underwriting agents.
- ***When?*** In 2021, we expect the AFM to monitor the trends, and particularly compliance with the PARP obligation.

Call to report incidents

- ***What?*** The AFM sent businesses a letter drawing their attention to reporting incidents that could constitute a serious threat to the sound and controlled business operations. Given the current situation in which we are more often working together remotely as a result of the COVID-19 crisis, the AFM is asking businesses to be more attentive with regard to integrity and information security incidents. The letter contains an appendix with a non-exhaustive list of examples of incidents.
- ***Who?*** All licensed financial services providers.
- ***When?*** The AFM is devoting a higher level of attention to the statutory obligation to report incidents. The AFM indicates that it will be able to investigate compliance with this obligation in the future.

EXISTING LAWS AND REGULATIONS

Proposal for cancelled knowledge and experience assessment financing of energy-saving provisions

- ***What?*** The proposed Financial Markets Amendment Decree 2021 cancels the knowledge and experience assessment if the consumer wants to take out an additional mortgage credit of a maximum of EUR 25,000 for demonstrable financing of energy-saving facilities in a home with the same provider via the execution-only channel (without advice).
- ***Who?*** Intermediaries and advisors who advise a mortgage loan or mediate therein via the execution-only channel (without advice) in the situation in which their clients want to borrow a maximum of EUR 25,000 for

the sustainabilisation of their home.
- ***When?*** The Amendment Decree was consulted on in the summer of 2020. The decree is expected to enter into force in 2021. The precise date is not yet known.

Expansion of rules on tied sales in the case of insurance

- ***What?*** Intermediaries in insurance are currently obliged, in the case of mediating in an insurance together with an additional product (not insurance) or additional service, to inform the client whether the various products or services can be purchased separately and if so, to provide an explanation of those products or services and information about the costs and charges of each financial product or service. The proposed Financial Markets Amendment Decree 2021 changes this obligation in the sense that this obligation applies if insurance is offered together with an additional product or additional service and it thus need not involve insurance in combination with another financial product or financial service.
- ***Who?*** Intermediaries that offer insurance along with an additional product or additional service.
- ***When?*** The Amendment Decree was consulted on in the summer of 2020. The decree is expected to enter into force in 2021. The precise date is not yet known.

Active commission transparency in non-life insurance

Intermediaries and advisors may not provide or receive commission for mediating or advising in connection with non-life insurance, not a payment protector, individual work incapacity insurance or term life insurance, apart from the excepted commissions. Acquisition commissions or ongoing commissions are excepted, provided the condition that, briefly put, the client is informed of the commission free of charge at his or her request, is met.

The Financial Markets Amendment Decree 2021 consulted on adds as condition that the information requirements in Article 86i of the Market Conduct Supervision (Financial Institutions) Decree (*Besluit Gedragstoezicht financiële ondernemingen Wft*, BGfo) must be met and adds new topics, specifically the existence of the acquisition commission or ongoing commission that is received for the provision of financial services in respect of non-life insurance and the characteristics of the service. That way, the current 'passive' commission transparency obligation for non-life insurance is converted to an active obligation for the purpose of informing insured parties regarding any acquisition commission or ongoing commission prior to taking out the insurance and the services opposite that commission (instead of the client themselves first having to request that information).

For consumers (so, not the corporate market), it is also added that they must be actively informed about the average amount or percentage of the acquisition commission or the ongoing commission that is received for the advice or the mediation with regard to certain categories of non-life insurance. In the responses to the consultation, the question of whether the average commission amounts per product group are sufficient, resurfaced. In response, the Minister of Finance, in his letter to the House of Representatives dated 27 October 2020, announced his intention to tighten the active requirement of commission transparency in the sense that exact commission amounts per product must be made transparent.

The Amendment Decree was consulted on in the summer of 2020. The decree is expected to enter into force in 2021. The precise date is not yet known.

Further Remuneration Measures for Financial Undertakings Act in preparation

- ***What?*** On 2 July 2020, the Minister of Finance submitted a bill on the Further Remuneration Measures for Financial Undertakings Act to the House of Representatives. The bill aims to introduce a number of changes to the current remuneration measures as provided for in the Wft including the introduction of a statutory retention period of five years for shares paid out as part of a fixed remuneration and a tightening of the averaging scheme for personnel not covered by the collective labour agreement, who may be awarded a higher bonus than 20% under certain conditions.
- ***Who?*** Financial service providers who fall within the scope of the Dutch remuneration rules.
- ***When?*** The envisaged date of entry into force of most of the tightening measures is 1 July 2021. Certain other changes are intended to take effect on 1 July 2022.

Amendment of examination targets for professional competence under the Wft 2021

- ***What?*** In the autumn of last year, the change to the Regulation on examination targets financial services Wft (*Regeling eindtermen en toetstermen examens financiële dienstverlening Wft*) was consulted on. The Board for Expertise in Financial Services (*College Deskundigheid Financiële Dienstverlening*, CDFD) issued advice on the content of the Wtf Permanent Education (PE) examinations for the new PE year. As a result, textual clarifications and editorial and technical changes are currently proposed and the introduction of one new

examination target in Annex 8. Pension Insurance.
- ***Who?*** Advisors who have a diploma obligation.
- ***When?*** The intended date of entry into force for the changes is 1 April 2021, the same as the start of the new PE year.

NEW LAWS AND REGULATIONS

Proposal for quality requirements automated advice

The bill for Financial Markets Amendment Decree 2021 introduces quality requirements for fully automated advice to ensure that such advice complies with the same requirements as advice given by a person. For example, the bill provides that at least two individuals must be designated per financial product who are responsible for the automated system and the automated advice. They must have the professional competence to be able to give advice themselves (diploma obligation). Analyses must be performed evidencing that the automated system works before it is used. A periodic check must be performed to determine whether the automated advice is appropriate for and aligns with the information given by the consumer or client. After the system is put into operation, periodic checks must be performed to ensure that the automated system is only available to the envisaged target group and the professional competence requirements have been applied and are being met. The automated system must ensure that it collects sufficient information and that the advice is also based on that information. Adequate measures must be taken if an error is discovered in the automated system.

The Amendment Decree was consulted on in the summer of 2020. The decree is expected to enter into force in 2021. The precise date is not yet known.

Proposed obligations independent/dependent advice

- ***What?*** The bill for Financial Markets Amendment Decree 2021 introduces the obligation for financial service providers to inform the consumer or client prior to the advice regarding a payment protector, complex product, mortgage credit, individual work incapacity insurance, term life insurance, premium pension claim or funeral insurance whether the advice is being given dependently or independently. If independent advice is given, a sufficient number of financial products available on the market must be evaluated and the financial products may not be offered solely by the financial service provider himself or by entities that have close ties with the financial service provider.
- ***Who?*** Financial service providers giving advice regarding the aforementioned products (i.e.: impactful products).
- ***When?*** The Amendment Decree was consulted on in the summer of 2020. The decree is expected to enter into force in 2021. The precise date is not yet known.

OTHER DEVELOPMENTS

EIOPA survey on application of IDD

- ***What?*** In November 2020, EIOPA launched a survey on the application of the Insurance Distribution Directive (IDD). The aim of the survey is to gather feedback from stakeholders on the experience with the application of the IDD, in particular on the improvement of quality of advice and selling methods, the impact of the IDD on small and medium-sized enterprises and possible further improvements identified after the implementation of the IDD.
- ***Who?*** Advisors and intermediaries in insurances, authorised agents, subauthorised agents and certain ancillary insurance intermediaries to which the IDD applies.
- ***When?*** Stakeholders have until 1 February 2021 to respond to the survey. Afterwards, EIOPA will assess the responses and is expected to publish its report at the end of 2021.

EIOPA's approach to supervising POG standards under IDD

- ***What?*** In October 2020, EIOPA communicated its approach to the supervision of Product Oversight and Governance (POG) standards under the IDD to the market. The document is intended to provide more clarity in this respect to insurance product developers and distributors and to support them in implementing their own POG policy documents (the PARP).
- ***Who?*** Insurance intermediaries to whom the IDD applies who develop and/or distribute insurances.
- ***When?*** The AFM is expected to pay attention to this in the ongoing supervision.

Brexit deal

- ***What?*** A Brexit deal was concluded on 24 December 2020. This deal, however, barely discusses the financial sector, which means that the loss of the European passport has not been addressed. It is now up to both the EU and the United Kingdom to decide, unilaterally, to consider the level of financial supervision of the other as equal and to grant full access to its own market, also referred to as equivalence decisions. For financial

services providers, however, such a decision cannot be taken based on either the MCD or the IDD regulations. The United Kingdom has also thus far refrained, to the extent possible, from passing an equivalence decision for financial services providers who wish to perform activities in the United Kingdom from the EU. The *temporary permissions regime* is still in effect for financial services providers, however. Financial services providers who prior to Brexit performed activities in the UK based on a European passport and who submitted an application under the temporary permissions regime in 2020 can partially continue to perform their activities under the same terms and conditions for up to a maximum of three years. Financial services providers who are not availing themselves of this scheme will be afforded the opportunity, on the basis of the *Financial Services Contracts Regime* to wind down their activities in the United Kingdom in an orderly fashion.

- ***Who?*** Financial services providers who are licensed to act as intermediaries, to act as authorised agents, to act as subauthorised agents or reinsurance intermediaries in life insurances and/or non-life insurances or to act as mortgage intermediaries and who operate in both the EU and in the United Kingdom.
- ***When?*** The Brexit deal entered into force on 1 January 2021.

EIOPA call to action to mitigate COVID-19 impact on consumers

- ***What?*** In April 2020, EIOPA issued a call to action to insurers and insurance intermediaries to take a number of measures to mitigate the impact of COVID-19 on consumers, including a call for flexibility towards consumers. It is crucially important to EIOPA that insurers and intermediaries continue to concentrate on safeguarding business continuity and the fair treatment of consumers.
- ***Who?*** Insurance intermediaries.
- ***When?*** Continuously throughout the COVID-19 crisis.

FINTECH & ALTERNATIVE FINANCING

Please note: The cross-sectoral sections Integrity and Sustainability may also be relevant to parties developing initiatives in the area of fintech and/or alternative financing. Of course, other sections of this Outlook may be relevant, depending on the regulations applicable to the relevant initiatives.

AFM SUPERVISION

Trend Monitor 2021

On 3 November 2020, the AFM published its annual analysis of trends and developments in the financial markets: Trend Monitor 2021. In this report, the AFM signals trends that may influence its supervision in 2021, and supervisory themes which the AFM will prioritise in 2021. Although Trend Monitor 2021 does not yet contain any specific actions of the AFM - these will be announced (in particular) when the AFM Agenda 2021 is published in early 2021 - Trend Monitor 2021 does give some indication of what market parties will have to take into account in 2021.

In its Trend Monitor 2021, the AFM identifies five important trends that result in points of attention for the AFM's supervision. One of those trends is related to FinTech, as it pertains to the digitisation of the financial sector. In this context, the AFM describes the following three developments:

1. **BigTechs are expanding their financial activities in Europe**. The AFM finds that for now, the financial services of BigTech in the Netherlands are limited to payments. For example, ApplePay has entered into partnerships with various Dutch banks. At the same time, according to the AFM, the collaboration between Deutsche Bank and Google shows that the BigTechs are also entering other areas of the financial sector. According to the AFM, due to the large client bases, strong brands and big financial reserves, the expectation is that BigTechs will also be able to quickly take a spot in other financial areas. According to the AFM, this means that the banking sector and other financial service providers are increasingly facing very strong competition.
2. **Responsible use of artificial intelligence (AI) requires the attention of market parties and supervisory authorities.** The AFM sees that the financial sector, in particular the insurance sector, is increasingly using AI applications. The AFM believes it is important to

use AI responsibly. The use must be in line with the requirements related to ethical and controlled operations, product development and the duty of care. In the period ahead, the AFM intends to formulate expectations for the responsible use of AI and at the same time, reinforce its supervision related to this technological development.

3. **The use of Distributed Ledger Technology (DLT) in the financial sector is growing.** Although the blockchain hype has since decreased, the AFM notes that the use of DLT in the financial sector is indeed increasing. According to the AFM, DLT offers the opportunity to deal smarter and more efficiently with transactions and data storage using cryptography. Existing examples illustrate how the application of DLT makes it possible to simplify the market infrastructure, shorten issuing and payment processes and reinforce security. However, according to the AFM, despite these potential benefits, DLT is also subject to risks that cannot yet be automatically controlled. In addition, relevant regulatory requirements cannot be met in all cases. The AFM therefore welcomes the European Commission's proposal for a pilot regime related to DLT applications on trading venues (also see 'Cryptocurrencies' below). In the AFM's opinion, such an EU framework may help supervisory authorities when allowing experiments without violating existing EU regulations (MiFID II and the CSDR, for example).

In Trend Monitor 2021, the AFM also addresses the relationship between (new) FinTech companies and established financial institutions. According to the AFM, a scenario in which the disruptive nature of (new) FinTech parties results in a takeover of the entire financial sector seems to have been negated by now. In most instances, FinTechs offer the same services as traditional parties, but more efficiently due to new technological innovation. The AFM notes, however, that FinTech companies have a number of competitive disadvantages in respect of established banks, such as the lack of a sizeable client base, (soft) information about potential clients, reputation and brand recognition. In addition, this is accompanied by the fact that, among other things, acquiring new clients is costly for this group of newcomers. Conversely, the AFM also sees advantages of FinTechs that have been able to achieve a strong position in the chain on their own, in particular in the area of payments, but other areas as well, such as investing, banking and insuring.

DNB SUPERVISION

Supervisory Strategy 2021-2024

- ***What?*** On 24 November 2020, DNB published its updated Supervisory Strategy 2021-2024. In this document, DNB sets the course for supervision in the coming years. The objective of the document is to inform financial institutions about the aim of supervision and thus to function as a point on the horizon. The Supervisory Strategy 2021-2024 provides insight into DNB's risk-based approach to supervision and elaborates on the three key objectives in the previous Supervisory Strategy (2017). One of the three key objectives is responding to technological innovation. DNB identifies that new technologies and digitalisation bring about fundamental changes in the financial sector, and formulates three ambitions in this context:
  1. data in order at financial institutions: this means, among other things, that good data quality and an adequate set-up of the data management, with attention for operational risks and the protection of personal data, must be a priority for institutions;
  2. utilise data better in the supervision: in the years ahead, DNB will focus on data-driven supervision and increasingly use smart algorithms and artificial intelligence;
  3. more digital contact and cooperation: DNB's iForum envisages being the connecting link with the sector and serving as a catalyst for technological innovation. Together with institutions, DNB wants to set up pilots to assess on a small scale whether an innovation works for institutions as well as for DNB before a decision is taken about its implementation. According to DNB, the Innovation Hub and the program 'Regulatory Sandbox' will be continued under the wings of the iForum.
- ***Who?*** The Supervisory Strategy 2021-2024 is relevant for all financial institutions that are under the supervision of DNB.
- ***When?*** The Supervisory Strategy 2021-2024 describes the course for supervision which DNB has set for the next four years.

ESMA AND EBA

ESMA Work Programme 2021

- ***What?*** On 2 October 2020, ESMA published its Annual Work Programme for 2021. In this programme, ESMA describes its supervisory priorities for 2021. ESMA identifies four main activities, including the performance of risk assessments of the topics investors, financial markets and financial stability. In this context, ESMA states that it will continue to monitor financial innovation on an ongoing basis in 2021, focusing on both the opportunities and the risks of financial innovation. To determine what innovations should lead to increased attention and possibly a response from ESMA, ESMA has developed a financial innovation scoreboard. ESMA will apply this methodology, which includes both quantitative and qualitative assessment elements, to, among other things, the following focus areas: FinTech, crypto-assets, suptech/regtech, artificial intelligence, machine learning,

outsourcing to providers of cloud services and digital resilience.

- ***Who?*** In view of the nature of ESMA's supervisory activities, the Annual Work Programme 2012 is particularly relevant for banks, investment firms and managers of investment institutions and UCITS.
- ***When?*** The Annual Work Programme 2021 describes ESMA's focus areas in 2021.

ESMA guidelines on outsourcing to cloud service providers

- ***What?*** On 18 December 2020, ESMA published its final guidelines on outsourcing to cloud service providers. The object of the guidelines is to provide guidance to financial institutions if they outsource services to such providers and to help them identify, address and monitor the related risks.
- ***Who?*** The guidelines are relevant for all supervised financial institutions that utilise third-party cloud services and in particular for, among others, managers of investment institutions and UCITS (bank) investment firms and CCPs.
- ***When?*** The guidelines will be translated into all of the official EU languages and published on ESMA's website. Within two months after publication, the competent authorities of each Member State must notify ESMA of whether they are complying with, or intend to comply with, the guidelines and the supervision of compliance with those guidelines.

EBA Work Programme 2021

- ***What?*** On 30 September 2020, the EBA published its Annual Work Programme for 2021. In that document, EBA describes its six main priorities for 2021, including contributing to a sound development of financial innovation and operational resilience in the financial sector. In 2021, EBA will continue to focus on safeguarding technological neutrality in the approach to regulations and supervision. It will do so by (i) monitoring developments, (ii) promoting the exchange of knowledge between supervisory authorities and (iii) promoting a common approach to regulations and supervision via its own FinTech Knowledge Hub and the ESAs' FinTech Innovation Forum (EFIF). EBA will focus specifically on, among other things, 'platformisation', crypto-assets, artificial intelligence and big data.
- ***Who?*** In view of the nature of EBA's supervisory activities, the Annual Work Programme is particularly relevant for banks and investment firms.
- ***When?*** The Annual Work Programme 2021 describes the EBA's focus areas for 2021.

THE NETHERLANDS FINTECH ACTION PLAN

The Netherlands FinTech Action Plan

On 3 July 2020, Minister Hoekstra and state secretary Keijzer presented a FinTech Action Plan. In the Action Plan, the government uses the broad definition of FinTech as formulated by the Financial Stability Board: "*a technology-driven financial innovation that can lead to new business models, applications, processes or products with a material impact on financial markets, institutions and services.*"

The 12-page Action Plan comprises three pillars:

1. Putting the Dutch FinTech climate and the FinTech sector on the national and international map;
2. Providing good access to knowledge and talent for FinTechs; and
3. Providing regulations that are ready for the future and offer room for innovation.

For each of the three pillars, the Action Plan contains various 'sub-goals' with accompanying action points. The topic of law and regulations plays a key role in that context. The Action Plan also formulates a considerable number of (less and more specific) action points which, as already stated, in many instances relate to law and regulations. Here, we mention a number of striking initiatives that may lead to amendments of the law or a modified application of existing rules:

- To determine whether there is room in Dutch and EU regulations for more proportionality in respect of the requirements in the area of AML/CFT for small companies and start-ups, talks will be held with the market, supervisory authorities and other stakeholders to see whether this room exists;
- In the context of more attention for proportionate supervisory costs, the Minister of Finance will ask supervisory authorities AFM and DNB to ensure that in the run-up to the adoption of the budgets of the AFM and DNB (on which the supervisory costs are based), sufficient small parties and new entrants are also involved;
- Also in the context of proportionate supervisory costs: an arrangement will be investigated that enables the AFM and DNB to build up a reserve for incidental costs or unforeseen circumstances that cannot reasonably be attributed to these (new) parties. The reserve may contribute to lowering thresholds for market entry in the event new activities are subject to financial supervision.

Meanwhile, on 6 November 2020, the Ministry of Finance published a draft bill (Financial Markets Amendment Act 2022) for consultation;
- In the period ahead, the government will work towards EU regulations on the use of artificial intelligence in the financial sector;
- In addition, the government will continue to work on EU regulations for cryptocurrencies and the use of distributed ledger technology in the financial sector;
- The government is working on national regulations for fully automated advice. The consultation of new rules for fully automated advice from financial service providers commenced on 1 July 2020 and ended on 13 August 2020; and
- The government will promote further research at EU and international level into the possibilities of central bank digital currency (CBDC), also see 'Cryptocurrencies' below).

It is positive to see that the government has attention for a number of relevant topics for (startup) FinTechs, such as proportionality of legislation and supervisory costs. However, the government does not yet make specific proposals in respect of the subject of proportionality in the Action Plan, with the exception of the reserve to be introduced for supervisory costs. In early 2021, the government will inform the House of Representatives regarding the status of the Action Plan. The government also plans to conduct a new investigation in 2022 in order to continue to monitor the Netherlands' position as the country of establishment of FinTech companies.

DIGITAL FINANCE PACKAGE EUROPEAN COMMISSION

Digital Finance Package / regulation and directive on digital resilience

- ***What?*** On 24 September 2020, the European Commission published its Digital Finance Package. It is the European Commission's intention to use this package to support the digital transition of the financial sector and at the same time, limit the accompanying risks as much as possible. The package comprises a:

  - Description of the European Commission's strategy in respect of a digital financial sector;
  - Proposal for a regulation regarding markets for crypto-assets;
  - Proposal for a regulation regarding a pilot regime for market infrastructures based on distributed ledger technology;
  - Proposal for a regulation and a directive regarding digital operational resilience for the financial sector; and
  - Renewed strategy in respect of retail payments in the European Union.

  The European Commission's proposals regarding crypto-assets and distributed ledger technology will be discussed below under 'Cryptocurrencies'. The renewed strategy in respect of retail payments will be discussed under 'Payment Services/Online Payments'. We will now briefly discuss the contents of the proposal for a regulation and a directive regarding digital operational resilience.

  The proposed regulation gives extensive rules for (i) the control of IT-risks by financial institutions, the reporting of major ICT-related incidents to the supervisory authority and the testing of digital resilience by financial institutions, (ii) giving shape to the contractual relationship between financial institutions on the one hand and ICT-service providers on the other, (iii) the supervision of critical ICT-service providers and (iv) cooperation between supervisory authorities in the context of the supervision of this regulation. The object of the proposed directive is to amend the various sectoral directives, such as AIFMD, UCITS, CRD, MiFID II and PSD2, to ensure that those directives contain references to the regulation discussed above.
- ***Who?*** The proposed scope of application of the regulation and directive for digital operational resilience is broad and includes banks, insurers, payment institutions, digital currency institutions, investment firms, crypto-asset service providers, CDSs, CCPs and managers of investment institutions and UCITS, but also accounting firms and ICT-service providers, for example.
- ***When?*** The European Commission's proposal for a new regulation and a directive related to digital operational resilience must first be approved by the European Parliament and the Council. This proposal will take the necessary time and it is currently unclear whether that process will be finalised in 2021. According to the proposal, after its entry into force the regulation will be directly applicable in the Netherlands after 12 months. Following its entry into force, the directive must be converted into national legislation.

ALTERNATIVE FINANCING

New European legal framework for crowdfunding

- ***What?*** On 20 October 2020, the Crowdfunding Regulation was published in the Official Journal of the European Union. The core of the regulation is that

providing crowdfunding services will require a permit regime, including a European passport. A crowdfunding service exists if a crowdfunding service provider connects investors and project owners via a platform, because it (i) facilitates the granting of loans to project owners by investors (so-called loan-based crowdfunding), or (ii) places securities issued by project owners with investors and in turn receives orders from investors in such securities and passes these on (so-called equity-based crowdfunding).
The regulation is not applicable to project owners that qualify as consumers. The regulation is also not applicable to crowdfunding offers in excess of EUR 5 million calculated over a period of 12 months. In the instances in which the regulation is not applicable, the national regime as applicable in the Netherlands will apply.

- ***Who?*** The regulation is important for all crowdfunding platforms whose services fall within the aforementioned scope of the regulation.
- ***When?*** The regulation applies directly in the Netherlands starting 10 November 2021.

CRYPTOCURRENCIES

DNB supervision of crypto service providers

- ***What?*** In a news report dated 17 December 2020, DNB reviews its assessment of registration applications from crypto service providers. The following step for DNB will be conducting continuous supervision of these new players. DNB has announced that the supervision will be risk-based, in which respect it noted that it may decide to conduct on site audits at crypto service providers. DNB also noted that the capacity it has available would not be devoted solely to supervising registered crypto service providers, but that it would also monitor whether unregistered providers of crypto services operate in the Netherlands (see DNB's news report also dated 17 December 2020).
- ***Who?*** Crypto service providers.
- ***When?*** On a continuing basis. 2021 will be the first full year in which DNB will supervise crypto service providers. We expect that DNB will immediately act as an active supervisory authority.

Financial Markets Amendment Act 2020 – reputation requirement UBOs crypto service providers

- **What?** On 14 October 2020, the Financial Markets Amendment Act 2020 was published in the Government Gazette. As a result of the Amendment Act, ultimate beneficial owners (UBOs within the meaning of Article 1 Wwft) of crypto service providers will be subject to a reputation assessment. This means that DNB will assess them in terms of (i) reliability and (ii) competence (suitability). A transitory law will be put in place for current ultimate beneficial owners of crypto service providers.
- **Who?** Crypto service providers as referred to in the Wwft.
- **When?** The Amendment Act entered into force on 15 October 2020. The reputation requirement applies from 1 May 2021.

Evaluation of the Money Laundering and Terrorist Financing Prevention Act and Sanctions Act for crypto service providers

- ***What?*** In response to the letter from the Dutch Association of Bitcoin Companies (Verenigde Bitcoin Bedrijven Nederland) of 2 November 2020 to DNB regarding the strict requirements of DNB in the context of the registration process, the House of Representatives put questions to the Minister of Finance. One of the questions was whether the Minister will advance the evaluation of the Money Laundering and Terrorist Financing (Prevention) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*, Wwft) and the Sanctions Act 1977 (*Sanctiewet 1977*) for crypto service providers in order to gain an earlier insight into the possible repressive effect of the administrative charges and procedures. On 19 November 2020, the Minister replied, stating that an evaluation in too short a time period may lead to an incomplete picture. He will return to the House of Representatives in early 2021 with a proposal for the performance of the evaluation and will consider whether it is necessary and useful to accelerate the evaluation.
- ***Who?*** Crypto service providers that fall within the scope of the registration obligation.
- ***When?*** There will be more clarity in early 2021 regarding the timing and contents of the evaluation to be performed.

Proposal for a regulation regarding markets for crypto-assets

On 24 September 2020, the European Commission published a proposal for a regulation on Markets in Crypto-assets (MiCA). According to the proposal, the object of MiCA is to create legal certainty by introducing a single EU-wide regulatory framework for all crypto-assets that fall outside the scope of existing financial legislation. In addition, MiCA must support innovation, ensure fair competition and consumer protection and combat risks to financial stability.

The central concept in the MiCA proposal is 'crypto-asset', defined in the proposal as: '*a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology*'. Cryptos that qualify as a financial instrument within the meaning of MiFID II/MiFIR are not covered by the definition of a crypto-asset. Furthermore, the proposal introduces the terms '*asset-referenced tokens*' and '*e-money tokens*'. These are subcategories of crypto-assets, for which additional rules will be proposed.

The MiCA proposal introduces a very broad range of obligations for parties that perform activities in the area of crypto-assets, with alignment apparently having been sought with the Prospectus Regulation, MiFID II and the Market Abuse Regulation:

- The obligation for issuers to publish a white paper for offering crypto-assets that are not asset referenced or e-money tokens, to the public or to request admission to trade crypto-assets on a trading platform;
- A license requirement, capital requirements and reserve requirements for issuers to offer asset-referenced tokens to the public or to request admission to trade asset-referenced tokens on a trading platform;
- A banking or electronic money institution license requirement for issuers to offer e-money tokens or to request admission to trade e-money tokens on a trading platform;
- A license regime for the provision of certain services related to crypto-assets, including the provision of crypto custody and management services on behalf of third parties, the operation of a crypto trading platform, the provision of exchange services, the receipt, transmission and execution of orders in crypto-assets on behalf of third parties and the provision of advice on crypto-assets;
- Market abuse rules for anyone concluding transactions related to crypto-assets that have been admitted to a trading platform or for which a request for admission had been made. An obligation to disclose inside information will be introduced for issuers of crypto-assets.

The proposal also provides for various exceptions and exemptions from the various obligations above.

MiCA is designed as a regulation and will thus be directly applicable in all Member States. Although at the time of writing it is unclear whether the European Parliament and the Council will adopt the proposal in this form, and, if so, when the regulation will enter into force, we recommend parties involved in providing services related to crypto-assets to carefully study the European Commission's proposal and already take the new requirements proposed therein into account.

Proposal for a regulation regarding a pilot regime for distributed ledger technology (DLT)

- ***What?*** On 24 September 2019, the European Commission published a proposal for a regulation regarding a pilot regime for market infrastructures based on DLT. The proposal introduces a pilot regime for multilateral trading facilities (MTFs) and securities settlement systems of central securities depositories (CSDs) that utilise distributed ledger technology. The goal is to temporarily exempt these market infrastructures, under specific conditions, from certain requirements pursuant to MiFID II/MiFIR (for MTFs) and the CSDR (for securities settlement systems) because they would otherwise be unable to develop solutions for the trade in and settlement of transactions in crypto-assets that qualify as financial instruments. In addition, the pilot regime must give ESMA and local supervisory authorities the opportunity to gain experience with the opportunities and risks that ensue from such crypto-assets, and with the underlying DLT.
- ***Who?*** If the proposal becomes a regulation, it will be particularly relevant for MTFs and CDSs that (wish to) utilise DLT in their activities.
- ***When?*** The proposal must first be adopted by the European Parliament and the Council. This proposal will take the necessary time and it is currently unclear whether that process will be finalised in 2021. According to the proposal, after its entry into force the regulation will be directly applicable in the Netherlands after 12 months.

ECB report on central bank digital currency (CBDC)

- ***What?*** After DNB had already published a detailed report on central bank digital currency (CBDC) in April 2020, the European Central Bank also published an extensive report on CBDC in October 2020. In that report, the ECB outlines the possible contours and accompanying minimum requirements of CBDC and invites the public to submit their views.
- ***Who?*** CBDC can best be described as (i) fiat money (ii) that is held in digital form in accounts with central banks and (iii) that is accessible to everyone, both the public and companies. In fact, CBDC boils down to the ability to hold a cash account directly at a central bank;

in the Netherlands this is DNB. The introduction of CBDC could thus lead to huge changes in the current payment landscape, but also, for example, the way banks are funded. The ECB's current report is therefore at least relevant for the payment and banking sector.
- ***When?*** In the report, the ECB notes that it will decide in mid-2021 whether it will commence a digital euro project in which at least one variant of CBDC will be explored that must be able to meet the minimum requirements as described in the ECB's report.

FSB report on stable coins

- **What?** On 13 October 2020, the Financial Stability Board (FSB) published a report including recommendations, regarding the rules on global stable coins arrangements (GSAs). According to the FSA, stable coins have the potential to make payments - particularly cross-border payments - more efficient and to increase financial inclusion. However, a globally accepted GSA could become systemically important in one or more jurisdictions. For that reason, the FSB makes 10 recommendations to governments worldwide to address the challenges GSAs pose to financial stability, with the aim of promoting consistent and effective regulation and supervision of GSAs.
- ***Who?*** The report is relevant for parties involved with crypto-assets, in particular stable coins.
- ***When?*** The FSB expects that governments investigate GSAs in 2021 in their jurisdiction and act on the FSB's recommendations.

PAYMENT SERVICES / ONLINE PAYMENTS

Renewed strategy of the European Commission regarding retail payments in the European Union

- ***What?*** On 24 September 2020, the European Commission published its renewed strategy for retail payments in the European Union, addressing, among other parties, the European Parliament and the Council of Ministers. In the renewed strategy, the European Commission departs from the following four strategic pillars: (i) digital and instant payment solutions with a pan-European scope, (ii) innovative and competing retail payment markets, (iii) efficient and interoperable retail payment systems and other supporting infrastructures and (iv) efficient international payments. For each pillar, the European Commission formulates a number of key actions which it believes should be taken in order to achieve the goals related to the pillars.
- ***Who?*** The renewed strategy is relevant for all parties that are active within the European payment sector.
- ***When?*** The renewed strategy describes the European Commission's ambitious plans for the European payment sector for the years ahead.

ACM market study of the role of BigTechs in the Dutch payment system

- ***What?*** On 16 November 2020, the Netherlands Authority for Consumers & Markets (ACM) published a market study on the role of BigTechs in the Dutch payment system. The ACM conducted this study at the request of the Ministry of Finance. In the study, the ACM focussed on the services of Apple, Amazon, Ant Group, Facebook, Google and Tencent. The ACM concludes that the presence of BigTechs on the Dutch payment market is currently still limited, but it is growing. Up to now, BigTechs primarily offer innovative means of payment to consumers, including payment using an e-wallet on mobile devices. It is the ACM's expectation that the BigTechs will further expand their activities on the Dutch payment market in the near future.
- ***Who?*** The ACM's market study is relevant for the payment sector.
- ***When?*** Continuous.

COVID-19

AFM: crowdfunding platform standing firm in difficult circumstances

- ***What?*** On 8 July 2020, the AFM published on its website the outcome of a survey it conducted among the crowdfunding platforms supervised by the AFM. The survey revealed that the pandemic is impacting the crowdfunding sector, but that the sector is able to handle the problems for now. The AFM advises crowdfunding platforms to enhance their procedures related to continuity management and adapt them to the new situation.
- ***Who?*** Crowdfunding platforms subject to the supervision of the AFM.
- ***When?*** Continuous throughout the COVID-19 crisis.

CONSUMER CREDIT PROVIDERS

This part addresses important developments for providers of mortgage credit and consumer credit in 2021. We recommend credit providers who also provide additional services, such as advice, to consult the sections in this Outlook relating to such (Financial Service Providers). In addition, the relevant sections of this Outlook are of course also relevant to credit providers licensed as a Bank, Insurer, Payment Service Provider or Investment Firm. Lastly, the cross-sectoral section Integrity is also relevant to credit providers.

AFM SUPERVISION

Trend Monitor 2021

- ***What?*** In AFM's Trend Monitor 2021, the AFM refers to a number of trends that increase the risk of households in practice taking on higher mortgage loan commitments than advisable based on the lending standards.
  - Firstly, it concerns an increased influence of policy objectives on mortgage borrowing ability, such as promoting the sustainability of the housing stock and improving the position of first-time buyers in the housing market. In order to help achieve these objectives, there is legal provision to deviate from the LTI and LTV norms in certain situations.
  - Secondly, it concerns the role of other debts in relation to the lending standard, such as student loan debts, consumer credit and private lease. These obligations may, for various reasons, possibly not be taken into account, or not fully taken into account, by lenders when determining the maximum financing burden on a mortgage application. For example, for student loan debts and private lease there is no uniform registration requirement.
- ***Who?*** Mortgage credit providers, in particular on provision of mortgages to first-time buyers.
- ***When?*** The trends identified by AFM have its attention in 2021. It will then investigate in which cases these trends bring risks for consumers and what the implications of those risks are. To this end, the AFM will enter into discussions with providers, the government and other stakeholders.

Legislative wish: statutory rules on private leasing

- ***What?*** In the AFM's annual legislative letter of 30 March 2020 to the Minister of Finance, it argues that operational leasing to consumers, also known as private lease, should be regulated by law and placed under its supervision. This would involve private lease relating to matters to be designated by Order in Council. It is not clear what exactly this would involve. In its letter, the AFM mentions the private lease of cars, systems and goods. Unlike financial lease, operational lease is currently exempt from the rules on consumer credit. Given that operational lease has characteristics similar to that of regulated purchase financing and that there are comparable risks, the difference in legal guarantees is, according to the AFM, undesirable and cannot be explained. The Minister has stated in his response that he would investigate whether intervention will be necessary and whether regulation would be the most obvious course of action.
- ***Who?*** Private lease providers.
- ***When?*** According to the letter from the Minister of Finance to the Dutch House of Representatives of 27 October 2020 concerning his measures for the financial resilience of households, he expects the study into the private lease market to be completed in Q2 2021. It remains to be seen whether and, if so, how private leasing will be regulated.

Legislative letter: duty of care control stage financial products

- ***What?*** In the AFM's annual legislative letter of 30 March 2020 to the Minister of Finance, the AFM also outlines a few general developments. The AFM points out that specific standards in terms of the control stage, i.e. the period after the sale of the financial products, are limited. The general duty of care under Article 4:24a of the Dutch Financial Supervision Act does not specify the obligations that apply during the term of an agreement (aftercare). In the coming year, the AFM will therefore take stock of where there is a need to concretise the legal framework.
- ***Who?*** All financial service providers, including providers, intermediaries and advisors with regard to credit.
- ***When?*** The AFM is taking stock of the duty of care in the control stage (aftercare). More on this may be known in 2021.

Tighter lending standards for consumer credit

- ***What?*** At the end of last year, the Dutch Banking Association (NVB), the 'Vereniging van Financieringsondernemingen in Nederland' (VFN) and the AFM published a report on the tightening by the NVB and the VFN of the lending standards used to determine the maximum amount of consumer credit that can be borrowed. This will be incorporated in the codes of conduct of the NVB and the VFN.
- ***Who?*** Consumer credit providers.
- ***When?*** The new codes of conduct will come into force on 1 April 2021. A temporary transitional measure will apply from 1 January until 1 April 2021, namely a premium upon the determination of the lending standard.

Providers of home equity mortgages must improve Product Approval and Review Process (PARP)

- ***What?*** At the end of last year, the AFM published its report 'Investigation into the product approval and review process at providers of home equity mortgages'. Its conclusion is that providers of home equity mortgages need to improve product development (the PARP). Among other things, the target group is insufficiently demarcated and the effects of changing market conditions are not sufficiently examined. With the home equity mortgage, the equity in a house can be redeemed by borrowing the equity from a mortgage provider. Because home equity mortgages are complex and high-impact products, differ greatly from one another and involve risks, it is important that providers develop these products with extra care. The AFM expects all companies to review their PARP, including that of product groups other than home equity mortgages.
- ***Who?*** Providers who develop and offer home equity mortgages.
- ***When?*** The AFM has indicated that it will continue to pay attention to the quality of the PARP in 2021.

Call to report incidents

- ***What?*** The AFM sent businesses a letter drawing their attention to reporting incidents that could constitute a serious threat to the sound and controlled business operations. Given the current situation in which we are more often working together remotely as a result of the COVID-19 crisis, the AFM is asking businesses to be more attentive with regard to integrity and information security incidents. The letter contains an appendix with a non-exhaustive list of examples of incidents.

- ***Who?*** All licensed credit providers.
- ***When?*** The AFM is devoting a higher level of attention to the statutory obligation to report incidents. The AFM indicates that it will be able to investigate compliance with this obligation in the future.

EXISTING LAWS AND REGULATIONS

Proposal for cancelled knowledge and experience assessment financing of energy-saving provisions

- ***What?*** The proposed Financial Markets Amendment Decree 2021 cancels the knowledge and experience assessment if the consumer wants to take out an additional mortgage credit of a maximum of € 25,000 for the (demonstrable) financing of energy-saving facilities in a home with the same provider via the execution-only channel (with no advice).
- ***Who?*** Financial service providers who provide mortgage loans or act as intermediaries via the "execution only" channel (without advice) in the situation where their clients want to take out an additional mortgage of up to EUR 25,000 to make their home more sustainable.
- ***When?*** A consultation on the Amendment Decree was launched in the summer of 2020. The Decree is expected to come into force in 2021. The exact date is not yet known.

Proposal to reduce frequency of audit cost price model

- ***What?*** The Financial Markets Amendment Decree 2021 proposes to reduce the frequency of the audit of the cost price model. Instead, an obligation is introduced for the provider of the financial product to report each year whether the cost price model correctly and fully allocates the consultancy and distribution costs to the mortgage credit and whether there has been a material change in this. At the moment, the cost price model still has to be audited annually by an auditor. Where there is no material change, the frequency with which the auditor has to audit the cost price model is lower.
- ***Who?*** Mortgage credit providers who provide advisory services or from whom a mortgage can be taken out on an execution-only basis.
- ***When?*** A consultation on the Amendment Decree was launched in the summer of 2020. The Decree is expected to come into force in 2021. The exact date is not yet known.

Consumer Credit Directive: evaluation and review

Evaluation

The Consumer Credit Directive (No 2008/48/EC) was evaluated in early 2019. The most important results of the evaluation are presented in the European Commission (EC) report of 5 November 2020 (COM(2020) 963 final, available on the EC's website). It concludes that the directive has partially succeeded in securing high standards of consumer protection and promoting the development of an internal market for credit, and that its objectives are still relevant. The directive has a particularly positive impact with regard to the right of revocation and the right of early repayment, the annual percentage rate (APR) and the European standard information sheet. In addition, shortcomings of the directive were also identified. Among other things, these concern:

- *Scope*: the exclusions from Directive's scope encompass certain widely used loans as well as loans that are documented to more easily lead to consumer detriment under certain circumstances, such as zero-interest loans, payday loans, leasing agreements that do not impose an obligation to purchase, or agreements with pawnshops. Furthermore, the Directive does not cover the entire process of credit granting of which many aspects are only partially harmonised or not at all harmonised across the EU (e.g. the content of credit databases). This represents an important barrier to the creation of a real internal market for consumer credit;
- *Definitions and unclear terms*: for example, the terms "sufficient information" and "for some time";
- *Information obligations and channels of communication*: concerning the format and length of the European standard information sheet in mobile digital technology and the provisions concerning television and radio advertising;
- *Creditworthiness assessment and credit databases*: the Directive does not specifically define the information to be checked or the conditions under which the creditor can deem the consumer to be creditworthy. The information to be checked and the decision-making process are defined at Member State level, giving considerable discretion to Member States to further regulate the details of the creditworthiness assessment and the access to and the content of databases. As a result, the current provisions of the Directive have led to a fragmented situation with respect to creditworthiness assessment rules as well as database interoperability which hamper better functioning of the internal market for consumer credit.

The results of the evaluation indicate that some provisions of the Directive may need to be revised.

Revision

The results of the evaluation will be taken into account in the revision of the directive by the European Commission (EC) scheduled for Q2 2021. In preparation of this, the EC published an inception impact assessment in the summer of 2020. In response, the Ministry of Finance, together with the AFM, prepared a non-paper with important principles for the revision of the directive. It recommends, among other things, increasing the level of protection at EU level, for example, by introducing general European standards for the creditworthiness assessment.

Although directives must first be transposed into national law, meaning that it will be some time before the new rules of a revised directive apply, the planned revision of the Consumer Credit Directive in 2021 is nevertheless an important development to follow.

Investigation into reduction of maximum interest rate

- ***What?*** As a result of the COVID-19 crisis, the maximum interest rate has been temporarily reduced from 14% to 10%. The temporary reduction will apply at least until 1 March 2021, after which it may be extended for a further period of up to six months. The Minister of Finance is currently having an investigation carried out into the effects of a structural reduction in the maximum interest rate.
- ***Who?*** Providers of consumer credit using the maximum interest rate.
- ***When?*** The Minister expects to inform the Dutch House of Representatives at the beginning of this year of his decision on whether a structural reduction of the maximum interest rate is desirable. He aims to do so before the expiry of the temporary measure on 1 March 2021.

Further Remuneration Measures for Financial Undertakings Act in preparation

- ***What?*** On 2 July 2020, the Minister of Finance submitted a bill on the Further Remuneration Measures for Financial Undertakings Act to the Dutch House of Representatives. The bill aims to introduce a number of changes to the current remuneration measures as included in the Dutch Financial Supervision Act, including the introduction of a statutory retention period of five years for shares paid out as part of a fixed remuneration and a tightening of the averaging scheme for personnel not covered by the collective labour agreement, who may be awarded a higher bonus than 20% under certain conditions.
- ***Who?*** Credit providers that fall within the scope of the Dutch remuneration rules.
- ***When?*** The intended effective date of most of the tightened rules is 1 July 2021. Certain other changes have an intended effective date of 1 July 2022.

NEW LAWS AND REGULATIONS

Proposed duty of disclosure dependent and independent mortgage credit advice

- ***What?*** The proposed Financial Markets Amendment Decree 2021 introduces an obligation for financial service providers to inform the consumer, prior to the provision of advice on, inter alia, a mortgage credit, whether the advice is provided on a dependent or independent basis.
- ***Who?*** Financial service providers advising on mortgage credit.
- ***When?*** A consultation on the Amendment Decree was launched in the summer of 2020. The Decree is expected to come into force in 2021. The exact date is not yet known.

New lending standards for mortgage credit as of 1 January 2021

- ***What?*** The Temporary mortgage credit scheme has been amended as of 1 January 2021. The purpose of this scheme is to determine the income criteria for the provision of mortgage credit and the maximum amount of the credit in relation to the value of the property. It concerns an adjustment of the definition of energy-saving facilities and a further increase of the financing capacity for double-income households. In addition, the weighting factor to be used for student loans in determining the financing burden and permitted financing burden has been added. Furthermore, the income tables have been replaced in accordance with the advice of the Nibud.
- ***Who?*** Mortgage credit providers.
- ***When?*** As of 1 January 2021.

OTHER DEVELOPMENTS

MinFin measures financial resilience of households

In his letter to the Dutch House of Representatives of 27 October 2020, the Minister of Finance gives an overview of his follow-up steps to strengthen the financial resilience of households. The policy consists of three pillars, namely:

1. **Adequate consumer protection**. Strengthening financial resilience starts with establishing clear frameworks, including laws and regulations, that protect vulnerable consumers. The Minister will continue to pay attention to possible risks associated with different forms of credit. To this end, investigations have been launched, such as the investigation into private leasing. With regard to mail-order credits, the Minister will consider whether additional measures should be taken, also looking into the possibility of additional powers for the AFM in the case of revolving purchase financing. The investigation into improving the service document (DVD) has been completed and the Minister is consulting with the AFM on how the conclusions can be put into practice.
2. **Cooperation with the financial sector, consumer organisations and knowledge institutes for better consumer choices**. The purpose of the Consumer Choices Action Plan is to look for ways to ensure a better consumer choice environment, such as investigating whether the maximum loan amount is leading consumers to more expensive homes and higher mortgages.
3. **Financial education** (Money Wise Platform).

The letter summarises the steps the Minister has already taken and the follow-up steps he is currently taking. Over the course of 2021, further information, results and initiatives, if any, will be shared.

Investigation into non-bank small business lending

- ***What?*** There are currently no legal rules for providing credit to business customers. There is self-regulation through the Code of Conduct for Lending to Small Businesses of the NVB and the Code of Conduct for SME Financiers of Stichting MKB Financiering. In response to a motion, the Minister of Finance has had an investigation carried out into the market for non-bank small business lending. In his letter of 27 October 2020 to the Dutch House of Representatives, the Minister responds to the investigation report and then outlines the follow-up steps further to that report. The Minister notes that the position of small business customers has been strengthened in recent years by the codes of conduct, but also has concerns based on the investigation results. These concerns relate to the question of whether entrepreneurs can properly weigh up the choice of credit provider and the costs that will be charged. The Minister sees reason to investigate whether there are grounds for intervention, whether through legislation or not. In order to be able to assess this, he will engage in talks with the market.
- ***Who?*** Providers of loans to the small business market.
- ***When?*** The Minister expects to be able to inform the Dutch House of Representatives in Q1 2021 of the outcome of the talks with the market.

EBA guidelines on loan origination and monitoring

The European Banking Authority (EBA) has prepared Guidelines on the origination and monitoring of loans (EBA/GL/2020/06). These guidelines also partly apply to credit providers without a banking licence!

The guidelines introduce the requirements for the assessment of consumers' creditworthiness from the Mortgage Credit Directive (No 2014/17/EU) and the Consumer Credit Directive (No 2008/48/EC). Section 5 of the guidelines applies to mortgage and consumer credit providers falling within the scope of the directives (with the exception of point 93). More specifically, this concerns (i) the information and documentation to be collected for assessing the consumer's creditworthiness and (ii) the analysis to be carried out on the borrower in the context of the creditworthiness assessment. Among other things, for example, the following emerges from the guidelines:

- An assessment should be carried out of the consumer's ability and prospect to meet payment obligations, in particular with regard to the source of the consumer's repayment capacity. Relevant factors which may affect the consumer's current and future repayment capacity, such as other financial obligations, must be taken into account.
- In particular, in the case of self-employed persons or persons with seasonal or other irregular income, reasonable questions should be asked and reasonable steps should be taken, where necessary, to assess and verify the source of the repayment capacity.
- Where appropriate, sensitivity analyses should be carried out to take account of potential negative events in the future specific to the type of loan concerned.

The guidelines will apply from 30 June 2021.

Brexit deal

- ***What?*** A Brexit deal was concluded on 24 December 2020. The financial sector, however, is virtually ignored in the deal. As Brexit approaches, it is important that credit providers, if they have not already done so, reflect on the impact Brexit will have on them, including how the UK rules for offering credit in the UK will be after Brexit. Although credit providers cannot operate in other EU Member States by means of a European passport, there are credit providers who offer their services online in the Netherlands from another EU Member State under the Directive on electronic commerce (No. 2000/31/EC, implemented in Article 1:16 Dutch Financial Supervision Act). UK credit providers operating in the Netherlands on the basis of this Directive, or Dutch credit providers operating in the UK on this basis, will have to consider

alternatives to secure their market access.

- ***Who?*** Credit providers who offer their services online in the Netherlands from the UK under the Directive on electronic commerce or who offer their services online in the UK from the Netherlands under that Directive.
- ***When?*** The Brexit deal entered into force on 1 January 2021.

COVID-19

AFM points of attention in the event of payment problems

- ***What?*** In mid-October 2020, the AFM published on its website points for attention with regard to payment problems. The AFM expects credit providers to prepare for payment problems resulting from the coronavirus crisis and to consult with consumers on how problems can be resolved. Among other things, it expects credit providers to have developed policies for the situation in which a customer reports a payment problem and for when a payment break comes to an end. The customer's situation will have to be examined and a fitting solution must be found. In addition, the AFM expects that a policy has been developed which elaborates how credit providers work together with the customer to catch up on payment arrears. Catching up on payment arrears must not lead to temporary overindebtedness. The credit provider must therefore monitor this at all times.
- ***Who?*** Credit providers that are preparing for payment problems of customers and/or have already experienced these.
- ***When?*** Continuously throughout the COVID-19 crisis.

AFM principles for mortgage providers in the event of payment problems

- ***What?*** At the end of April 2020, the AFM published on its website ten principles for mortgage providers to help their customers with payment problems caused by the coronavirus crisis. One of the principles is that information about the customer's financial position must first be collected before a solution can be offered. If this is not possible due to the large number of payment problems, a general solution may be chosen first, after which the relevant information should be obtained from the client as soon as possible and, if necessary, the chosen solution adjusted. The AFM also promotes sustainable recovery, which means that the customer's interests are given centre stage when looking for a solution to the payment problem and that the solution must be sustainable for the future. According to the AFM, a good solution must meet the criteria of being cost efficient, useful, safe and comprehensible. It must be avoided that clients are offered different solutions in equal situations. This means that mortgage providers must have clear procedures in place and must have access to adequate information and training for employees dealing with clients.
- ***Who?*** Mortgage providers that are preparing for payment problems of clients and/or have already experienced these.
- ***When?*** Continuously throughout the COVID-19 crisis.

TRUST OFFICES

Please note: The cross-sectoral section Integrity is also relevant to trust offices.

DNB SUPERVISION

Supervisory Strategy 2021-2024

- ***What?*** On 24 November 2020, DNB published its updated Supervisory Strategy 2021-2024. In this document, DNB sets the course for supervision in the coming years. The objective is to inform financial institutions about the aim of supervision and thus to function as a point on the horizon. One of DNB's goals is to clamp down more severely on financial and economic crime. As part of that goal, DNB specifies monitoring compliance with the obligation to have an independent and effective internal compliance function by trust offices. In the coming years, DNB will take vigorous action against any violations of this requirement arising from the Supervision of Trust Offices Act 2018 (*Wet toezicht trustkantoren 2018*).
- ***Who?*** The Supervisory Strategy 2021-2024 is relevant for all trust offices subject to supervision.
- ***When?*** The Supervisory Strategy 2021-2024 describes the course for supervision which DNB has set for the next four years.

EXISTING LAWS AND REGULATIONS

Upcoming prohibited services for trust offices

It is anticipated that the Supervision of Trust Offices Act 2018 (*Wet toezicht trustkantoren 2018*, Wtt 2018) will be amended. Consultations were held in the spring of 2020 on the draft bill for the amendment of the Wtt 2018. The main elements of the Amendment Act concern two new prohibitions, namely the prohibition on the professional or commercial provision of conduit companies and the prohibition on the provision of services involving countries on the list of high-risk third countries or the list of non-cooperative tax jurisdictions. The proposals are part of the Anti-Money Laundering Action Plan and are related to the measures taken to combat tax avoidance and tax evasion in the Netherlands.

The prohibition of conduit companies

One of the trust services listed in the Wtt 2018 is the use of a conduit company on behalf of the client. According to the bill, conduit companies lead to a lack of transparency. To counter this, it has been proposed that this trust service be abolished in combination with the introduction of a general prohibition on the professional or commercial provision of conduit companies. There is an exception to the intended prohibition for companies and legal entities that serve to fulfil a legal obligation, such as realising the separation of assets and liabilities.

The prohibition on the provision of services in the event of the involvement of high-risk countries

Currently, trust offices are required to carry out enhanced customer due diligence if the State where the client, the object company or the ultimate beneficial owner of the client or object company is domiciled or has its registered office, is a State designated by the European Commission with a higher risk of money laundering or terrorist financing. This list consists of countries which have shortcomings in their national AML/CFT legislation. Because, according to the legislature, the combination of trust services, often involving complex structures and large sums of money, and third high-risk countries creates irresponsibly high integrity risks, it is proposed that trust services be prohibited in cases where high-risk countries are involved.

Given that the structures served by trust offices are often tax driven and given that large assets are often transferred between companies, trust offices need to be alert to tax evasion or tax avoidance in their client due diligence. In this context, the involvement of countries on the list of non-cooperative tax jurisdictions is an important indicator for enhanced customer due diligence. The bill goes a step further and prohibits the provision of trust services to clients, object companies and ultimate beneficial owners of clients and object companies from the aforementioned list of 'high risk jurisdictions'.

In response to this bill, a number of parties have commented that the prohibition on the provision of services in relation to the involvement of high-risk countries could result in the relevant activities continuing without the involvement of a gatekeeper and thus disappearing from the radar. The Ministry of Finance states, however, that this risk is always present and is in itself not sufficient reason to refrain from introducing the prohibition. Nonetheless, this risk will be closely monitored and, if there are signs that this service is being continued illegally on a massive scale, the necessary measures will be taken.

When will the prohibitions take effect?

The Council of Ministers approved the bill in question on 25 September 2020 and it has now been incorporated in the Bill for the Anti-Money Laundering Action Plan and sent to the Council of State. The bill is expected to be sent to the House of Representatives in early 2021. If the legislative process is successful, the new prohibitions are expected to enter into force at the end of 2021 or the beginning of 2022. It is obvious that the new prohibitions will be subject to a transitional regime, but the specific details are not yet known.

UBO registration for trusts and similar legal constructions

- ***What?*** The bill for the Registration of Ultimate Beneficial Owners for Trusts and Similar Legal Constructions Implementation Act, on which consultations had already been held earlier in 2020, was presented to the Council of State for advice on 16 November 2020. The Council of State delivered its opinion on 16 December 2020. The bill aims to implement the obligation (laid down in the amended Fourth Anti-Money Laundering Directive) to record and centrally register information on the ultimate beneficial owners of trusts and similar legal constructions. The public UBO register is kept by the Chamber of Commerce.
- ***Who?*** Trusts and similar legal constructions.
- ***When?*** The actual bill is expected to be presented to the House of Representatives in early 2021. This means that this bill could probably be adopted at the end of 2021 or the beginning of 2022 and enter into force. Its entry into force will involve a transitional period within which registration must actually take place. The draft bill allows for a period of three months.

Possible general prohibition on the provision of tax advice by a trust office

Currently, a trust office domiciled in the Netherlands is already prohibited from providing trust services to a client who carries out tax advice provided to that client by the same trust office or a group entity of that trust office. The purpose of this current prohibition is to ensure the independent performance of the client due diligence prior to entering into the business relationship or providing the trust service.

In its legislative letter of 24 March 2020 to the Minister of Finance Hoekstra, DNB proposed simplifying the existing combination prohibition and introducing a general prohibition on the provision of tax advice by a trust office.

DNB has arrived at this proposal because it finds it difficult to determine whether this independent implementation is actually guaranteed and because there is currently no obligation to include independent tax advice in a service-related dossier. In response to DNB's wish, Minister Hoekstra (in a letter to the House of Representatives) has stated that he is in principle favourably disposed towards this proposal and will discuss the matter with DNB. Among other things, an assessment will have to be made as to what impact a general prohibition would have on the sector and to what extent the prohibition would contribute to controlling integrity risks.

When will the prohibition, if any, come into force?

We are not aware of any draft or concrete bills on the introduction of this general prohibition on tax advice by trust offices. It is not known whether, and if so when, concrete bills will follow.

NEW LAWS AND REGULATIONS

Financial Markets Amendment Act 2020 – Integrity assessment for UBOs of trust offices

- ***What?*** On 14 October 2020 the Financial Markets Amendment Act 2020 (*Herstelwet financiële markten 2020*) was published in the Dutch Bulletin of Acts and Decrees. Among other things, this amendment act will amend the Wtt 2018. The effect will be that the ultimate beneficial owners (UBOs) of trust offices will fall under the integrity supervision of DNB. The amended standard will entail that the UBO of a trust office domiciled in the Netherlands is suitable in view of its reputation and its trustworthiness is beyond doubt. This will also mean that any change regarding antecedents of a UBO must be reported to DNB without delay as from the entry into force of this obligation. Persons who already qualify as UBOs at the time of entry into force will be presumed to comply with the new integrity requirements.
- ***Who?*** Trust offices subject to supervision and their UBOs.
- ***When?*** The provisions relating to the integrity assessment of the UBOs of trust offices will enter into force on 1 May 2021.

Obligation to report cross-border constructions

- ***What?*** Although more of a tax than a supervisory nature, we would like to clarify the forthcoming obligation to report certain potentially tax-aggressive cross-border constructions to the tax authorities. This obligation stems from the European Directive Mandatory Disclosure Rules/ DAC6 (Directive (EU) 2018/822). Together with the Implementation Act a guideline has been published that provides pointers for determining whether or not specific constructions are subject to a reporting obligation.
- ***Who?*** Intermediaries and auxiliary intermediaries, including trust offices.
- ***When?*** The Act entered into force on 1 July 2020. However, the European Union has granted Member States a six-month postponement of the reporting obligation on account of the corona crisis. The Netherlands is taking advantage of this. The first feasible deadline for reporting to the Tax and Customs Administration will be 31 January 2021, all depending on the actual structure.

Essay collection Tax Governance Code

- ***What?*** On 17 December 2020, the Ministry of Finance published the essay collection entitled 'Tax governance, social responsibility and ethics. Time for a code?'. With this essay collection, the Ministry seeks to promote dialogue on the social responsibility of taxpayers and consultants in relation to tax evasion, which may possibly lead to the drafting of a Tax Governance Code. Trust offices are addressed in the collection as well, through the discussion of the Tax integrity guidelines drafted by Holland Quaestor, the association of Dutch trust offices. These guidelines aim, among other things, to give substance to the open standard of 'social propriety' as included in the Supervision of Trust Offices Act 2018 (*Wet toezicht trustkantoren 2018*, Wtt 2018).
- ***Who?*** Trust offices.
- ***When?*** In early 2021, the Ministry of Finance will host an online conference to resume the debate on a possible Tax Governance Code.

ISSUERS & THE CAPITAL MARKETS

Please note: The cross-sectoral section Sustainability is of major importance for issuing institutions.

AFM SUPERVISION

Trend Monitor 2021

- ***What?*** Growing competition between securities exchanges and trading platforms within a single European capital market will not necessarily lead to more balanced pricing and better liquidity, writes the AFM in its annual Trend Monitor Report published on 3 November 2020. A major factor in this competition is the degree of transparency. According to the AFM, impending changes in policy, including the revision of MiFID II, will serve in part to strengthen the transparency requirements, but will also (for example) make the standardization of bonds possible, all this to create a more liquid European bond market.
- ***Who?*** European exchanges, trading platforms, and their participants.
- ***When?*** The most significant changes for the European exchanges and trading platforms will follow from the revision of MiFID II. This is something that European policymakers are currently working on.

Report: 'Sustainable bonds in the Netherlands' 2020

- ***What?*** On 21 April 2020, the AFM published the report of a study of the sustainable bond market. It concludes that the sustainable bond market will continue to grow rapidly (in part as a result of the European Green Deal). Moreover, the AFM emphasises the importance of more transparency and standardisation in the market in question, and in this regard the Taxonomy Regulation is particularly relevant. Transparency from the issuing institution is of major importance. In the area of supervision, the AFM indicates that with respect to the prospectus, it calls for more transparency on certain information, such as the use of the revenues and the description of the impact of the investment. The AFM also notes that it intends to focus on 'rogue' market parties that attempt to ensnare potential investors with dubious sustainable investment propositions and/or by engaging in 'greenwashing'.
- ***Who?*** Issuing institutions that issue (or claim to issue) sustainable bonds.

- ***When?*** The AFM report was published on 21 April 2020, and its conclusions have since proven relevant for the sustainable bond market, being that this market in particular and its regulation have been in a constant state of flux on the way to the transition to a sustainable economy. This will be an area of attention for the AFM's supervision in 2021.

ESMA

Work Programme 2021

ESMA has once again published its annual supervision programme. The Work Programme 2021 was published on 2 October 2020. In its supervision programme, ESMA sets out its priorities in supervision and specific points for attention in the coming twelve months. ESMA's planned activities are a response to the challenges facing the EU and its capital markets, including the development of a broad retail investment basis to support the Capital Market Union (CMU), the promotion of sustainable financing and markets oriented towards the long term, and how to approach the opportunities and risks of digitisation, as well as strengthening the EU's role on the global capital markets and creating the conditions for a proportionate approach to regulation.

For issuing institutions (in the broadest sense of the word), the ESMA Work Programme 2021 contains the following relevant subjects:

- Market integrity: ESMA plans to revise the existing guidelines on postponement of disclosure of inside information under the Market Abuse Regulation, this to cover the information that is provided to issuing institutions that fall under SSM supervision as financial institutions. In addition, ESMA will be presenting bills for the amendment of the Market Abuse Regulation in the form of new technical implementation standards (in this regard, see also: 'Report on adjustment of MAR for the use of SME growth markets').
- Prospectuses: In 2021, ESMA will be starting a peer review of the review and approval procedures for prospectuses. This review is also intended to assess the effect of various different approaches on the part of the regulatory authorities with regard to this review and approval, and the capacity of issuing institutions to attract capital in the EU. ESMA will publish the report of this review on 21 July 2022, exactly two years after the new European Prospectus Regulation went into effect.
- Securitisation: In 2022, ESMA will also conduct a peer review of the implementation of the STS criteria ('simple, transparent & standardised') for asset-backed commercial paper (ABCP) and non-ABCP securitisations. This review is prescribed by the Securitisation Regulation and must be performed within three years after that regulation's going into effect. Also in 2021, ESMA will be starting its supervision of securitisation repositories (SR). These are parties that under the Securitisation Regulation collect and maintain information on securitisation instruments and underlying assets, and as such contribute to the transparency of the securitisation market.
- Financial and technological innovation: Also in 2021, ESMA will be continuing to monitor the financial activities and trends among retail investors, with particular focus on financial and technological innovation and developments in ESG (environmental, social & governance). This is with the goal of preventing financial innovation from undermining the core objectives of the supervision, such as investor protection, financial stability and orderly markets.

Report on adjustment of MAR for the use of SME growth markets

- ***What?*** On 29 October 2020 ESMA published its final report on changes to the current Market Abuse Regulation. This follows ESMA's consultation document of 6 May 2020, in which proposed technical regulation and implementation standards. These intended changes pertain to the promotion of the use of the SME growth markets. For example, the draft technical implementation standards detail the format of the insider list that issuing institutions issuing securities that are admitted for trading on an SME growth market are required to keep and be able to provide to the competent national authorities upon request.
- ***Who?*** Institutions issuing securities admitted for trade on an SME growth market.
- ***When?*** The final report has already been sent to the European Commission. It is not yet clear when the delegated regulations will be adopted and go into effect, but partly in consideration of ESMA's response in its final report, we do expect that this will happen in 2021.

Consultation evaluation on SME growth markets

- ***What?*** On 6 May 2020, ESMA published a consultation document for the purposes of the evaluation to be carried out by ESMA and the European Commission of the functioning of the system for SME growth markets, taking into account the number of MTFs registered as SME growth markets, the number of issuing institutions in them and their respective trading volumes.
- ***Who?*** The evaluation is relevant for SME issuing institutions, investment firms and trading platforms.
- ***When?*** The deadline for the submission of responses

expired on 15 July 2020. ESMA will use the responses received in the drafting of a final evaluation report. ESMA expects to submit this report to the European Commission in the first quarter of 2021.

Results of MAR evaluation

- ***What?*** Along with the aforesaid ESMA publication, on 24 September 2020 ESMA also presented its results from full review of the functioning of the Market Abuse Regulation. The report presents an individual review of each individual article, and makes recommendations for updating the Regulation on a number of points. It also makes suggestions for the development of additional guidance.
- ***Who?*** Any market party to which the Market Abuse Regulation applies, including listed issuing institutions and trading platforms.
- ***When?*** The expectation is that in 2021 a number of steps will be taken to follow up on this ESMA report with preparations for amendments to the Market Abuse Regulation.

Annual Report Accepted Market Practices MAR

- ***What?*** On 22 December 2020, ESMA published its annual report on accepted market practices (AMPs). One of the main findings is that the relevance of AMPs (set out in Article 13 of the Market Abuse Regulation, MAR) continues to be limited for Dutch issuers to which the Market Abuse Regulation applies. ESMA incorporates the main findings in its policy.
- ***Who?*** All listed and unlisted issuers to which the Market Abuse Regulation applies.
- ***When?*** Immediately.

Points of attention for annual reporting in 2020 for listed/issuing institutions

- ***What?*** ESMA has published its European Common Enforcement Priorities (ECEP) 2020. Among its ramifications is that the consequences of the coronavirus crisis, both financial and non-financial, must be presented in the annual reporting in a transparent manner. Additionally, the consequences of climate change and Brexit must have a place in the annual reporting of issuing institutions for 2020. The annual report for listed companies must be published digitally using the European Single Reporting Format (ESEF), as is also described on the AFM website.
- ***Who?*** Issuing institutions (of securities that are listed on a securities exchange) and which apply IFRS as accounting standard, their audit committees and their external auditors.
- ***When?*** The priorities were published on 28 October 2020 and are relevant for the drafting of the annual reporting over 2020.

EUROPEAN COMMISSION

The new action plan for a capital market union

On 24 September 2020, nearly 5 years after the publication of the first action plan, the European Commission published a new action plan on the establishment of the capital market union (**CMU**). The goal of the CMU is to offer the option to allow investments and savings to circulate between all member states, so capital can flow to where it is most needed, ultimately resulting in an economically stronger Europe. In the words of the Commission, this is how the CMU can help the EU recover from the COVID-19 pandemic, provide the financial resources needed for the European Green Deal, equip Europe for the digital age and provide an answer to other challenges facing society.

In order to establish the CMU and actually strengthen Europe economically, the Commission has defined the following three key objectives in the new action plan:

1. Support a green, digital, inclusive and resilient economic recovery by making financing more accessible to European companies
2. make the EU an even safer place for individuals to save and invest long-term
3. integrate national capital markets into a genuine single market

To achieve these key objectives, the European commission has formulated 16 action points for further development. Below, we identify a few of them that are particularly relevant for this section of the Outlook.

- Supporting access to public markets: In order to promote and diversify small and innovative companies' access to funding, the Commission will assess, by Q4 2021, whether the listing rules for public markets could be further simplified.
- Directing SMEs to alternative providers of funding: With a view to facilitating access to finance for SMEs, the Commission will (by Q4 2021) analyse the merits and feasibility of setting up a referral scheme to require banks to direct SMEs whose credit application they have turned down to providers of alternative funding.

- Helping banks to lend more to the real economy: In order to scale-up the securitisation market in the EU, by Q4 2021 the Commission will carry out a comprehensive review of the EU securitisation framework for both simple transparent and standardised (STS) and non-STS securitisation.
- Building retail investors' trust in capital markets: The Commission will assess the applicable rules in the area of inducements and disclosure and, where necessary, propose to amend the existing legal framework in order to ensure that retail investors receive fair and adequate advice as well as clear and comparable product information (Q1 2022). The Commission will also put forward a bill to amend MiFID II by Q4 2021/Q1 2022 to reduce the administrative burden and information requirements for a subset of retail investors.
- Investment protection and facilitation: The Commission will propose strengthening the investment protection and facilitation framework in the EU (Q2 2021).

EXISTING LEGISLATION AND REGULATIONS

Change in Prospectus Regulation before completion of the EU Recovery Prospectus?

- ***What?*** A number of different steps are being taken to ensure that capital markets can better support economic recovery in the wake of the COVID-19 crisis. One of the measures under this 'Capital Market recovery package' concerns the change in the current Prospectus Regulation. This proposed change to the Prospectus Regulation represents the introduction of the 'EU Recovery Prospectus'. This is a shorter prospectus that companies with a history on the public capital market can use to give their investors information when they wish to issue new shares. This should make it easier for these companies to attract capital and cover their financing needs. The EU Recovery Prospectus is designed to focus on essential information and would only be an option for secondary issues (of shares).
- ***Who?*** For issuing institutions whose shares have been admitted for trading on a regulated market or SME growth market without interruption over at least the past 18 months.
- ***When?*** The bill is currently in the negotiation phase before the European Council. Because this bill pertains to the recovery of the economy following the COVID-19 crisis, the chairmanship is making efforts to move the bill forward as quickly as possible. We expect this bill to take effect before the end of 2021.

Change in Securitisation Regulation in connection with STS quality mark for synthetic securitisations

- ***What?*** Another bill as a component of the 'Capital Markets Recovery Package' is to amend the current Securitisation Regulation to facilitate financial recovery from the COID-19 Pandemic. This bill for the amendment of the Securitisation Regulation further expands the existing European regulations for simple, transparent and standardised securitisations (STS securitisations) to include synthetic securitisations. The idea behind synthetic securitisations with the STS quality mark is that these will be less risky, and as such an interesting and safe way of freeing up capital capacity with banks while offering investment opportunities to institutional investors. This bill is intended to allow banks to continue to loan to SMEs once the initial shock of the COVID-19 crisis has passed.
- ***Who?*** Banks that securitise the loans they hold and then resell them to institutional investors.
- ***When?*** Like the EU Recovery Prospectus, this bill is in the negotiation phase. The first discussions have been had in the working group designated by the European Council. Because this bill pertains to the recovery of the economy following the COVID-19 crisis, the Presidency is making efforts to move the bill forward as quickly as possible. We expect this bill to take effect before the end of 2021.

Changes in PRIIPs/KID?

- ***What?*** On 21 July 2020 the ESAs informed the European Commission of the results of a review of the Key Information Document (KID) under the PRIIPs Regulation. The ESAs are proposing a number of improvements relating to the KID. On 31 December 2021, the exception for the drafting of a KID for retail AIFs and UCITSs expires. The market sees improvements with respect to the KID, including those relating to the expiry of this exception, as very welcome.
- ***Who?*** Right now, this is relevant to exempt AIF managers and permit-holding managers of AIFs the units of which are being offered and traded in amounts of at least EUR 100,000. After 1 January 2022 this will be relevant for all managers of AIFs and UCITSs.
- ***When?*** Not yet clear, but the exception for drafting the KID for retail AIFs and UCITSs expires on 31 December 2021.

NEW LEGISLATION AND REGULATIONS

Implementation rules for covered bonds

- ***What?*** We have already written about this new European-law framework for covered bonds (see our previous Outlook (2020)). Covered bonds are debt instruments issued by credit institutions and backed by a separate pool of assets against which bondholders can recover directly as preferential creditors. The framework will consist of a regulation with direct effect and a directive that must be implemented in Dutch legislations and regulations.
- ***Who?*** Credit institutions that also issue securities.
- ***When?*** Both the regulation and the directive were officially published on 18 December 2019 and went into effect on 7 January 2020. The regulation is applicable as from 8 July 2022. National implementing legislation must be adopted and published by no later than 8 July 2021, and must go into effect no later than 8 July 2022.

Financial Markets Amendment Act 2022: direct filing of annual accounts with commercial register?

- ***What?*** On 6 November 2020, the Minister of Finance presented the Financial Markets Amendment Act 2022 for consultation. Issuers of securities that are admitted to a regulated exchange and which have the Netherlands as their member state of origin may file their adopted annual accounts (and accompanying documents) directly with the commercial register. This change eliminates the obligation of the issuer to send the adopted annual accounts to the AFM and the obligation for the AFM to then send these documents on to the commercial register. This puts an end to the objections to this forwarding obligation, which were based on practical considerations.
- ***Who?*** Issuers of securities admitted to a regulated market and which have the Netherlands as their member state of origin.
- ***When?*** Market parties have until 18 December 2020 to respond to the consultation. We expect that the goal is to have the act to go into effect on 1 January 2022.

OTHER DEVELOPMENTS

Brexit deal

- ***What?*** A Brexit deal was concluded between the EU and the United Kingdom on 24 December 2020. This deal, however, barely discusses the financial sector, which means that the loss of the European passport has not been addressed. It is now up to both the EU and the United Kingdom to decide, unilaterally perhaps, to view the financial sector of the other as equal and to grant full access to its own market, also referred to as equivalence decisions. This also has implications for the use of the 'European passport' of approved prospectuses. At the moment, this European passport is no longer valid in the United Kingdom. As a result, Dutch companies wishing to offer securities in the United Kingdom or to be listed on a stock exchange in the United Kingdom (e.g., the London Stock Exchange) now or in the future will also have to go through an approval process for their prospectus with the UK supervisory authority. Insofar as is known, the United Kingdom has not adopted an equivalence decision yet in the context of the validity of EU prospectuses. It has stated, however, that prospectuses approved by an EU Member States before 31 December 2020 will remain valid until the original expiry date.
- ***Who?*** Issuers seeking to offer securities in the United Kingdom or seeking to apply for a listing on a regulated exchange there.
- ***When?*** The Brexit deal entered into force on 1 January 2021.

COVID-19

ESMA: Improve transparency of nonfinancial statements in annual reporting

- ***What?*** On 28 October 2020, ESMA published a statement outlining the European community enforcement priorities for the financial reporting on 2020 for listed companies. These enforcement priorities are related to nonfinancial statements in the annual accounts for 2020, and pertain to the COVID-19 pandemic, social and employee matters, and the business model and value creation, as well as climate change-related risks. In this regard, see the thematic study of the AFM discussed in this section of the Outlook that pertains to the accounting of the impact of the coronavirus crisis in the annual reporting on 2020.
- ***Who?*** Issuers of securities admitted to a regulated exchange.
- ***When?*** In the statement, ESMA indicates that it and other European national enforcement agencies will be carrying out additional monitoring of the application of the requirements of IFRS and all other relevant provisions as outlined in its statement, which the national authorities will incorporate into their assessments and, where necessary, implement corrective measures. Issuing institutions that are listed on a regulated exchange must devote more attention in their 2020 annual accounts to their nonfinancial statements and be prepared for their

relevant supervisory authorities to look extremely closely at this content in 2021.

AFM: Attention to the impact of the coronavirus crisis in financial reporting

- ***What?*** Based on a thematic study, the AFM has concluded that listed companies did not always make the consequences of the coronavirus crisis clear, or fully clear, in their semiannual reporting. Almost all the companies investigated reported the effects of the coronavirus crisis, but the quality of the content they presented varied widely, and according to the AFM certain elements require improvement. With this thematic study, the AFM is cataloguing the varying levels of this quality. The companies in question are being called upon by the AFM to show improvement on these elements in their annual reporting for 2020. In the report of the study, the AFM identified a number of points for improvement and practical examples.
- ***Who?*** Listed companies.
- ***When?*** The study was published on 24 November 2020, and the hope is that it will improve the annual reporting on 2020.

ESMA reporting obligation short position holders starting from 0.1%

- ***What?*** On 17 December 2020, ESMA renewed its decision to impose an obligation requiring net short position holdings to report positions of 0.1% and above. The ESMA arrived at this reporting obligation in light of the COVID-19 pandemic.
- ***Who?*** Net short position holders with positions of 0.1% and above.
- ***When?*** The decision to report positions of 0.1% and above applies until 19 March 2021.

INSURERS

This section discusses the foreseeable developments for 2021 that are aimed specifically at insurers. We recommend insurers who also provide additional services to consult the sections in this Outlook relating to such. Furthermore, we would like to point out that the Financial Service Providers section in this Outlook may be relevant to insurers if they also provide brokerage or advisory services. Lastly, the cross-sectoral sections Integrity and Sustainability are also relevant to insurers.

DNB SUPERVISION

Supervisory Strategy 2021-2024

In November 2020, DNB published an updated Supervisory Strategy for the years 2021-2024. DNB's previous Supervisory Strategy was published three years ago, but the revised approach to supervision and the new multi-year cost framework for supervision were the reasons for DNB to update the Supervisory Strategy. As regards insurers, DNB indicates, among other things, the following:

- **Sustainability**: DNB indicates that sustainability risks require adequate control. In recent years, greater insight has been gained on the exposure of insurers, among others, to various sustainability risks. Emphasis was initially placed on controlling the risks arising from climate change and other ecological changes that could entail substantial financial consequences, such as loss of biodiversity. The control of material sustainability risks will be embedded more deeply in DNB's supervision in the years to come. DNB will actively work towards the identification of risks by institutions and DNB will monitor whether adequate control measures are taken.
- **Long-term low interest rates**: DNB sees that the revenue model of life insurers is under tremendous pressure in the event of long-term low interest rates. For insurers, selling new life insurances is profitable only at a relatively high insurance premium. Due to high premiums and tax adjustments, these products have become less and less attractive to customers and few life insurance policies have been taken out in the past few years. In addition, the margins on existing policies will be strained if the interest rate risk has not been fully hedged in the past. The obligations of insurers increase when interest rates decrease, but, because of Solvency II, the full effect thereof will be visible with some delay. Through cost savings, consolidations, and the economizing of products, progress has been made to increase the future viability of the industry, but the vulnerability to the low interest rates remains substantial. The challenge for insurers in years to come will, according to DNB, be to generate sufficient returns in order to make good on the payments it promised.
- **Changing laws and regulations**: DNB indicates that—as is probably known—proposals will be made on behalf of insurers to amend the Solvency II Directive.

We expect that DNB will focus its supervision on the aforementioned aspects in the following years. We recommend market parties to prepare for this wherever possible.

Climate-related risks to be part of fit and proper assessments

- ***What?*** In November 2020, DNB indicated that, as of next year, climate-related and environmental risks will become a standard part of the fit and proper assessments to which board members of insurers, among others, will be subjected. The 'climate-related and environmental risks' theme will be an explicit component of that assessment, including a request to the insurers in question to include in the assessment file of a candidate an explanation as to their knowledge and experience in the field of climate and environmental risks.
- ***Who?*** Insurers.
- ***When?*** As from 1 January 2021. We recommend insurers, in preparing for the assessment, to address the climate and environmental risks separately.

Points for attention in reporting outsourcing, including cloud outsourcing

- ***What?*** In November 2020, DNB shared with the market a number of points for attention in respect of the reporting of outsourcing, including cloud outsourcing. DNB requires that insurers, in reporting the outsourcing, provide a complete schematic overview of the outsourcing chain (including an explanation) and a risk analysis based on a DNB template. DNB also requires that the right to have an investigation or audit performed extends to all critical or important outsourcings throughout the outsourcing chain. If this is not the case, the contracts must be amended. Lastly, DNB would like outsourcing contracts to meet the requirements as stipulated in Article 274 Solvency II and the EIPOA Guidelines on outsourcing to cloud service providers.
- ***Who?*** Insurers.
- ***When?*** In 2021, DNB will specifically devote attention to the quality of outsourcing of work and the reporting thereof to DNB. We therefore recommend insurers to check their outsourcing structure.

Outcome of AFM and DNB survey on transition to alternative benchmark interest rates

- ***What?*** DNB and AFM encourage market parties to move forward in adjusting to alternative benchmark interest rates of financial contracts with a view to the transition deadline of 31 December 2021. On 1 January 2022, the global transition from Inter Bank Offered Rates (IBORs) to Risk Free Rates (RFRs) will end, which is why the AFM and DNB are monitoring the progress of the transition. DNB expects insurers to adjust their products and contracts in good time.

- ***Who?*** Insurers.
- ***When?*** The transition deadline is 31 December 2021. We recommend insurers to devote attention to the transition.

Draft Q&As DNB

- ***What?*** In October 2020, DNB published a draft Q&A on the treatment of savings-based mortgages under Solvency II. In this Q&A, DNB describes how Solvency II carries over into the different manifestations of savings-based mortgages at insurers. A draft Q&A was also published on the role of deferred taxes under Solvency II. In December 2020, DNB published the final Q&A on the role of deferred taxes under Solvency II.
- ***Who?*** Insurers.
- ***When?*** DNB is expected to publish a final version of the Q&A on the treatment of savings-based mortgages under Solvency II in Q1 2021. We expect that in 2021 DNB will assess whether parties have followed up on the new Q&As.

Broad observance of Good Practice on powers of attorney

- ***What?*** DNB has indicated in a news report that the Good Practice on the Management of Powers of Attorney has been taken up properly. At the same time, DNB sees room for improvement. DNB refers here to, among other things, making arrangements on data usage in the outsourcing agreement. The Good Practice stipulates that the data obtained by an authorised agent cannot be used by that party, unless arrangements are made in this regard. DNB places great store by good contractual detailing by insurers and their authorised agents on data ownership, compliance with the Dutch Sanctions Act, and the performance of checks at file level.
- ***Who?*** Insurers.
- ***When?*** We expect DNB to actively incorporate these points for attention in its supervision of insurers.

Outcome thematic study InsurTech

- ***What?*** In 2019, DNB took stock among small and medium-sized insurers of the current and future application of InsurTech. Based on the survey, DNB concludes that, at the majority of the small and medium-sized insurers, InsurTech is part of the vision for the future. In its regular supervision, DNB engages in dialogue on specifically AI. In a broader context of technological innovation, DNB has engaged in talks with the industry via the iForum, with one of the initiatives devoting attention to the explainability of AI. DNB considers adaptability to be of vital importance to the future viability of any insurers.
- ***Who?*** Insurers.
- ***When?*** We expect DNB to incorporate these points for attention in its supervision.

New information security monitor 2020

- ***What?*** In 2020, DNB published its second information security monitor. In the information security monitor, DNB shares the following important observations:
  - Cyber hygiene and vulnerability management in particular remain crucial;
  - Testing of measures contributes to the continuous improvement of cyber resilience;
  - Do not delegate responsibility when outsourcing. Stay in control;
  - Prevention alone is not enough. Focus shifts to detection and response;
  - Be aware of the role that you, as director, have in information security;
  - Take into account specific risks arising further to the COVID-19 pandemic.

  In the following years, DNB will use several investigative methods in respect of information security and cyber security. Over the next period, DNB will also explicitly focus on mutual cooperation between financial institutions. According to DNB, this is essential for the financial sector to counter cyber threats.
- ***Who?*** Insurers.
- ***When?*** We expect DNB to incorporate these points for attention in its supervision.

Proportional implementation RSR 2021

- ***What?*** In October 2020, DNB indicated that this year it will opt for a proportional implementation of the statutory requirement for the provision of the Regular Supervisory Report (RSR). Most insurers will not have to submit a full RSR in 2021. DNB will ask some major insurers to provide an elaboration of sections of the RSR and other insurers to submit a full RSR because, for instance, the RSR was of insufficient quality and did not meet DNB's need for information.
- ***Who?*** Insurers.
- ***When?*** Some insurers will have to submit an adjusted or full RSR to DNB in 2021.

Digital provision of minutes

- ***What?*** In August 2020, DNB indicated that it expects insurers to make the minutes of the Management Board,

the Supervisory Board and its committees and the Asset and Liability Committee available digitally if so requested.
- ***Who?*** Insurers.
- ***When?*** As from August 2020.

Revision of DNB's approach to supervision

- ***What?*** In November 2020, DNB announced that it will start supervising according to an updated supervision methodology. DNB wants to put its available capacity to use where the biggest prudential and integrity risks are observed. The greater the negative impact of these risks on confidence, the more intense the supervision will be. With this risk-based approach, DNB aims to deploy its capacity as effectively and efficiently as possible.
- According to DNB, institutions will notice that supervision will become more dynamic. The number of conversations with the account supervisor will decrease and DNB will act increasingly on the basis of collected data. The supervision category that the institution has been classified in by DNB determines the intensity of supervision. There are three categories, from small and not too complex to large and complex. DNB has explained all this in a Q&A.
- ***Who?*** Insurers.
- ***When?*** As from 1 January 2021.

AFM SUPERVISION

Basic principles for insurance product information document

- ***What?*** The AFM has found that important information is often missing from the Insurance Product Information Document (IPID), the document for consumers on what an insurance product does and does not cover and what the obligations are. It is not standard yet for the IPIDs assessed by the AFM to be of a satisfactory level. That is why the AFM provides a number of basic principles and calls upon developers to critically examine their IPIDs on the basis of the findings.
- ***Who?*** Insurers.
- ***When?*** We expect the AFM to focus on the quality of the IPID in 2021.

EIOPA

Single Programming Document 2021-2023 & Annual Work Programme 2021

In September 2020, EIOPA announced its priorities for 2021-2023. EIOPA sees two cross-cutting themes for the years to come, namely digitalisation & cyber risks and sustainability. Besides these overarching themes, EIOPA has identified four strategic objectives. For the elaboration of these objectives, we refer to the EIOPA document.

Building on from its priorities for 2021-2023, EIOPA also announced its work programme for 2021. In addition to the aforementioned cross-cutting themes, EIOPA in 2021 wants to focus specifically on activities including the following:

- **Driving forward conduct of business regulation and supervision**: EIOPA will provide input into the review of both the IDD and PRIIPS framework. In addition, EIOPA, together with the other ESAs, will work on enhancing sustainable finance disclosures.
- **Leading supervisory convergence towards high-quality prudential supervision throughout the EU**.
- **Strengthening the financial stability of the insurance and occupational pensions sectors:** EIOPA works towards, among other things, the development and improvement of the financial stability of the insurance and occupational pensions sector. In this respect, EIOPA will focus on integrating the enhanced pension data, on emerging risks such as cyber risks, and on ESG factors.

Advice on Solvency II review

In December, EIOPA published its opinion on the review of the Solvency II framework.
EIOPA notes that overall the Solvency II framework is working well from a prudential perspective and that no fundamental changes are needed, but that a number of amendments are required to ensure that the regulatory framework continues as a well-functioning risk-based regime. The opinion also reflects the need to supplement the current microprudential framework with a macroprudential perspective, including the introduction of specific tools and measures, to equip supervisors with sufficient powers to address all sources of systemic risk identified.

The measures proposed by EIOPA are aimed at keeping Solvency II suitable for the intended purpose by implementing a well-balanced update of the regulatory framework, which better reflects the economic situation, and by supplementing the missing elements of the framework. The advice addresses the 19 subjects discussed in the EC's *call to action* to EIOPA (of February 2019) on the review of the Solvency II Directive. Among others, the advice contains the following proposals:

- Changes to the capital treatment of the interest rate risk, as a result of the strong decline of interest rates in recent years and the existence of negative interest rates;
- Recommendation for changes to the interest rate curves used by insurers to value liabilities, specifically in respect

of the extrapolation of risk-free interest rates to better represent the market reality;
- Changes to the design of the volatility adjustment to better align it with the objectives of the adjustment and to enhance the efficiency thereof in curbing short-term volatility and rewarding insurers for holding illiquid liabilities;
- Refinement of the calculation of the risk margin of insurance liabilities, recognising diversification in time, thereby reducing volatility and its scope, in particular for long-term liabilities;
- Revisions of the criteria for the possibility to hold shares in the long term by establishing a link with long-term illiquid liabilities, aimed at better representing risks and further promoting long-term investments;
- Clear risk-based quantitative criteria to identify low-risk undertakings eligible for applying proportionality measures, by recommending a new procedure for the application and supervision of the proportionality principle;
- Support for efficient exchange of information between national supervisory authorities during the process of authorising insurers and in the event of material changes in cross-border activities; and
- The introduction of a minimum harmonised and comprehensive recovery and resolution framework and the introduction of a European network of national insurance guarantee schemes that should meet a minimum set of harmonised features with the main objective being the protection of policyholders and, if necessary, the payment of compensation or the guarantee of the continuity of the insurance.

In addition to the opinion, EIOPA also published a number of related documents, including a fact sheet, background document and an impact assessment. The EC's response to this opinion is expected in Q3 2021. We recommend market parties to continue to monitor the developments in this respect closely.

Guidelines ICT security and governance

- ***What?*** In October 2020, EIOPA published the 'Guidelines on information and Communication Technology security and governance (ICT)'. These guidelines help national supervisory authorities and insurers/reinsurers understand how to apply the regulations of the European Commission with regard to operational risks relating to ICT security and governance measures. The guidelines:
  - provide clarification and transparency at a European level on the minimum expected information and cyber security capabilities, i.e. their security baseline;
  - avoid potential regulatory arbitrage; and
  - foster supervisory convergence between the various European countries regarding the expectations and processes applicable in relation to ICT security and governance as a key to proper ICT and security risk management.
- ***Who?*** Insurers and supervisory authorities.
- ***When?*** EIOPA expects supervisory authorities to apply these guidelines as from 1 July 2021. DNB has already announced to incorporate these guidelines in its supervision as from 2021.

Guidelines on outsourcing to cloud service providers

- ***What?*** On 6 February 2020, EIOPA published the Guidelines on outsourcing to cloud service providers. DNB has indicated that it applies these guidelines in its supervision and that it expects insurers, as from 1 January 2021, to observe these Guidelines in all outsourcing contracts relating to cloud services that enter into effect or are amended on or after this date.
- ***Who?*** Insurers and supervisory authorities.
- ***When?*** Insurers must comply with these Guidelines as from 1 January 2021.

Survey on application IDD

- ***What?*** In November 2020, EIOPA launched a survey on the application of the IDD. The aim of the survey is to gather feedback from stakeholders on the experience with the application of the IDD, in particular on the improvement of quality of advice and selling methods, the impact of the IDD on small and medium-sized enterprises and possible further improvements identified after the application of the IDD.
- ***Who?*** Insurers.
- ***When?*** Stakeholders have until 1 February 2021 to respond to the survey. It is most likely that EIOPA will incorporate the results of the survey in its review of the IDD.

EIOPA's approach to supervision of the POG requirements under IDD

- ***What?*** In October 2020, EIOPA communicated its approach to the supervision of Product Oversight and Governance (POG) requirements under IDD to the market. In the document, EIOPA emphasises that in their policy and procedures insurers and insurance distributors must take into account their business model, the complexity of their product and the characteristics of the target market.
- ***Who?*** Insurers.
- ***When?*** DNB is expected to pay attention to this in the ongoing supervision.

Consultation and discussion papers

- ***What?*** In February 2020, EIOPA submitted a discussion paper on the IBOR transition to the market for consultation**.** In June 2020, a discussion paper was submitted for consultation on the European insurance value chain and new business models arising from digitalisation. In October 2020, a supervisory statement on the use of risk mitigation techniques of insurers/ reinsurers was submitted to the market for consultation. In November 2020, EIOPA launched a consultation on the supervisory practices and expectations in case of breach of the Solvency Capital Requirement (SCR) by insurers/ reinsurers.
- ***Who?*** Insurers/reinsurers.
- ***When?*** The consultation term and response term for the discussion papers were in 2020. Responses to the consultation on the supervisory practices can be submitted until 17 February 2021. In 2021, EIOPA will present follow-up steps for all initiatives.

Publication of results peer review of cooperation supervisory authorities in cross-border activities

- ***What?*** In December 2020, EIOPA published the results of its peer review on the cooperation between supervisory authorities on the supervision of cross-border activities of insurers. The peer review focuses on how national supervisory authorities approach insurance cross-border activities, how they exchange supervisory information and cooperate, how data is stored and practices regarding portfolio transfers. EIOPA ultimately issued 60 recommended actions and described four best practices to be adhered to by the national supervisory authorities.
- ***Who?*** Supervisory authorities and, indirectly, insurers engaged in cross-border activities.
- ***When?*** EIOPA will closely monitor compliance and, where necessary, take additional action. We expect that DNB, where necessary, will adopt these recommendations and apply them in its supervision of insurers.

Opinion on remuneration principles in the insurance sector

- ***What?*** In April 2020, EIOPA communicated to the market its Opinion on the supervision of remuneration principles in the insurance and reinsurance sector'. The remuneration principles of Solvency II allow insurers and supervisory authorities a great deal of discretion, causing divergent practices within the European Union. Through this opinion, EIOPA seeks to improve supervisory convergence by focusing on a set of remuneration principles.
- ***Who?*** Insurers/reinsurers.
- ***When?*** In practice, these guidelines seem to change little for Dutch insurers.

Financial Stability Report 2020

- ***What?*** In July 2020, EIOPA published the Financial Stability Report 2020. In the report, EIOPA identifies financial stability risks that are relevant to insurers. At an earlier stage, EIOPA had already published a supervisory statement. In September 2020, the ESAs also published a joint report on the risks and vulnerabilities of the European financial system in light of COVD-19.
- ***Who?*** Insurers/reinsurers.
- ***When?*** Although no concrete action points for 2021 follow from this, we do expect that the conclusions of this report will guide EIOPA's priorities in 2021.

EXISTING LAWS AND REGULATIONS

European Commission consultation on review Solvency II

- ***What?*** On 1 July 2020, the European Commission launched a consultation to gather input for the review of Solvency II. The consultation has been closed. The European Commission will use the input for its review of Solvency II. The Ministry of Finance has responded to the consultation and reported that more practical rules and principles are required to protect policyholders. It also believes that insurers must continue to be stimulated to remain active as institutional investors and providers of insurance products for saving and risk mitigating purposes. According to the Ministry, the ultimate goal must be to simplify the framework.
- ***Who?*** Insurers.
- ***When?*** The European Commission has indicated that it expects to present a proposal to review Solvency II in Q3 2021.

EIOPA consultation paper on supervisory reporting and public disclosure

- ***What?*** In the context of the 2020 Solvency II Review, EIOPA conducted a consultation on supervisory reporting and public disclosure from February 2020 to June 2020. EIOPA has decided to integrate the technical implementation measures in the 2020 Solvency II Review to ensure that it comprises all reporting processes.
- ***Who?*** Insurers.
- ***When?*** The consultation lasted until June 2020. As

expected, EIOPA has taken the results of this consultation into account in the final advice to the European Commission (in late 2020).

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

In July 2020, the Ministry of Finance submitted the 2021 Financial Markets Amendment Decree to the market for consultation. For insurers, it is particularly relevant that it is proposed to convert the current 'passive' requirement of commission transparency for non-life insurance to an active requirement.

The purpose of active commission transparency for non-life insurance is to actively inform policyholders, before taking out a non-life insurance, about any acquisition commission or ongoing commission and the services to be rendered in return. After all, if a client knows whether they are paying for a certain service, they might be more inclined to request such service.

In order to give clients the possibility to compare distribution channels, both direct providers of non-life insurance and advisors and/or brokers must communicate the characteristics of their services. If direct providers apply a selfservice model, in which no extra support is provided by the insurers in handling a claim, for example, this must be clear to the client. After all, no commission is paid in that case, but no 'extra' services are provided either.

In addition, direct providers must communicate what they are paying third parties, not being brokers or advisors, as introduction fee. Examples of third parties include price comparison websites, which do not also render brokerage or advisory services, that receive a fee from an insurer for every policyholder that is directed from the price comparison website to the website of an insurers and takes out insurance there.

Advisors and/or brokers are moreover expected from now on to actively inform the consumer on the average acquisition commission and ongoing commission for a particular category of products. In view of the differences between the private market and the professional market (in terms of, among other things, knowledge, empowerment, and type of advice given), this obligation does not apply to the professional market. In the responses to the consultation, the question of whether the average commission amounts per product group are sufficient resurfaced. In response, the Minister of Finance, in his letter to the House of Representatives dated 27 October 2020, announced his intention to tighten up the active requirement of commission transparency in the sense that exact commission amounts per product must be made transparent.

The Amendment Decree was consulted on in the summer of 2020. The decree is expected to enter into force in 2021. The precise date is not yet known. We recommend that market parties already start preparing for the forthcoming amendments.

Further Remuneration Measures for Financial Undertakings Act in preparation

- ***What?*** On 2 July 2020, the Minister of Finance submitted a bill on the Further Remuneration Measures for Financial Undertakings Act to the Dutch House of Representatives. The bill aims to introduce a number of changes to the current remuneration rules as included in the Financial Supervision Act (*Wet op het financieel toezicht*, Wft), including the introduction of a statutory retention period of five years for shares paid out as part of a fixed remuneration and a tightening of the averaging scheme for personnel not covered by the collective labour agreement, who may be awarded a higher bonus than 20% under certain conditions.
- ***Who?*** Insurers that fall within the scope of the Dutch remuneration rules.
- ***When?*** The envisaged date of entry into force of most of the tightening measures is 1 July 2021. Certain other changes have an envisaged date of entry into force of 1 July 2022.

Sustainability legislation

- ***What?*** In the past year, policymakers and supervisory authorities again devoted a great deal of attention to sustainability and climate change. We have also seen the achievement of a number of important milestones in this context, the most notable of which may be the publication of the Taxonomy Regulation in the Official Journal of the European Union on 22 June 2020. The forthcoming sustainability rules relate to three pillars: (i) controlling risks related to climate change, (ii) financing the sustainability of the economy, and (iii) fostering transparency and long-termism by undertakings. For an overview of the relevant developments in the field of sustainability, we refer to the Sustainability special of this Outlook.
- ***Who?*** Insurers.
- ***When?*** Each of the aforementioned pillars will have an impact on the business operations and services by insurers and that is why 2021 will be an important year for insurers when it comes to preparing for and implementing new sustainability rules.

NEW LAWS AND REGULATIONS

Implementation of a ban on the performance of services by third-country insurers

In October 2020, the Minister of Finance submitted to the House of Representatives the bill to amend the Financial Supervision Act in connection with the implementation of a ban on the performance of services by third-country insurers (the Bill).

It is proposed to include a ban for life and non-life insurers on the performance of services for conducting the business of a life or non-life insurers in the Netherlands if such services are performed from an establishment in a State that is not a EU Member State. The above ban will not apply to the performance of services in the reinsurance business to the Netherlands by life and non-life insurers whose registered office is in a State that is not a EU Member State. Some conditions do need to be imposed on this route. These parties must, for instance, actually conduct the direct life and non-life insurance business in the State of their registered office and may only conduct the reinsurance business by rendering services to the Netherlands in the context of the reinsurance activity that they are authorised to exercise in the State where they have their registered office.

The Bill also stipulates that, in line with the European Commission's current interpretation of Article 162 Solvency II, a life or non-life insurers that has its registered office in a State that is not a EU Member State and that has a branch in another EU Member State is not allowed to conduct the life or non-life insurance business from that branch by rendering services to the Netherlands. These insurers may still—under certain conditions—conduct the reinsurance business from that branch by rendering services to the Netherlands.

A life insurer or non-life insurers not being an insurer with limited risk exposure, with its registered office in a State that is not a EU Member State that looks to incorporate an insurer with its registered office in the Netherlands or a branch in the Netherlands to continue its insurance business must submit a full application for a licence within six months after the entry into force of the Bill. A life insurers or non-life insurers, not being an insurer with limited risk exposure, with its registered office in a State that is not a EU Member State, that looks to continue to conduct the reinsurance business only by rendering services to the Netherlands must report to DNB within six months after the entry into force of the Bill.

If an insurer does not wish to file an application for a licence, a winding-up period of two years applies. The insurer in question must submit a plan to DNB for approval, indicating the manner in which it intends to terminate its insurance activities via the performance of services within 24 months of the entry into force of this Bill. DNB may extend this winding-up period by a year if that is reasonably necessary to safeguard the winding up of the interests of the Dutch policyholders.

The Bill is currently being discussed in the House of Representatives. We expect this bill to take effect in mid-2021. We recommend market parties to, insofar as necessary, already make the required preparations.

EIOPA finalises PEPP regulations

- ***What?*** In the previous Outlooks, we already addressed the implementation of the Pan-European Personal Pension Product (PEPP) in detail. The PEPP Regulation has been published in the Official Journal of the EU and has entered into force. The PEPP Regulation will only start to apply after 12 months of the publication of certain delegated regulations. In August 2020, EIOPA presented the final set of Implementing Regulatory Standards (ITS) and Regulatory Technical Standards (RTS) and advices to the European Commission. The EIOPA documentation pertains to, among other things, the presentation of the KID, the possible annual revision of the PEPP KID by the provider, the reporting to supervisory authorities, caps on costs, risk mitigation, and product intervention powers. The European Commission will use the input by EIOPA in drafting the delegated regulations.
- ***Who?*** Insurers.
- ***When?*** It is not clear at this point when the European Commission will publish the delegated regulations in the Official Journal of the EU.

Proposal Sovereign Bond Backed Securities Regulation (SBBS) (update)

- ***What?*** In our previous Outlooks, we devoted attention to the proposal for a regulation on sovereign bond-backed securities (SBBS). It follows from the most recent quarterly report by the Dutch central government that the negotiations in the European Council have not commenced yet.
- ***Who?*** Insurers.
- ***When?*** At this point, therefore, we will have to wait and see how much time this process will take and whether it is realistic to expect that this legal framework will still take effect in 2021. We would not be surprised if this should be pushed to 2022.

OTHER DEVELOPMENTS

Adjustment of minimum capital rule and bank tax

- ***What?*** Further to a Supreme Court judgment of 15 May 2020, the minimum capital rule for banks and insurers will be adjusted through the tax plan 2021. Further to the aforementioned Supreme Court judgment, AT1 capital qualifies as debt from a tax perspective, as a result of which any interest accrued on AT1 capital is deductible in the determination of profits for tax purposes. Therefore, it has been proposed to no longer qualify AT1 capital as capital in the calculation of the leverage ratio and the equity ratio for the application of the minimum capital rule. To hedge the loss resulting from the aforementioned judgment, the percentage of the minimum capital rule will be increased from 8% to 9% effective 1 January 2021 and the bank tax will be temporarily increased for a year in 2021.
- ***Who?*** Banks and insurers.
- ***When?*** This temporary amendment entered into effect on 1 January 2021.

Ethical Framework for data applications

- ***What?*** The Dutch Association of Insurers has developed an ethical framework for data applications. This framework transcends the statutory minimum in the deployment of modern technologies: if a certain technology is permitted by law, but is in violation of these principles, insurers will not use it. The framework is based on the recommendations of the High-Level Expert Group on Artificial Intelligence. This advisory body of the European Commission has determined that the use of AI must meet seven requirements in order to be ethical: (i) Human agency and oversight; (ii) Technical robustness and safety; (iii) Privacy and Data governance; (iv) Transparency; (v) Diversity, non-discrimination and fairness; (vi) Societal and environmental well-being; and (vii) Accountability. The document sets out for each requirement a number of standards for insurers that apply not only to AI, but also to all modern, data-driven decision-making that affects customer confidence. The Dutch Association of Insurers has also published explanatory notes to the ethical framework. The notes recommend, among other things, the internal appointment of an individual to implement this ethical framework and to organise an internal kick-off meeting.
- ***Who?*** Insurers that are members of the Dutch Association of Insurers.
- ***When?*** This type of self-regulation has entered into effect on 1 January 2021.

ESAs are proposing amendments to risk mitigation techniques and clearing obligation

- ***What?*** On 23 November 2020, the ESAs published two final reports with draft regulatory technical standards (RTS). The first report proposes amendments to EMIR Delegated Regulation 2016/2251 on risk mitigation techniques for OTC derivatives not cleared by a CCP, more specifically with regard to margin requirements and derivatives contracts novated from a UK counterparty to a EU counterparty as a result of Brexit. The second report introduces amendments to three EMIR Delegated Regulations on the clearing obligation, more specifically with regard to certain intragroup transactions and derivatives contracts novated from a UK counterparty to a EU counterparty as a result of Brexit.
- ***Who?*** All parties falling within the scope of EMIR and dealing with Brexit.
- ***When?*** It is now up to the European Commission to approve the RTS in the form of delegated regulations. Subsequently, the European Parliament and the Council can still object.

IAIS reports on sustainability, Big Data and LIBOR

- ***What?*** Over the past year, the International Association of Insurance Supervisors (IAIS) has published a number of relevant reports on sustainability, Big Data and LIBOR:
  - ***Sustainability****:* This paper identifies a number of areas in respect of which supervisory authorities may encourage the publication of information relating to sustainability through the application of existing supervisory instruments. IAIS also announces that it will continue to work on climate-related risks in the insurance sector, focusing on risk management, governance, investments and disclosures.
  - ***Big Data****:* In this paper, IAIS notes that the increasing digitalisation of insurances offers opportunities for the sector. But this rapid innovation could inadvertently present the risk of poor results for policyholders and increased vulnerabilities for the sector as a whole. IAIS indicates that supervisory authorities must remain vigilant and, if necessary, take appropriate and proportionate actions to address these risks.
  - ***LIBOR****:* In this report, IAIS encourages the supervisory authorities to step up their efforts to facilitate insurers transitioning away from LIBOR. The report contains a number of recommendations to support the transitioning away from LIBOR—these are in line with the recommendations of Financial Stability Board in this regard, namely: (i) improving the identification of transition exposures and other challenges; (ii)

supporting the LIBOR transition; and (iii) increasing the intensity of cooperation and coordination in the field of supervision.

- ***Who?*** Supervisory authorities and indirectly the insurers under their supervision.
- ***When?*** We expect the supervisory authorities to take the IAIS reports into account where necessary.

Evaluation Solvency II basic regime

In September 2020, the Minister of Finance shared with the House of Representatives the evaluation of the Solvency II basic regime. For insurers not falling within the scope of Solvency II, also referred to as 'basic insurers', the Netherlands has developed an adjusted supervision regime: Solvency II Basic. The very smallest insurers are not subject to the basic regime. An exemption applies to them. Both DNB and the basic insurers have indicated to be satisfied with the basic regime and its contribution to a more diverse market. The Dutch Association of Insurers has made a number of proposals to amend the basic regime. The Minister has indicated that he is willing to look at the indexation of the line between exempted insurers and the basic regime. The Minister does not agree with the proposal to abolish the statements of changes in Equity and Returns and the proposal to include in the explanatory notes to the annual accounts the interpretation of the market value balance sheet according to the Wft and the effect on the SCR.

Brexit deal

- ***What?*** A Brexit deal was concluded on 24 December 2020. This deal, however, barely discusses the financial sector, which means that the loss of the European passport has not been addressed. It is now up to both the EU and the United Kingdom to decide, unilaterally perhaps, to view the financial sector of the other as equal and to grant full access to its own market, also referred to as equivalence decisions. For incoming activities of insurers, the EU has not adopted such a decision, based on Solvency II, at least not yet. DNB did publish a fact sheet indicating which activities can and cannot be carried out by UK insurers in the Netherlands from 2021 onwards. Unlike the EU, the United Kingdom has passed a number of equivalence decisions for insurers who wish to perform activities in the United Kingdom from the EU. Moreover, the temporary permissions regime applies to insurers. Insurers who prior to Brexit engaged in activities in the UK on the basis of a European passport and who submitted an application under the temporary permissions regime in 2020 can partially continue to perform their activities under the same terms and conditions for up to a maximum of three years. Insurers who are not availing themselves of this scheme will be afforded the opportunity, on the basis of the Financial Services Contracts Regime to wind down their activities in the United Kingdom in an orderly fashion.
- ***Who?*** Insurers who are active in both the EU and the United Kingdom.
- ***When?*** The Brexit deal entered into force on 1 January 2021.

COVID-19

Dividend distribution by insurers

- ***What?*** At the beginning of the COVID-19 crisis, DNB—in line with a statement by EIOPA—called on insurers to temporarily refrain from distributing dividends and from purchasing their own shares until there is more clarity on the impact of COVID-19. DNB indicated in July 2020 that it will assess the dividend proposals of insurers under its supervision. In this regard, DNB did indicate that it endorses the recent ESRB recommendation that financial institutions, including insurers, refrain until at least the end of 2020 from distributing dividends or purchasing shares to better withstand the—possibly severe—economic shock caused by the coronavirus crisis. Insurers that, in spite of the ESRB recommendation, are still considering to distribute dividend or purchase shares are fully subject to the obligation to make a sound forward-looking analysis in light of the coronavirus crisis and, for instance, the continuing low interest-rate environment. In addition, DNB expects a careful analysis of the uncertain prospects based on the supervisory framework and the policy on equity. DNB repeated this call in December 2020.
- ***Who?*** Insurers.
- ***When?*** We expect that in 2021 DNB will continue to closely monitor developments in this respect.

EIOPA Paper on shared solutions for non-damage business interruption insurances

- ***What?*** In July 2020, EIOPA published a paper in which it explores various options for developing a shared solution to address the risk of business interruption in the context of a pandemic. According to EIOPA, the COVID-19 pandemic has revealed the existence of a significant protection gap for 'non-damage business interruption' insurance and the need to improve access to data and ensure proper modelling of the risks of business interruption. EIOPA indicates that both the public and the private sector must be involved in the solution. This solution should build on the following four elements: (i) proper risk assessment; (ii) risk prevention and adaptation measures; (iii) suitable product design; and (iv) risk

transfer. In this latter regard, EIPOA is considering, for instance, mandatory cover for non-damage business interruption insurance throughout the EU.
- ***Who?*** Supervisory authorities and insurers.
- ***When?*** Parties had until 25 September 2020 to respond to this paper. We expect EIOPA to return to this subject in early 2021.

EIOPA Supervisory Statement on the treatment for Solvency II purposes of schemes based on reinsurance

- ***What?*** In July 2020, EIOPA published a supervisory statement on the Solvency II recognition of schemes based on reinsurance with regard to COVID-19 and credit insurance. Through this statement, EIOPA expresses its opinion on the treatment for Solvency II purposes of schemes based on reinsurance implemented by Member States within the European Commission's Temporary Framework for State aid measures. EIOPA has found that there are significant differences in the treatment of reinsurance schemes across the different Member States and has made several recommendations.
- ***Who?*** Supervisory authorities and insurers/reinsurers.
- ***When?*** It is not clear yet how long these recommendations will remain topical.

EIOPA Call to action to mitigate the impact of COVID-19 on consumers

- ***What?*** In April 2020, EIOPA issued a call to action to insurers and distributors to take a number of measures to mitigate the impact of COVID-19 on consumers, including a call for flexibility towards consumers. At the same time, EIOPA pointed out to insurers that they should realise that deviations from policy conditions may have consequences for their solvency and ultimately for policyholder protection. The AFM repeated this call on its website.
- ***Who?*** Insurers and distributors.
- ***When?*** We encourage market parties to adopt these proposals, insofar as this has not been done yet.

EIOPA Statement on product development and product governance requirements

- ***What?*** In July 2020, EIOPA issued a statement calling upon insurers to review their product development process and product governance measures in light of the potential effect of COVID-19 on their products and their use to consumers. This statement must be viewed as an extension of EIOPA's call to mitigate the consequences of COVID-19 for consumers to the extent possible (see also above).
- ***Who?*** Supervisory authorities and insurers.
- ***When?*** We encourage market parties to adopt these proposals, insofar as this has not been done yet.

EIOPA Consultation on the Supervisory Statement on ORSA in the context of COVID-19

- ***What?*** In December 2020, EIOPA launched a consultation on the Supervisory Statement on ORSA in the context of the COVID-19 pandemic. Indeed, EIOPA believes that the current situation calls for an ad-hoc/non-regular ORSA in the cases where the pandemic impacts the risk profile of the undertaking materially, in particular in those cases where the performance of the regular ORSA has not allowed the undertaking to assess and to take into account the impact of the COVID-19 pandemic.
- ***Who?*** Insurers.
- ***When?*** Insurers have until 15 March 2021 to respond to the consultation. EIOPA will take the feedback received into account in drafting an impact assessment and a report.

DNB's expectations in respect of business continuity plans COVID-19

- ***What?*** In a news report, DNB shared its expectations in respect of business continuity plans of insurers in light of COVID-19. Existing business continuity plans that are adequate for coping with brief isolated events could turn out inadequate in the event of a persistent pandemic. DNB expects that institutions have recognised this risk, have analysed the impact thereof, and will take additional measures where necessary. In concrete terms, this means that DNB expects that the impact of a pandemic must be included in the business continuity management.
- ***Who?*** Insurers.
- ***When?*** Although DNB made these suggestions in light of COVID-19, we expect that DNB will continue to maintain these suggestions.

DNB: room for health insurers during coronavirus crisis to provide liquidity support to healthcare providers

- ***What?*** The Association of Dutch Health Insurers (*Zorgverzekeraars Nederland* (ZN)) has asked questions on how to deal with the additional advance funding for coronavirus-related healthcare spending and the compensation for loss of turnover due to the postponement of regular plannable healthcare in light of Solvency II. DNB has clarified to ZN that the financial buffers in excess of the SCR may be used in

this coronavirus pandemic. In respect of health insurers who see their solvency temporarily drop below their own internal target standard, DNB takes the expected temporary duration of this exceptional situation into account. For instance, DNB will not demand immediate remedial action on the basis of the insurer's policy on equity, provided that this drop below the target standard is the result of the temporary additional advance funding and funds are not at risk of slipping below the SCR.

- ***Who?*** Insurers, including health insurers.
- ***When?*** We expect that DNB will continue to afford this room for liquidity support for as long as necessary.

INTEGRITY

AFM SUPERVISION

Follow-up investigation into transaction monitoring by investment firms and fund managers

- ***What?*** Compliance with the Anti-Money Laundering and Anti-Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*, Wwft) requires transactions monitoring and the reporting of unusual transactions. A previous investigation by the AFM (also see below) has shown that investment firms and fund managers are still making insufficient efforts to combat money laundering and terrorist financing. That is why the AFM initiated an in-depth follow-up investigation. In this investigation, the AFM checked whether investment firms and fund managers prepare transaction profiles for their clients, apply detection rules for identifying unusual transactions and report adequately and in good time to the Netherlands Financial Intelligence Unit (FIU).
- ***Who?*** Investment firms and fund managers.
- ***When?*** The follow-up investigation commenced in June 2020. The general findings are expected to be published in 2021.

Transaction monitoring by fund managers and investment firms needs improvement

- ***What?*** In 2019, the AFM subjected six market parties to a thematic investigation of transaction monitoring and the reporting obligation. In April 2020, the AFM published a number of general items requiring attention in response to this investigation. The AFM also called upon market parties who had indicated in the annual Wwft questionnaire that they do not monitor transactions to set up a transactions monitoring system before the end of 2020. Meanwhile, the AFM has initiated a new thematic investigation (see above), the results of which we expect in 2021.
- ***Who?*** Managers of alternative investment funds (AIFs), managers of undertakings for collective investment in transferable securities (UCITS), investment firms and their affiliated agents and life insurance brokers.
- ***When?*** Immediately. Market parties must adhere to the AFM's items requiring attention. It is our expectation that the AFM will continue to focus on compliance with the Wwft and transaction monitoring in particular in 2021.

Guideline on the Wwft and on the Sanctions Act amended

- ***What?*** The AFM amended the Guideline on the Wwft and Sanctions Act in response to the implementation of the Fifth Anti-Money Laundering Directive (AMLD5) and the entry into force of the UBO register in the Netherlands.
- ***Who?*** Managers of alternative investment funds (AIFs), managers of undertakings for collective investment in transferable securities (UCITS), investment firms and their affiliated agents and life insurance brokers.
- ***When?*** Immediately.

DNB SUPERVISION

Supervisory Strategy 2021-2024 - Financial and Economic Crime

- ***What?*** On 24 November 2020, the DNB published an updated 'Supervisory Strategy 2021-2024'. In that document, the DNB sets out its previous 'Supervisory Strategy 2018-2022' in more concrete terms. One of DNB's key objectives is combatting financial and economic crime. The aim of combatting financial and economic crime is to eliminate unlawful use of the financial system by i) a more intensive approach to supervision, ii) the application of smarter methods, and ii) a more international approach to financial and economic crime. DNB will continue to ensure that financial institutions take adequate measures to prevent financial and economic crime. In addition, DNB wants to focus on public/private cooperation and data bundling to ensure increased insight into complex criminal cash flows. The cooperation between European supervisory authorities is also extremely important as many (crypto) constructs are of a cross-border nature.
- ***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?*** The Supervisory Strategy was drawn up for the period 2021-2024 and provides insight into DNB's envisaged approach to supervision.

Supervision of crypto service providers

- ***What?*** Since the implementation of AMLD5 on 21 May 2020, providers of crypto services (specifically: exchanging between cryptocurrencies and fiat money and offering crypto wallets) fall within the scope of the Wwft. They must register with DNB. To do so, they must demonstrate, among other things, that their internal procedures safeguard compliance with the Wwft and the Sanctions Act. The registration of existing crypto service providers had to be completed by 21 November 2020. This deadline gave rise to (public) discussions with the supervisory authority in the final weeks because of the specific requirements that DNB imposed on crypto service providers in the context of sanction regulations. DNB has indicated that it will begin supervising crypto service providers on a risk based, for example by having crypto service providers complete a questionnaire in 2021 to be analysed afterwards. DNB may also decide to conduct on-site audits.
- ***Who?*** Crypto service providers who fall within the scope of the Wwft.
- ***When?*** 2021 will be the first full year in which DNB will supervise crypto service providers. We expect that DNB will immediately act as an active supervisory authority.

Adjusted method for integrity supervision

- ***What?*** Since 1 January 2021, DNB has been applying an adjusted method in the integrity supervision of banks, insurers, pension funds and payment institutions. This adjustment is part of a revision of the approach to supervision that will apply across the spectrum of DNB's supervision. DNB intends to conduct more risk-based supervision in order to optimise its use of the available supervisory capacity. In addition, DNB intends to avail itself more of the possibilities which digitisation offers for extracting information from market party data, such as the data which DNB receives from annual integrity risk reports.
- ***Who?*** Banks, insurers, pension funds and payment institutions.
- ***When?*** DNB has been applying the new method since 1 January 2021.

EXISTING LAWS AND REGULATIONS

UBO register

- ***What?*** The UBO register finally entered into force in the Netherlands on 27 September 2020. Existing companies, with the exception of trusts and funds for joint account for which a separate act will be adopted (see below at 'New laws and regulations'), have 18 months to report the UBO information to the Chamber of Commerce (CoC). New companies must provide this information immediately. Institutions that fall within the scope of the Wwft are obliged to consult the UBO register when accepting clients. If there are any discrepancies between the UBO register and the information collected by the Wwft institution in connection with their own client

due diligence review, the Wwft institution must report these back to the CoC. The obligation to report back does not apply pending the transition period if no UBO information has yet been added to the UBO register.
- ***Who?*** Managers of alternative investment funds (AIFs), managers of undertakings for collective investment in transferable securities (UCITS), investment firms and their affiliated agents and life insurance brokers.
- ***When?*** Immediately.

Financial Markets Amendment Act 2020 – reputation requirements UBOs crypto service providers

- **What?** On 14 October 2020, the Financial Markets Amendment Act 2020 was published in the Dutch Bulletin of Acts and Decrees. As a result of the Amendment Act, ultimate beneficial owners of crypto service providers will be subject to a reputation assessment. This means that DNB will assess them in terms of (i) trustworthiness and (ii) competence (suitability). A transitory law will be put in place for current ultimate beneficial owners.
- **Who?** Crypto service providers as referred to in the Wwft.
- **When?** The Amendment Act entered into force on 15 October 2020. The reputation requirement applies from 1 May 2021.

Amendment of Wwft BES

- **What?** On 28 October 2020, an amendment to the Wwft BES was published in the Dutch Bulletin of Acts and Decrees. The amendment is based in part on the fact that the FATF will perform an evaluation of compliance with the FATF standards in 2021. The evaluation will also include the Caribbean Netherlands and the Wwft BES had not yet provided for compliance with all relevant FATF standards.
- **Who?** Financial service providers who fall within the scope of the Wwft BES.
- **When?** The new rules will enter into force on 1 July 2021.

The European Commission removes Mongolia from its 'high-risk third countries list'

- ***What?*** After having been officially on the list for three months, Mongolia is no longer qualified as a 'high-risk third country'. This follows from a recent amendment to a delegated regulation that accompanies AMLD4. As a result of this amendment, the European Union's high-risk list now corresponds to the list of the Financial Action Task Force (FATF). The entities that fall within the scope of the Anti-Money Laundering and Anti-Terrorist Financing Act (Wwft) must implement the amendment - which has immediate effect - in their policy.
- ***Who?*** All entities who are subject to the Wwft and who provide their products/services in third countries.
- ***When?*** The delegated regulation will enter into force 20 days after publication in the Official Journal.

NEW LAWS AND REGULATIONS

Progress on anti-money laundering action plan

- **What?** On 30 June 2019, the Ministry of Finance and the Ministry of Justice and Security presented an anti-money laundering action plan in which they proposed various initiatives to combat money laundering. Meanwhile, a third progress report was published on 2 December 2020, in which the ministries reported what progress had been made in respect of the initiatives. The letter is accompanied by a table containing an overview of the initiatives and their status. This table is certainly worth taking a look at, because it offers a useful overview of what is going on and what is yet to come, such as new regulations for tackling tax evasion and avoidance (combatting letterbox companies). It is clear that the Dutch legislature has high ambitions in the area of combatting money laundering and terrorist financing. Likely playing a role in that is the fact that the FATF will conduct an investigation in 2021 regarding compliance with the FATF standards by the Netherlands and the extent to which these standards are effectively implemented (see the note about this below). Incidentally, many of the initiatives have already been finalised.
- **Who?** All financial market parties that fall within the scope of the Wwft.
- **When?** On a continuing basis.

Action Plan for an EU policy for the prevention of money laundering and terrorist financing

On 7 May 2020, the European Commission announced an action plan with specific measures for the next 12 months to take more drastic action against money laundering and terrorist financing at EU level (the **Action Plan**). In addition, the Commission will henceforth use a new method to determine in what third countries the anti-money laundering regulations fall short. Lastly, the Commission

adopted a new list with effect from 1 October 2020 of third countries whose regulatory framework displays strategic shortcomings (the so-called 'high-risk third countries'). These shortcomings constitute a considerable threat to the financial system of the EU. The new list is better aligned with the lists published by the FATF. Countries were added (The Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia (as can be read in the section above, now removed), Myanmar/Burma, Nicaragua, Panama and Zimbabwe) and removed (Bosnia and Herzegovina, Ethiopia, Guyana, Laos, Sri Lanka and Tunisia).

Action Plan

The Action Plan comprises six pillars. The pillars are aimed at harmonising EU anti-money laundering rules. The EU's battle against money laundering and terrorist financing will be reinforced and become more efficient as a result of the harmonisation. The coordination between the authorities themselves will be improved. The pillars build on the findings of the Commission's anti-money laundering package of July 2019, in which the fragmentation of EU rules and the limited cooperation between EU intelligence units (the local Financial Intelligence Units, FIUs) were identified as weak spots.

These six pillars are:

1. Effective application of the EU rules: the Commission will closely monitor the implementation of the EU rules by the Member States. EBA is encouraged to fully utilise its new powers to combat money laundering.
2. A single EU rule book: the application of the EU rules in the Member States may differ. To combat this, the Commission will make a proposal in Q1 2021 for regulations that are better harmonised.
3. Supervision at EU level: in Q1 2021, the Commission will make a proposal for the establishment of a supervisory institution at EU level to ensure that criminals can no longer abuse gaps in the supervision. This may be EBA, or a new supervisory authority to be established.
4. A coordination and support mechanism for the FIUs of the Member States: in Q1 2021, the Commission will make a proposal for the introduction of an EU mechanism to help intelligence units coordinate and to support them in their crucial role in the identification of transactions. We believe this is very desirable, as current practice show that only a fraction of the reported unusual transactions also actually lead to a criminal investigation, among other things because of limited capacity (both on the part of FIU and the Public Prosecution Service/Fiscal Intelligence and Investigation Service).
5. Enforcing the EU criminal-law provisions and the exchange of information: the Commission will offer guidelines regarding the role of public-private partnerships for the promotion of the exchange of information.
6. The EU's role in the world: the EU wants to become a global player in the battle against money laundering. Certain third countries constitute a threat to the internal market. In support, the Commission will announce the new method by which it will henceforth determine in which third countries the regulations fall short.

Timing

In respect of the foregoing pillars, the Commission will submit a proposal in early 2021 for new laws and regulations.

Impact

Potentially, this may result in a major shift in supervision pursuant to the Wwft. The Netherlands currently hold a leading role in this area. Both politics (including with the anti-money laundering action plan Act) and the supervisory authorities (DNB and the AFM set up the supervision very expressly and do not shy away from imposing formal measures such as fines and orders subject to a penalty) set high standards for combatting money laundering and terrorist financing. In practice, this means among other things that banks and other financial undertakings are hesitant to accept clients that entail an increased risk. EBA also identified this risk in early September 2020.

More harmonisation at the European level would be desirable, because an *unlevel playing field* will be created if the standards are applied and explained less drastically in other Member States. In addition, a single central supervisory authority should give this harmonisation a considerable boost if it interprets the rules the same in every Member States. We are curious as to how this development will proceed.

Bill for an anti-money laundering action plan

New national regulations in the battle against money laundering

The Netherlands wants to be a leader in Europe in the battle against money laundering and terrorist financing. As far as Minister Grapperhaus (Justice and Security) and Minister Hoekstra are concerned, the Netherlands is going a step further in terms of regulations than what is prescribed pursuant to the Anti-Money Laundering Directive (recently, both AMLD4 and AMLD5 were implemented in the Netherlands on 25 July 2018 and 21 May 2020, respectively). This follows from a proposal by both ministers for an anti-money laundering action plan Act. This will take the Netherlands out of step with Europe, while the direction at the European level is to seek further harmonisation of the anti-money laundering regulations (see the section above).

Where are we now?

- On 30 June 2019, Minister Grapperhaus and Minister Hoekstra published the anti-money laundering action plan.
- There was a consultation in December 2019 and January 2020 regarding a bill on the anti-money laundering action plan.
- On 25 September 2020, the cabinet agreed to the bill and sent the bill to the Council of State. Both the bill and the recommendation of the Council of State will be published after they have been submitted to the House of Representatives.
- It follows from the third progress letter on the anti-money laundering action plan that the intention is to send this bill to the House of Representatives in early 2021.

Contents of the proposal

The proposal includes amendments to the Anti-Money Laundering and Anti-Terrorist Financing Act and the Economic Offences Act. The proposal provides for:

- A ban on cash payments upwards of EUR 3,000 for professional traders and traders in a commercial capacity, a measure that will be particularly felt on P.C. Hooftstraat.
- In the case of an enhanced client due diligence review in respect of 'high-risk clients', information must be requested regarding integrity risks at Wwft institutions in the same category.
- The possibility of outsourcing (transaction) monitoring to a third party. In principle, this is currently not possible because the provision that pertains to outsourcing the client due diligence review does not mention the monitoring element among the elements of client due diligence that can be outsourced.
- Further to that: the option of joint transaction monitoring by Wwft institutions by allowing them to share transactions.

Expected timing

We expect the bill to be submitted to the House of Representatives in Q1 2021 and we expect that the act will enter into force in Q3 and Q4 of 2021.

UBO register for trusts and funds for joint account

- ***What?*** The consultation for the UBO register bill in respect of trusts and similar legal arrangements was published on 17 April 2020. A separate act is being prepared for these types of institutions for the implementation of the UBO register. The consultation text contains a proposal to treat a fund for joint account (*fonds voor gemene rekening*, FGR) the same as a trust (a concept in Anglo-Saxon legal systems). An FGR has no legal personality; it is an agreement between manager, custodian and unit holders. The aim of the fund is to raise capital in order to collectively invest it. Specifically, the equation of an FGR with a trust based on the consultation text would mean that *all* parties involved in the FGR, including all unit holders, qualify as UBOs. In the case of investment funds (AIFs or UCITS) that are set up as an FGR, this will mean that the fund must regard and register all investors as UBO with the CoC. This would have an enormous impact in a practical sense, in particular for closed-ended investment funds with a large investor base and open-ended investment funds that allow for very frequent issue and redemptions. Extensive attention was requested for this in the consultation reactions. It is our sincere hope that the legislature will take these comments to heart, in any event in respect of investment funds that fall with the scope of the supervisory regulations, so that the compliance burden does not become unnecessarily great for this category of FGRs.
- ***Who?*** All investment funds (AIFs and UCITS) that are set up as FGR.
- ***When?*** According to the most recent progress report on the anti-money laundering action plan, the bill will be submitted to the House of Representatives in early 2021.

Implementation of Directive on combatting money laundering by criminal law (AMLD6)

- ***What?*** The implementation of the Directive on combatting money laundering by criminal law entered into force on 1 December. Minister Grapperhaus (Justice and Security) noted that Dutch law already materially contains the lion's share of the provisions of the directive. This means that the implementation is limited to the amendment of the Extraterritorial Jurisdiction (International Obligations) Decree (*Besluit internationale verplichtingen extraterritoriale rechtsmacht*).
- ***Who?*** Anyone who is guilty of money laundering.
- ***When?*** The decree implementing the directive entered into force on 1 December by Royal Decree.

OTHER DEVELOPMENTS

EBA: Report and opinion on the future of the European AML/CFT framework

- ***What?*** On 10 September 2020, EBA replied to the European Union's *call for advice* on how the European legal AML/CFT framework can be strengthened. EBA advised the European Commission to adopt a 'single rule book' in order to: (i) harmonise the European legal framework in a directly applicable regulation,

(ii) strengthen the aspects of the current anti-money laundering directive (AMLD5), (iii) review the list of entities currently subject to a reporting obligation within the scope of the European AML/CFT regime and (iv) clarify the provisions in sectoral legislation regarding financial services to ensure that these are compatible with the European AML/CFT objectives.
- ***Who?*** All financial market partes and natural persons who perform activities, provide services or offer products that fall within the scope of the European AML/CFT framework.
- ***When?*** Based on the current recommendation of the EBA, the European Commission will submit bills for a single rule book for AML/CFT in Q1 2021.

EBA: Opinion on the risks involved in money laundering and terrorist financing in SREP

- ***What?*** On 4 November 2020, EBA published an Opinion in which it explains how prudential supervisory authorities (such as DNB) must take the risks of money laundering and terrorist financing into account in their annual Supervisory Review and Evaluation Process (SREP). Supervisory authorities must be able to identify relevant risks. For example, institutions may face shortcomings in their IT systems that criminals could abuse. EBA also expects supervisory authorities to cooperate efficiently with other (European) public investigation and supervisory partners. This pertains in particular to the exchange of information.
- ***Who?*** All financial undertakings that fall under the supervision of DNB.
- ***When?*** The opinion was issued on 4 November 2020. EBA is expected to publish the revised SREP guidelines by the end of December 2021. These guidelines will discuss in more detail how supervisory authorities must incorporate the risks related to money laundering and terrorist financing into the SREP.

EBA: Financial undertakings must be additionally alert to money laundering during the pandemic

- ***What?*** On 31 March 2020, EBA called on supervisory authorities (and thus indirectly, the market parties they supervise) to be extra alert to money laundering during the pandemic. In times of crisis, criminals may increase their activities in these areas and develop new techniques to abuse the circumstances. In practice, this seems to also be the case with various types of WhatsApp fraud.
- ***Who?*** All financial market parties that fall within the scope of the Wwft.
- ***When?*** Continually as long as the COVID-19 pandemic continues.

EBA: Consultation on Risk Factor Guidelines

- ***What?*** On 5 February 2020, EBA published a consultation regarding the revision of the Risk Factor Guidelines. The Risk Factor Guidelines provide for specific guidance in respect of the client investigation and (transaction) monitoring to be performed by Wwft institutions. These are important guidelines for market parties.
- ***Who?*** All financial market parties that fall within the scope of the Wwft.
- ***When?*** We expect that EBA will publish the new Risk Factor Guidelines sometime in 2021.

EBA: Opinion on the relation between the AML/CFT framework and deposit guarantee schemes

- ***What?*** On 11 December 2020, EBA published an Opinion in which it assessed, in the framework of bank failures, how information from depositors about potential AFM/CFT risks are identified and forwarded to deposit guarantee schemes before they repay the depositors. Among other things, EBA has studied the effectiveness of the information exchange and cooperation between the relevant authorities. By way of the Opinion, EBA is making proposals to the European Commission in the context of the continuous revision of the anti-money laundering directive and the directive regarding deposit guarantee schemes, but they are also submitting proposals to national authorities to implement changes in their national systems.
- ***Who?*** Banks subject to a deposit guarantee scheme.
- ***When?*** The proposals aimed at the national authorities must be implemented within 12 months of the Opinion's publication. EBA is requesting the Commission to include the proposals aimed at it in a proposal to revise the anti-money laundering directive and the directive on deposit guarantee schemes.

EBA: Report on cooperation between supervisory authorities

- ***What?*** On 15 December 2020, and in light of its new role in leading, coordinating and monitoring of European AML/CFT supervision, EBA published a report on the functioning of the new system of AML/CFT colleges intended to promote the cooperation and exchange of information between national prudential and anti-money laundering supervisors. The AML/CFT colleges are intended to supervise financial market parties that operate in at least three Member States and outside the EU. The process of establishing the colleges is still

ongoing, but 10 colleges for banks have already been established as of this writing. In its report, the EBA describes multiple good practices, but there are other outstanding areas for improvement. For example, all the relevant supervisors were not always immediately identified and invited to the colleges, as a result of which third country authorities or prudential supervisors in particular were unable to participate.

- ***Who?*** The Report is primarily relevant for supervisory authorities. Ultimately, the cooperation could also impact internationally operating financial market parties.
- ***When?*** Supervisors have until 10 January 2022 to establish AML/CFT colleges. This means that 2021 will be an important year for establishing these colleges and the associated supervision.

EBA: Methodology and process for AML/CFT risk assessments

- ***What?*** On 16 December 2020, the EBA published a document in which it explains how it will use its authority to conduct AML/CFT risk assessments. These assessments relate to competent authorities of the relevant Member States and focus on the strategies, capacities and resources they use for anti-money laundering supervision. The EBA will thus be assessing, among other things, the extent to which these authorities are capable of tackling the most important AML/CFT risks that arise. The ultimate objective of the risk assessments is to bolster the convergence of European anti-money laundering supervision.
- ***Who?*** In principle, the risk assessments will affect the competent authority (such as DNB or the AFM). They might also indirectly affect financial market parties that are subject to Wwft supervision, particularly if DNB or the AFM adjust their supervisory practices in response to the results of the risk assessment.
- ***When?*** It is still unclear when the EBA will conduct the risk assessments.

FATF: Request regarding the improvement of cross-border payments

- ***What?*** On 1 December 2020, the FATF published a questionnaire in which it requested input from the market with a view to improving cross-border payments. The FATF recognises the advantages of faster, cheaper and broader, more accessible options in terms of cross-border payments, but also notes that there are still a number of impediments to this, including in the area of anti-money laundering regulations.
- ***Who?*** Banks and payment service providers in particular.
- ***When?*** The consultation period will run until 15 January 2021. It is our expectation that, in part based on the input, the FATF will prepare various recommendations.

FATF: Evaluation of compliance of FATF standards by the Netherlands

- ***What?*** The Netherlands will be evaluated by the FATF in 2021. There are two components to this evaluation: an assessment of the technical compliance with the FAFT standards and an assessment of whether these are carried out effectively. The Caribbean Netherlands will also be included.
- ***Who?*** The Netherlands as a legislature. It may result in amendments to laws and regulations that will also affect financial market parties.
- ***When?*** In March 2021, the FATF will receive an overview of results in this area in the past few years. In July 2021, the FATF will interview private and public parties. The FAFT's assessment report is expected in March 2022.

FATF: Report on AML/CFT risks relating to COVID-19

- ***What?*** On 16 December 2020, the FATF published its updated report in which it outlines, based on multiple case studies, how AML/CFT risks have developed during the COVID-19 pandemic and how the authorities are dealing with these. For example, one of the case studies regards a scam in which face masks were sold via the Netherlands, but also regards investment fraud (or the risk thereof), for example, by making assertions about products that protect against COVID-19, which are becoming more common around the world. In addition, the FATF concludes that current trends include changes in financial behaviour, increased financial volatility and economic contraction. According to the FATF, using a risk-based approach such as the one ensuing from the FATF standards, one must deal with the changing financial system and the associated risks. Financial undertakings must be on the alert for such risks and take these into account in their policies.
- ***Who?*** All financial market parties that fall within the scope of the Wwft.
- ***When?*** The COVID-19 pandemic and the associated risks are still developing. We expect that this will continue to require attention in 2021.

BCBS: Review of AML/CFT guidelines

- ***What?*** With the review of its AML/CFT guidelines, the Basel Committee on Banking Supervision (BCBS) added guidelines for the purpose of cooperation and the exchange of information between prudential and AML/CFT supervisory authorities for banks, at both national and cross-border levels. Among other things, the envisaged cooperation and exchange of information

pertains to the granting of permits, continuing supervision and enforcement measures.
- ***Who?*** Banks and their supervisors (such as DNB and FIU).
- ***When?*** The guidelines were revised in July 2020 and have applied since then.

European Commission: Comparative law examination of trusts and similar legal arrangements

- ***What?*** The European Commission conducted an investigation of the question of whether Member States have properly identified and subjected trusts and similar legal arrangements that are governed by their national law to the obligations contained in the anti-money laundering regulations. The document offers an interesting overview of the various legal concepts that are customary in Member States. For example, the Netherlands have decided for now to equate funds for joint account with trusts for the application of the anti-money laundering regulations (also see the section above about the UBO register for funds for joint a ccounts). Incidentally, the Commission concluded that a joint approach to the identification of constructs that are similar to trusts is lacking as a result of which legal certainty and competition conditions could be at risk, and gaps may arise in the laws that are vulnerable to money laundering. To combat this problem, the Commission is considering setting up an informal working group, which could result in additional rules.
- ***Who?*** The document offers useful insight into the various types of legal concepts in the EU for financial market parties that accept cross-border clients.
- ***When?*** The investigation was published on 16 September 2020. It is still unclear whether and when the investigation will actually lead to a further European approach.

SUSTAINABILITY

INTRODUCTION

The European framework for regulatory sustainability rules is made up of a number of Regulations and Directives which, to a large extent, are linked to the Taxonomy Regulation. Speaking broadly, this means three major regulatory schemes:

- The Taxonomy Regulation (Regulation EU/2020/852);
- The Regulation on sustainability-related disclosures in the financial services sector (Regulation EU/2019/2088, Sustainable Finance Disclosure Regulation, SFDR); and
- The Directive on non-financial information (Directive EU/2014/95, Non Financial Reporting Directive, NFRD).

The Taxonomy Regulation introduces a classification system for sustainable activities. Financial institutions must use this classification system to classify investments, products, etc. This classification is done on the basis of the data that is obtained, in part, from undertakings that are required to publish non-financial information under the NFRD.

On the basis of the SFDR, financial institutions must be transparent about the extent to which they are in compliance with Environmental, Social & Governance (ESG) factors. Institutions must publish their analysis (which must be based on the NFRD data and the Taxonomy Regulation (i) on their website, (ii) in periodic reports, (iii) in promotional material, and (iv) in the provision of precontractual information. The manner of pubzlication depends on which article of the SFDR applies.

The NFRD prescribes that large undertakings that are public interest organisations and which employ more than 500 people must include a non-financial statement in their management reports. In this non-financial statement, the undertaking must include information concerning the activities that have an impact on environmental, social and employee matters, respect for human rights, and anti-corruption and bribery matters.

In terms of sustainability, the year 2020 can best be described as a transitional year. The bulk of the European framework for the various sustainability schemes was already in place in 2019. The year 2020 was primarily spent producing the level 2 and level 3 regulations (in draft form). Also in 2020, various supervisory authorities shared their visions and expectations for regulatory supervision of sustainability matters with the market.

In the Outlook 2020 we took a detailed look at the new European framework for sustainability rules. The Outlook 2021 builds further on this knowledge. Readers who are interested in the general framework would do well to start with the sustainability chapter in the Outlook 2020.

EUROPEAN LEGISLATION AND REGULATIONS

European Climate Law

- ***What?*** The core objective of the European Green Deal is the achievement of a climate-neutral European economy and society by 2050. The European Commission wants to enshrine this objective into law with a European Climate Law. The European Commission's original proposal dates from 4 March 2020. On 17 September 2020, the Commission modified its proposal by adding a target plan and detailed impact evaluation. On 23 October 2020, the European Council reached agreement on a portion of the proposal's general approach. On 11 December 2020, the European Council reached agreement on the Commission's proposal to raise the central greenhouse gas emissions target for 2030 from 40% to at least 55% (compared to 1990).
- ***Who?*** All sectors of the economy and society (including the financial sector).
- ***When?*** At present it is not clear when this proposal might be adopted or enter into force. For the current status, see the legislative train, which provides a detailed overview of the history and latest developments.

EC Consultation roadmap for Taxonomy delegated regulation

- ***What?*** In July 2020 the European Commission presented a roadmap for consultation on a delegated regulation under Article 8 of the Taxonomy Regulation. Although this document contains few details, the European Commission does indicate that it is considering whether the three indicators (turnover, Capex and Opex) that companies must use to indicate what portion of their activities is sustainable requires further explanation for companies that fall under the NFRD, and whether other indicators should be developed for financial undertakings that must provide information under the NFRD.
- ***Who?*** Financial institutions
- ***When?*** The consultation period ended on 8 September 2020. The European Commission has indicated that it will revisit this consultation in Q2 2021.

From action plan to EU taxonomy

In March 2018, the European Commission published the Sustainable Finance Action Plan. Point 1 of the action plan pertained to the introduction of a European classification

system for sustainable activities, an EU taxonomy. On 22 June 2020, the Taxonomy Regulation was published in the Official Journal of the European Union. The Taxonomy Regulation went into effect on 12 July 2020. The Taxonomy Regulation will become directly applicable in all European member states with respect to the taxonomy for the climate transition on 1 January 2022. The taxonomy for the other environmental targets will become applicable as from 1 January 2023.

Final report of expert group on EU taxonomy

On 9 March 2020, the Technical Expert Group on Sustainable Finance (TEG) published its final report on the EU taxonomy. The report contains recommendations with regard to the underlying thread of EU taxonomy, and a detailed implementation guide on how companies and financial institutions can use the taxonomy. The report also includes a technical annex which: (i) provides technical screening criteria for 70 activities to reduce climate change and 68 activities in connection with adaptation to climate change, including criteria for not inflicting significant damage to other environmental objectives; and (ii) an updated methodology to support the technical screening criteria.

The TEG has also created an Excel tool to help users implement the EU taxonomy in their own activities. The TEG and the European Commission have also published a FAQ on the final report and the steps still to be taken in the area of sustainable financing.

Delegated regulations

The Taxonomy Regulation gives the European Commission the task of drafting a current list of ecologically sustainable activities by establishing technical screening criteria for each environmental objective. These criteria will be set out in delegated regulations. In November 2020 the European Commission presented a delegated regulation for consultation. This delegated regulation pertains to the further detailing of the technical screening criteria for activities that make a substantial contribution to limiting climate change and adapting to climate change. This consultation period ended on 18 December 2020.

In addition, the European Commission was given the mandate to adopt a delegated regulation on the EU directive on the disclosure of non-financial information and information in regard to diversity by certain large undertakings and groups (NFRD), and to do so by June 2021. This directive prescribes that large undertakings must provide a non-financial statement that includes information concerning activities that have an impact on environmental, social and employee matters. This information can then in turn be used to classify investments under the Taxonomy Regulation. In the delegated regulation, the European Commission will specify the way in which the information must be provided. This will consider the content, presentation and method of disclosure of the information. The European Commission has asked the ESAs to advise on the implementation of this delegated regulation. In response, ESMA has published a consultation paper indicating that it will share its findings with the European Commission by 28 February 2021. Likewise, EIOPA has published a consultation paper on this issue indicating that it will be sharing its findings with the European Commission in February 2021.

Taxonomy Regulation

- ***What?*** The Taxonomy Regulation introduces a classification system to determine whether, and if so, to what degree, economic activities can be qualified as ecologically sustainable, taking into account the six objectives defined in the regulation. It will serve as a framework in the EU for the taxonomy for qualifying specific economic activities as ecologically sustainable. The Taxonomy Regulation has the object of increasing the confidence of investors, raising awareness of the environmental impact of financial products, creating visibility and alleviating concerns about 'greenwashing'.
- ***Who?*** Managers, investment firms, financial services providers, insurers.
- ***When?*** Some elements of the Taxonomy Regulation go into effect on 1 January 2022. The Taxonomy Regulation enters into force on 1 January 2023.

Sustainable Finance Disclosure Regulation (SFDR)

- ***What?*** A Regulation that pertains to the provision of information with regard to sustainability for financial products. See the introduction for a more detailed description.
- ***Who?*** Managers, investment firms, financial services providers, insurers.
- ***When?*** Most of the rules go into effect on 10 March 2021.

EC Consultation on introduction of EU Green Bond Standard

- ***What?*** On 6 April 2020, the European Commission opened a consultation to collect the arguments and opinions of interested parties on the potential for the establishment of an EU Green Bond Standard. In this regard it is relevant to mention that the Technical Expert

Group on Sustainable Finance (TEG) produced a report in June 2019 containing a proposal for an EU Green Bond Standard. In addition, in March 2020 the TEG published a usability guide for the EU Green Bond Standard. In an open letter, ESMA responded to the European Commission's consultation on the introduction of the EU green bond standards (GBS). In it ESMA stressed that the success of these green bond standards will be determined by whether these are seen as a reliable indicator for investments in sustainable economic activities. To achieve this, ESMA sees it as necessary for there to be external reviewers under the GBS to conduct the rigorous assessments into the framework introduced at an issuing institution with regard to green bonds. ESMA considers the best way to guarantee assessments of high quality is the introduction of a formal EU registration and supervision system for these external reviewers.

- ***Who?*** Issuing institutions and potential investors.
- ***When?*** In its work programme for 2021 the European Commission announced that in Q2 2021 it would be making a proposal for the adoption of an EU standard for Green Bonds.

EC Consultation on sustainable corporate governance

- ***What?*** On 26 October 2020 the European Commission opened a consultation on sustainable corporate governance. According to the European Commission, sustainability in corporate governance means that companies are encouraged to take ecological (including climate and biodiversity), social, human and economic consequences into account in their business decisions, and to shift focus towards sustainable value creation in the long term and away from financial value in the short term. The consultation has the goal of collecting information and arguments from stakeholders for a potential initiative in sustainable corporate governance.
- ***Who?*** Financial and non-financial institutions.
- ***When?*** The consultation period will close on 8 February 2021. An official proposal from the European Commission is expected in Q2 2021, but more information about the direction of this initiative may be found in the renewed strategy for sustainable financing (which is expected in Q1 2021).

EC Consultation on revision of NFRD

- ***What?*** On 20 February 2020, the European Commission released a consultation document requesting input from various stakeholders on the potential revision of the non-financial reporting directive (NFRD). In the document, the European Commission indicated in part that there is insufficient public information available on how non-financial issues, and in particular sustainability issues, influence companies and how companies themselves have an influence on society and the environment. Additionally, the European Commission observed that companies (that fall under the NFRD) are incurring unnecessary and avoidable costs in relation to reporting non-financial information. The consultation period ended on 11 June 2020. Parties that used the opportunity to respond include the Dutch government, the AFM, ESMA, and EBA.
- ***Who?*** Financial and non-financial institutions.
- ***When?*** In its notice accompanying the European Green Deal, the European Commission committed to revising the NFRD Directive in 2020 as an element of the strategy for promoting sustainable investments. At the time of this writing, it is not clear whether the European Commission will still be presenting a proposal for the revision of the NFRD.

ESA consultations for draft RTS under SFDR

- ***What?*** On 23 April 2020 the ESAs began a consultation to obtain input on the draft Regulatory Technical Standards (RTS) concerning the content, methods and presentation of disclosure obligations under the SFDR. There are a number of different disclosure obligations under the SFDR relevant to the draft RTS, including: (i) the presentation and content of the information in relation to the principle of 'no significant harm' to environmental objectives; (ii) a statement on the website of an entity concerning the due diligence policy with respect to the negative impacts of investment decisions on sustainability factors in relation to the climate, environment, social affairs and employment, respect of human rights and fighting corruption and bribery; (iii) the pre-contractual information on how a product with ecological or social characteristics fulfils those characteristics and, if an index has been designated as a reference benchmark, information on whether and how this index is consistent with these characteristics.
- ***Who?*** Managers, investment firms, financial services providers, insurers.
- ***When?*** Partly as a result of the COVID-19 pandemic, the effective date of the RTS has been postponed to a later date that is not as yet defined. Consequently, the SFDR will go into effect on 10 March 2021 without applicability of the rules worked out in further detail in the RTS. We expect that the RTS will go into effect in late 2021 or early 2022. This means that the indicated undertakings have some extra time to get compliant with the RTS.

ESA templates for transparency under the SFDR

- ***What?*** On 21 September 2020, the ESAs launched a Survey about the templates (also referred to as 'mock-ups') that market parties must use for the disclosure obligations under the SFDR, specifically in regard to the 'Article 8' and 'Article 9' products and periodic reporting. For further relevant information relating to the SFDR, see below.
- ***Who?*** Managers, investment firms, financial services providers, insurers.
- ***When?*** The templates must be complete by the time that the RTS go into effect (see above).

EC letter to ESAs about applicability of the SFDR

- ***What?*** On 20 October 2020 the European Commission sent a letter to the ESAs about the applicability of the SFDR and the underlying RTS. In the letter, the European Commission indicated that while the coronavirus crisis has unavoidably delayed the consultation process on the draft RTS, this delay will not lead to a postponement of the obligations set out in the SFDR.
- **Who?** Managers, investment firms, financial services providers, insurers.
- ***When?*** The SFDR is applicable as from 10 March 2021.

Publication of delegated regulations MiFID II, AIFMD, UCITS, Solvency II & IDD on integration of sustainability risks into business processes

In June 2020, the European Commission shared the draft delegated regulations in regard to the adjustment of MiFID II, AIMFD, UCITS, Solvency II and IDD. The European Commission's proposals are based on the technical recommendations previously drafted by ESMA and EIOPA. These delegated regulations are relevant to investment firms, investment fund managers, insurers and insurance brokers. The delegated regulations answer the questions of how and where these market parties should integrate sustainability risks and sustainability factors into their business models and procedures.

MiFID II delegated regulation

- **Organisational**: the addition that ESG considerations must be taken into account in the compliance with the already mandatory general organisational requirements where ESG considerations are relevant to the investment services provided to clients;
- **Risk management**: the addition that sustainability risks must be considered in the establishment, implementation and maintenance of rules of conduct and procedures for risk management;
- **Conflicts of interest**: the addition that the identification of conflicts of interest also pertain to conflicts in distribution of sustainable investments, including the deceptive promotion of investment products and strategies as sustainable ('greenwashing');
- **Assessment of suitability**: the addition that investment firms must take into account the client's sustainability choices when giving investment advice and asset management services;
- **Product development process**: the addition that ESG preferences must be included in the assessment of whether a financial instrument meets the needs and conforms to the characteristics of the target group.

AIFMD & UCITS delegated regulation

- **Organisational:** the addition that managers must take into account the sustainability risks in the compliance with the already applicable general organisational requirements;
- **Resources (UCITS**): the addition that the obligation of UCITS management companies with respect to professional and expert employees and integrity and professionalism in job performance henceforth also include access to the expertise necessary for effective integration of sustainability risks**;**
- **Internal review:** the addition that the executive-level management is responsible for the integration of sustainability risks**;**
- **Operational:** the addition that in the identification of conflicts of interest, conflicts related to the integration of sustainability risks must also be included, including (but not limited to) resulting from remuneration or personal transactions, or leading to deceptive promotion of investments as sustainable;
- **Duty of care requirements in investment selection and monitoring:** the addition that in the compliance with the applicable duty of care requirements, any sustainability risks and the negative impact of investment decisions on sustainability are considered. Secondly, the addition that wherever possible, strategies to reduce the negative impact of undertakings on sustainability objectives will be pursued, for example, in the exercise of co-determination rights;
- **Risk management policy:** the addition that the policy must make it possible to assess exposure to sustainability risks.

Solvency II delegated regulation

- **Organisational**: the addition that the risk management function comprises the identification and assessment

of sustainability risks and that the remuneration policy incorporates information about its own consistency with the integration of sustainability risks;
- **Operational**: the additional obligation to integrate sustainability risks in the assessment of risk, quality, liquidity and profitability of the investment portfolio and take into account the long-term sustainability impact of investment strategy and investment decisions. Further, a new requirement that the ESG preferences of investors and policyholders be reflected in their investment portfolios where those preferences are relevant to the definition of the target group for the product approval process. Finally, sustainability risks as additional point of attention for the advising of the actuarial function concerning the line of conduct with respect to entering into insurance-technical obligations;
- **Risk management**: (i) for the required risk policy for controlling the risk of loss or negative value changes of insurance obligations, the addition that risk may also be the result of sustainability risks; (ii) for the required risk policy for the control of the investment risk, measures for the adequate identification, assessment and management of the sustainability risks related to the investment portfolio as an added requirement; (iii) the addition that the assessment of general solvency needs henceforth also incorporates the effect of sustainability risks, including climate change

IDD delegated regulation

- **Conflicts of interest:** the addition that the identification of conflicts of interest will also include conflicts of interest related to ESG factors, particularly where clients have expressed ESG preferences;
- **Product development:** the addition that producers of insurance products will consider ESG factors in the product approval process if the product is intended for distribution to clients seeking ESG insurance products.

This set of delegated regulations was open for consultation until 6 July 2020. The definitive proposals of the European Commission must still go through the Council and the European Parliament before being published in the Official Journal of the European Union. We expect that this process will be completed in 2021.

Publication of delegated regulations on sustainability criteria for benchmarks

- ***What?*** In December, the three delegated acts with respect to the sustainability criteria for benchmarks was published in the Official Journal of the European Union. This refers to the following three delegated regulations:
  1. Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published;
  2. Commission Delegated Regulation (EU) 2020/1817 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on how environmental, social and governance factors are reflected in the benchmark methodology; and
  3. Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks.

  Originally, the benchmark managers were obliged to report by 30 April 2020 on how sustainability (in the form of the ESG factors) is reflected in their methodology and their benchmark statements, but at the end of April 2020, in what was titled a 'no-action letter', ESMA called upon national supervisory authorities to give no priority to supervision and enforcement of compliance with the ESG disclosure requirements in their supervisory activities so long as the delegated acts were not yet in force.
- ***Who?*** Benchmark managers.
- ***When?*** The delegated regulations went into effect on 23 December 2020. As from that moment ESMA's call to give no priority to the supervision and enforcement of these ESG disclosure requirements no longer applies.

OTHER EUROPEAN DEVELOPMENTS

EC Consultation on renewed strategy for sustainable financing

- ***What?*** On 8 April 2020, the European Commission opened a consultation on its renewed strategy for sustainable financing. In its renewed strategy, the European Commission intends to focus on the following three subjects: (i) a foundation for sustainable investments by creating a framework with appropriate resources and structures; (ii) creating more opportunities for individuals, financial institutions and other commercial undertakings to have a positive impact on sustainability; (iii) the need to fully integrate the climate and environmental risks into financial institutions and the financial system as a whole. Multiple supervisory authorities, including the AFM, ESMA and EBA, responded to this consultation.

- ***Who?*** Financial and non-financial institutions.
- ***When?*** The European Commission has indicated that it will be publishing its renewed strategy in Q1 2021.

ESMA sustainable financing strategy

- ***What?*** In February 2020 ESMA published its strategy on sustainable financing. The strategy describes how ESMA intends to give sustainability a central role in its activities by integrating the ESG factors into its work. The strategy emphasises ESMA's most important priorities, such as the strive for convergence of national supervision practice on ESG factors, underscoring the importance of the reduction of the risk of greenwashing, the prevention of dubious sales practices, and the promotion of transparency and reliability in the reporting of non-financial information.
- ***Who?*** Financial institutions.
- ***When?*** Where ESMA has not yet implemented the points of its 2020 strategy, it is expected to do so in 2021.

EIOPA discussion paper on integration of climate change into Solvency II standard formula

- ***What?*** In December 2020 EIOPA published a discussion paper on the methodology for the options to incorporate climate change into the 'Nat Cat module' for the calculation of the Solvency Capital Requirement (SCR). The frequency and severity of natural disasters is expected to increase as a result of climate change. Improved climate projections show that extreme weather such as heat waves, heavy precipitation events, drought, extreme winds and flooding will increase in many European regions. In order to shore up the financial resilience of insurers and reinsurers against natural disasters, the Nat Cat module must be kept current in light of climate change. Against this background, EIOPA proposes a number of methodological steps and process changes to integrate climate change into the calculation of the risk of natural disasters. This paper is a follow-up to EIOPA's opinion on Solvency II and sustainability, and should be seen in the context of EIOPA's broader sustainable finance agenda.
- ***Who?*** Insurers and other interested parties.
- ***When?*** Interested parties can provide input until 26 February 2021. EIOPA expects to produce a definitive report in the summer of 2021.

EIOPA Discussion paper on non-life underwriting and pricing in light of climate change

- ***What?*** In December 2020, EIOPA published a discussion paper on non-life underwriting and pricing in light of climate change. The paper highlights challenges associated with current non-life underwriting practices and options to ensure the availability and affordability of insurance products, in the context of climate change. The discussion paper builds on work stemming from the Opinion on sustainability within Solvency II and is part of EIOPA's overall sustainable finance agenda.
- ***Who?*** Insurers and other interested parties.
- ***When?*** Interested parties can provide input until 26 February 2021.

EIOPA Consultation on supervision of the use of scenarios for climate change in ORSA

- ***What?*** In October 2020 EIOPA published its draft opinion on the use of climate change scenarios in the Own Risk and Solvency Assessment (ORSA). In the draft opinion, EIOPA set out its expectations with regard to how national supervisory authorities should oversee the integration of climate change scenarios into the ORSA. For example, EIOPA indicates that supervisory authorities must require from the institutions under their supervision that, where the risks of climate change apply when identifying the material risks of climate change they must take into account at least two scenarios, being: (i) a risk scenario for climate change in which the global increase in temperature remains below 2°C, and preferably not exceeding 1.5°C, in accordance with the EU obligations; and (ii) a risk scenario for climate change in which the global temperature increase exceeds 2°C. In the draft opinion EIOPA also gives practical tips on the selection and implementation of scenarios.
- ***Who?*** Insurers and other interested parties.
- ***When?*** Relevant parties have until 5 January 2021 to respond to the consultation. EIOPA has indicated that it will be publishing its final opinion in the spring of 2021.

Sensitivity analysis of climate-change related transition risks: EIOPA's first assessment

- ***What?*** In December 2020, EIOPA published its first sensitivity analysis of climate-change related transition risks in the investment portfolio of European insurers. The report explores, among other things, current holdings of corporate bonds and equity that can be related to key climate-policy relevant sectors such as fossil fuel extraction, carbon- intensive industries, vehicle production

and the power sector. The sensitivity analysis is part of EIOPA's broader sustainability agenda to integrate ESG risk assessments in the regulatory and supervisory framework.

- ***Who?*** Insurers.
- ***When?*** EIOPA sees this report as a contribution to the discussion on transition risks at a European level, rather than as a final, conclusive assessment. It is therefore to be expected that EIOPA will conduct sensitivity analyses more often in the future.

NGFS publishes recommendations for the management of climate and environmental risks

- ***What?*** In May 2020, the Network for Greening the Financial System (NGFS) published recommendations for the management of climate and environmental risks in the form of five recommendations for supervisory authorities. They recommend that supervisory authorities make arrangements for adequate risk management of climate-related and environmental risks by financial institutions and implement mitigating measures where necessary.
- ***Who?*** Supervisory authorities (and indirectly, the banks under their supervision).
- ***When?*** We expect that DNB will incorporate the documentation referred to above into its supervision of market parties where possible.

NGFS publishes documentation on climate risks

- ***What?*** In June 2020, NGFS published a number of documents on banks' approach to climate risks. It includes, in part: (i) an initial set of climate scenarios for future-oriented risk assessment; (ii) a guide for climate scenario analyses that can be used by central banks and supervisory authorities; and (iii) a study of the impact of climate change on monetary policy. According to NGFS, this documentation will enable the supervisory authorities and the financial institutions under their supervision to better identify, quantify and limit the climate risks in the financial system.
- ***Who?*** Supervisory authorities (and indirectly, the banks under their supervision).
- ***When?*** We expect that DNB will incorporate the documentation referred to above into its supervision of market parties where possible.

ECB supervision of climate-related and environmental risks

- ***What?*** On 27 November 2020, the ECB published the final guide on climate-related and environmental risks. In this guide, the ECB explains what it expects from banks with regard to controlling climate-related and environmental risks within the existing prudential framework. These risks must furthermore be disclosed in a transparent manner. In addition, the ECB specifies how banks are to take climate-related and environmental risks (as determining factors for existing risk categories) into account in, among other things, their governance, risk management and business strategy. In its November 2020 newsletter, the ECB communicated that it will enter into a dialogue with the banking sector in 2021 to see to what extent current practice diverges from the supervisory expectations. This dialogue also serves to identify key areas for improvement. In this context, the ECB also published a report revealing that banks are lagging behind in terms of the information they are providing on climate-related and environmental risks. The ECB intends identifying the remaining lacunas in the second half of 2021 and to discuss these with the banks.
- ***Who?*** Primarily relevant for significant banks. Moreover, DNB has decided to apply the ECB guide in the context of its supervision of less significant banks.
- ***When?*** The guide entered into effect on 27 November 2020. The ECB will enter into a dialogue with banks in 2021 and will start conducting active supervision in 2022 by carrying out targeted investigations.

EBA discussion paper: ESG risks banks and investment firms

- ***What?*** On 3 November 2020, EBA published a discussion paper on the management and supervision of ESG risks for banks and investment firms. In the paper various ESG factors and ESG risks are identified and explained by EBA, giving particular consideration to risks stemming from climate change. EBA also reflects on the ongoing progress that institutions and supervisory authorities achieved on this particular topic over the recent years. EBA also considers social and governance factors in its analysis and also explores why and how these factors can also be sources of risk for institutions. The feedback will ultimately inform the EBA's final report on management and supervision of ESG risks for banks and investment firms. The feedback will also be taken into account in the development by EBA of a technical standard in the context of the implementation of ESG risks in the disclosure requirements belonging to the Pillar 3 and CRR2 requirements. In addition, EBA will assess whether a dedicated prudential treatment of exposures

related to assets or activities associated substantially with environmental and/or social objectives would be justified as a component of Pillar 1 capital requirements. Reference is made here to the EBA's Action Plan on Sustainable Finance.
- ***Who?*** Banks and investment firms.
- ***When?*** The consultation runs through 3 February 2021. EBA expects to publish its final report in June 2021.

IOSCO Report: 'Sustainable Finance and the Role of Securities Regulators and IOSCO'

- ***What?*** In April 2020 IOSCO published a report on sustainable financing and the role of supervisory authorities. The report presents a list of the current initiatives by both supervisory authorities and the industry, and a detailed analysis of the most relevant ESG-related international initiatives. IOSCO also identifies a number of areas where improvements can be made and highlights the importance of IOSCO playing a key role in this area. The report underscores three recurring themes: (i) the lack of consistency and comparability of the current frameworks being used in the context of sustainable financing and disclosure; (ii) a lack of shared definitions of sustainable activities, and (iii) greenwashing and protection of investors. To address these challenges, IOSCO is establishing a sustainable finance task force.
- ***Who?*** Issuing institutions and asset managers.
- ***When?*** We expect that in 2021 the IOSCO will present proposals for addressing the challenges it has identified.

DEVELOPMENTS IN THE NETHERLANDS

AFM and sustainability position paper

In June 2020 the AFM published a position paper describing the broad outlines of its expectations from market parties in the area of sustainability and how it intends to exercise its supervision in this area. The paper describes the most significant risks for investors and other actors in the financial market in relation to sustainability and what this means for the AFM's supervision.

The AFM sees the failure of the market as a source of supervisory risk. The market for sustainable financing is exposed to various forms of market failure: externalities, information imperfection, and irrationality and biases. Because of this failure, supply and demand in the market for sustainable financing are not adequately coordinated.

The AFM indicates that in its supervision it is devoting particular attention to the following risks: (i) shocks in the valuation of financial instruments; (ii) investors' information disadvantage with respect to sustainable investment; (iii) the lack of reliable, standardized information; (iv) greenwashing.

There are three central assumptions underlying the AFM's supervision of sustainability:
- Undertakings provide reliable and accessible information about sustainability factors in the commercial activities.
- Financial institutions involve sustainability aspects in their operations, product development, risk management and investment decisions, and exercise transparency in doing so.
- Consumers and other types of customers are properly informed and advised on sustainability factors to support their financial decisions. They get a product that is a suitable answer to their need.

Market parties can expect that the AFM will include the points described above (and the other points presented in the position paper) in its supervision in 2021.

AFM report on sustainable bonds in the Netherlands

- ***What?*** In April 2020, the AFM published a report on the market for sustainable bonds in the Netherlands. In the report the AFM discusses the growth of the sustainable bond market, the need for transparency and standardisation in this market and its impact on the AFM's supervision. The AFM expresses its expectation that the market for sustainable bonds will continue to grow fast. Additionally, the AFM indicates that increased transparency and standardisation would be beneficial to the market. In the area of supervision, the AFM calls for more transparency on certain information in the prospectus, such as the use of the revenues and the description of the impact of the investment. The AFM exercises supervision of the reporting of non-financial information in the management report by listed companies, and here strives for integration of sustainability reporting.
- ***Who?*** Issuing institutions and potential investors.
- ***When?*** We expect that the AFM will have incorporated the points for attention from this report into its supervision in the course of 2021.

AFM survey of sustainable investment by consumers

- ***What?*** A consumer research survey by the AFM shows that private investors seem to be willing to accept lower returns and more risk if investments are sustainable. This, according to the AFM, is the reason why supervision of sustainable investments and the sustainability claims

of offerors is so important. The AFM wants to prevent greenwashing, that is, offers deceptively promoting non-sustainable products as sustainable investments.
- ***Who?*** Offerors of sustainable investment products and potential investors.
- ***When?*** Our expectation is that the AFM will be conducting active supervision to combat greenwashing in 2021 (and the years thereafter).

AFM Trend Monitor 2021

On 3 November 2020, the AFM published its annual analysis of the developments that will shape the financial sector and its supervision in the coming years, the Trend Monitor 2021. In Trend Monitor 2021 the AFM makes the following relevant observations on the subject of sustainability:

- **Transition to a sustainable economy and society**: the market for sustainable financial products and investments is growing. The AFM sees the biggest challenge as being the availability and quality of information on sustainability risks and performances. It is this information that investors must rely on to make their investment decisions. Upcoming new European legislation is going to set new requirements on this information disclosure. The AFM expects that these will improve the availability, reliability and comparability of sustainability information.
- **Sustainability performance of financial products is still not clear enough or verifiable enough for investors**: the AFM observes that the market for sustainable financing still faces a number of challenges. One of the most significant is the degree to which sustainability performance is clear and verifiable for the investor. The AFM indicates that new European legislation is on the way that will set requirements on the provision of information on sustainable products.
- **ESG ratings play an important role in sustainable investments**: the AFM considers that important steps are being taken towards a standardized definition, but also maintains the opinion that sustainability is still not a clearly defined concept.
- **ESG ratings can differ sharply between rating agencies**: the AFM sees as one important issue about ESG ratings that there is a lack of fixed rules on the methodology, governance and reporting requirements that all rating agencies must meet. As a result, there can be significant differences between the ratings of different rating agencies. These differences can arise from the use of different ESG components, assessment methods, weightings and evaluations. The different assessments of ESG performance of a company make these ratings difficult for investors to compare.
- **The AFM considers the unregulated status of ESG rating agencies a point of attention and is a proponent of an international standard for non-financial reporting:** the AFM proposes regulating the ESG rating agencies and placing them under the supervision of a body such as ESMA. With respect to the international standards for non-financial reporting, the AFM considers that the European Commission must take the lead in this.

We expect the supervision of sustainability to be one of the AFM's key focus areas in 2021 and subsequent years.

AFM call for regulation of providers of sustainability data and related services

- ***What?*** In December 2020, the AFM, together with its French counterpart *Autorité des marchés financiers* (AMF), published a position paper in which the supervisory authorities call for the regulation of providers of sustainability data and related services. The AFM and AFM believe this reduces the risk of misallocation of investments or greenwashing and helps investors make sustainable investment decisions. According to the supervisory authorities, the regulation of ESG services will become one of the key measures of the European Commission's renewed sustainable finance strategy. In the paper, the AMF and the AFM propose the creation of a European regulation that would entrust the supervision of ESG rating agencies and other providers of sustainability services to ESMA.
- **Who?** ESG rating agencies and other providers of sustainability services.
- ***When?*** It is unclear at this time what the EC will do with this proposal. We advise market parties to monitor this call closely.

DNB Supervisory Strategy 2021-2024

In November 2020, DNB published an updated Supervisory Strategy for the years 2021-2024. DNB's previous Supervisory Strategy was published three years ago, but the revised approach to supervision and the new multi-year cost framework for supervision were the reasons for DNB to update the Supervisory Strategy. The new version frames supervision of sustainability and a perspective on the future as one of DNB's key focus areas.

On sustainability, DNB has the ambition to embed the management of the sustainability risk in the supervision. DNB is focusing on the identification of risks by institutions and will ensure that sufficient risk management measures are in place. To do this, DNB must develop a set of supervision instruments with an adequate level of forward-looking perspective. DNB will also be making efforts to identify data and information gaps (and to fill them). DNB also wants to contribute to the development

of more precise methods for measuring climate-related financial risks. DNB expects financial institutions to be transparent about how they incorporate sustainability into important decisions such as investment policy or the decision to extend credit.

DNB indicates that in the coming years it also wants to be part of the process of drafting international regulations intended to improve the management of sustainability risks. These could be, for example, international standards like those of the BCBS, or European guidelines such as those of the EBA. DNB will also be continuing to develop the methodology for climate stress tests in a European context.

DNB is also focusing on boosting the change capacity of financial institutions. DNB indicates that it is up to the institutions to anticipate changes and address them. There must be a capacity for change at all levels of the organisation. DNB also indicates that in the regular supervisory discussions and on-site audits, the focus on changing business models is high. Here the relevant question is whether institutions are remaining within their individual established risk profiles with their risk exposure. DNB's assumption is that risk profiles must be appropriate based on the societal function that the specific institution fulfils. An additional question is what activities are important for the profitability of a financial institution and whether these activities are viable for the future.

We expect that DNB will be incorporating these key focus areas into its supervision in the coming years.

DNB Good Practice climate-related risks

- ***What?*** In April 2020 DNB published the Q&A and Good Practice document 'Integration of climate-related risk considerations into banks' risk management'. In this Good Practice, DNB provides tools for the integration of climate-related risks in banks' governance, risk management and reporting. Climate-related risks must be understood to include both physical risks (e.g. damage caused by extreme weather conditions) and transition risks (e.g. change of business models and amendment of regulations for the benefit of a carbon-neutral economy). The exposure to these risks at clients and assets of the bank and at the bank itself can lead to an impact on risks to which the prudential rules of banks pertain: credit risk, market risk, operational risk, concentration risk, liquidity risk, etc. In the Q&A, DNB offers its interpretation of how existing legislation applies to climate-related risk management. The Banks section reviews this Good Practice in more detail.
- ***Who?*** Banks.
- ***When?*** We expect that DNB will incorporate this Good Practice (and the Q&A) in its supervision of banks in 2021. We also expect that in the coming years the approach to climate-related risks on the part of banks will become a supervisory dossier of the same depth, scope and enforcement risk as the integrity dossier.

DNB application of ECB Guide on climate-related and environmental risks

- ***What?*** According to a news report on its website, DNB, following the ECB's recommendation, will apply the ECB Guide on climate-related and environmental risks for banks in its supervision of less significant banks. In doing so, DNB will follow the approach adopted by the ECB in respect of the large, significant banks under the direct supervision of the ECB.
- ***Who?*** Less significant banks under DNB supervision.
- ***When?*** DNB's application of the ECB guide took effect on 10 December 2020.

DNB and PBL study of risks of loss of biodiversity

- ***What?*** Together with the Netherlands Environmental Assessment Agency (*Planbureau voor de Leefomgeving,* PBL), DNB conducted a study into the risks of loss of biodiversity. DNB and PBL reached the conclusion that the financial sector runs risk exposure from biodiversity loss. Financial institutions are exposed to physical risks resulting from the financing of economic activities that depend on ecosystem-based services. Additionally, financial institutions are exposed to transitional and reputational risks when companies they finance have a disproportionately negative impact on biodiversity. DNB therefore recommends that financial institutions survey their physical, transitional and reputational risk exposure relating to the loss of biodiversity. In this regard it is relevant to note that a number of Dutch financial institutions have signed the 'Pledge', by which they have committed to stopping the loss of biodiversity in the coming years and focusing on recovery with their investments and financing.
- ***Who?*** Financial institutions.
- ***When?*** We expect that in the future DNB will be incorporating the risks of biodiversity loss into its supervision.

Climate-related risks to be part of fit and proper assessments

- ***What?*** DNB will not only be incorporating climate-related risks into its assessment of financial institutions' risk management at the institution level. DNB also considers it

important for the individual management board members and supervisory board members of the financial institution to be familiar with the climate-related risks to which the financial institution is exposed. To that end, in November 2020 DNB published a news report announcing that starting next year, climate-related and environmental risks will become a standard part of the fit and proper assessments at financial institutions. A candidate management board member, supervisory board member or regulatory official may be asked, for instance, about his or her knowledge of climate-related and environmental risks, relevant legislation in this area, and the impact thereof in the context of the institution. Additionally, DNB will ask the institution to, when submitting the assessment file, include an explanation of the candidate's knowledge and experience in the area of climate-related and environmental risks, for example, in describing the decision-making process and considerations in respect of the appointment and/or in the notes to the suitability matrix.

- ***Who?*** Banks, pension funds and insurers.
- ***When?*** Effective 1 January 2021 on assessments of new management board members and supervisory board members and reassessments of existing ones.

Deforestation Guide

- ***What?*** The Platform for Sustainable Financing has published a guide on combating deforestation. The guide presents an overview of the available services and instruments financial institutions can use to identify, analyse and fight deforestation linked to their financial activities. Along with an action plan, it also provides a number of best practices from the Dutch financial sector.
- ***Who?*** Financial institutions.
- ***When?*** DNB and the ECB have announced that in the future, the risks of loss of biodiversity (including deforestation) will become a part of their supervisory activities.

Paper on relationship between biodiversity and the financial sector

- ***What?*** The Platform for Sustainable Financing has released a paper in which a group of eight Dutch financial institutions share how their organisations are trying to fight biodiversity loss. The paper attempts to give insight into two issues: (i) how financial institutions can be affected by risks resulting from biodiversity loss, and (ii) how they can have a positive impact on the preservation and restoration of biodiversity.
- ***Who?*** Financial institutions.
- ***When?*** We expect that in the future DNB will be incorporating the risks of biodiversity loss into its supervision.

Climate Risk Working Group: 'as a financial institution, discuss climate risks with clients'

- ***What?*** The Platform for Sustainable Financing has presented a compilation of contributions highlighting that the financial sector needs to be giving more attention to climate risks in discussions with clients. With business clients, financial institutions can primarily discuss the potential impact of climate risks on their business operations. In the case of mortgage owners, it can be pointed out that climate risks can arise if a home is not upgraded to the latest environmental standards. The Platform for Sustainable Financing advises the government and supervisory authorities to make relevant climate information available and easily accessible by registering it in a new European ESG register. The Platform also recommends creating a 'regulatory sandbox' for financial institutions to collect experience with climate risks and opportunities.
- ***Who?*** Financial institutions.
- ***When?*** At present it is not entirely clear what DNB intends to do with this compilation. We can imagine that DNB will take certain points from it to incorporate into its supervision or explore in more detail at the European level at some point in the future.

Financial Sector Climate Commitment framework

- ***What?*** KPMG was commissioned by the Financial Sector Climate Commitment Commission to develop a framework. Participating financial institutions will be able to use this framework in their reporting. It presents institutions with questions in the following three categories: (i) measuring CO2 content; (ii) action plans, climate targets and actions; (iii) other questions.
- ***Who?*** The signers of the Climate Commitment.
- ***When?*** The financial institutions have committed to reporting, from financial year 2020, on the climate impact of their relevant financing and investments to the Financial Sector Climate Commitment.

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