

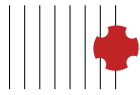
Outlook 2022

Finnius Outlook 2022

DISCLAIMER

In this Outlook we identify certain developments for 2022. This Outlook does not contain a complete overview of all relevant supervisory regulations for the financial undertakings mentioned herein. This Outlook is therefore not intended as legal advice. For information on the processing of your personal data, please see our Privacy Policy on www.finnius.com.

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Introduction

outlook 2022

Outlook 2022

Finnius' team has made an effort to summarize the regulatory expectations for you in a concise and to-the-point manner. This Finnus Outlook 2022 outlines the important developments that financial institutions may find on their path in 2022. We realize that the overview presented is a snapshot based on the initiatives and proposals as known at the end of 2021. But we have tuned the viewer extra sharply and believe we can again present a relevant and good overview in this year's Outlook.

What is striking is that in 2022 the financial sector will once again have to take into account numerous developments and changes. At national level, a large number of legislative proposals and amendments to regulations are being processed or prepared. Due to the lengthy formation process of the Dutch government, the legislative process has in many cases been delayed, but this is expected to lead to a catch-up in the first half of 2022, with the Financial Markets (Amendment) Act 2022 and the Bill on Plan of Action for Money Laundering as prominent regulations. The supervisors AFM and DNB have determined their focus for 2022 and the European supervisory organizations (EBA, EIPOA, ESMA) have presented their work programs at the end of 2021. These organizations are also preparing amendments to guidelines, standards and supervisory rules in a substantial number of areas. The number of ongoing consultations and announced consultations is as high as ever.

What is also striking is the continuing attention of regulators and supervisors to the impact of climate risks for financial institutions, to the theme of "sustainability" and to the financial sector's commitment to preventing money laundering. We have given this a place in this Outlook by including cross-sector specials on Sustainability and Integrity again this year. These topics are here to stay for the financial sector and therefore deserve a prominent place.

We have expanded the circle of financial institutions this year. The skepticism of authorities regarding cryptocurrencies from years ago has given way to regulation of crypto service providers. Those parties - along with FinTech companies - have been given their own chapter in this Outlook. This is a good example of a group of innovative service providers that manages to put a lasting footprint in society and then finds regulation in its path.

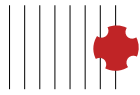
As a practical guide for the Outlook, we would like to point out that - apart from the general themes mentioned above - the information is always presented by type of institution. This allows you to quickly find the relevant developments for your institution or area of interest. Also, it is clear to us that you would like to look ahead as concretely as possible and have the sources immediately at your fingertips. The 'what'/'who'/'when' structure with hyperlinks to the consulted sources and documents has therefore been maintained due to the many positive reactions. We believe we have once again produced an informative and useful overview for you.



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



GENERAL DEVELOPMENTS

This section deals with topics that by nature cannot be linked specifically to one or certain parties being active in the financial markets, but are applicable in a broader sense to everyone who operates in Dutch financial markets. In addition, this section devotes attention to two market parties to whom no separate section in the Finnius Outlook is designated, being CCPs and Audit Firms.

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

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- Dutch Financial Markets Amendment Act 2021
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EUROPEAN REGULATORS

- ESA's Joint Committee Work Program 2022
- ESMA Work Programme 2022
- EBA European Supervisory Examination Programme (ESEP) 2022

CONSUMER PROTECTION

- EC Consumer Agenda 2020-2025
- EC Proposal Directive on Distance Marketing of Financial Services
- Implementation of the Consumer Protection Modernization Directive

Initiative note 'From 'neutral' arbitrator to consumer guardian.

Progress on the Consumer Choices Action Plan and Principles for Using Consumer Behavioral Insights
AFM Discussion Paper Pre-contractual Information Documents in Consumer Protection

AUDIT FIRMS

- Direct AFM supervision from 2022 on non-oob audit firms
- Act on the future of the accountancy sector

EMIR

- ESMA guidelines on transfer of data between Trade Repositories
- ESMA guidance on reporting under EMIR
- Delegated Regulation EMIR on commercial terms for clearing services
- EBA RTS on Initial Margin Model Validation
- ESMA discussion paper regarding EMIR clearing thresholds

BENCHMARKS

- EC Implementing Regulations CHF LIBOR and Euro overnight index average
- ESMA Work Programme 2022
- ESMA statement on clearing obligations and derivatives trading under benchmark transition
- ESMA Final Report methodology, supervisory function and administration under the Benchmark Regulation
- ESMA Technical Advice on penalties for benchmark administrators
- ESMA Sector-specific contribution to sustainable finance
- ESMA Brexit impact statement
- Delegated Regulation on governance arrangements for benchmark administrators
- EBA Thematic Note Regarding Phasing Out LIBOR and EONIA
- EBA Consultation on adaptation of technical standards for internal models for benchmarks
- Joint statement by AFM and DNB regarding request for interest rate benchmarks

AFM Recommendations to mitigate behavioral risks of benchmark transition
 Letter ERFRWG regarding statutory substitution of rates for GBP and JPY LIBOR

CSDR

CSDR review
 ESMA opinion further postponing part of settlement discipline rules
 ESMA guidance on reporting on settlement fails

MARKET ABUSE REGULATION

Template for cooperative arrangements third countries under Delegated Regulation supplementing MAR
 ESMA Consultation on amendments to MAR guidelines on insider information obligations
 ESMA's Statement on investment recommendations via social media

SFTR

ESMA Q&A SFTR data reporting
 ESMA Guidelines relating to reporting under Articles 4 and 12 SFTR
 ESMA Guidelines on the calculation of positions under the SFTR

CCPS

European legal framework for recovery and resolution of CCPs
 EC proposal to extend equivalent decision for UK-based CCPs
 EC decision to last grant of transitional capital requirement regime for non-EU CCPs
 EBA Consultation on amendment to ITS with restrictions on availability of liquid assets
 ESMA Consultation CCP recovery plan
 ESMA Launch CCP stress tests (including operational risks)
 ESMA Publishing methodology for third country CCPs
 ESMA Guidance on outsourcing to cloud service providers
 ESMA Consultation implementation RTS and draft guidelines for CCPs
 ESMA Consultation regarding highly liquid financial instruments in light of investment policies CCPs under EMIR
 ESMA Guidelines on 'supervisory review and evaluation process'.
 ESMA publishes results of survey on systemically important UK CCPs
 Ministry of Finance Consultation on Implementation Act on Recovery and Settlement Regulation CCPs
 Ministry of Finance Implementing Order on Recovery and Settlement of CCPs
 CPMI & IOSCO Call for comments regarding access to clearing services and portability
 FSB - 2021 Resolution Report: 'Glass half-full or still half-empty?'

Other developments

Investment, Mergers and Acquisitions Security Test Act

SUPERVISION, ENFORCEMENT & PROCEDURES

AFM Trend Monitor 2022

At the end of 2021 the AFM provided its vision of the trends and associated risks with respect to the supervision of the financial markets for 2022. The AFM published its [Trend Monitor 2022](#) on 4 November 2021. The concrete implications of the trends and risks for the AFM's supervisory activities are elaborated in its Agenda 2022, which will be published by the AFM in early 2022. In the specific sections of this Finnius Outlook 2022, topics from Trend Monitor 2022 are highlighted for a particular sector. Below, the Trend Monitor 2022 is discussed in a more general sense.

In the report, the AFM identifies the following seven trends and associated risks:

- **Macroeconomic developments:** the AFM notes that the pace of economic recovery remains uncertain. Financial markets are optimistic, but recently rising inflation expectations can dampen sentiment. With interest rates remaining low, sometimes even negative, the search for yield continues. As a result, prices of riskier assets are rising. According to the AFM, the effect of the low interest rate among individuals is reflected in a strong increase in the number of investors. A point for attention according to the AFM is that retail investors, in their search for alternatives to saving, are switching to investment products of which they do not properly assess the risk. A second concern related to low interest rates is the risks to financial stability due to the vulnerability of financial markets to overvaluation and abrupt market shocks. A third area of concern identified by the AFM, and again related to the low interest rate, concerns the profitability and soundness of financial institutions, primarily insurers. According to the AFM, the return on investments remains low due to the low interest rate, while the long-term liabilities increase. This can create an area of tension in the careful treatment of customer interests and the sustainable design of the business model.
- **Developments in the areas of housing, work and pensions:** the AFM notes that the Dutch housing market continues to overheat and in the rental market supply is structurally mismatched with demand. First-time buyers in particular run the risk of borrowing too much without justification. In the Dutch labour market, the high degree of flexibilization puts pressure on the income security of a large group of workers.



According to the AFM, this underlines the need for households to maintain sufficient financial reserves to be able to withstand economic shocks. With regard to pensions, the AFM points out that in the new pension system - which must take effect no later than 2027 - pension participants will have more responsibility. The largely variable benefits can have a significant impact on the level of the pension. The transition to this new system is extensive and complex, which is reinforced by the vulnerable financial position of pension funds.

- **Digitization:** the AFM points out that the increasing use of data by market participants also entails risks. The lawful handling of personal data and the security of data against cyber attacks requires continuous attention. The AFM also sees risks in the increasing importance of big tech for the financial sector, such as concentration risks with regard to cloud services. The AFM also points out that investing in risky crypto-assets is taking off and that European regulations are being drawn up (the *Markets in Crypto-assets Regulation*, see the section on Fintech & Crypto).
- **Internationalisation:** in the context of this trend, the AFM mentions that supervisory convergence as the next step in European cooperation is increasingly influencing the activities of the AFM. Furthermore, the Netherlands has become one of the most important trading centers for shares in Europe and foreign players know how to find their way to the Netherlands through the European passport system. The latter also brings with it disadvantages, such as the increase of illegal parties.
- **Sustainability:** the AFM notes that financial companies play an important role in the sustainability transition and are increasingly held accountable for this. At the same time, the laws and regulations are still being developed.
- **Integrity:** with regard to the subject of integrity, the AFM describes that money laundering and other financial crime affect the integrity of the financial and economic system. The AFM emphasizes that financial institutions have an important function in preventing criminals from bringing illegally obtained assets into the financial system or using the financial system to conduct illegal activities.
- **Changes in the supervisory landscape:** the latest trend identified by the AFM is that the supervisory landscape is changing. The government is expected to take an increasingly active stance. The AFM in particular is being given more tasks, such as in the field of pensions and accountancy. In addition, the influence from Europe on the priorities of national regulators such as the AFM is growing.

DNB Supervision in focus

- **What?** On December 7, 2021, DNB published the document '[Supervision in focus](#)'. In this document, DNB sets out what its spearheads will be for supervision in 2022, namely:
 - Responding to technological innovation: DNB will continue to challenge institutions in 2022 on their strategy and the sustainability of their business model, in light of the digitization of financial services.
 - Steering for sustainability and future-proofing: by 2022, DNB will embed sustainability in its supervisory methodology, making sustainability risks an integral part of regular supervision and the assessment frameworks used within it. For example, DNB will start to include climate risks in periodic risk assessments and will use supervisory interviews, deep dives and on-site surveys to get a better picture of how institutions are managing climate risks.
 - Combating financial-economic crime: in 2022, DNB will continue to monitor the implementation of remediation and improvement agreements made with banks. The integrity supervision of payment and electronic money institutions is also an important area of attention for DNB. DNB will continue its cooperation with the AFM and the Ministry of Finance to jointly propagate a good European approach.
- **Who?** All financial companies that are (also) supervised by DNB.
- **When?** The spearheads look at DNB's supervision in 2022.

DNB Vision and strategy 2025

- **What?** In early December 2021, DNB published a [document](#) outlining its medium-term strategy. DNB describes six ambitions that should be achieved by 2025. The ambitions are (in)directly related to DNB's supervisory task. The ambitions include the following themes: 'Corporate Social Responsibility', 'balanced economic relations', 'data-driven working methods', 'trust in financial institutions', 'diversity of staff and effective dialogue with stakeholders' and 'effective and cost-conscious task performance'. In relation to the financial sector, DNB describes its vision as follows:

"DNB is committed, independently and as part of the European Union, to a trusting, shock-resistant and future-oriented financial sector. It identifies threats to financial stability in a timely manner and takes appropriate control measures. DNB stands for a financial sector that supports economic activity. As an independent central bank, supervisor and resolution



authority, DNB is influential both nationally and internationally by always seeking close cooperation and dialogue with stakeholders. DNB is committed to further European harmonization, for example in the field of integrity supervision and the supervision of insurers and CCPs."

- **Who?** All institutions supervised by DNB.
- **When?** Period 2022 - 2025.

Fine policy of the AFM

- **What?** In July 2021, the AFM published a revised version of its [fine policy](#). In this document, which replaces the AFM's fine policy from March 2015, the AFM sets out the step-by-step plan by which it determines the amount of the fine.
- **Who?** The new fine policy is relevant to all market participants and individuals who are faced with a fine from the AFM.
- **When?** Ongoing.

Exploration AFM possibility of settlement

- **What?** In the [legislative letter](#) that the AFM sent to the Minister of Finance in the spring of 2021, the AFM noted that it will investigate the possibility of settlement in penalty procedures. According to the AFM, a real possibility is that it will reduce an administrative fine by a certain percentage if the fined party agrees not to pursue further legal proceedings.
- **Who?** All market participants and individuals who are faced with a fine from the AFM.
- **When?** We have not seen any examples of settlement attempts by the AFM to date in its penalty practice, so we are curious whether the AFM will make (more) work of this 2022.

Supervisory cooperation in the supervision of digital activities

- **What?** On October 13, 2021, the AFM [announced](#) on its website that it will work more intensively with the Dutch Authority for Consumers and Markets (Autoriteit Consument & Markt), the Dutch Data Protection Authority (Autoriteit Persoonsgegevens) and the Dutch Media Authority (Commissariaat voor de Media) in order to strengthen the supervision of digital and online activities. The various regulators have jointly launched the Collaborative Platform for Digital Regulators. Within this platform, knowledge and experience from supervisory practice will be exchanged on themes such as artificial intelligence, data processing, manipulation

and deception. Furthermore, the supervisors are looking at where they can strengthen each other in enforcement processes, including by jointly tackling digital market problems.

- **Who?** This development is relevant to all market participants supervised by the AFM.
- **When?** Ongoing.

New confidential advisors at DNB and AFM in screening procedures

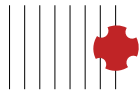
- **What?** On September 13, 2021, DNB [announced](#) on its website that DNB and the AFM have appointed two (new) confidential advisors (*vertrouwenspersonen*) in the context of screening procedures. The new confidential advisors are Mr Van Manen and Ms Monissen. If a person is screened and is dissatisfied with the procedure followed, he or she can turn to these advisors.
- **Who?** All persons whose suitability or integrity is assessed by DNB or the AFM.
- **When?** Ongoing.

Evaluation of the functioning of AFM and DNB

- **What?** On December 14, 2021, the Minister of Finance sent the [results](#) of the evaluation of the functioning of the AFM and DNB to the House of Representatives. The background to this evaluation is the Non-Departmental Public Bodies Framework Act (*Kaderwet zelfstandige bestuursorganen*), which stipulates that the functioning of an independent administrative body (such as the AFM and DNB) must be evaluated every five years by the responsible minister(s). The research bureau that carried out the evaluation makes several recommendations to further improve the effectiveness and efficiency of the supervision of the AFM and DNB. The recommendations relate to, among other things, measuring the effect of supervision, digitalization, mutual cooperation and cost development.
- **Who?** The recommendations and their follow-up by the AFM and DNB are relevant to all supervised institutions.
- **When?** In response to the evaluation, the AFM and DNB noted that they take the recommendations to heart and will address these in the coming period to further improve supervision.

ECB Fine Policy

- **What?** In March 2021, the European Central Bank (ECB) published a [document setting out](#) the principles and method of calculation when imposing fines. By doing so, the ECB aims for transparency and impartiality with regard to the decisions it makes in fines cases.



- **Who?** Institutions and individuals facing a fine from the ECB.
- **When?** Ongoing.

AFM Dutch business climate and levy system

- **What?** On March 30, 2021, the AFM appointed in its [legislative letter](#) that a well-developed capital market infrastructure is important both for corporate finance, such as SMEs, and for large asset managers and institutional investors. The existing capital market infrastructure in the Netherlands attracted many new trading platforms after the Brexit, as well as other parties active in the capital markets. This development can create positive scale and cluster effects that boost the attractiveness of the Netherlands for technology-driven financial services and related services. However, it is not a given that the newly established parties will stay in the Netherlands. There are large differences between the EU member states, which is partly driven by the charging system for supervision (which puts pressure on the business climate in the Netherlands). When developing new legislation at the Dutch as well as the European level, sufficient attention must be paid to the specific characteristics (and preservation of) the Dutch capital market infrastructure.
- **Who?** This is relevant to market participants who are in the Dutch and European capital markets.
- **When?** Ongoing.

AFM: Desire for data-driven supervision

- **What?** In the annual [legislative letter](#) from the AFM to the Minister of Finance, the AFM advocates to include an explicit legal basis for requesting data in the Wft. Currently, in the supervision of financial services (on a regular basis), the AFM receives, in its opinion, insufficient data from financial institutions on the basis of which it can design its compliance supervision in a risk-oriented manner. The Minister has indicated that he will enter into discussions with the AFM on this issue.
- **Who?** All financial institutions under the supervision of the AFM.
- **When?** We expect more clarity in 2022 on how the Minister of Finance will deal with the AFM's wishes on this issue.

DNB Supervision Calendar available digitally

- **What?** On December 23, 2021, DNB announced in its [news release](#) that the Supervision Calendar will become available through DNB's online environment, the Digital Supervision Desk (DLT). There, the Supervision Calendar

Service will become visible. The Supervision Calendar will no longer be published in pdf-form. The Supervision Calendar is institution-specific.

- **Who?** All supervised institutions, except for those supervised by the ECB under the SSM.
- **When?** Ongoing.

FINANCIAL SUPERVISION ACT (FSA)

Dutch Financial Markets Amendment Act 2021

- **What?** At the end of 2019, the Ministry of Finance published the draft Financial Markets Amendment Act 2021 for [consultation](#). The draft act envisages amendments to various laws and provides, among other things, for a legal anchoring of the Financial Stability Board. This issue was addressed in the Outlook 2021. The status of the progress regarding the Dutch Financial Markets Amendment Act 2021 is unknown to us at the time of publication of this Outlook.
- **Who?** The proposal is relevant to supervised financial institutions. It is discussed in more detail at the relevant individual market parties in this Outlook.
- **When?** We expect more information on the progress and enactment of the Financial Markets Amendment Act 2021 to be available in 2022.

Financial Markets Amendment Decree 2021

- **What?** This decree provides for the amendment of the Decree on Conduct Supervision of Financial Undertakings Wft (*Besluit Gedragstoezicht financiële ondernemingen Wft*), the Decree on Prudential Rules Wft (*het Besluit prudentiële regels Wft*), the Decree on Financial Markets BES (*het Besluit financiële markten BES*) and several other decrees in the field of financial markets. On the decision list of the [procedural meeting](#) of December 1, 2021, the procedure of the draft Financial Markets Amendment Decree 2021 is on the agenda. At the end of the procedure, the proposal will be submitted to the Council of State for its opinion. As a result of the public consultation (which ran from July 1, 2020 to August 14, 2020), amendments were made regarding, among other things, active nominal commission transparency (*actieve nominale provisietransparantie*). Following the internet consultation on this Financial Markets Amendment Decree 2021, it was also decided to include the provisions relating to the removal of the knowledge and experience test in a separate [decree](#). This latter decree

entered into force on 1 April 2021.

- **Who?** The Financial Markets Amendment Decree 2021 is relevant to supervised financial institutions. It is discussed in more detail at the relevant individual market parties in this Outlook.
- **When?** We expect more information on the progress and enactment of the Financial Markets Amendment Act 2021 to be available in 2022.

Financial Markets Amendment Act 2022

- **What?** On October 25, 2021, the Minister of Finance presented a proposal for the [Financial Markets Amendment Act 2022](#) to the House of Representatives, of which one of the purposes is to make it possible for DNB and the AFM to maintain a reserve for non-recurring costs within the supervisory funding system. This issue was addressed in the Outlook 2021. The sector-specific aspects of the draft act are discussed in the specific sections of this Outlook 2022. The status of the consideration of this act is included in the [agenda](#) of the House of Representatives during the procedural meeting on November 3, 2021. A legislative report was distributed on November 11, 2021, and the report (act) was introduced on November 18, 2021. To the best of our knowledge at the time of writing this Outlook, no further schedule for the consideration or enactment of this law is available.
- **Who?** The act is relevant to supervised financial institutions. It is discussed in more detail in the sections regarding the relevant individual market parties in this Outlook.
- **When?** We expect more information to be available about the processing of the act in early 2022.

Dutch Financial Supervision Funding Regulations 2021

- **What?** On June 4, 2021, the [Regulation on Financial Supervision Costs 2021](#), as adopted by the Ministry of Finance and the Ministry of Social Affairs and Employment, was published in the Government Gazette. This regulation sets the bandwidths and rates for the reimbursement of supervisory costs by the financial sector for the calendar year 2021.
- **Who?** The regulation is relevant to supervised financial institutions.
- **When?** The regulation entered into force on June 5, 2021. Based on the rates and scales in this regulation, the AFM and DNB will send invoices to the institutions supervised by them in 2022.

Letter to the House of Representatives regarding amendment to the Financial Supervision Funding Decree 2019 by 2022

- **What?** On September 23, 2021, the Minister of Finance submitted to the House of Representatives, with an [accompanying letter](#), the [draft decree](#) amending the Decree on Financial Supervision Costs 2019. This decree proposes two changes to the charging of financial supervision to the financial sector. The first amendment relates to the cost framework determined in respect of the AFM for the period 2021-2024. That cost framework includes an expansion of the costs for auditor supervision. The cost allocation in the Decree on Financing Financial Supervision 2019 (Bbft 2019) must be adjusted to this for the year 2022. The second amendment relates to including payment institutions with a licence in another Member State that operate in the Netherlands in scope of the supervisory costs. These institutions fall under the prudential supervision of DNB to a limited extent, but are fully subject to the integrity supervision pursuant to the Wwft.
- **Who?** The regulation is relevant for auditing organizations and payment institutions licensed in another European member state.
- **When?** Both amendments take effect on January 1, 2022, and thus apply to calculations of fees as of the beginning of the calendar year 2022.

AFM Transparency and accessibility of the DFSA

- **What?** On 30 March 2021, the AFM stated in its [legislative letter](#) that accessible and comprehensible legislation is beneficial to the compliance with financial supervisory legislation and contributes positively to the business climate. In the discussion of the bill "Implementation of the Capital Requirements Act 2020", the Minister of Finance noted that he would strive for gradual legislative improvements to make the law more transparent and accessible. The AFM states that it is willing to help think about a step-by-step improvement of Dutch financial supervision legislation.
- **Who?** This is relevant to market participants who are regulated or subject to the DFSA.
- **When?** Starting in 2022 and beyond.

AFM and AMF: Cooperation on cross-border supervision

- **What?** In a joint [position paper](#), the French and Dutch regulators AMF and AFM call for better cross-border supervision to protect consumers when they purchase



financial products and services from providers from other EU member states. The regulators propose to strengthen the role of national regulators (the host regulator) for cross-border services and to reduce the risk of supervisory arbitrage. To this end, they propose the following solutions: limited due diligence by the home state in the process of granting passports, establishment of a central, up-to-date database of cross-border activities at ESA level; broadening of the host supervisor's capabilities in Article 86 MiFID II and a better division of powers between home and the host supervisor with respect to conduct of business supervision, with more powers for the host supervisor on conduct of business supervision matters.

- **Who?** Financial institutions offering cross-border services to consumers and clients on the basis of a European passport.
- **When?** This position was published as part of the Retail Investment Strategy. In order for one or more of these proposals to apply, the relevant directives and regulations will need to be amended.

EUROPEAN COMMISSION (EC)

Work Programme 2022

- **What?** On October 19, 2021, the EC made public its [Work Programme 2022](#). In this document, the EC describes the different topics it wants to focus on in 2022, such as the recovery of the Covid pandemic, the European Green Deal and digitalization.
- **Who?** The EC's focus areas are relevant to the entire financial sector.
- **When?** The Work Programme 2022 describes the focus areas of the EC in 2022.

Proposals under the Capital Markets Union Action Plan

- **What?** On November 25, 2021, the EC released a [package of concrete legislative proposals](#) to further develop the 2020 Capital Markets Union (CMU) Action Plan. These include a number of proposals related to the European Single Access Point (ESAP). The ESAP is to become a common source of free public information about EU companies and investment products, regardless of where they are based or incorporated in the EU. ESMA is designated to develop the ESAP. The EC's other CMU proposals pertain to (among other things) AIFMD and MiFID II/MiFIR, and are being discussed in the sections of the relevant players. In

addition to these concrete legislative proposals, the EC has announced that it will accelerate its work to establish an "open finance framework", which aims to enable the sharing and reuse of data by financial firms for the purpose of developing new services.

- **Who?** The ESAP is a relevant development for almost all players. The other EC proposals are relevant to, among others, fund managers and investment firms and are addressed in those sections.
- **When?** The EC's proposals must first be approved by the Council and the European Parliament. This process will take time and at the moment it is not clear whether this process will be completed in 2022. The ESAP should become operational by 2024.

Better Regulation plan

- **What?** On April 29, 2021, the EC published a [communication](#) in which it makes a number of proposals for improving European legislation and the process leading up to such new legislation. Among other things, the EC proposes a more streamlined consultation process and calls for the introduction of the principle that for every new law, a similar existing law must be repealed. Also, all new laws must contribute to the sustainability goals of the United Nations and support digital transformation.
- **Who?** All types of financial market participants.
- **When?** Ongoing.

EUROPEAN REGULATORS

ESA's Joint Committee Work Program 2022

The [Work Programme](#) of the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA, collectively the ESAs) was published on 1 October 2022. The 2022 Work Programme shows that also in 2022 the focus will (continue to) be on consumer and investor protection, financial services and products offered to retail investors, prudential analysis of cross-sector developments (including with respect to PRIIPs, SFDR and the Securitisation Regulation) and financial stability risks and vulnerabilities in respect thereof. In addition, the focus is on cybersecurity, financial conglomerates and prudential consolidation, as well as accounting and auditing.

In the framework of the Green Deal and the Sustainable Finance Strategy, the Joint Committee will develop draft technical standards under the SFDR and further increase its



involvement in the European Commission's Digital Finance Package (incl. legislative bills on Digital Operational Resilience (DORA)). Also, the Joint Committee's focus will be on financial innovation (including through coordination and cooperation among national innovation facilitators in line with the FinTech Action Plan) and the cross-sectoral impact on investor protection, EU market integrity and financial stability (as a result of England's exit from the European Union). Finally, the ESAs will further map and monitor external credit assessment institutions (ECAIs) under the Capital Requirements Regulation and Solvency II Directive.

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

ESAs' Joint Committee Work Program describes the focus areas of the ESAs in 2022.

ESMA Work Programme 2022

- **What?** ESMA published its [2022 Annual Work Programme](#) on September 28, 2021. ESMA reflects its supervisory priorities for 2022 in the Annual Work Programme. In 2022, ESMA will continue to focus on its objectives to better protect investors and promote stable and orderly financial markets. ESMA has identified five main priorities for 2022: (i) cross-sectoral priorities such as the development of the Capital Markets Union, ESG under the European Commissions' Renewed Sustainable Finance Strategy and ESMA's own Sustainable Finance strategy and innovation and digitalization (such as Digital Operational Resilience Act, the Markets in Crypto Assets Regulation and the Regulation for market infrastructure based on ledger technology), (ii) contributing to a sound and efficient EU Single Market by promoting supervisory convergence using risk-driven analytics and dedication to consumer protection, (iii) the (early) risk identification and tailor-made supervision (by means of using stress tests) to ensure financial stability, (iv) further developing ESMA as a source of expertise and strategy in financial market regulation as part of the *Single Rulebook* and (v) strengthening the risk-based, preventive approach to supervision and enforcement processes. The specific sections of this Outlook elaborate on ESMA's 2022 Annual Work Programme where relevant.
- **Who?** Given the nature of ESMA's supervisory activities, the 2022 Annual Work Programme is particularly relevant to banks, investment firms, and managers of investment funds, UCITS and, from 2022 onwards, also

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

- **When?** The 2022 Annual Work Program describes ESMA's focus areas in 2022.

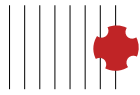
EBA European Supervisory Examination Programme (ESEP) 2022

- **What?** EBA published the [European Supervisory Examination Program \(ESEP\)](#) for 2022 on November 12, 2021, which identifies the key topics that need to attract attention from the supervisory authorities across Europe. The ESEP intends to provide input on the planning processes of prudential supervisors and to shape their supervisory practices. For 2022, five key themes have been identified that require supervisory attention: (i) impact of the COVID-19 pandemic on asset quality and adequate facilities, (ii) information and communication technology (ICT) security risk and ICT outsourcing risk, data aggregation risk, (iii) digital transformation and FinTech market parties, (iv) ESG risks, and (v) anti-money laundering and terrorist financing (AML/CFT).
- **Who?** The ESEP is relevant not only to supervisors but also to supervisory collectives, as converging practices and methods are indispensable in the context of cross-border banking groups.
- **When?** The EBA will consider how the key issues raised by the ESEP (i) are embedded in the competent authorities' priorities for 2022 and (ii) are reflected in their respective activities throughout the year. Thus, we expect that the focus of national supervisors in 2022 will therefore be more directed on the above five items.

CONSUMER PROTECTION

EC Consumer Agenda 2020-2025

- **What?** On November 13, 2020, the European Commission published its Consumer Agenda. The Consumer Agenda concerns a renewed strategic framework for European consumer policy for the years 2020- 2025. The overarching goals of the Consumer Agenda were addressed in the Outlook 2021. In the Consumer Agenda, the European Commission announces that it will make several proposals for new consumer rules. Specifically for 2022, it follows from the Consumer Agenda that the European Commission intends to take into account the developments of the digital transformation and the interests of individual investors in the retail investment strategy (which



strategy should be ready in the first half of 2022). Also, in 2022, after updating the guidance on the [Unfair Commercial Practices Directive](#) and the [Consumer Rights Directive](#), the European Commission intends to analyse whether additional legislation or other measures are needed in the semi-long term in order to ensure that everyone is treated fairly both online and offline. Finally, the European Commission will assist Member States with the timely and efficient transposition, implementation, and enforcement of [the Directive on Better Enforcement and Modernization of Consumer Protection Rules](#), and the announced and expected Directive on Representative Actions for the protection of the collective interests of consumers, once formally adopted and entered into force.

- **Who?** The Consumer Agenda is relevant to all financial institutions that provide services to consumers.
- **When?** The Consumer Agenda translates the European Commission's vision for the next five years (including 2022) and is expected to lead to proposals for new European consumer rules.

EC Proposal Directive on Distance Marketing of Financial Services

- **What?** In the [Consumer Agenda](#) published on November 13, 2020, the European Commission announced that in 2021 it would come forward with proposals to revise, among others, the Distance Marketing of Financial Services Directive. The bill was in consultation until September 28, 2021.
- **Who?** This proposal is relevant to market participants who provide financial services to consumers at a distance.
- **When?** The adoption of the bill by the European Commission is [expected](#) in the first quarter of 2022.

Implementation of the Consumer Protection Modernization Directive

- **What?** On October 13, 2021, the [bill](#) to implement the [Consumer Protection Modernization Directive](#) was submitted to the House of Representatives and has been taken into consideration. The bill amends Book 6 of the Civil Code, the Consumer Protection Enforcement Act and the Prices Act as a result of the aforementioned Directive.
- **Who?** (Online) traders, including online marketplaces, consumers and the supervisory authorities (ACM and AFM) are affected by this regulation.
- **When?** The act is expected to take effect on May 28, 2022.

Initiative note 'From 'neutral' arbitrator to consumer guardian.

- **What?** On February 10, 2021, an [initiative note](#) "From 'neutral' arbitrator to consumer guardian: Proposals to improve the purpose and structure of the Financial Services Complaints Institute (Kifid)" was published, in which a number of improvement proposals are made regarding the purpose and structure of the Kifid based on discussions with consumers, experts and published evaluations of the functioning of the Kifid. On July 12, 2021, the Dutch Parliament responded to the aforementioned initiative note. The government identifies room for improvement with respect to the low threshold of the complaints procedure and the transparency on the follow-up of decisions. Together with the Kifid, the Dutch Parliament also sees room to further counteract the appearance of influencing the sector. The Kifid will follow up on the proposals.
- **Who?** The outcomes from the initiative note and the consideration of the proposals contained therein are potentially relevant to consumers and Kifid member institutions.
- **When?** It is expected that at the end of 2022, the Kifid will report to the House of Representatives the results achieved by the Kifid with respect to the follow-up of the proposals in the initiative note.

Progress on the Consumer Choices Action Plan and Principles for Using Consumer Behavioral Insights

- **What?** The Consumer Choices Action Plan, launched in 2019, aims to find ways to ensure a better consumer choice environment, such as examining whether the maximum loan amount steers consumers towards more expensive homes and higher mortgages. In February 2021, the Minister of Finance provided an [overview of progress](#) in this respect. Completed initiatives include different communication messages to target customers with installment-free mortgages and exploring communication strategies to better protect customers with revolving consumer loans and to prevent future payment problems. The knowledge gained was published via the *Wijzer in geldzaken*-website. Consumers are helped by the provisions of services and by means of developing an environment in which consumers should determine which choice(s) to make in such a way as that it encourages financially sound behavior. In line with this, the AFM published three [Principles for the Use of Consumer Behavior Insights](#) at the end of March 2021: (i) stay aware of the most relevant consumer behavioral insights, (ii) use these insights to promote that consumers make wise financial choices, and (iii) measure the effect of the use of these insights.

- **Who?** All financial institutions.
- **When?** This is a policy statement by the AFM that does not in itself lend itself to enforcement action. However, we expect that the AFM will consider these principles in its ongoing supervision.

AFM Discussion Paper Pre-contractual Information Documents in Consumer Protection

- **What?** The AFM prepared a [discussion paper](#) in October on the role of legally required pre-contractual information documents in consumer protection, according to its news release of [December 21, 2021](#). In the paper, the AFM indicates that other instruments can also protect consumers and that in this respect, it is important to apply insights into consumer and market behavior.
- **Who?** The paper is relevant to market participants who offer their services to consumers.
- **When?** Ongoing.

AUDIT FIRMS

Direct AFM supervision from 2022 on non-oob audit firms

- **What?** From 2022, the AFM will directly [supervise](#) compliance with the Dutch Audit Firms Supervision Act (Wta) by audit firms that conduct statutory audits for organisations that do not qualify as public interest entities ('non-oob'). Until 2022, the regular supervision of non-oob audit firms was actually performed by professional bodies NBA and SRA. In order to give substance to this new situation, the AFM has concluded new [covenants](#) with the NBA and SRA on information exchange in the area of quality and supervision of audit firms, see the [news release](#) from the AFM dated December 23, 2021.
- **Who?** All non-OOB audit firms, about 260 in total.
- **When?** As of January 1, 2022. The AFM has announced that it will build up its supervision in stages.

Act on the future of the accountancy sector

- **What?** On July 9, 2021, the Ministry of Finance consulted on the [draft Act on the Future of the Accountancy Sector](#). The legislative proposal seeks to amend a number of accountancy laws, including the Audit Firms (Supervision) Act. The amendments relate to, among other things, the determination, reporting and publication of 'audit quality indicators',

the strengthening of the governance of the largest accountancy organisations and the simplification and strengthening of supervision by the AFM. The proposal also includes a power for the NBA to designate an audit firm in cases where an audit client does not find an audit firm willing to conduct the statutory audit.

- **Who?** Accountants and audit firms.
- **When?** The consultation ran until September 16, 2021. On November 15, 2021, the Minister announced that he was still studying the consultation responses. In 2022, the Minister is expected to come up with a final bill.

EMIR

ESMA guidelines on transfer of data between Trade Repositories

- **What?** On May 28, 2021, ESMA published a consultation document containing [draft guidelines](#) relating, in particular, to the transfer of transaction data between Trade Repositories. The document consists of two parts: draft guidance under EMIR and draft guidance under Regulation 2015/2365 (the SFTR).
- **Who?** The guidelines are relevant to Trade Repositories, counterparties and CCPs.
- **When?** We expect ESMA to publish final guidelines in early 2022.

ESMA guidance on reporting under EMIR

- **What?** On July 13, 2021, ESMA published [draft guidelines](#) for consultation. The draft guidelines further elaborate on the draft technical standards (RTS and ITS) on the data that parties to derivatives transactions under EMIR Refit must report to Trade Repositories, as well as on the processing of that data by Trade Repositories and access to that data by supervisors.
- **Who?** All parties required to report derivatives transactions under EMIR, as well as Trade Repositories.
- **When?** The consultation period ended on September 30, 2021. ESMA expects to publish the final guidance by Q1 2022, assuming the EC has adopted the RTS/ITS by then.

Delegated Regulation EMIR on commercial terms for clearing services

- **What?** On September 8, 2021, [Delegated Regulation 2021/1456](#) was published in the Official Journal of the EU. The Delegated Regulation complements EMIR by setting out the conditions under which commercial



terms for clearing services for OTC derivatives shall be considered fair, reasonable, non-discriminatory and transparent (Article 4(3a), third paragraph EMIR).

- **Who?** Clearing members and clients which provide clearing services in the EU, where those services are provided in relation to OTC derivative contracts that are subject to the clearing obligation.
- **When?** The Delegated Regulation will apply from 9 March 2022. Trading conditions for clearing services agreed before September 9, 2021, must be reviewed and, to the extent necessary, amended by September 9, 2022.

EBA RTS on Initial Margin Model Validation

- **What?** On November 4, 2021, EBA published draft technical standards (RTS) on Initial Margin Model Validation (IMMV) for [consultation](#). EBA is developing the IMMV RTS under Article 11(15)(aa) EMIR.
- **Who?** The RTS are relevant to counterparties who enter into OTC derivative contracts that are not cleared by a CCP.
- **When?** The consultation period ends on February 4, 2022. Ultimately, the EC will need to adopt the RTS in the form of a delegated regulation.

ESMA discussion paper regarding EMIR clearing thresholds

- **What?** On November 22, 2021, ESMA published a [discussion paper](#) asking market participants for input on issues related to the clearing thresholds included in EMIR. Under EMIR Refit, ESMA must periodically review these clearing thresholds.
- **Who?** ESMA is seeking input from counterparties and CCPs.
- **When?** The consultation period runs until January 19, 2022. ESMA states that it will take the consultation responses into account when preparing a follow-up report.

BENCHMARKS

EC Implementing Regulations CHF LIBOR and Euro overnight index average

- **What?** The EC has issued two Implementing Regulations ([EU 2021/1847](#)) and ([EU 2021/1848](#)) relating to the development of a statutory substitute for certain settings of the Swiss LIBOR rate and the benchmark relating to the Euro overnight index average.

- **Who?** These Implementing Regulations are relevant to parties using the Swiss LIBOR rate and/or the Euro overnight index average.
- **When?** The Implementing Regulations are effective January 3, 2022.

ESMA Work Programme 2022

- **What?** In 2022, ESMA will exercise new mandates in addition to the existing ones, as pointed out in its [Work Programme 2022](#). For example, ESMA will start supervising critical benchmark administrators and Data Reporting Service Providers (DRSPs), with the latter focusing in particular on the availability and integrity of transaction data provided to national regulators for the purpose of monitoring market abuse.
- **Who?** Developments in relation to ESMA supervision in the context of benchmarks as described in the ESMA Work Programme 2022 is of interest to benchmark administrators and DRSPs.
- **When?** The 2022 Annual Work Program describes ESMA's focus areas in 2022.

ESMA statement on clearing obligations and derivatives trading under benchmark transition

- **What?** On December 16, 2021, ESMA issued a [statement](#) clarifying that ESMA's proposed drafts of RTSs on the clearing obligation (CO) and derivatives trading obligation (DTO) will not enter into force in time for the transition to alternative benchmarks of EONIA or LIBOR-based OTC derivatives contracts by the end of 2021. On July 9, 2021, ESMA issued a [consultation](#) in this regard and on November 18, 2021, ESMA published the [RTSs](#) on the scope of the CO and DTO to accompany the benchmark transition. These are still subject to approval by the EC.
- **Who?** The above is relevant to market participants active in OTC trading.
- **When?** The above applies as of January 3, 2022.

ESMA Final Report methodology, supervisory function and administration under the Benchmark Regulation

- **What?** ESMA issued a [consultation](#) on February 25, 2021, of draft guidelines on the methodology that will be applied with regard to a benchmark in exceptional circumstances. Subsequently, on September 24, 2021, ESMA issued the [final report](#) and guidance on the methodology, supervisory function and administration under the Benchmark Regulation. The guidance focuses on providing more transparency to users of benchmarks



in the context of the circumstances that would lead to a deviation from the standard methodology.

- **Who?** The guidelines are relevant to national supervisory authorities and administrators designated under Article 3(1)(6) of the Benchmark Regulation.
- **When?** The guidelines should become effective on May 31, 2022.

ESMA Technical Advice on penalties for benchmark administrators

- **What?** On March 26, 2021, ESMA published a [Technical Advice](#) to the EC providing input regarding procedural guidance in the context of imposing enforcement measures on benchmark administrators. The EC has developed a [Delegated Regulation](#) in this regard.
- **Who?** These developments are relevant to benchmark administrators.
- **When?** The adoption of the Delegated Regulation was scheduled for the third quarter of 2021. At the time of writing, there is no clarity on the timing of the adoption of the legislative proposal by the EC.

ESMA Sector-specific contribution to sustainable finance

- **What?** ESMA highlights on its [website](#) its commitment to making its contribution to a more sustainable financial system. ESMA is committed to contributing to a more sustainable financial system, as part of the European Green Deal and global efforts to achieve the United Nations COP26 goals on combating climate change. In the context of benchmarks, ESMA puts emphasis on promoting effective and consistent supervision between national supervisory authorities in relation to climate benchmarks and the application of sustainability disclosure requirements for benchmarks.
- **Who?** This contribution by ESMA is relevant for parties using (climate) benchmarks.
- **When?** Starting in 2022 and beyond.

ESMA Brexit impact statement

- **What?** On March 9, 2021, ESMA published an [updated statement](#) on its website explaining the application of certain key provisions of the Benchmark Regulation in light of Brexit (*Impact of Brexit on the Benchmark Regulation*). In doing so, ESMA addresses the fact that the transition period of the Benchmark Regulation has been postponed until 31 December 2023, with the result that the change in the ESMA register has not yet had an impact on the ability of EU27 supervised

entities to use the benchmarks provided by third country managers, including those in the UK. During the transition period of the Benchmark Regulation, third country benchmarks can still be used by supervised entities in the EU if the benchmark is already used in the EU as a reference for financial instruments, financial contracts or for measuring the performance of an investment fund.

- **Who?** All parties active in financial markets and dealing with benchmarks.
- **When?** Ongoing.

Delegated Regulation on governance arrangements for benchmark administrators

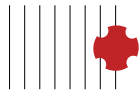
- **What?** On September 29, 2020, ESMA published a [final report](#) containing draft technical standards (RTS) detailing certain provisions of the Benchmark Regulation. On August 13, 2021, a final [Delegated Regulation](#), specifying the requirements to ensure that an administrator's governance arrangements are sufficiently robust, was published in the Official Journal of the EU.
- **Who?** The Delegated Regulation is relevant to all parties operating in financial markets and dealing with benchmarks, and in particular to administrators of benchmarks.
- **When?** The Delegated Regulation will apply as of January 1, 2022.

EBA Thematic Note Regarding Phasing Out LIBOR and EONIA

- **What?** The EBA published a [thematic note](#) on October 14, 2021, on the transition risks of benchmark rates as LIBOR and EONIA (the Euro Overnight Index Average) - two key benchmark interest rates - are about to be phased out.
- **Who?** The thematic note is relevant to parties using LIBOR and EONIA.
- **When?** The transition is relevant as of January 1, 2022 as LIBOR phases out December 31, 2021 (except for USD LIBOR, which phases out in June 2023) and EONIA as of January 3, 2022.

EBA Consultation on adaptation of technical standards for internal models for benchmarks

- **What?** On December 17, 2021, EBA issued a [consultation regarding](#) the amendment to the Implementing Regulation for Benchmarking Internal Approaches to Credit Risk and Market Risk 2023.



- **Who?** This consultation is relevant to market participants who use benchmarks for internal approaches to credit risk and market risk.
- **When?** The consultation will run until February 18, 2022.

Joint statement by AFM and DNB regarding request for interest rate benchmarks

- **What?** On 1 July 2021, AFM and DNB issued a [joint statement](#) containing action points for institutions. In this context, the EC, ECB, EBA and ESMA had previously issued a [joint statement](#) as well. In their statement, the AFM and DNB formulated action points for institutions and timelines from other jurisdictions. The action points are that institutions: (i) should move LIBOR and EONIA contracts to alternative benchmarks; (ii) should stop issuing new LIBOR and EONIA contracts; (iii) should include fallback options in EURIBOR contracts; and (iv) should inform counterparties and customers of contract changes in a timely and complete manner.
- **Who?** The results from the study are relevant to banks (which fall under the direct supervision of DNB), pension funds, asset managers and insurers.
- **When?** On January 1, 2022, the transition from Interbank Offered Rates (IBORs) to alternative interest rate benchmarks ends for most interest rate benchmarks. Only USD LIBOR will be further delayed for a number of maturities until at least July 1, 2023.

AFM Recommendations to mitigate behavioral risks of benchmark transition

- **What?** On June 30, 2021, the AFM issued [recommendations](#) in the context of mitigating the (behavioral) risks surrounding the introduction of new tariffs and/or the inclusion of fallback options in their contracts.
- **Who?** These recommendations are relevant to banks, insurers and pension funds.
- **When?** The AFM urges stakeholders to take action to meet the December 31, 2021 deadline.

Letter ERFRWG regarding statutory substitution of rates for GBP and JPY LIBOR

- **What?** On November 15, 2021, the Chair of the Euro Risk Free Rates Working Group (ERFRWG) sent a [letter](#) to the EC highlighting the proposal, in light of the changes to the Benchmark Regulation, to align heavy legacy contracts under EU law with those of the UK, which would require the use of a synthetic LIBOR for GBP and JPY LIBOR contracts and to adopt specific

legislation providing legal certainty to contracts linked to synthetic LIBOR.

- **Who?** This is relevant to users of contracts linked to synthetic LIBOR for GBP and JPY LIBOR.
- **When?** The ERFRWG suggests to the EC that it should act as soon as possible. We recommend that market participants keep an eye on these developments regarding the GBP and JPY LIBOR in 2022.

CSDR

CSDR review

- **What?** In 2020, the European Commission launched a planned review of the Central Securities Depositories Regulation (CSDR), which a consultation was included. In that context, on July 1, 2021, the Commission published a [report](#) containing the outcome of that consultation. The Committee concluded in the report that it had not become apparent that fundamental changes to CSDR were necessary. However, CSDR can be improved in certain areas, including the regime for mandatory buy-ins. Therefore, the EC will propose an amendment to CSDR: CSDR Refit.
- **Who?** CSDs, CCPs, trading venues and market participants such as (bank) investment firms.
- **When?** The EC legislative proposal for CSDR Refit is expected in 2022.

ESMA opinion further postponing part of settlement discipline rules

- **What?** One of the topics in the CSDR is settlement discipline. In this regard, the CSDR contains rules for parties to prevent failed settlement of transactions, and for the situation where settlement does fail, it provides rules on monitoring, sanctioning and so-called mandatory buy-ins. These rules, as further detailed in Delegated Regulation 2018/1229, should become applicable on prior to February 1, 2022. However, in its [letter of 23 September 2021](#) to the EC, ESMA proposed to postpone the entry into force of the rules on mandatory buy-ins in view of the current review of CSDR and, in its statement of [17 December 2021](#), it called for a clarification of the practical implementation of the remaining part of the CSDR regime on settlement discipline, which will apply from 1 February 2022.
- **Who?** CSDs, CCPs, trading venues and market participants such as (bank) investment firms.
- **When?** Delegated Regulation 2018/1229 will enter into force on February 1, 2022. The EC [press release](#) of November 25, 2021 shows that the EC supports ESMA's advice to postpone the rules on buy-ins and that this



has also already been agreed upon between the Council and the European Parliament.

ESMA guidance on reporting on settlement fails

- **What?** On September 24, 2021, ESMA published final [guidance](#) on the obligation of CSDs to report failed settlements to competent authorities (Article 7(1) CSDR).
- **Who?** CSDs.
- **When?** The guidelines should start to apply from the moment that the Delegated Regulation 2018/1229 becomes applicable (see previous alert on this).

MARKET ABUSE REGULATION

Template for cooperative arrangements with supervisory authorities in third countries under Delegated Regulation supplementing MAR

- **What?** The [MAR](#) requires the competent authorities of the Member States to conclude cooperation arrangements with supervisory authorities of third countries regarding the exchange of information and the enforcement of obligations arising from the MAR in third countries. Agreements on the exchange of information in this context can only be concluded if (i) the information to be provided thereunder is subject to at least equivalent guarantees of professional secrecy as provided for in the MAR and (ii) such exchanges are intended for the performance of the tasks of the relevant competent authorities. It is envisaged that when entering into new cooperation arrangements and updating existing cooperation arrangements with third country authorities, competent authorities will use the template where possible. The [Delegated Regulation](#) is based on ESMA's draft RTS includes the relevant template as an annex.
- **Who?** The published template is relevant for supervisory authorities of Member States that enter into cooperation agreements with supervisory authorities in third countries.
- **When?** The Delegated Regulation entered into force on October 31, 2021, and it is expected that the collaborations will continue to be designed in accordance with the content of the template included in the Delegated Regulation in 2022.

ESMA Consultation on amendments to MAR guidelines in the context of disclosure obligations in relation to insider information

- **What?** Issuers may delay disclosure of insider information under MAR when immediate disclosure is likely to harm an issuer's legitimate interest, the delay in disclosure is unlikely to mislead the public, and confidentiality is ensured. The ESMA MAR Guidelines contain a list of legitimate interests of issuers that are likely to be harmed by immediate disclosure of insider information. ESMA has issued a [consultation](#) in the context of amendments to the current MAR Guidelines to build on and expand these MAR Guidelines, in the context of the interaction between the MAR insider transparency obligations and the prudential supervisory framework. In the consultation paper, ESMA proposes the following changes: (i) clarifying that in the case of redemptions, reductions and repurchases of own funds, pending authorisation by the prudential regulator, the institution has a legitimate interest in delaying the disclosure of insider information until the authorisation is granted; (ii) clarifying that in the case of draft SREP decisions and related preliminary information, the institution has a legitimate interest in delaying the disclosure of insider information until that information becomes final and (iii) add a separate section clarifying that Pillar 2 Capital Requirements and Pillar 2 Capital Guidelines that are included in the regulatory review and evaluation process under the Capital Requirements Regulation and the Directive Package are likely to meet the definition of *insider information* as referred to in the MAR and therefore should be disclosed as soon as possible, once final. Market participants and other stakeholders could file a response until August 27, 2021.
- **Who?** Financial market participants, including securities issuers to which the Market Abuse Regulation applies (e.g. as a result of a listing on a regulated market or multilateral trading facility).
- **When?** ESMA has indicated on its [website](#) that the final report and amended MAR Guidelines are expected to be published by the end of 2021. These amended guidelines are then expected to apply as of January 1, 2022. On the date of writing this Outlook, ESMA's final report is not yet available.

ESMA's Statement on investment recommendations via social media

- **What?** Under the MAR, market participants who make investment recommendations are required to disclose their identity and make objective recommendations. In doing so, they must disclose all relationships and circumstances that impair this objectivity. Additional



rules must be followed for experts. If this is not complied with, there is a risk of misleading investors. In this context, ESMA issued a [statement](#) at the end of October explaining the rules that apply if someone, inside or outside the European Union, makes investment recommendations via social media, sharing an opinion on, for example, the current or future price of a certain type of share(s). In its statement, ESMA mentions that investment recommendations must be made in a specific - and transparent - way so that investors can assess the following elements, before making the investment decision: (i) the credibility of the recommendation and the level of objectiveness; and (ii) the interests of the person(s) making the recommendations, if any. In this way, opinions can be freely expressed without harming others in the process.

- **Who?** ESMA's clarification is relevant to financial market participants who make investment recommendations through social media.
- **When?** We expect that in 2022, with digitization and investor protection (still) playing a major role in the supervisory themes in 2022, the focus of ESMA (but also of the national supervisors) will continue to be on how financial market participants express themselves digitally about financial products and prevention of negative influence on investors.

- **Who?** These guidelines apply to market participants acting as counterparties in securities financing transactions as defined in Article 3(2) SFTR, operators of trade registers as defined in Article 3(1) SFTR and national supervisory authorities.
- **When?** Reporting obligations under the SFTR have been in place since April 2020. These reporting obligations have been further established by these guidelines since last year.

ESMA Guidelines on the calculation of positions under the SFTR

- **What?** ESMA's [guidelines](#) became available on December 14, 2021. These set out principles to be followed by trade register providers for their position calculations. Those principles are complemented by specific procedures which are to be followed in order to achieve the timely and accurate reporting of positions by trade register providers. Through these guidelines, the goal is to ensure a consistent and uniform application of the SFTR.
- **Who?** These guidelines apply to trade register providers as defined in Article 3(1) of the SFTR and registered under Chapter III of the SFTR.
- **When?** New reports must comply with these guidelines as of January 31, 2022.

SFTR

ESMA Q&A SFTR data reporting

- **What?** On December 17, 2021, ESMA issued a [Q&A](#) regarding data reporting obligations under the [Securities Financing Transactions Regulation](#) (SFTR). The purpose of the Q&A is to promote common supervisory approaches and practices in the application of SFTR with respect to regulatory data reporting topics.
- **Who?** The content of the Q&A is relevant to market participants who are a counterparty to a securities financing transaction, managers of UCITS and AIFs and a counterparty that reuses financial instruments and that is located in the EU or, under certain circumstances, in a third country.
- **When?** Ongoing.

ESMA Guidelines relating to reporting under Articles 4 and 12 SFTR

- **What?** On March 29, 2021, ESMA issued [guidance](#) to clarify the reporting requirements under Articles 4 and 12 SFTR and to provide practical guidance on how to implement these and other provisions. The guidance is intended to help reduce costs across the reporting chain.

CCPS

European legal framework for recovery and resolution of CCPs

- **What?** The [Regulation](#) on a framework for the recovery and resolution of central counterparties aims to create a credible framework for recovery and resolution and to ensure, to the greatest extent possible, that CCPs capture measures to overcome financial distress, to maintain the critical functions of a CCP that fails or is likely to fail while liquidating its remaining activities under normal insolvency procedures to safeguard financial stability, to prevent significant adverse effects on the financial system, and to maintain its ability to serve the real economy while ensuring that the failure of a CCP costs taxpayers as little as possible. In order to deal efficiently with failing CCPs, competent authorities should have the power to impose preparatory measures on CCPs. A minimum standard should be set regarding the content and information to be included in recovery plans to ensure that all CCPs in the European Union have sufficiently detailed recovery plans should they face financial difficulties. The Regulation provides the parameters to be observed in a recovery plan.

- **Who?** The Recovery Framework is relevant to CCPs and the resolution authority of the relevant CCPs (to which latter parties the power to apply the resolution tools and to exercise the resolution powers as described in this Regulation is granted).
- **When?** The Regulation will apply from August 12, 2022. Some provisions in the Regulation have a different application date (for the different dates of entry into force, see Article 97 of the Regulation).

EC proposal to extend equivalent decision for UK-based CCPs

- **What?** On November 10, 2021, European Commissioner McGuinness released the [proposal](#) for the future plans for central clearing activities. The Commission maintains its view that over-reliance on UK-based CCPs for some clearing activities poses a source of medium-term financial stability risk, and will continue its work to enhance the capacity of EU-based CCPs as a tool to reduce such over-reliance. To address the potential short-term financial stability risk associated with an abrupt interruption of access to clearing services, the European Commission will propose an extension of the equivalent decision for UK-based CCPs, which extension should be long enough to revise the European supervisory framework for CCPs.
- **Who?** CCPs and market participants using services provided by CCPs.
- **When?** The process to expand the equivalent decision is expected to start early 2022.

EC decision to last grant of transitional capital requirement regime for non-EU CCPs

- **What?** On June 24, the European Commission [decided](#) to extend the current transitional regime on capital requirements that apply to European banks and investment firms when they interact with non-EU CCPs. The transitional regime has been extended for one year. This is the last extension possible under the Capital Requirements Regulation (CRR). Under the CRR, EU CCPs and non-EU CCPs recognized by ESMA are considered 'eligible CCPs' (QCCPs). EU banks and investment firms are subject to a significantly lower capital requirement for exposures to QCCPs compared to exposures to non-QCCPs. Parties exposed to those non-EU CCPs that will not be recognized by ESMA by June 28, 2022, will not be eligible for lower capital requirements after that date.
- **Who?** The extension is relevant to European banks and investment firms subject to CRR capital requirements.
- **When?** The extension will expire on June 28, 2022.

EBA Consultation on amendment to ITS regarding currencies with restrictions on availability of liquid assets

- **What?** EBA launched a [consultation](#) on July 16, 2021 on amendments to the Implementing Technical Standards (ITS) for currencies with restrictions on the availability of liquid assets in the context of the liquidity coverage ratio (LCR). The CRR specifies a number of deviations applicable to currencies with restrictions on the availability of liquid assets for the purpose of calculating the LCR. As part of the Risk Reduction Measures (RRM) package adopted by European legislators, an additional deviation has been added. The ITS are being updated to implement the proposed changes (e.g., the deletion of the Norwegian krone (NOK)), resulting in the fact that no currency will be recognized as having restrictions on the availability of liquid assets. EBA is additionally tasked with updating the existing Regulatory Technical Standards (RTS) specifying the use of deviations and their conditions of application after a new deviation has been added. Because of the loss of recognition of a single currency as such, the RTS will not be updated by EBA, but it will keep an eye on any updates to the extent that a currency needs to be included.
- **Who?** The consultation and its outcomes are particularly relevant to credit institutions and investment firms subject to the prudential requirements under the CRR.
- **When?** The consultation ran until October 16, 2021, and EBA is expected to incorporate the responses from it into the updated version of the ITS in 2022.

ESMA Consultation CCP recovery plan

- **What?** On July 12, 2021, ESMA launched seven consultations to gather feedback on how to implement its CCP recovery mandates. In its [press release](#), ESMA mentions that the seven consultation documents include proposals for draft RTS on the methodology for calculating and maintaining the additional amount of pre-funded specific own funds, guidance on the consistent application of triggers for the use of early intervention measures, and guidance on CCP recovery plan indicators and scenarios.
- **Who?** The outcome of these consultations are particularly relevant to CCPs.
- **When?** The period for all seven consultations ended on September 20, 2021. ESMA will consider the responses to this consultation with a view to publish the final reports by Q4 2021/Q1 2022.



ESMA Launch CCP stress tests (including operational risks)

- **What?** On June 7, 2021, ESMA published a [framework](#) for the fourth stress test of CCPs (as required under EMIR). ESMA initiates and coordinates this stress test to assess the resilience and safety of recognized European Union CCPs and Tier 2 third country CCPs (TC-CCPs) against adverse market developments and to identify any deficiencies. The 2021 stress test addresses credit and concentration risks and uses enhanced methodologies, including lessons learned from previous tests, such as assessing the combination of concentration costs and credit losses when liquidating defaulted portfolios or including an *intra-day* exercise for credit. For the first time, and in line with ESMA's mandate, the stress test also covers operational risk.
- **Who?** Developments surrounding stress testing are relevant to CCPs.
- **When?** The publication of the final report and the results of the tests are expected in the second half of 2022.

ESMA Publishing methodology for third country CCPs

- **What?** On July 13, 2021, ESMA [published](#) a [methodology](#) for assessing whether a CCP established in a third country (TC-CCP) or some of its clearing services have such a substantial systemic importance that the TC-CCP should not be considered in order to provide certain clearing services or activities in the European Union. The methodology was developed by ESMA's CCP Supervisory Committee and is based on the requirements of Article 25(2)(c) of EMIR.
- **Who?** Developments around the systemic risk methodology are relevant to national supervisors and DNB as the national central bank in particular.
- **When?** We expect DNB's focus on third country CCPs to be tightened in 2022 applying the above methodology.

ESMA Guidance on outsourcing to cloud service providers

- **What?** On May 10, 2021, ESMA published [Guidelines](#) that address outsourcing of services to cloud service providers. As of January 1, 2022, the Guidelines also apply to data reporting service providers and managers of EU critical benchmarks.
- **Who?** The Guidelines apply to competent authorities and, among others, to CCPs, including Tier 2 CCPs from third countries that meet the relevant EMIR requirements.

- **When?** These Guidelines apply from July 31, 2021 to all cloud outsourcing arrangements entered into, renewed or amended on or after this date. Companies should review and, where appropriate, amend existing cloud outsourcing arrangements to ensure they are in line with these Guidelines by December 31, 2022. Where the review of cloud outsourcing arrangements of critical or important functions have not been completed by December 31, 2022, companies should notify their competent authority, including the actions planned to complete the review or potential exit strategy.

ESMA Consultation implementation RTS and draft guidelines for CCPs

- **What?** ESMA launched six [consultations](#) in relation to CCPs on November 18, 2021. The six consultation documents include proposals for draft regulatory technical standards on (i) resolution colleges, (ii) the valuation of assets and liabilities of CCPs under resolution, (iii) client and indirect client safeguards, and (iv) the content of resolution plans, and includes proposals for draft guidance on (a) the valuation on termination of contracts, and (b) the application of the circumstances under which a CCP is deemed to be failing or likely to fail. Harmonized resolution measures allow CCPs and relevant legislators to be prepared for the measures and actions taken in a resolution process.
- **Who?** The outcomes of the consultations will be particularly relevant to CCPs and supervisory authorities.
- **When?** The closing date for consultations is January 24, 2022. ESMA is expected to publish the final reports by the second quarter of 2022.

ESMA Consultation regarding highly liquid financial instruments in light of investment policies CCPs under EMIR

- **What?** On November 19, 2021, ESMA issued a [consultation](#) to (i) generally assess whether the scope of financial instruments considered highly liquid with minimal market and credit risk should be expanded and (ii) more specifically assess whether money market funds (MMFs) authorized under [MMF Regulation](#) (or a subset thereof) should be included in this list. Under Article 85 (3a(e)) of EMIR, ESMA has been mandated to provide a report to the European Commission on the two questions in (i) and (ii) above.
- **Who?** The outcome of the consultations will be particularly relevant for CCPs with highly liquid financial instruments as part of their portfolio and market participants (such as AIFs and UCITS) that are licensed under the MMF Regulation.

- **When?** The consultation closes on January 24, 2022, and ESMA is expected to incorporate the results of the consultation into the final proposal for amendment.

ESMA Guidelines on ‘supervisory review and evaluation process’

- **What?** On 23 October 2020, ESMA also published a consultation document containing draft guidelines to further elaborate the ‘supervisory review and evaluation process’ of supervisors in respect of CCPs, as referred to in Article 21 EMIR. This issue was addressed in the Outlook 2021. ESMA has published the [Guidelines](#) on 24 February 2021.
- **Who?** The guidelines are relevant to CCPs.
- **When?** The guidelines have been applicable since February 24, 2021.

ESMA publishes results of survey on systemically important UK CCPs

- **What?** ESMA published a [statement](#) and report ([Part 1](#) and [Part 2](#)) on the conclusions of its assessment of Tier 2 CCPs established in the United Kingdom (UK) on December 17, 2021. The report identifies three clearing services that are of significant systemic importance to the financial stability of the European Union and pose risks that may not be fully mitigated under the current EMIR regulatory framework. It concludes that the costs and risks of no longer recognizing these services currently outweigh the benefits to the EU. The report includes four sets of policy measures in response to identified risks and vulnerabilities related to systemically important UK CCPs serving European market participants.
- **Who?** The results of the study are particularly relevant to market participants using services from systemically important UK CCPs.
- **When?** ESMA’s findings provide important input to the European Commission’s decision regarding the extension of its temporary equivalent decision for UK-based Tier 2 CCPs in early 2022.

Ministry of Finance Consultation on Implementation Act on Recovery and Settlement Regulation CCPs

- **What?** On December 11, 2021, an [internet consultation](#) was issued by the Ministry of Finance for the bill implementing [Regulation](#) on Recovery and Settlement of CCPs. This bill proposes a number of amendments to Dutch legislation to properly implement the Regulation.

- **Who?** The results of the consultation are relevant to CCPs, clearing members and clients of CCPs and regulators.
- **When?** The consultation will end on January 21, 2022. It is expected that amendments will then be made to the bill and explanatory memorandum during 2022.

Ministry of Finance Implementing Order on Recovery and Settlement of CCPs

- **What?** On November 12, 2021, the Implementation Decree implementing Regulation (EU) 2021/23 on recovery and resolution of CCPs was [published](#) in the Official Gazette. Through this implementation decree, an amendment is made to the Decree on Implementation of EU Regulations on Financial Markets in connection with the implementation of the [Regulation](#) on Recovery and Settlement of Central Counterparties and the [Regulation](#) on Loss Absorption and Recapitalization Capacity of Banks and Investment Firms.
- **Who?** The provisions in the Implementation Decree are relevant to CCPs, clearing members and clients of CCPs, credit institutions, investment firms and regulators.
- **When?** The executive order is applicable as per November 12, 2021.

CPMI & IOSCO Call for comments regarding access to clearing services and portability

- **What?** The Committee on Payments and Market Infrastructures ([CPMI](#)) and the International Organization of Securities Commissions ([IOSCO](#)) both issued a request for input (*call for comments*) on November 29, 2021, regarding their new joint, consultative report. The report concerns a discussion paper on client clearing: access and portability. This report aims to (i) increase the overall understanding of new access models, allowing clients to directly access CCP services and achieve effective access or portability for their positions and (ii) identify potential issues for follow-up work.
- **Who?** The results of the consultation are relevant to CCPs and clients of CCPs.
- **When?** Input on the *call for comments* closes on January 24, 2022. CPMI and IOSCO are expected to publish an updated report during 2022.



FSB – 2021 Resolution Report: ‘Glass half-full or still half-empty?’

- **What?** The Financial Stability Board (FSB) published its 2021 [Resolution Report](#) on December 7, 2021. This focuses on the evaluation of the status of the achievements up to the above date. The review found that a number of gaps needed to be addressed if the benefits of the Resolution reforms were to be fully realized.
- **Who?** FSB Resolution Report input is relevant to banks, CCPs and insurers.
- **When?** Our expectation is that, following the input in the FSB Resolution Report, work will be continued in 2022 to determine on concrete steps to improve the outcomes from the review.

OTHER DEVELOPMENTS

Investment, Mergers and Acquisitions Security Test Act

- **What?** On June 30, 2021, the [bill](#) for the Investment, Mergers and Acquisitions Security Review Act was presented to the House of Representatives. The bill introduces a review mechanism for investments, mergers and acquisitions that may pose a risk to national security. This involves investments in (i) providers playing a vital role or (ii) companies that possess sensitive technology.
- **Who?** The bill identifies several financial institutions as providers with a vital role, including CCPs.
- **When?** The bill is expected to take effect in early 2023.



BANKS

Introduction

For banks, 2022 will be a year of (further) implementing climate risk control measures, climate-related stress tests, and implementing new regulations and guidance. There will also be a lot of new regulations for banks in 2022. This concerns legal rules, but also more detailed technical standards and interpretations from regulators and supervisors. Both on a global, European and national level.

In order to limit the size of this chapter, we had to make a selection. For example, in this Outlook 2022 we only address a number of supervisory law developments that are specifically relevant to the banking sector. For banks that provide several types of services, other sections of this Outlook may also be relevant, such as the section for [Investment Firms](#), [Payment Institutions](#) and/or for [Lenders](#) and [Financial Service Providers](#).

The cross-sectoral components [Integrity](#) and [Sustainability](#) are also of great importance to banks. Subjects relating to them are not discussed in this section but only in the aforementioned specials. Furthermore, it is useful for banks to take note of the [General](#) section, because it also discusses topics that may affect banks (such as developments regarding the Benchmark Regulation and the Securities Financing Transactions Regulation (SFTR)).

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

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- Revised guidelines on recovery plan indicators
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parent company

Guidance to assess breaches of the large item limits

New regulations on interest rate risk management

Consultation on revised SREP guidelines.

ITS for ESG risk disclosure under CRR

Report on ESG risk management and monitoring

RTS revision on credit risk adjustment

OTHER PUBLICATIONS

AFM

Trend Monitor 2022

DEVELOPMENT OF EUROPEAN LEGISLATION AND

REGULATIONS

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Important changes

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Package of measures aimed at sustainability (including Green Bonds)

DORA

RTS on use of internationals approach

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Directive on credit servicers and credit purchasers

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Implementation framework for covered bonds

BRRD II Implementation Act

Financial Markets Amendment Act 2021 - group DNO

Financial Markets Amendment Decree 2021- outsourcing and group DNO

Law on availability of basic payment account for Dutch citizens abroad

Further remuneration rules for the financial sector

Consultation options for strengthening measures to prevent dividend stripping

Investment, Mergers and Acquisitions Security Test Act

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ECB SUPERVISION

+ Climate-related risks: control and stress testing

Call for better management of climate-related risks

ECB [calls](#) on banks to better manage their climate-related risks. In a [report](#) on the state of climate and environmental risk management in the banking sector published on November 22, 2021, the ECB analyzes how European banks are adapting their practices to manage climate and environmental risks. The ECB concludes that banks have taken the first steps to incorporate climate-related risks, but no bank comes close to meeting the ECB's expectations as published in the ECB's [guide](#) to climate and environmental risks. Banks have made efforts to meet these expectations in terms of governance, risk appetite and operational risk management. However, they are lagging behind in areas such as internal reporting, market and liquidity risk management, and stress testing. For example, half of the banks have not planned concrete measures to integrate climate and environmental risks into their business strategies, and less than a fifth have developed key risk indicators to monitor. In doing so, the quality of the plans is too low and progress too slow. The ECB has sent individual feedback letters to banks asking them to address their shortcomings. In some cases, banks will receive an additional capital requirement as part of Supervisory Review and Evaluation Process (SREP).

Earlier in 2021, the ECB published an ambitious [roadmap](#) (July) with an overview of climate-related issues and priorities, a [report](#) (July) analyzing the impact of climate-related risks on financial stability, and an [opinion](#) (September) on a proposal for a directive on corporate sustainability reporting (CSRD). See below for an overview of ECB and EBA publications in the area of climate-related risks and for a comprehensive treatment of these publications the [Sustainability](#) section. As a next step, the ECB will conduct a full assessment of how banks are prepared to manage climate and environmental risks, with a deep dive into their integration into strategy, governance and risk management. The evaluation will take place in the first half of 2022, at the same time as the 2022 ECB Climate Risk Stress Test.

2022 ECB Climate Risk Stress Test

In October 2021, the ECB sent a [letter](#) to all significant banks announcing the implementation of a climate-related risk stress test in 2022. This stress test is also known as the 2022 ECB Climate Risk Stress Test (CST). In addition to the

letter, the ECB also [published](#) an explanatory note. The explanatory note is based on the ECB's [guide](#) on climate-related and environmental risks published in 2020, which contains the ECB's expectations with banks' management of these risks, and the EBA's [report](#) on the management and supervision of ESG risks for banks and investment firms (see also under [Report on ESG risk management and monitoring](#)).

The stress test consists of three different modules:

1. A comprehensive questionnaire to assess how banks build their climate stress test from a risk management perspective (what capabilities and capacity does the bank have).
2. A peer benchmark analysis to compare banks based on a common set of climate risk statistics. These statistics reveal how much banks rely on revenue from carbon-intensive industries and the share of greenhouse gas emissions that banks finance.
3. A bottom-up stress test focused on transition and physical risks. The stress test assesses how extreme weather events will affect banks over the next year, how vulnerable banks are to a sharp increase in the price of carbon emissions over the next three years, and how banks respond to transition scenarios over the next 30 years.

The CST will be conducted from March through July 2022 at significant banks. The CST consists of two phases, first collecting data from banks and then analyzing this data and drawing conclusions.

The ECB views the CST as a learning opportunity for both banks and supervisors. It aims to identify vulnerabilities, industry *best practices* and challenges faced by banks. The exercise will also help to improve the availability and quality of data and enable supervisors to better understand the stress tests. It is not anticipated at this time that the output will lead directly to additional capital requirements in Pillar 2. However, the findings may lead to additional capital requirements for a specific bank through the SREP.

Overview of ECB and EBA publications on climate risks

- [November 2020](#) - ECB's [guide](#) to climate-related and environmental risks outlining the ECB's expectations with banks' management of these risks;
- [March 2021](#) - [consultation](#) by EBA for Implementing Technical Standards (ITS) on how ESG risks are disclosed under CRR;
- [June 2021](#) - EBA [report](#) on ESG risk management and

supervision for banks and investment firms;

- [July 2021](#) - ECB [roadmap](#) with overview of climate-related issues and priorities;
- [July 2021](#) - ECB and ESRB [report](#) and on climate-related risks and financial stability;
- [August 2021](#) - ECB [study report](#) on developing tools and mechanisms for integrating ESG factors into the EU prudential framework for banks and into banks' business strategies and investment policies;
- [September 2021](#) - ECB [opinion](#) on a proposal for a directive on corporate sustainability reporting;
- [September 2021](#) - ECB [press release](#) with the [results](#) of the economy-wide climate stress test;
- [October 2021](#) - ECB [commentary](#) on the 2022 Climate Risk Stress Test (CST);
- [November 2021](#) - ECB [report](#) on the state of climate and environmental risk management in the banking sector.

Supervisory priorities of the ECB in 2022-2024

- **What?** On December 7, 2021, the ECB published the [Supervisory priorities 2022-2024](#). In cooperation with national supervisors, the ECB assessed the main risks and vulnerabilities of significant banks and, based on this assessment, set the strategic priorities for the next three years. The priorities are: 1) banks emerge from the pandemic healthy, 2) structural weaknesses are addressed through effective digitisation strategies and enhanced governance, and 3) emerging risks, including climate and environmental risks, IT and cyber risks, are tackled. For each priority, the ECB has developed a set of strategic objectives and underlying work programs for the next three years. The priorities provide guidance for planning and prioritizing supervision by the Joint Supervisory Teams (JSTs) and important guidance for the SREP. The overall objective is for the European banking sector to emerge stronger and healthier from the pandemic crisis and to be able to contribute constructively to the digital and green transformation of the economy.
- **Who?** All significant banks. Further, DNB will also apply these supervisory priorities to the less significant banks under its supervision.
- **When?** The Supervision Priorities 2022-2024 are for the next 3 years.



Feedback suggestions European Parliament

- **What?** In the document [Feedback on the input provided by the European Parliament](#) dated December 22, 2021, the ECB responds to the [European Parliament's Resolution](#) of October 7, 2021 on the Banking Union. The European Parliament recognizes the role of European banking supervision in temporarily broadening bank capital requirements in response to the COVID-19 pandemic and notes that sound credit risk management should remain a core supervisory priority. In response, the ECB indicates that it continues to monitor the impact of the COVID-19 pandemic and that reducing *non-performing* loans (or NPLs) remains a priority. The ECB also emphasizes that a new supervisory power to restrict dividends could be counterproductive. Financial institutions should be enabled to raise capital. Moreover, such a power may signal that new supervisory powers will follow more frequently in the future. Finally, the ECB appoints the 2022 ECB Climate Risk Stress Test, combating money laundering and terrorist financing, the impact of a digital Europe, and the progress of Basel 3 implementation.
- **Who?** All significant banks. Furthermore, DNB will also use the ECB feedback for the less significant banks under its supervision.
- **When?** The feedback can be read in addition to the Supervision Priorities 2022-2024.

New guide to fit and proper assessments

- **What?** On December 8, 2021, the ECB [published](#) a new guide to fit and proper assessment. This new guide replaces the previous version, last amended in May 2018. This guide explains policy positions, supervisory practices and processes applied by the ECB in assessing the good repute and suitability of members of the management and supervisory boards of significant banks. The main changes compared to the May 2018 version are increasing the scope of persons to be tested and clarifying the procedure for retesting. It is emphasised that the review is not a snapshot, but that management board members and supervisory board members must be reliable and suitable at all times.
- **Who?** All significant banks and their directors and supervisors.
- **When?** As of December 2021.

Harmonisation of reporting

- **What?** In December 2021, the ECB [announced](#) the development of an Integrated Reporting Framework (IReF). By using this harmonised statistical reporting system, banks can easily report their statistical data

to the European System of Central Banks (ESCB). The new system will reduce the reporting burden on banks. Supervisors can analyze and compare these data more easily in the new system. The IReF ensures an unambiguous interpretation of statistical concepts and standardizes the information that banks must provide to their own supervisors.

- **Who?** All banks.
- **When?** Following an industry-wide consultation, the ECB is now launching the design phase of the project, which is expected to come into operation in 2027. One of the next steps in the project is the drafting of an ECB regulation, which is expected to be adopted in 2024.

Requests for a license and notifications now via ECB's IMAS Portal

- **What?** With effect from January 1, 2022, an application for a declaration of no objection *in a bank* and a notification for cross-border provision of services or opening a branch in another Member State *by a bank* will be submitted through the ECB's [IMAS Portal](#) and no longer through DNB's Digital Supervision Desk (DLT). The obligation covers both significant and non-significant banks. Applications for a declaration of no objection by a bank pursuant to Section 3:96 DFSA will still be submitted through the DLT. It is expected that the IMAS Portal will soon also offer exclusive access for applications for a banking license.
- **Who?** All entities wishing to apply for a no-objection certificate in a bank and all banks wishing to make a notification to provide cross-border services or open a branch in another member state.
- **When?** As of January 1, 2022.

Consultation on disclosure requirements for securitisation transactions

- **What?** On November 15, 2021, the ECB published the [consultation](#) of the *guide on the notification of securitisation transactions*. This consultation follows the ECB's decision of 14 May 2021 to monitor significant banks' compliance with the retention and transparency requirements in the amended Securitisation Regulation. This guide clarifies what information the ECB expects from banks acting as originators or sponsors of a securitisation transaction. The ECB expects banks to follow the guide for all securitisation transactions issued after April 1, 2022.
- **Who?** All banks involved as originators or sponsors in a securitisation transaction.
- **When?** The outcome of the consultation, which runs until January 5, 2022, will be taken into account when finalizing the guide.

DNB SUPERVISION

Supervision in focus – DNB supervisory priorities for banks

- **What?** On 7 December 2021, DNB published [Supervision in focus](#). In it, DNB summarizes what is being worked on in supervision. For the year 2022, DNB will focus on the multi-year spearheads from the Vision on Supervision 2021-2024: (i) responding to technological innovation, (ii) steering for future orientation and sustainability and (iii) combating financial-economic crime. The digital resilience of institutions is high on the agenda for 2022. In addition, DNB continues to insist on good risk management by financial institutions and points to the climate stress test that the ECB will conduct on significant banks in 2022. Finally, DNB emphasizes credit risk management and the visibility of customers with (potential) payment problems. Supervision of this is also a priority in 2022.
- **Who?** Less significant banks. DNB's priorities on financial-economic crime apply to all banks.
- **When?** Supervision in View looks to 2022. Vision on Supervision 2021-2024 describes DNB's supervisory course to 2024.

Sustainable balance

- **What?** On December 7, 2021, DNB [published](#) a report providing an overview of the integration of sustainability risks into the integrity and control of business operations by Dutch financial institutions, including banks. DNB concluded that this is still only a limited issue. Financial institutions are aware of sustainability risks but do not sufficiently manage them. Sustainability risks are often not included in the risk management cycle. DNB believes that although sustainability risks are not yet explicitly mentioned in CRD and CRR, integrating them into banks' risk management is in line with this legislation. DNB refers here to the publications of the ECB and EBA, see also [ECB Climate-related risks: control and stress tests](#).
- **Who?** All banks.
- **When?** DNB will make sustainability risks an integral part of regular supervision. In 2022, DNB will further concretize its expectations regarding the management of sustainability risks and submit them to the financial sector for consultation.

Regulation on sound remuneration policies 2021

- **What?** On 1 October 2021, the [Regulation on sound remuneration policies 2021](#) (Rbb 2021) was published in the Official Gazette. The Rbb 2021 is the successor to the Regulation on sound remuneration policies 2017 (Rbb 2017), which was revised at the end of 2020 due to the entry into force of CRD V. The reason for the Rbb 2021 is the entry into force of IFD. The Rbb 2021 now contains remuneration rules for banks and investment firms that fall under CRR *and* investment firms that fall under IFR. For banks, the Rbb 2021 contains some textual adjustments and corrections to better align with the wording of the CRD. Furthermore, the provision on state aid that was deleted in the revision of the Rbb 2017 has been partly reinstated. The reason for this is that although part of this provision is implemented in the DFSA, it also contains some rules that complement the DFSA.
- **Who?** All banks.
- **When?** The Rbb 2021 is applicable as of October 19, 2021.

Regulation on risk weighting of mortgage loans 2022

- **What?** On October 7 2021, DNB published the [Regulation on the risk weighting of mortgage loans 2022](#), which introduces a lower limit (minimum floor) for the risk weighting of mortgage loans on bank balance sheets in the Netherlands. The lower limit ensures that banks must hold a minimum amount of capital for their mortgage loans and prevents ever-increasing house prices from leading to ever-decreasing risk weights. DNB considers this measure important because banks do not take sufficient account of systemic risks in the housing market in the risk weighting of mortgage loans. The measure was already announced by DNB in the fall of 2019, but postponed in the spring of 2020 due to uncertainty about the impact of the corona crisis on bank balance sheets and the housing market. DNB has since seen the systemic risks in the current mortgage market continue to increase, while at the same time seeing the risk weights of mortgage loans in banks' risk models continue to decline.
- **Who?** Banks, especially those that use an internal model for mortgage lending.
- **When?** Effective January 1, 2022. The measure will be in effect at least until December 2022, after which DNB has the option to extend the measure.



Consultation revised countercyclical capital buffer framework

- **What?** On October 7, 2021, DNB [published](#) a consultation on the revision of the analytical framework for determining the Countercyclical Capital Buffer (CCyB). The primary purpose of this buffer is to increase the resilience of banks as cyclical risks build up, and to release these additional resources when systemic risks materialize. DNB has already indicated in the Financial Stability Review Autumn 2021 that it intends to apply a CCyB of 2% in a standard risk environment from now on. To implement this policy, the analytical framework for setting the CCyB needs to be modified.
- **Who?** All banks.
- **When?** The consultation period runs until January 18, 2022. DNB aims to comment on the responses and publish the final framework by the end of February 2022.

Amendment to the Policy on individual clientprofile 2017

- **What?** On 11 October 2021, DNB [published](#) the regulation amending the Policy on individual clientprofile 2017. In the Policy individual clientprofile 2017, DNB sets out the information DNB requires for the implementation of the Deposit Guarantee Scheme (DGS) (as of 1 January 2019 in the form of the individual clientprofile. This will make it possible to reduce the period in which DGS compensation is granted and made available for payment to seven working days. The amendment has clarified the policy rule on a number of points.
- **Who?** Banks.
- **When?** Effective January 1, 2022. The measure will be in effect at least until December 2022, after which DNB has the option to extend the measure.

New information security monitor 2021

- **What?** DNB released its third [Information Security Monitor](#) in 2021. While the observations are based on surveys of pension funds and insurers, DNB considers them relevant for the entire Dutch financial sector. The main observations are: (i) The risk management cycle within institutions focused on information security is insufficiently effective; (ii) Controlling information security throughout the outsourcing chain is crucial; and (iii) Resilience against cyber attacks needs to be strengthened, this is where urgent attention is needed.
- **Who?** All banks.

- **When?** Effective immediately; DNB will monitor the follow-up of the necessary improvements in regular supervision.

Confidant for suitability and integrity testing

- **What?** DNB and the AFM assess bank directors and supervisory board members for suitability and integrity. On [13 September 2021](#) DNB appointed two confidants who may be consulted in the process of testing: Mr Jaap van Manen and Ms Diana Monissen. If a director or supervisory director is dissatisfied with the course or result of the assessment, he or she can contact a confidant.
- **Who?** All banks.
- **When?** As of September 13, 2021.

SRB

SRB Work Programme 2022

- **What?** On November 26, 2021, the SRB [published](#) its Work Programme 2022. In it, the SRB outlines its goals and priorities for 2022. This Work Programme applies in continuation of the Multi-Annual Programme 2021-2023 (MAP). The focus in 2022 will be on maintaining and operationalizing the guiding principles set out in the Expectations for Banks ([EfB](#)) and [Minimum Requirement for Own Funds and Eligible Liabilities \(MREL\) policies](#) published by the SRB in April 2020.
- **Who?** All banks.
- **When?** The Work Programme covers the monitoring of the SRB in 2022.

Guidance on liquidity and funding in resolution

- **What?** Following the Expectations for Banks ([EfB](#)) published in April 2020, the SRB published [guidance](#) on liquidity and funding in resolution in April 2021. This guidance looks at estimating liquidity needs and aims to improve bank resolvability and preparedness for a potential resolution.
- **Who?** Significant banks, but DNB can also use this document as a national resolution authority for less significant banks.
- **When?** During 2022 and 2023.

Guidance on on separability of banks in time of crisis

- **What?** Following the Expectations for Banks (Efb) published in April 2020, the SRB published [guidance](#) in October 2021 on separability of banks in times of crisis. In this guidance, the SRB elaborates on the transfer by banks of business units as part of the resolution process. Banks should indicate how legal entities, business units or a portfolio of assets and liabilities can be transferred to a third party in the short term. The SRB expects banks to prepare an analysis and a transfer roadmap (if applicable).
- **Who?** Significant banks, but DNB can also use this document as a national resolution authority for less significant banks.
- **When?** By the end of 2022, banks must have sent an analysis and a transfer roadmap (if applicable) to the SRB.

Guidance on solvent wind-down of derivatives and trading books in resolution

- **What?** Following the Expectations for Banks (Efb) published in April 2020, the SRB published [guidance](#) in December 2021 on the orderly resolution of trading activities with minimum risk to financial stability. The guidance is addressed to banks with such a large trading book that it may impede credible and feasible implementation of their resolution strategies. Banks are expected to prepare a detailed plan and describe options for winding down their trading activities.
- **Who?** Significant banks with trading activities, but DNB can also use this document as a national resolution authority for less significant banks.
- **When?** During 2022 and 2023.

Updates in the MREL policy.

- **What?** In late May 2021, the SRB published an [update](#) to its “Minimum Requirements for Own Funds and Eligible Liabilities” policy. This updated policy includes a number of new elements and some refinements. In addition, on December 17, 2021, the SRB published the reported liabilities [checklist](#) and a [sign-off form](#), both for MREL reporting.
- **Who?** Significant Banks. DNB will also use this policy as the national resolution authority for less significant banks.
- **When?** MREL will be phased in and apply no later than January 1, 2024.

CRR discretion and MREL calibration

- **What?** On December 22, 2021, the SRB [announced](#) to monitor regulators’ discretion to temporarily exclude certain exposures to central banks from the calculation of the total exposure of a bank. In implementation of its monetary policy during the COVID-19 pandemic, the ECB exercised its authority to temporarily exclude certain central bank exposures from the calculation of the leverage amount. This measure is applicable until the end of March 2022. If necessary, the SRB will take action and adjust the MREL targets.
- **Who?** All banks.
- **When?** The SRB is monitoring developments in 2022.

Introducing backstop SRF

- **What?** The Single Resolution Fund (SRF) is an emergency fund that can be called upon by banks in times of crisis. The SRF ensures the stabilisation of the financial system. Banks have to pay an annual fee to the SRF. Starting in 2022, the *backstop* for the SRF will be [introduced](#). This is an additional emergency fund that can be called upon and doubles the size of the SRF. Initially, the *backstop* is provided with public money to provide immediate support and confidence to the market. However, this publicly funded *backstop* must then be repaid by all banks in the years following its use.
- **Who?** All banks.
- **When?** Starting in 2022.

Guidance reporting impossibility of inclusion of bail-in recognition clauses

- **What?** In [June 2021](#) and [October 2021](#), the SRB published guidance on reporting the situation where it proves impossible to include specific clauses in contracts governed by the law of a third country with respect to write-down and conversion powers of resolution authorities (so-called bail-in recognition clauses). The inclusion of these bail-in recognition clauses is an obligation under the BRRD. Banks that determine that it is not legally or otherwise possible to include these bail-in recognition clauses should notify the resolution authority.
- **Who?** All banks.
- **When?** As of October 2021.



EBA

EBA Annual Work Programme 2022

- **What?** On October 5, 2021, EBA published its [Annual Work Programme 2022](#) with EBA's priorities for the next year. For 2022, EBA will contribute to the development of an ESG framework for banks, monitoring the impact of COVID-19 on the bank's balance sheets, the implementation of Basel 3 and the implementation of the Digital Financial Strategy, in particular the legislative proposals for a Digital Operational Resilience Act (DORA) and on Markets in Crypto-assets (MiCA). In addition, EBA lists 5 priorities, including monitoring and updating the prudential framework for supervision and resolution, strengthening EU-wide stress testing framework and contributing to a new EU infrastructure in terms of anti-money laundering and terrorist financing.
- **Who?** All banks.
- **When?** The Annual Work Program 2022 describes EBA's focus areas in 2022.

European Supervisory Examination Programme (ESEP) 2022

- **What?** EBA published its [European Supervisory Examination Programme](#) (ESEP) on 12 November 2021. The ESEP contains a set of priorities for supervisors in 2022, including (i) impact of the COVID-19 pandemic on asset quality and adequate provisioning, (ii) information and communication technology (ICT) security risk and ICT outsourcing risk, (iii) digital transformation and FinTech players, (iv) ESG risks, and (v) anti-money laundering and counter-terrorist financing (AML/CFT).
- **Who?** The ESEP reflects EBA's priorities for banking supervisors, such as the ECB and DNB. This in turn is reflected in the supervisory priorities of these supervisors.
- **When?** Supervisors should consider the above topics in shaping their supervisory priorities for 2022.

European Resolution Examination Programme (EREP) 2022

- **What?** EBA published its [European Resolution Examination Programme](#) (EREP) on November 12, 2021. The EREP contains a set of priorities for resolution authorities for 2022, including: (i) the minimum requirement for own funds and eligible liabilities (MREL) shortfalls, (ii) the development of management information systems for valuation at

resolution, and (iii) preparations for managing liquidity needs at resolution.

- **Who?** The EREP reflects EBA's priorities for resolution authorities.
- **When?** Resolution authorities should consider the above issues in shaping their oversight priorities for 2022.

Guidelines for granting a banking license

- **What?** On November 11, 2021, EBA [published](#) its guidelines on a common assessment methodology for granting authorisation as a credit institution. The guidelines are addressed to supervisors in EU member states, but provide banks with a good understanding of how supervisors assess certain aspects of licensing. In these guidelines, EBA calls for a proportionate application of licensing requirements in relation to the risk of an individual business model and emphasizes consistency of assessment at the time of application and assessment in ongoing supervision thereafter. In addition, the guidelines provide guidance on the assessment of the business plan, the bank's capitalisation and internal governance. Finally, the guidelines emphasize the importance of cooperation with the supervisory authority in combating money laundering. Wherever possible, the guidelines refer to other EBA guidelines. With that, these guidelines can be well used as a guide to prepare for the license application.
- **Who?** All banks.
- **When?** These guidelines apply from two months after publication in all EU languages.

Revised guidelines on sound remuneration policy

- **What?** On July 2, 2021, EBA [published](#) its revised guidelines on sound remuneration policies. These revised guidelines take into account the amended CRD. The guidelines also clarify some aspects of retention bonuses and severance payments to counter circumvention. For example, in principle, a retention bonus may be paid once. In exceptional cases, multiple retention bonuses are possible, provided this is justified and the moments of payment are different. In addition, a retention bonus is not permitted if it is intended to compensate for a variable bonus that cannot be paid out due to a lack of performance. Banks must also adopt a gender-neutral remuneration policy.
- **Who?** All banks.
- **When?** The guidelines will apply as of December 31, 2021.

Revised guidelines on internal governance

- **What?** On July 2, 2021, EBA [published](#) its revised guidelines on internal governance. These revised guidelines take into account the changes to CRD and IFD, in particular the changes in the areas of money laundering, terrorist financing and countering conflicts of interest. The revised guidelines clarify that identifying, managing and mitigating the risk of money laundering and terrorist financing is part of sound internal governance and part of banks' risk management. The guidelines also require a bank to have a code of conduct to ensure that all necessary measures are taken to prevent any form of discrimination and to guarantee equal opportunities for staff (regardless of gender).
- The new guidelines replace EBA's existing 2017 guidelines.
- **Who?** All banks.
- **When?** The guidelines will apply as of December 31, 2021.

Revised guidelines on assessment of suitability

- **What?** On July 2, 2021, EBA and ESMA [published](#) revised guidelines on the assessment of the suitability of members of the management body and key function holders. The guidance replaces the existing 2017 guidance and incorporates the changes made by CRD V to the suitability requirements. See also our earlier publication on this subject in our [blog Finnius' View](#) on the website.
- **Who?** All banks.
- **When?** The guidelines will apply as of December 31, 2021.

Revised guidelines on recovery plan indicators

- **What?** On November 9, 2021, EBA published [guidelines](#) on recovery plan indicators under the Directive on the recovery and resolution of credit institutions and investment firms (BRRD). The guidelines serve, among other things, to specify the minimum list of qualitative and quantitative indicators for recovery plans that must be included in recovery plans developed and assessed in accordance with Articles 5 to 9 BRRD. The revised guidelines replace the existing 2015 guidelines.
- **Who?** All banks.
- **When?** The guidelines apply as of February 14, 2022.

Guidelines for the supervision of intermediate EU parent company

- **What?** On July 28, 2021, EBA [published](#) guidelines on monitoring the threshold for establishing an intermediate EU parent undertaking. CRD requires that institutions that are part of a group located in a third country must have an EU intermediate parent undertaking located in the Union when the total value of the group's assets in the Union is equal to or greater than EUR 40 billion. The guidelines specify how a third country group should calculate and monitor the total value of their assets in the Union to ensure timely application of the EU intermediate parent undertaking requirement.
- **Who?** Third country banking groups with total assets of more than EUR 40 billion who wish to operate within the EU.
- **When?** As of November 14, 2021.

Guidance to assess breaches of the large item limits

- **What?** On September 15, 2021, EBA [published](#) guidance specifying the criteria to assess the exceptional cases when institutions exceed the large exposure limits and the time and measures to return to compliance. In the event that a bank exceeds the large exposure limits, CRR requires that this be reported to the supervisor without delay. This guidance provide supervisors with guidance on how to assess whether extraordinary circumstances exist and whether a bank can be allowed to reduce the excess within the limits for a specified period.
- **Who?** All banks.
- **When?** As of January 1, 2022.

New regulations on interest rate risk management

- **What?** On November 10, 2021, EBA [published](#) a draft Implementing Technical Standards (ITS) on banks' disclosure of risks from potential changes in interest rates that affect both the economic value of equity and net interest income from non-trading book activities (IRRBB). The requirement to disclose these interest rate risks follows from the amended CRR. In addition, on December 2, 2021, EBA [published](#) three consultations of new regulations on the technical aspects for capturing IRRBB risks: (i) guidelines on IRRBB and the management of credit risk arising from non-trading book (CSRBB) activities, (ii) regulatory technical standards (RTS) with a standardised IRRBB approach to quantify interest rate risk for the economic value



of equity and net interest income, and (iii) regulatory technical standards (RTS) with an IRRBB supervisory test with different interest rate scenarios.

- **Who?** All banks.
- **When?** The consultation period for the RTS and guidelines runs until April 4, 2022.

Consultation on revised SREP guidelines

- **What?** On June 28, 2021, EBA [published](#) a consultation of the revised guidelines on common procedures and methodologies for the SREP. The main changes are: (i) revision of bank categorisation, (ii) addition of money laundering and terrorist financing (ML/TF) risk assessment, in line with EBA's [opinion](#) published in November 2020, and (iii) revision of Pillar 2 capital surcharge provisions.
- **Who?** All banks.
- **When?** The consultation period ended on September 28, 2021. We expect EBA to publish the revised guidelines soon.

ITS for ESG risk disclosure under CRR

- **What?** On March 1, 2021, EBA [published](#) a consultation for Implementing Technical Standards (ITS) on how ESG risks are disclosed under CRR. This proposal requires banks to provide comparable quantitative information on transition and physical risks related to climate change, including information on exposures to carbon-related assets and assets subject to chronic and acute climate change. In addition, the proposal includes a Green Asset ratio (GAR). The GAR identifies the bank's financing activities that are environmentally sustainable according to the EU taxonomy, such as those consistent with the European Green Deal and the Paris agreement goals.
- **Who?** All banks.
- **When?** The consultation period ended on June 1, 2021. We expect EBA to publish the technical standards soon.

Report on ESG risk management and monitoring

- **What?** On June 23, 2021, EBA [published](#) a report with a comprehensive proposal on how ESG factors and ESG risks should be included in the regulatory and supervisory framework for banks and investment firms. This report includes common definitions of ESG risks. This report served as the basis for the ECB's [explanatory notes](#) to the announcement of the 2022 ECB Climate Risk Stress Test (CST). In addition, this report was sent to the European Commission with a request to consider it in the context of revisions to CRR and CRD.

- **Who?** All banks.
- **When?** The report will be used by EBA in the development of EBA guidelines for banks' management of ESG risks and for an update of the SREP guidelines to include ESG risks in bank supervision (see also [EBA - Consultation revised SREP guidelines](#)). Also, the European Commission will be able to take the EBA's recommendations into account when amending CRR and CRD.

RTS revision on credit risk adjustment

- **What?** On December 13, 2021, EBA [published](#) revised Regulatory Technical Standards (RTS) on credit risk adjustment in calculating the risk weight (RW) of defaulted exposures in the Standardised Approach. The proposed changes are a follow-up to the European Commission's action plan to address non-performing loans (or NPLs) in the wake of the COVID-19 pandemic. Under certain circumstances, the risk weight of NPLs on the seller's balance sheet (100%) differs from the risk weight on the buyer's balance sheet (150%). The revised RTS ensure that the risk weight can remain the same in both cases. The consultation ended on September 24, 2021.
- **Who?** All banks.
- **When?** The consultation period ended on September 24, 2021. We expect EBA to publish the technical standards soon.

OTHER PUBLICATIONS

With a view to further harmonisation of the Single Rulebook for banks, EBA published in 2021 a large number of guidelines, opinions, studies and draft technical standards that will be of great interest to all banks in 2022. These included:

- A [report](#) on the feasibility of an integrated reporting system. This report looks at improving and modernizing EU supervisory reporting and reducing the overall reporting burden. This report should be seen in addition to the ECB's [announcement](#) of the development of an Integrated Reporting Framework (IReF).
- An [updated list and report](#) of Tier 1 core capital instruments (CET1). Since the list was first published on May 28, 2014, EBA has included 18 new forms of instruments. In total, the list includes 111 authorized CET1 instruments.
- Draft [Regulatory Technical Standards](#) (RTS) containing the methodology to be applied to calculate risk-weighted exposure amounts for exposures to collective investment schemes. The revised RTS has been sent to the European Commission for approval.



- A [consultation](#) on *machine learning* in the context of internal ratings based (IRB) models. The purpose of the consultation paper is to establish regulatory expectations on how new advanced machine learning models can coexist with and comply with CRR when used in the context of IRB models. The consultation runs until February 11, 2022.
- An [opinion](#) on the protection of deposits within the EU. More specifically, the EBA assessed the treatment of customer funds placed with banks by payment institutions, e-money institutions, investment firms, other banks and other types of financial institutions. One of the recommendations is to clarify in the Deposit Guarantee Scheme Directive that customer funds in banks are protected by the relevant Deposit Guarantee Scheme.
- The revised [guidelines](#) on stress tests conducted by national deposit guarantee schemes under the Deposit Guarantee Schemes Directive (DGSD). The revised guidelines expand the scope of DGS stress tests, by requiring more tests, and seek greater harmonisation and comparability of stress test results, enabling EBA to conduct a robust peer review of national DGS stress tests by 2025.
- A [report](#) on the platformisation of the banking and payments sector in the EU. The EBA identifies rapid growth in the use of digital platforms to ‘bridge’ customers and financial institutions, a trend that is expected to accelerate in line with the broader trend towards the digitisation of the financial sector in the EU.
- A [peer review](#) of the EU supervisors’ application of the ESA Joint Guidelines on the Prudential Assessment of the Acquisition of Qualifying Holdings when applying for a Statement of No Objection (CoA). The EBA concludes that the guidelines are largely or fully applied and that this leads to a uniform assessment of AoA applications. The EBA also makes a number of recommendations for improvement.
- A [consultation](#) on a Regulatory Technical Standards (RTS) on retention requirements under the Securitisation Regulation. The RTS aims to clarify the requirements related to risk retention. The consultation will run until September 30, 2021.
- A [report](#) on the monitoring of Additional Tier 1 instruments including considerations on ESG capital bonds. The EBA makes recommendations to ensure the quality of ESG capital bonds from a prudential perspective.

- The revised [Regulatory Technical Standards](#) (RTS) on equity and eligible liabilities. This RTS has been amended to align with the amended CRR. The revised RTS has been sent to the European Commission for approval and will be directly applicable thereafter as EU regulations.
- Final [Regulatory Technical Standards](#) (RTS) with conditions for consolidation in accordance with Article 18 CRR. The revised RTS has been sent to the European Commission for approval.

AFM

Trend Monitor 2022

- **What?** On 4 November 2021, the AFM published [Trend Monitor 2022](#). In it, as every year, the AFM identifies important trends and associated risks in the financial sector. The concrete implications of the trends and risks for the AFM’s supervisory activities are elaborated in the AFM Agenda 2022, which will be published by the AFM in early 2022. For banks, the following developments mentioned in Trend Monitor 2022 are particularly relevant: uncertainty of the economic recovery, low interest rates and the high debt of companies and households and the charging of negative interest by banks. In addition, the AFM mentions the role of banks as gatekeepers in the prevention of money laundering, terrorist financing and violation of the Sanctions Act.
- **Who?** All less significant banks. AFM trends with respect to financial-economic crime apply to all banks.
- **When?** We expect the AFM to give increased attention to the themes in Trend Monitor 2022 in its ongoing supervision in 2022.

DEVELOPMENT OF EUROPEAN LEGISLATION AND REGULATIONS

Banking Package 2021

On October 27, 2021, the European Commission adopted a proposal to revise [CRR](#) and [CRD](#): [Banking Package 2021](#). These new rules should ensure that banks become more resilient to possible future economic shocks. This proposal completes the implementation of the Basel III Accord in the EU (the proposal is also referred to as ‘final Basel 3’). In addition, the proposal contains rules that contribute



to the recovery after the COVID-19 pandemic and to the transition to a climate neutral economy. The proposal to revise CRR and CRD follows significant changes to CRR and CRD in 2021, as implemented in the DFSA. It is still possible to provide feedback to the European Commission until 16 February 2022 (see [here](#)). All feedback will be summarised by the European Commission and submitted to the European Parliament and the Council so that they can take it into account in the further consideration of the proposal.

Important changes

Below we briefly discuss the main proposals in the Banking Package 2021.

Risk weighted assets

The proposal includes changes to the way banks calculate their risk-weighted assets (RWA). Banks can calculate risk-weighted assets by using the standard approach or by using an internal model. Under the standard approach, the amount to be held for which loan is fixed. Banks using the internal model estimate the risk weights themselves based on historical data. The use of internal models by banks usually results in banks having to hold less capital than under the standard approach. This has led to many differences between banks and an uneven playing field. The proposal contains four changes.

- First, the total RWA based on internal models must not be less than 72.5% of RWA in accordance with the standard approach. This limit is also known as the output floor.

Second, in the standard approach, calculations of risk weights are more finely tuned to risks and internal models are more clearly regulated, for example by no longer allowing them for all assets.

- Third, banks may no longer estimate capital requirements for operational risk (such as fraud and data breaches) using internal models, but only using a single standard approach.
- Finally, banks should only use standard methods to calculate capital requirements for losses on derivative contracts that may arise due to deteriorating counterparty creditworthiness.

ESG risks

Under the proposal, banks must systematically define ESG risks, include them in short- to medium- to long-term horizons, disclose them and manage them as part of their

risk management. This will include regular climate stress tests. Regulators will need to assess ESG risks in ongoing supervision. In addition, banks are expected to disclose the extent to which they are exposed to ESG risks.

Stronger supervision

Finally, the proposal includes stronger tools for bank supervisors. There will be new powers for supervisors to assess whether senior bank personnel have the skills and knowledge required to manage a bank. In addition, supervisors will have more powers to better supervise fintech groups, including bank affiliates. This is in response to the WireCard scandal.

Daisychain proposal

- **What?** The [Banking Package 2021](#) adopted by the European Commission on October 27, 2021, contains a separate proposal to amend CRR in the area of resolution and the mismatch in interactions between the BRRD and CRR, the so-called [daisychain](#) proposal.
- **Who?** All banks.
- **When?** The proposal was recently discussed in the Council and will then be sent to the European Parliament. See the Council press release of December 21, 2021 [here](#).

Consultation macroprudential rules CRR

- **What?** Article 513 CRR requires the European Commission to review the macroprudential rules in the CRR by June 30, 2022, and every five years thereafter, to determine whether they are adequate to address systemic risk across sectors, regions and Member States. The main macroprudential rules are the capital requirements and buffers, CET 1, Pillar 1 and Pillar 2. To this end, the European Commission published a [consultation](#) on November 30, 2021. The market is invited to make proposals for improvement.
- **Who?** All banks.
- **When?** The consultation period runs through March 18, 2022.

Package of measures aimed at sustainability (including Green Bonds)

- **What?** On July 6, 2021, the European Commission [adopted](#) an ambitious and comprehensive package of measures to promote investment in sustainable economies. These include a new [strategy](#) for financing the transition to a sustainable economy and a proposal for a [European Green Bond Standard](#) (EUGBS). Both



measures follow the European Commission's 2018 [Action Plan: financing sustainable growth](#). In 2022, there are many different developments in the pipeline across the spectrum of sustainability regulations, which will therefore also affect banks, see the [Sustainability](#) section.

- **Who?** All banks.
- **When?** Thus, these developments are expected to become relevant at various times in 2022. We recommend that market participants follow these developments closely.

DORA

- **What?** On November 24, 2021, the text of the proposed Regulation on Digital Operational Resilience for the Financial Sector (DORA) was [agreed](#) upon within the Council. DORA broadly consists of the following five pillars (i) ICT risk management (ii) ICT incident handling, (iii) ICT risk management in outsourcing, (iv) supervision of critical ICT service providers; and (v) supervisory cooperation and oversight/enforcement.
- **Who?** All banks.
- **When?** The next step is for the Council and the European Parliament to enter into trilogue negotiations on the content of the text of DORA. According to the most recent text, the regulation will be directly applicable in the Netherlands 24 months after its entry into force.

RTS on use of internationals approach

- **What?** On October 20, 2021, the European Commission adopted the [Technical Regulatory Standards](#) (RTS), which establishes the assessment methodology to be followed by supervisors when evaluating whether a bank meets the requirements for using the internal models.
- **Who?** All banks.
- **When?** We expect the RTS to be adopted in 2022.

Update implementing regulation reporting requirements

- **What?** On September 13, 2021, the European Commission [published](#) a proposal to establish reporting requirements for banks with an internal model that should allow EBA and the regulator to monitor the range of risk-weighted exposure amounts or own funds requirements for the purpose of exposures or transactions in the benchmark portfolio. The change will require certain banks to adjust their reporting.
- **Who?** Banks using an international approach.

- **When?** The proposal is currently being discussed in the Council and will then be sent to the European Parliament.

Directive on credit servicers and credit purchasers

- **What?** On November 24, 2021, the proposal for a [Directive](#) on credit servicers, credit purchasers and the recovery of collateral was published. This directive standardises the rules for servicers and buyers of credit in the EU and facilitates the sale of non-performing loans (NPLs). When providers are faced with a large accumulation of NPLs and do not have the staff or expertise to service them properly, they should be able to outsource the servicing of those loans to a specialised credit servicer or transfer the credit agreement to a credit buyer with the necessary risk appetite and expertise to manage them.
- **Who?** Banks looking to buy or sell credit.
- **When?** The directive must be implemented by December 29, 2023. Next year we can expect a bill to implement it.

DEVELOPMENT OF DUTCH LEGISLATION AND REGULATIONS

Implementation framework for covered bonds

- **What?** On October 29, 2021, a consultation was [published](#) on the Act to implement the Covered Bonds Directive. The consultation period for the implementation act ended on November 26, 2021. The Act to implement the Covered Bonds Directive has now been passed by the Senate. With this, the implementation of the framework for a uniform regime in the EU for covered bonds is almost complete. Covered bonds are debt instruments issued by banks and secured by a segregated pool of assets to which bondholders as preferential creditors can have direct recourse.
- **Who?** Banks that issue covered bonds.
- **When?** The Covered Bonds Directive had to be adopted and published by July 8, 2021. We expect the Act to implement the Covered Bonds Directive to be published in the Official Gazette in early 2022.



BRRD II Implementation Act

- **What?** At the end of 2021, the [BRRD II Implementation Act](#) was published in the Official Gazette. This Implementation Act implements the Directive on loss absorption and recapitalisation capacity of banks and investment firms (BRRD II). BRRD II amends the Directive on the recovery and resolution of credit institutions and investment firms (BRRD) and has been implemented in the Netherlands in the DFSA (in particular Part 3A) and the Bankruptcy Act. The main objective of BRRD II is to increase the quality of the bail-inable buffer of banks and investment firms (MREL).
- **Who?** All banks.
- **When?** The Implementing Act came into force on December 21, 2021.

Financial Markets Amendment Act 2021 – group DNO

- **What?** At the end of 2019, the Ministry of Finance [consulted](#) on the Financial Markets Amendment Act 2021. The bill amends various laws and provides, among other things, for the introduction of a notification obligation with respect to changes that take place within a group, after a declaration of no objection (DNO) for a group of companies has previously been granted by DNB as referred to in Section 3:102 (2) DFSA.
- **Who?** If the proposal becomes law, it will have relevance for group companies that hold a group DNO from DNB in relation to a bank.
- **When?** At the time of writing, the Financial Markets (Amendment) Act 2021 has not yet been presented to the House of Representatives. It is unclear when/if this part of the 2021 Amendment Act will enter into force.

Financial Markets Amendment Decree 2021–outsourcing and group DNO

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets Amendment Decree 2021](#) to the Lower House. This Decree provides, among other things, for a more detailed elaboration of the obligation to report intra-group changes in case of a declaration of no objection (DNO) granted to such group. In addition, the Decree provides for an amendment to the provisions on intra-group outsourcing, bringing them more in line with the EBA guidelines on outsourcing. As a result of this amendment, the rules relating to outsourcing policies, procedures and agreements will also apply to banks when they outsource activities to group companies within the EU. For such outsourcing, as a result of

this amendment, an exception from the outsourcing provisions of the Bpr is no longer possible.

- **Who?** Group companies that have a group DNO from DNB in relation to a bank and banks with outsourced functions within the group.
- **When?** The proposal is currently being debated in the Dutch Lower House. The amendment with respect to the group vwb is related to the proposed amendment in the Financial Markets (Amendment) Act 2021 (see above).

Financial Markets Amendment Decree 2021– euro account in the Dutch Caribbean

- **What?** The [Financial Markets Amendment Decree 2021](#) contains a measure that removes the formal obstacle for Dutch banks to offer euro accounts in the Dutch Caribbean. This will allow residents of the Dutch Caribbean to have access to a euro payment or savings account at a Dutch bank. Banks are not obliged to offer a euro account to residents of the Dutch Caribbean.
- **Who?** All banks.
- **When?** The proposal is currently being debated in the House of Representatives.

Law on availability of basic payment account for Dutch citizens abroad

- **What?** This [bill](#) entails an amendment to Section 4:71(f) DFSA on the basis of which consumers who reside lawfully in the EU, regardless of the place of residence or the nationality of the consumer, also have the right to apply for and use a basic payment account in euros. A bank that offers payment accounts to consumers in the Netherlands will from then on also have to offer consumers from another EU member state the possibility to open a basic payment account so that these consumers can also participate in payment transactions.
- **Who?** Specifically, banks and payment institutions.
- **When?** It is not yet clear when this bill will take effect. The bill has now been published for some time, so we would not be surprised if it goes into effect in 2022.

Further remuneration rules for the financial sector

- **What?** In the summer of 2020, the Minister of Finance [submitted](#) a proposal to implement a number of changes to the current remuneration rules as contained in the DFSA, including (i) the introduction of a statutory retention period of five years for shares paid as part of a fixed remuneration and (ii) a tightening of the averaging rule for non-CFO staff, who may be awarded a higher bonus than 20% under certain conditions.

- **Who?** All banks.
- **When?** The proposal is currently pending before the House of Representatives. It is unclear when the amendment will take effect. We expect this to be in mid-2022.

Consultation options for strengthening measures to prevent dividend stripping

- **What?** On December 15, 2021, the Ministry of Finance [launched](#) a consultation in connection with possible measures to prevent dividend stripping (in short: splitting economic and legal entitlement to dividends in order to obtain a dividend tax benefit).
- **Who?** All banks.
- **When?** You can respond until January 26, 2022. In mid-2022, the Cabinet expects to inform the House of Representatives about possible measures.

Proposed amendment to House for Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House for Whistleblowers Act. This Act provides, among other things, for the obligation to establish a procedure for dealing with the reporting of suspected wrongdoing within an organisation. Currently, with respect to this obligation, a threshold of at least fifty persons within the organisation is still provided. One of the proposed amendments is that this threshold will no longer apply to companies active in the financial sector, including investment firms. The AFM will be appointed as the competent supervisor.
- **Who?** All banks.
- **When?** The legislative amendment was actually supposed to take effect on December 17, 2021. However, the proposal is currently pending before the House of Representatives. It is unclear when the amendment will take effect. We expect this to be in early 2022.

Investment, Mergers and Acquisitions Security Test Act

- **What?** On June 30, 2021, the [bill](#) for the Investment, Mergers and Acquisitions Security Review Act was presented to the House of Representatives. The bill introduces a review mechanism for investments, mergers and acquisitions that may pose a risk to national security. This involves investments in (i) vital providers or (ii) companies that possess sensitive technology.
- **Who?** The bill identifies several financial companies as vital providers, including certain banks.

- **When?** The law is expected to take effect in early 2023.

Referral portal bank details

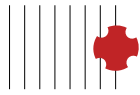
- **What?** On October 18, 2021, a consultation [was published](#) of the bill that deals with the expansion of the bank data referral portal. The bill addresses a national policy desire from the actionplan on money laundering, namely to allow balance and transaction data to be claimed via the referral portal from banks with more than 2.5 million account holders, for the purpose of combating money laundering and underlying crime.
- **Who?** Banks with more than 2.5 million account holders.
- **When?** The consultation period ended on November 29, 2021. We expect the bill to be sent to the House of Representatives in 2022.

Consultation review of the Short Selling Regulation

- **What?** ESMA published a [consultation](#) on September 24, 2021 that relates to the revision of the Short Selling Regulation ((EU) 236/2012). This document includes proposals for operational improvements and policy clarifications on a wide range of topics, including the calculation of net short positions, the prohibition of uncovered short selling transactions and the *locate rule* under which short selling transactions may take place, but also the introduction of a centralised notification and disclosure system to reduce the reporting burden, increase cost efficiency and enhance ESMA's monitoring capacity and coordination powers in case of potential threats at the EU level.
- **Who?** Banks that engage in short selling.
- **When?** The consultation period closed on November 19, 2021 and ESMA expects to publish its final report at the end of the first quarter in 2022. It will then be submitted to the European Commission for approval, after which it will enter into force. This is expected to be during 2022 at the earliest.

Amendment to Short Selling Ordinance - adjustment threshold notification

- **What?** On September 27, 2021, the European Commission published the [draft delegated regulation](#) on the adjustment of the relevant threshold for the notification of significant net short positions in shares. This delegated regulation amends Article 5(2) of the Short Selling Regulation by setting the threshold for notification to the competent authorities of significant



net short positions in shares at 0.1% of the issued share capital of the company concerned. Under the Short Selling Regulation, that threshold was originally set at 0.2%. However, during the COVID-19 pandemic, the notification threshold for net short positions in shares admitted to trading on a regulated market was lowered from 0.2% to 0.1%, in order to enable faster recognition of market developments. ESMA now intends to permanently lower this threshold and set it at 0.1%.

- **Who?** Banks with short positions in shares of listed companies.
- **When?** Expected in 2022.

December 16, 2021, address the issue of cash. In recent years, the share of cash payments has decreased and the share of non-cash payments has increased. Nevertheless, certain groups within society depend on the use of cash in order to participate in the payment system and thus in society. According to the Minister of Finance, it is important that a cash payment system remains in place. DNB is currently in talks with the main parties in the payment system about a covenant on cash. The costs for withdrawing and depositing cash are part of these discussions. When these talks are completed, the Minister of Finance will inform the Lower House further. This is expected to be in early 2022.

- **Who?** Banks and payment institutions.
- **When?** 2022.

OTHER DEVELOPMENTS

Inflation

- **What?** The ECB, DNB and the Bank for International Settlements (BIS) are all paying attention to rising inflation. On December 28, 2021, the ECB [published](#) a Working Paper “Endogenous growth, downward wage rigidity and optimal inflation” on adjusting the current inflation target of 2%. The BIS elaborates on rising interest rates and challenges for financial markets in a [quarterly review](#). DNB regularly mentions inflation in its news releases. Recently, DNB mentions the longer-than-expected [persistence](#) of inflation and [material](#) deficits due to rising prices and the impact on the economy
- **Who?** All banks.
- **When?** Inflation will be a topic of interest at DNB and the ECB in 2022.

Plans of the new cabinet

- **What?** On December 15, 2021, the intended new cabinet [published](#) a coalition agreement. In this agreement, the new cabinet presents the plans and challenges for 2022-2024. For the purpose of reducing nitrogen emissions, a contribution from banks is expected. This seems to refer to a cooperative attitude of banks towards farmers who have taken out financing and at the same time are confronted with measures. It is not clear what this means in a concrete case.
- **Who?** All banks.
- **When?** The new cabinet is expected to flesh out the plans in early 2022.

Importance of cash

- **What?** The Minister of Finance's [answers](#) to questions on Financial Markets - Stability and Institutions dated

Longer opening hours payment systems

- **What?** The Bank for International Settlements (BIS) has published an [consultative report](#) called ‘Extending and aligning payment system operating hours for cross-border payments’, issued as part of the G20 Cross-Border Payments Program. This report focuses on the opening hours of RTGS (real-time gross settlement) systems. These settlement systems are considered crucial for promoting cross-border payments. Extending the opening hours of RTGS in all jurisdictions can help remove current barriers, allowing cross-border payments to be made faster and reducing liquidity costs and settlement risks.
- **Who?** (Central) banks and payment institutions.
- **When?** Affected market participants have until January 14, 2022 to submit a consultation response to BIS. The report is primarily intended for central banks and payment system operators to further consider the costs and benefits of extending the opening hours of RTGS systems. It is unclear at this time what follow-up steps, if any, will result from this.



INVESTMENT FUNDS

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

Managers who are allowed to provide investment services in addition to managing investment funds (managers with MiFID II top-up) must comply with a large number of rules that apply to investment firms for that part of the service. Therefore, in addition to this section, we recommend that those managers take note of the [Investment Firms](#) section of this Outlook. The cross-sectoral components [Integrity](#) and [Sustainability](#) are also of great importance to managers. Subjects relating to them are not discussed in this section, but only in the aforementioned specials.

Finally, it is useful for investment fund managers to take note of the [General](#) section, as it also covers topics that may affect managers and investment funds (such as developments with respect to the Benchmark Regulation, the Market Abuse Regulation and the Securities Financing Transactions Regulation (SFTR)).

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

AFM OVERSIGHT

- Follow-up investigation into mandatory incident reporting in asset management sector
- Attention to notification requirement for significant changes
- Attention to management of outsourcing risks
- Attention to risk management for AIFMs
- 'Gatekeepers portrayed' report - Transaction monitoring deserves attention
- AIFMD reports from light managers as of 1 January 2022 via the AFM Portal
- AFM Trend Monitor 2022 - relevance for managers

DNB OVERSIGHT

- Supervision in focus - relevance for managers with MiFID II top up
- Entry into force rules IFD/IFR for managers with MiFID II top-up
- Supervision 2022

ESMA AND EBA

- ESMA Work Programme 2022
- ESMA Guidelines on performance fees for UCITS and certain types of AIFs
- ESMA Advertising Guidelines

ESMA guidelines on outsourcing to cloud service providers

- ESMA Q&A under UCITS - commissions
- ESMA Q&A under AIFMD - crypto
- EBA Consultation technical standards to identify shadow banking entities

DEVELOPMENTS IN EXISTING LEGISLATION AND REGULATIONS

- Review of the AIFM Directive
- Review of the ELTIF Regulation - towards a fully-fledged retail product?
- Adjustment of costs for notification of sub-funds
- Various developments PRIIPs
- Equivalence UK for certain transactions UCITS
- Consultation adjustments Short Selling Regulation
- Amendment to Short Selling Regulation - adjustment threshold notification
- Consultation for a review of the Money Market Fund Regulation.
- EC exploration retail investment strategy
- Further remuneration rules for the financial sector
- Proposed amendment to House for Whistleblowers Act

NEW LAWS AND REGULATIONS



Financial Markets Amendment Act 2022 - AIFMD light regime for foreign managers
Financial Markets Amendment Act 2022 - Foreign UCITS regulation
Financial Markets Amendment Decree 2021 - Technical amendments to UCITS
Financial Markets Amendment Act 2021 - the group DNO
Financial Markets Amendment Decree 2021- the group DNO
DORA

OTHER DEVELOPMENTS

ESRB: Issues note related to money market funds
FSB: Progress report on implementation of principles for prudent remuneration practices

AFM OVERSIGHT

Follow-up investigation into mandatory incident reporting in asset management sector

- **What?** In September 2021, the AFM [announced](#) a follow-up survey of incident reporting requirements among asset managers. The AFM called for incident reporting in December 2020, but has found that this has not led to a significant increase in incident reports. The AFM is conducting a follow-up survey of a number of specific market participants.
- **Who?** Authorized managers of UCITS and authorized managers of retail AIFs.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has again drawn attention.

Attention to notification requirement for significant changes

- **What?** In November 2021, the AFM [drew](#) attention to the reporting of significant changes to the AFM. The AFM noted that significant changes are - wrongly - not always reported to the AFM. These include mergers and acquisitions, changes in outsourcing contracts, changes in terms and conditions of services and products, but also restructuring processes or changes in business model, business structure, management, risk management or investment policy.
- **Who?** Authorized managers of AIFs and of UCITS, as well as managers of EuVECA, EuSEF or ELTIF funds.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

Attention to management of outsourcing risks

- **What?** In July 2021, the AFM [published](#) a letter providing feedback on an investigation into the outsourcing of critical activities. The research is a follow-up of the earlier AFM research 'Keten in Beeld'. The purpose of the letter is to share sector-wide insights and to once again point out the need to control outsourcing risks. The AFM concludes that the management of outsourcing risks can be improved.
- **Who?** Authorized managers of AIFs and UCITS.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has again drawn attention.

Attention to risk management for AIFMs

- **What?** In October 2021 the AFM [published](#) a feedback letter regarding a study into the risk management function at seven AIFMs. The AFM notes that risk management can be further tightened and indicates that it will continue to pay attention to the risk management of AIFMs.
- **Who?** Authorized managers of AIFs, but in principle equally relevant to authorized managers of UCITS.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

'Gatekeepers portrayed' report - Transaction monitoring deserves attention

- **What?** In October 2021, the AFM [published](#) the report 'Gatekeepers portrayed', in which the AFM provides an analysis of the feedback from managers on the annual Wwft and Sw questionnaire. The AFM notes that most fund managers take measures to comply with the Wwft and Sw. According to the AFM, transaction monitoring and the duty to report still require attention.
- **Who?** All managers.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has again drawn attention.

AIFMD reports from light managers as of 1 January 2022 via the AFM Portal

- **What?** As of 1 January 2022, light managers must submit their [annual AIFMD reports](#) to the AFM via the AFM Portal. Until this year, the reports had to be submitted to DNB. For this purpose, managers must create an account within the AFM Portal with access to Reports. Submitting reports to DNB is no longer possible. DNB also recently [drew](#) separate attention to this.
- **Who?** AIFMD light managers.
- **When?** Effective January 1, 2022.

AFM Trend Monitor 2022 - relevance for managers

- **What?** On November 4, the AFM [published](#) Trend Monitor 2022, in which the AFM discusses the main trends and associated risks in the financial sector. For asset management, the AFM emphasizes the strategic repositioning of parties, the risks of outsourcing and the influence of the increased demand for sustainable financial products. The risk of greenwashing is also discussed.

- **Who?** Primarily authorized managers of AIFs and UCITS, but in principle equally relevant to AIFMD light managers.
- **When?** Immediately.

DNB OVERSIGHT

Supervision in focus - relevance for managers with MiFID II top up

- **What?** On December 7, 2021, DNB [published](#) the document Supervision in focus, in which DNB looks back on its activities of last year and indicates what its priorities are for 2022. Specifically with respect to managers with MiFID II top-up, it will focus on further implementation of IFD/IFR.
- **Who?** Managers with MiFID II top-up.
- **When?** During 2022.

Entry into force rules IFD/IFR for managers with MiFID II top-up

- **What?** On November 26, 2021, the [Implementation Decree](#) on prudential supervision of investment firms to implement IFD entered into force. The Implementation Decree amends the BGfo and the Bpr. As a result, (i) the [DNB Regulation containing specific provisions on IFR and IFD](#) of 28 October 2021 and (ii) the DNB Regulation on amendments to the [Regulation on Statements of Financial Undertakings Wft 2011](#) of 28 October 2021 also entered into force. More information on IFR/IFD is included in the [Investment Firms](#) section of this Outlook.
- **Who?** Authorized managers who also provide investment services on a MiFID II top-up basis.
- **When?** As of November 26, 2021.

Supervision 2022

- **What?** On December 22, 2021, DNB [published](#) on its website a number of concrete supervisory topics on which it will focus in 2022. With respect to managers, DNB will pay attention to (controlling) liquidity. In the Supervision Calendar, which is accessible via the Digital Supervision Desk (DLT), it is announced whether a manager is involved in specific investigations or queries in this context.
- **Who?** Authorized managers of AIFs and UCITS.
- **When?** During 2022.



ESMA AND EBA

ESMA Work Programme 2022

- **What?** On September 27, ESMA published its [2022 Annual Work Programme](#). In it, ESMA identifies its priorities for 2022. As main themes ESMA identifies the further establishment of the Capital Markets Union, sustainability and innovation and digitalization. Specifically for supervision of (managers of) investment institutions, ESMA will focus primarily on harmonization of rules and interpretations by supervisors and assistance in establishing the single rulebook with respect to the review of the AIFM Directive, ELTIF Regulation and MMF Regulation.
- **Who?** Managers of investment funds, especially authorized managers.
- **When?** During 2022.

ESMA Guidelines on performance fees for UCITS and certain types of AIFs

- **What?** This [guidance](#) relates to performance fees for managers of UCITS and certain AIFs. The guidance covers the following topics: 1) Calculation method for performance fees, which should be verifiable; 2) Consistency between the performance fee model and investment targets; 3) Frequency with which the performance fee is paid to the manager; 4) Recovery from negative performance, a performance fee should only be paid when a positive return has accrued during the performance reference period and; 5) Disclosure of the performance fee model.
- **Who?** Managers of UCITS and managers of retail AIFs, excluding (i) closed-end AIFs; and (ii) open-end AIFs that are EuVECAs, EuSEFs, private equity AIFs or real estate AIFs.
- **When?** The Guidelines have been in effect since January 5, 2021, but for performance fee structures existing at that time, the Guidelines will apply as of January 1, 2022.

ESMA Advertising Guidelines

- **What?** On August 2, 2021, ESMA [published](#) the translation of the Guidelines on Marketing Communications under the Regulation on Cross-Border Fund Distribution. The guidelines include different requirements for advertising communications in respect of investment funds. The rules apply in addition to the national rules on advertising communications.
- **Who?** Managers of AIFs, managers of UCITS, EuVECA managers, and EuSEF managers.

- **When?** Effective February 2, 2022.

ESMA guidelines on outsourcing to cloud service providers

- **What?** On December 18, 2020, ESMA [published final guidelines on outsourcing to cloud service providers](#). These guidelines have been in effect since July 31, 2021. Managers must review existing outsourcing agreements regarding cloud services to ensure compliance with these guidelines by December 31, 2022. If this review is not completed by December 31, 2022, the manager must notify the AFM, specifying the actions it plans to take to complete the review or any exit strategy.
- **Who?** Authorized managers of AIFs and UCITS.
- **When?** These guidelines have been in effect since July 31, 2021. Companies should review existing outsourcing agreements regarding cloud services to ensure compliance with these guidelines by December 31, 2022.

ESMA Q&A under UCITS – commissions

- **What?** On December 17, 2021 and on November 26, 2021, ESMA published updates to the [Q&A](#) regarding the UCITS Directive. In these, ESMA answers questions on the scope and application of the UCITS Directive. An interesting addition in the November 26, 2021 Q&A relates to commissions.
- **Who?** Managers of UCITS.
- **When?** Immediately.

ESMA Q&A under AIFMD – crypto

- **What?** On [December 17, 2021](#) and ESMA published an update to the Q&A regarding the AIFM Directive. In it, ESMA answers questions on the scope and application of the AIFM Directive. An interesting addition in the most recent Q&A relates to the scope of the AIFMD with respect to crypto funds.
- **Who?** Managers of AIFs.
- **When?** Immediately.

EBA Consultation technical standards to identify shadow banking entities

- **What?** On July 26, EBA [published](#) a consultation for draft technical standards to identify shadow banking entities under CRD IV. Based on the draft standards, this could include certain types of investment funds. The consultation has been completed.



- **Who?** Certain types of investment funds as listed in the draft standards.
- **When?** EBA prepares draft technical standards which are then submitted to the EC. Timelines are not yet clear. It is important for managers to continue to monitor this development.

DEVELOPMENTS IN EXISTING LEGISLATION AND REGULATIONS

Review of the AIFM Directive

Introduction

Already since 22 July 2017, the European Commission has been working on a review of the AIFM Directive. In the Outlook 2021, we already paid attention to the (long) run-up to the outcome of that evaluation. On November 25, 2021, the long-awaited clarity came from the European Commission with a [proposal](#) to amend the AIFM Directive and UCITS Directive (the Proposal).

European Commission Proposal

It was unclear for a long time whether, as a result of the review, the European Commission would opt for a change to the level 1 text of the AIFM Directive or for a less far-reaching amendment of certain requirements of the AIFMD framework, without amending the level 1 text. The market provided a lot of input to an earlier consultation round in which the European Commission asked for input on certain topics. The general consensus from the market was that it would be preferable to clarify certain issues without amending the level 1 text of the AIFM Directive.

In the end, the European Commission has opted to amend the level 1 text of the AIFM Directive, but in a relatively limited way. Based on initial signals from the market, the response has been predominantly positive. The Proposal also amends certain parts of the UCITS IV Directive to ensure consistency between the AIFMD and UCITS frameworks.

Key takeaways

As far as we are concerned, the main takeaways for AIFMs are:

1. Substance. The board of a manager must be determined by at least two natural persons who work and reside in the Netherlands on a full-time basis. The

license applicant must also provide detailed information on the intended daily policymakers.

- 2. Loan origination.** Managers who manage loan originating funds must meet additional requirements in areas such as investment restrictions, risk management, liquidity management, and management of conflicts of interest.
- 3. Liquidity Management.** Additional liquidity management requirements with respect to open-ended funds and the obligation to inform investors about the liquidity management techniques that the AIF can use.
- 4. Outsourcing.** Further tightening of the possibilities for outsourcing and the conditions that apply to it. There will also be so-called peer reviews in which ESMA will conduct an analysis with local supervisors, more specifically with respect to the measures taken to prevent AIFMs, which outsource portfolio and/or risk management to service providers in third countries, from becoming so-called letterbox entities.
- 5. Depositaries.** The possibility of appointing a depositary in a Member State other than that in which the AIF is domiciled.
- 6. Costs.** Additional disclosure requirements about costs charged with respect to an AIF, including periodic reporting thereon.

Relevant for UCITS managers as well

The Proposal also amends the UCITS IV Directive. The aim is to achieve greater harmonization of rules between the two directives that dominate the supervision of managers in Europe. More specifically, parts (i), (iii) and (iv) above are also relevant for UCITS managers. There will also be further harmonization between the reporting requirements of UCITS and AIFs.

What's next

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

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

We are, of course, going to follow the developments closely in the near future.



Review of the ELTIF Regulation - towards a fully-fledged retail product?

Introduction

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

Options ELTIF Regulation

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

Cross-border offers of 'ordinary' AIFs to retail investors based on a European passport are not possible under the AIFM Directive. In that case, each Member State must separately check whether its national law permits an offer to retail investors. This makes the ELTIF framework potentially a good addition to the UCITS framework, but then for AIFs. An additional advantage of an ELTIF is that in certain Member States favourable tax treatment applies for investors.

Restrictions

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

Proposed changes

The European Commission hopes the proposed changes will make the ELTIF framework more attractive to managers. The proposed changes include:

- Broadening the type of assets in which an ELTIF may invest, particularly in terms of different types of movable

and immovable assets.

- Removing investment barriers for retail investors.
- Reduction in rules when an ELTIF is offered exclusively to professional investors.
- Additional liquidity requirements in order to ensure sufficient liquidity within the ELTIF and to allow 'matching' between investors who want to sell their stake and investors who want to buy - simultaneously - a stake in the ELTIF, which can then still give some flexibility to exit despite the closed-end nature of ELTIFs.

In doing so, the European Commission hopes that the ELTIF fund will become an attractive product for professional and retail investors who want exposure to long-term investments, allowing additional capital to flow into the real economy.

What's next

The proposal has yet to be negotiated at the European level. Once the proposal is finally adopted, it is currently envisaged that the amendments will enter into force 6 months thereafter. This is a rather short period of entry into force.

We hope that this will give the ELTIF framework a boost, both for offerings to retail and to professional investors.

Adjustment of costs for notification of sub-funds

- **What?** With effect from 1 January 2022, an [amendment](#) to the Financial Supervision Costs Regulation took effect. Based on the new rules, the AFM no longer charges a fee of EUR 4,400 for notification of a sub-fund.
- **Who?** Authorized managers of AIFs and UCITS.
- **When?** January 1, 2022.



Various developments PRIIPs

Introduction

In the field of the PRIIPs Regulation, which is primarily known for the obligation to draw up a Key Information Document (KID), various developments have been running in parallel for quite some time. As a result, it is easy to lose the overview. Nevertheless, 2022 appears to be the year in which concrete changes with regard to the PRIIPs Regulation and the KID will finally enter into force. Below we list the relevant changes in the usual Outlook format.

Yet another postponement of the KID obligation

- **What?** On December 15, two amendments were published in the Official Journal regarding the PRIIPs Regulation and the mandatory KID. The [first amendment](#) concerns (again) an extension of the exemption for retail AIFs and UCITS to prepare a KID under PRIIPs (they are now still required to prepare a Key Investor Information Document (KIID)). This postponement allows market participants to comply with the amended rules regarding the KID (see below). The [second change](#) is an amendment to the UCITS Directive and provides that when a UCITS is only offered to professional investors, whereby PRIIPs in principle do not apply, the manager has the choice to draw up either a KIID or a KID.
- **Who?** Authorized managers of retail AIFs and UCITS.
- **When?** January 1, 2023.

PRIIPs - Changes KID

- **What?** On September 7, the European Commission [published](#) amendments to the Delegated Regulation to the PRIIPs Regulation, which further details the requirements for the KID. These appeared in the [Official Journal of the European Union](#) on December 20, 2021. The amendments include (i) new methods to calculate appropriate performance scenarios and a revised presentation of these scenarios, (ii) the way costs should be presented and (iii) the way transaction costs should be calculated. In addition, there are several changes that apply specifically to retail AIFs and UCITS. For example, for certain types of AIFs and UCITS the obligation to provide information on past performance applies. Specific regulations also apply to sub-funds, share classes, fund of funds and feeder funds.
- **Who?** As of entry into force, this is relevant to exempt AIFMs and authorized AIFMs whose units are offered and traded for at least EUR 100,000. From 1 January 2023, it will be relevant to all AIFMs and UCITS managers. PRIIPs does not apply to AIFs that are only offered to professional investors.
- **When?** The changes will apply from July 1, 2022

PRIIPs - General review PRIIPs

- **What?** Currently, in view of article 33 PRIIPs Regulation, an investigation into the overall functioning of the PRIIPs Regulation is being conducted. The European Commission has [asked](#) the ESAs to give their opinion on many different subjects in the PRIIPs Regulation. The ESAs themselves then [asked for input from](#) the market in connection with this. It is difficult to predict exactly where this evaluation will lead.
- **Who?** Exempted AIFMs and authorized AIFMs whose units are offered and traded for at least EUR 100,000. As of January 1, 2023, this is relevant for all AIFMs and UCITS managers. PRIIPs does not apply to AIFs that are only offered to professional investors.
- **When?** ESAs must provide their input by April 30, 2022.

Equivalence UK for certain transactions UCITS

- **What?** DNB announced on December 8, 2021 through a Q&A on its [website](#) that UCITS may also, as of 2022, invest assets in deposits with a bank in the United Kingdom (UK) (for the purposes of Section 130(f) BGfö) and/or have a counterparty risk of up to 10% of its assets in a transaction in OTC derivatives when the counterparty is a bank headquartered in the UK (for the purposes of Section 134(2) BGfö).
- **Who?** Managers of UCITS.
- **When?** January 1, 2022.

Consultation adjustments Short Selling Regulation

- **What?** On September 24, 2021, ESMA published a [consultation document](#) containing proposed amendments to Regulation 236/2012 (the Short Selling Regulation). ESMA's proposals address, among other things, the calculation of short positions, the ban on naked short selling and the reporting obligation.
- **Who?** Managers of AIFs or UCITS that (also) engage in short selling.
- **When?** The consultation period ran until November 19, 2021. ESMA expects to publish a final report by the end of the first quarter.

Amendment to Short Selling Regulation - adjustment threshold notification

- **What?** On September 27, 2021, the European Commission published the [draft Delegated Regulation](#) on the adjustment of the relevant threshold for the notification of significant net short positions in shares.



This Delegated Regulation amends Article 5(2) of the Short Selling Regulation by setting the threshold for notification to the competent authorities of significant net short positions in shares at 0.1% of the issued share capital of the company concerned. Under the Short Selling Regulation, that threshold was originally set at 0.2%. However, during the COVID-19 pandemic, the notification threshold for net short positions in shares admitted to trading on a regulated market was lowered from 0.2% to 0.1%, in order to enable faster recognition of market developments. ESMA now intends to permanently lower this threshold and set it at 0.1%.

- **Who?** Investment funds with short positions in shares of listed companies.
- **When?** Expected in 2022.

Consultation for a review of the Money Market Fund Regulation.

- **What?** On March 26, 2021, ESMA [published](#) a consultation report for the purpose of a review of the Money Market Fund Regulation, the framework that provides for the regulation of money market funds. Through this document, ESMA asked for input for a possible review of the MMF Regulation. We are now waiting for a final report from ESMA. This will serve as input for the review of the MMF Regulation by the European Commission, which it must start in 2022.
- **Who?** Managers of money market funds.
- **When?** The consultation closed on June 30, 2021. We are now waiting for a final report from ESMA.

EC exploration retail investment strategy

- **What?** In the summer of 2021, the EC published a [consultation paper](#) for the retail investment strategy to be developed by the EC. Among other things, the EC wanted to know what stakeholders think about the comparability of financial products, financial illiteracy among consumers, sustainable investing and the impact of the digitization of financial services. In response to the EC's exploration, the AFM and the Ministry of Finance published a [non-paper](#) on December 13, 2021, containing their views on the position of retail investors.
- **Who?** In particular, managers of UCITS, now that they are offered to retail investors, but thus also relevant to some extent to managers of retail AIFs.
- **When?** The consultation generated 186 responses. The EC expects to announce its retail investment strategy in the first half of 2022.

Further remuneration rules for the financial sector

- **What?** In the summer of 2020, the Minister of Finance [submitted](#) a proposal for a Further Remuneration Measures for Financial Enterprises Act to the Dutch Parliament. The proposal aims to implement a number of changes to the current remuneration rules as contained in the Wft, including (i) the introduction of a statutory retention period of five years for shares paid as part of a fixed remuneration and (ii) a tightening of the averaging regime for non-CAO (i.e. collective labor agreement) staff, who may be awarded a higher bonus than 20% under certain conditions.
- **Who?** Managers of AIFs and UCITS falling within the scope of the Dutch remuneration rules, and possibly affiliated group companies.
- **When?** The proposal is currently pending before the House of Representatives. It is unclear when the amendment will take effect.

Proposed amendment to House for Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House for Whistleblowers Act. This Act provides, among other things, for the obligation to establish a procedure for dealing with the reporting of suspected wrongdoing within an organization. Currently, with respect to this obligation, a threshold of at least fifty persons within the organization is still provided. One of the proposed amendments is that this threshold will no longer apply to companies active in the financial sector, including the AIFM Directive, the UCITS Directive, the EuVECA Regulation and EuSEF Regulation. The AFM will be appointed as the competent supervisor.
- **Who?** Managers of AIFs and UCITS.
- **When?** The legislative amendment was actually supposed to take effect on December 17, 2021. However, the proposal is currently pending before the House of Representatives. It is unclear when the amendment will take effect. We expect this to be in early 2022.

NEW LAWS AND REGULATIONS

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

- **What?** On October 25, 2021, the Minister of Finance presented a proposal for the [Financial Markets \(Amendment\) Act 2022](#) to the House of Representatives. One of the amendments provides that small managers domiciled in another EU member state can also make use of the AIFMD light regime. A small manager is deemed to exist if the total assets under management do not exceed €100 million or €500 million. With respect to the €500 million threshold, investment funds may not use leverage and may not exercise the right to repurchase or redeem units for a period of five years (i.e. closed-end for at least five years). The light regime is only open to these managers to the extent that they offer units to professional investors. Furthermore, the proposed Amending Act contains a number of technical improvements, such as with respect to the Wge (Giro Securities Act) clarifying that the articles in which the term “investment institution” appears do not only extend to AIFs but also to UCITS.
- **Who?** Especially for small investment fund managers based in another EU member state that offer units to professional investors (EU light managers).
- **When?** The bill is now before the House of Representatives for consideration. We expect more to be known about the bill’s consideration in early 2022.

Financial Markets Amendment Act 2022 – Foreign UCITS regulation

- **What?** Another proposed amendment provides that a UCITS manager with its registered office in another Member State may manage a UCITS with its registered office in the Netherlands, if the UCITS manager is authorized in its home Member State to manage the relevant UCITS. The UCITS manager must hold a UCITS license in the home country for managing the type of UCITS concerned. The AFM must have approved the manager’s intention on the basis of Section 2:72(1) and (4) Wft. The proposed regulation surprises us somewhat, since the UCITS regulations provide for a double licensing obligation for both the UCITS manager and the UCITS. This has also been implemented in other Member States. The Netherlands now seems to be deviating from this.
- **Who?** UCITS managers with registered offices in another Member State who wish to manage a UCITS with its registered office in the Netherlands.

- **When?** The bill is now before the House of Representatives for consideration. We expect more to be known about the bill’s consideration in early 2022.

Financial Markets Amendment Decree 2021 – Technical amendments to UCITS

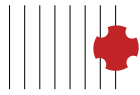
- **What?** On November 24, the Minister of Finance sent the proposal for the [Financial Markets \(Amendment\) Decree 2021](#) to the Senate and the House of Representatives. In it, some technical adjustments are proposed with respect to UCITS. The most notable of these is the deletion of the obligation to submit an annual auditor’s report to the AFM demonstrating that the UCITS has acted in accordance with the investment restrictions. This control task also rests with the depositary and was therefore considered superfluous. In addition, a prohibition on short selling is introduced.
- **Who?** UCITS managers.
- **When?** The rules will take effect in 2022, but it is not yet clear exactly when.

Financial Markets Amendment Act 2021 – the group DNO

- **What?** At the end of 2019, the Ministry of Finance [consulted](#) on the Financial Markets (Amendment) Act 2021. The bill amends various laws and provides, among other things, for the introduction of a notification obligation with respect to changes that take place within a group, after a group declaration of no objection (DNO) has previously been granted by DNB as referred to in Article 3:102 (2) Wft.
- **Who?** If the proposal becomes law, it will have relevance for group companies that have a group DNO from DNB with regard to a UCITS.
- **When?** At the time of writing, the Financial Markets (Amendment) Act 2021 has not yet been presented to the House of Representatives. It is unclear when/if this part of the 2021 Amendment Act will enter into force.

Financial Markets Amendment Decree 2021– the group DNO

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets \(Amendment\) Decree 2021](#) to the Lower House. This Amendment Decree provides, among other things, for a more detailed elaboration of the DNO-notification obligation in the event of changes within a group.
- **Who?** Group companies that have a group DNO from DNB with regard to a UCITS.



- **When?** This rule is related to the proposed amendment in the Financial Markets Amendment Act 2021 (see above). Thus, it is unclear when/if this decision will take effect.

- **Who?** Authorized managers.
- **When?** No specific timing; this is an interim report.

DORA

- **What?** On November 24, 2021, the text of the proposed [Regulation](#) on Digital Operational Resilience for the Financial Sector (DORA) was [agreed upon](#) within the Council. DORA roughly consists of the following five pillars:
 - ICT risk management;
 - Handling of ICT incidents;
 - Manage ICT risks in outsourcing;
 - Oversight of critical ICT service providers; and
 - Cooperation and supervision/enforcement by supervisors.
- **Who?** Authorized managers of AIFs and UCITS. Based on the draft text, an exception has been provided for exempt managers of AIFs for the time being.
- **When?** The next step is for the Council and the European Parliament to enter into trilogue negotiations on the content of the text of DORA. According to the most recent text, the regulation will be directly applicable in the Netherlands 24 months after its entry into force.

OTHER DEVELOPMENTS

ESRB: Issues note related to money market funds

- **What?** On July 1, the European Systemic Risk Board [published](#) a so-called Issue note regarding systemic vulnerabilities of and preliminary policy considerations to reform MMFs. The Issue note serves as input to the European Commission's review of the MMF Regulation, which it will start in 2022.
- **Who?** Authorized money market fund managers.
- **When?** The review of the MMF Regulation the European Commission will start in 2022.

FSB: Progress report on implementation of principles for prudent remuneration practices

- **What?** On November 4, the Financial Stability Board (FSB) [published](#) a progress report on the degree of implementation of principles for prudent remuneration practices and related standards by, among others, asset managers. The FSB notes that banks have made more progress than insurers and asset managers.



INVESTMENT FIRMS

Please note: the cross-sectoral components [Integrity](#) (think of the Wwft and the sanctions regulations) and [Sustainability](#) are also of great importance to investment firms. Developments relating to these topics are, with a few exceptions, not discussed in this section but only in the aforementioned specials.

In addition, it is useful for investment firms to take note of the [General Developments](#) section, as it also covers topics that may affect investment firms (such as developments with respect to the Benchmark Regulation, the Market Abuse Regulation and the Securities Financing Transactions Regulation (SFTR)).

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

AFM OVERSIGHT

Trend Monitor 2022

Follow-up study influencing trade behavior consumers

Principles of ongoing customer support

Attention to management of outsourcing risks

Attention to notification requirement for significant changes

Attention to suitability test products

Attention to 'finfluencers' and commissions in online posts about investing

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EBA & ESMA guidelines on suitability requirements for policymakers and key function holders

ESMA guidelines on the publication of market data

ESMA guidance on certain aspects of the appropriateness test

EBA internal governance guidelines under CRDV

ESMA draft RTS commodity derivatives under MiFID II Quick Fix

ESMA consultation on transparency obligations MiFIR

ESMA consultation MiFID II best execution reporting

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Further remuneration rules for the financial sector

Controlled remuneration policy regulation 2021

EBA guidelines controlled remuneration policy under CRDV

ESMA consultation on guidance on remuneration rules under MiFID II

Delegated Regulation on Article 30 IFD (remuneration policy)

Delegated Regulation on Article 32 IFD (variable remuneration)

OTHER DEVELOPMENTS, EXISTING LEGISLATION AND REGULATIONS

MiFID II Quick Fix

Delegated Regulation MiFID II on integration of sustainability aspects

EC MiFID II/MiFIR review by European Commission

EC exploration retail investment strategy

EC proposals MiFID II/MiFIR: revision of transparency regime and other changes

Financial Markets Amendment Act 2021 - the group DNO

Financial Markets Amendment Decree 2021- the group DNO

Financial Markets Amendment Act 2022 - asset segregation

BRRD II Implementation Act

Amendments Essential Information Document (EID)

PRIIPs Regulation

General Review PRIIPs Regulation

Proposed amendment to House for Whistleblowers Act

Consultation review Short Selling Regulation

Amendment to Short Selling Regulation - adjustment



threshold notification

MiFIR - Criteria for deviation ESMA supervision of APAs and ARMs

NEW LEGISLATION AND REGULATIONS: IFR & IFD¹

IFD Implementation Act

IFD Implementation Decree

IFD Implementation Regulations

Delegated Regulation on Article 5 IFD (to make CRR applicable)

Implementing Regulation on Article 54(3) + 49(2) IFR (reporting and disclosure)

EBA work on IFR & IFD

EBA methodology for reclassifying investment firms as credit institutions

OTHER NEW LEGISLATION AND REGULATIONS

DORA

MiCA

Investment, Mergers and Acquisitions Security Test Act

Parliamentary questions on circumventing the inducement ban

[1] See also the section above:

[Developments in Remuneration Rules.](#)

AFM OVERSIGHT

Trend Monitor 2022

On 4 November 2021, the AFM published [Trend Monitor 2022](#). In this document, as it does every year, the AFM identifies important trends and associated risks in the financial sector. The concrete implications of the trends and risks for the AFM's supervisory activities are elaborated in the AFM Agenda 2022, which will be published by the AFM in early 2022. For investment firms, the following developments mentioned in Trend Monitor 2022 are particularly relevant:

- **Search for yield:** due to continued low, sometimes even negative, interest rates, the search for yield continues. This causes the prices of riskier assets to rise. According to the AFM, the effect of the low interest rate among private individuals is reflected in a strong increase in the number of investors. According to the AFM, a point for attention is that retail investors, in their search for alternatives to saving, are switching to investment products of which they do not properly assess the risk.
- **Digitization:** the AFM points out that the increasing use of data by market participants also entails risks. The lawful handling of personal data and the security of data against cyber attacks requires continuous attention.
- **Internationalization:** according to the AFM, retail investors seek out foreign stock markets. This also makes them susceptible to international investment hypes, as was the case with GameStop. The AFM also sees an increase in cross-border online brokers with a revenue model based on [payment for order flow](#) (PFOF), which according to the AFM may work to the disadvantage of the customer and is prohibited in the Netherlands. See also the [EC proposals MiFID II/MiFIR](#) discussed below.
- **Sustainability:** without reliable, comparable information, there is a risk of greenwashing (the unjustified affixing of the label 'sustainable' to products). Good sustainability information is also indispensable for pricing sustainability risks and thus for limiting sustainability risks for the economy and the financial system. The AFM points out that there is a great deal of new European legislation on the horizon that imposes requirements on the provision of information regarding sustainable financial products.

Specifically for asset managers, the AFM has drawn up a so-called 'risk map'. It identifies risks with respect to the following six subjects:



- **Repositioning:** the AFM sees that the asset management environment is changing, among other things due to scaling-up and margin pressure, the growth of (online) passive (index) investing, increasing legislation and regulations and outsourcing issues. According to the AFM, these changes together create the need for individual parties to strategically reposition themselves in order to ensure their continuity.
- **Illiquid assets:** the search for return means that investments are increasingly being made in illiquid assets. The AFM points out, among other things, that there is a risk that these illiquid assets are incorrectly valued, as a result of which parties entering and exiting the market may carry out transactions at a different price, or be restricted in their transactions by illiquid markets.
- **Innovation:** according to the AFM, the use of artificial intelligence (AI) and the deployment of trading algorithms require careful consideration and transparency towards investors. Furthermore, in the eyes of the AFM, asset managers are sensitive to cyber attacks and may not be sufficiently resilient in the event of incidents.
- **Outsourcing:** the AFM notes that the importance of outsourcing is increasing within the sector and points to various risks of outsourcing. Outsourcing can result in a less effective guarantee of controlled and ethical business operations, because the chain becomes longer and dependencies increase. In addition, according to the AFM, the knowledge of outsourced processes in the own organization decreases.
- **Sustainability:** the AFM notes that investors are increasingly looking for financial products that comply with sustainability principles. The AFM points to the possible consequence of price increases of sustainable investments, or that asset managers switch to more risky 'sustainable' investments. Furthermore, the AFM points to the information gap between provider and customer, which makes greenwashing possible.
- **Money laundering/terrorist financing:** finally, the AFM points out that now that banks are further shaping their role as gatekeepers and are setting higher thresholds to counter money laundering and terrorist financing, the risk of money laundering may shift to investment firms (so-called waterbed effect).

We expect the AFM to give increased attention to the above themes in its ongoing supervision in 2022.

Follow-up study influencing trade behavior consumers

- **What?** On November 4, 2021, the AFM published a [news release](#) noting that due to suboptimal trading behavior, approximately one in three independent investors run unnecessary risk. The AFM announced that

it will launch a follow-up investigation into the extent to which investment firms influence trading behavior and how they can better protect investors.

- **Who?** Investment firms offering execution-only services.
- **When?** During 2022.

Principles of ongoing customer support

- **What?** On December 15, 2021, the AFM published on its website the document '[Principles for ongoing support for customer](#)'. In this document, the AFM describes what financial undertakings can do in the interests of their customers to provide them with ongoing support also in the management phase, i.e. after the conclusion and during the term of the product or service. The principles are:
 - Formulate your ambition about customer care in the management phase and determine an approach;
 - Make it clear to the customer what to expect and what not to expect; and
 - Put this into practice and test, evaluate and improve your services on ongoing basis.
- **Who?** All investment firms.
- **When?** Ongoing. With these principles, the AFM outlines a long-term vision and wants to encourage financial institutions to critically review and further develop their ongoing services to customers. On the basis of the principles, the AFM will enter into a dialogue with the sector on this subject.

Attention to management of outsourcing risks

- **What?** In July 2021, the AFM published a [letter](#) providing feedback on an investigation into outsourcing of critical activities. The research is a follow-up of the earlier AFM research 'Keten in Beeld'. The purpose of the AFM letter is to share sector-wide insights and to once again point out the need to manage outsourcing risks. The AFM concludes that the management of outsourcing risks can be improved.
- **Who?** All investment firms.
- **When?** With immediate effect; this is an ongoing obligation to which the AFM has again drawn attention. See in this context also the [ESMA Guidelines](#) on outsourcing to cloud service providers.

Attention to notification requirement for significant changes

- **What?** On November 8, 2021, in a [news release](#) on its website, the AFM issued a call for investment firms to report significant changes to the AFM. These include



mergers and acquisitions, changes in outsourcing contracts and changes in terms and conditions of services and products, but also restructuring processes or changes in business model, business structure, management, risk management or investment policy. Reporting such changes is a legal requirement.

- **Who?** All investment firms.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

Attention to suitability test products

- **What?** On November 8, 2021, the AFM published the report '[Outcomes of the suitability test](#)'. The AFM concludes that the investment firms investigated are aware of the regulations regarding the suitability test as referred to in Section 4:23 Wft, that processes are in place and that there is a policy in place to comply with the regulations. Nevertheless, the AFM identifies a number of areas where improvement is necessary, which it – through this report – shares with the investment firms that were not involved in the investigation. The AFM also refers to its '[Guidance on advisory and asset management services](#)', which was updated in November 2021.
- **Who?** Investment firms that provide advisory or asset management services.
- **When?** Ongoing. In the report the AFM states that it will monitor the improvement plans of the investment firms concerned.

Attention to 'influencers' and commissions in online posts about investing

- **What?** Finfluencers are influencers who speak out specifically about investing on social media. The AFM launched [a publication](#) on this subject in December 2021 as a result of research into 150 finfluencers. This coverage was widely reported in the media (also logical given the subject). The AFM points out that finfluencers can fall under the rules for investment firms if they do not properly demarcate their expressions. For example, they can easily be qualified as investment advice. In addition, investment firms must realize (according to a separate [news item](#) from the AFM) that payments made to finfluencers may qualify as prohibited commission.
- **Who?** Finfluencers and investment firms that work with and/or pay fees to finfluencers.
- **When?** The AFM has indicated that the activities of finfluencers will be on its radar in the coming period.

DNB OVERSIGHT

Supervision of investment firms 2022

- **What?** On December 22, 2021, DNB announced [on its website](#) the points for attention it had formulated for the specific supervision of investment firms in 2022. DNB announced the focus areas it has formulated for the specific supervision of investment firms in 2022. These are the following issues: (i) the liquidity requirement that applies, including the management of liquidity risks, (ii) the quality of data reported under the new reporting templates that apply from the third quarter of 2021 (including in connection with the implementation of the IFR and the IFD) and (iii) the business models of asset managers.
- **Who?** Specifically, Class 1 and 2 investment firms and asset managers.
- **When?** The spearheads look at DNB's supervision in 2022.

Supervision in the picture - relevance to investment firms

- **What?** On December 7, 2021, DNB published the document '[Supervision in focus](#)'. In this document, DNB sets out what - in addition to the above-mentioned focal points - will be its spearheads for supervision in 2022: (i) responding to technological innovation, (ii) steering towards sustainability and a future-oriented approach and (iii) combating financial-economic crime. Specifically with respect to investment firms, DNB states that 2022 will largely be about further implementation of the IFR & IFD. Furthermore, DNB points out that with the introduction of IFR for a number of large Dutch investment firms the obligation has arisen to apply for a banking license. The application procedures for this have now started and are expected by DNB to be completed in the course of 2022.
- **Who?** In particular, class 1 and class 2 investment firms.
- **When?** The spearheads look at DNB's supervision in 2022.

ESMA & EBA

ESMA Annual Work Programme 2022

- **What?** In September 2021, ESMA published its [Annual Work Programme 2022](#). In this document, ESMA describes its supervisory priorities for 2022. For investment firms, it is relevant that ESMA will focus on,

among others, the further review of MiFID II/MiFIR, the implementation of the sustainable finance framework and contributing to a single rule book in the area of digital finance (such as [DORA](#) and [MiCA](#) discussed below).

- **Who?** All investment firms.
- **When?** The Annual Work Program 2022 is relevant for the supervision of investment firms in 2022.

New information security monitor 2021

- **What?** DNB released its third [Information Security Monitor](#) (IS) in 2021. While the observations are based on surveys of pension funds and insurers, DNB considers them relevant for the entire Dutch financial sector. The main observations are: (i) the risk management cycle within institutions focused on information security is insufficiently effective; (ii) controlling information security throughout the outsourcing chain is crucial; and (iii) resilience against cyber attacks needs to be strengthened, urgent attention is needed.
- **Who?** All investment firms.
- **When?** Effective immediately; DNB will monitor the follow-up of the necessary improvements in regular supervision.

EBA Annual Work Programme 2022

- **What?** On October 5, 2021, EBA published its [Annual Work Program 2022](#). In it, EBA describes its main priorities for 2022. Relevant to investment firms, EBA will continue to support the implementation of the new IFR/IFD framework in 2022, through the preparation of RTS and guidance (see also '[EBA work on IFR & IFD](#)' later in this section).
- **Who?** All investment firms.
- **When?** The Annual Work Program 2022 describes EBA's focus areas in 2022.

ESMA guidelines on outsourcing to cloud service providers

- **What?** On May 10, 2021, ESMA published [guidance](#) on outsourcing to cloud service providers. The guidelines prescribe the measures that an investment firm must take when entering into a cloud outsourcing arrangement with a third party, such as in the areas of (contract) documentation, inspection rights and information security. Pursuant to the guidelines, an intended outsourcing of a critical or important function must be reported to the competent supervisory authority.

- **Who?** Investment firms that outsource tasks to a third party cloud service provider or to a third party that relies significantly on a cloud service provider to perform those tasks.
- **When?** The guidelines have been applicable since July 31, 2021. By December 31, 2022, investment firms must have reviewed existing cloud outsourcing arrangements and, where necessary, amended them in line with the ESMA guidelines.

EBA & ESMA guidelines on suitability requirements for policymakers and key function holders

- **What?** On July 2, 2021, EBA and ESMA published their [revised joint guidelines](#) on the suitability requirements for policymakers and key function holders referred to in Article 9 MiFID II. The guidelines replace the existing 2017 guidelines and incorporate the changes made by CRDV and IFD to the suitability requirements. See also our earlier publication on this subject in our [Finnius' View blog](#) on our website.
- **Who?** All investment firms.
- **When?** The guidelines are effective December 31, 2021.

ESMA guidelines on the publication of market data

- **What?** On August 18, 2021, ESMA published its final [guidance](#) on MiFID II/MiFIR market data obligations. Market data should be understood as the data that must be disclosed under MiFIR as part of the pre-trade and post-trade transparency obligations. On 18 October 2021, the AFM [drew](#) attention to these guidelines in a notice on its website and pointed out that it is integrating the guidelines into its supervision of market data providers.
- **Who?** The guidance is relevant to trading venues, approved publication arrangements (APAs), consolidated tape providers (CTPs) and investment firms that act as systematic internaliser (SI).
- **When?** The guidelines are effective January 1, 2022.

ESMA guidance on certain aspects of the appropriateness test

- **What?** On January 3, 2022, ESMA published a final report containing [guidance](#) to further elaborate on certain aspects of the appropriateness test as referred to in Article 25(3) MiFID II and further detailed in Delegated Regulation 2017/565.
- **Who?** The guidelines are relevant to all investment



firms that (also) provide execution-only investment services and in that context are required to perform an appropriateness test in relation to the client.

- **When?** The guidelines apply from 6 months after they are published in all official EU languages on ESMA's website.

EBA internal governance guidelines under CRDV

- **What?** On July 2, 2021, EBA published [final guidance](#) on the application of the internal governance rules (Article 74 CRDV). The new guidelines replace EBA's existing 2017 guidelines and incorporate the changes made by CRDV and the IFD to the internal governance rules.
- **Who?** Class 1 investment firms.
- **When?** The guidelines will apply as of December 31, 2021.

ESMA draft RTS commodity derivatives under MiFID II Quick Fix

- **What?** On November 22, 2021, ESMA published [draft technical standards](#) related to position limits for commodity derivatives. The proposed RTS are part of the MiFID II Quick Fix, which refers to a number of amendments to MiFID II made in response to the corona crisis (see also below "[MiFID II Quick Fix](#)" under "Other Developments Existing laws and regulations").
- **Who?** Parties trading in commodity derivatives.
- **When?** ESMA submitted the draft RTS to the European Commission (EC) on November 19, 2021. The EC must determine whether to turn the RTS into a delegated regulation by mid-February 2022. As of February 28, 2022, the MiFID II Quick Fix should apply.

ESMA consultation on transparency obligations MiFIR

- **What?** On July 9, 2021, ESMA published a [consultation paper](#) containing draft proposals to amend the pre-trade and post-trade transparency regime for equity and non-equity instruments under MiFIR. More specifically, these are proposed amendments to Delegated Regulation 2017/587 ('RTS 1') and Delegated Regulation 2017/583 ('RTS 2').
- **Who?** Trading venues and investment firms subject to RTS 1 and RTS 2.
- **When?** The consultation period ran until October 1, 2021. ESMA aims to submit a final report with draft RTS to the EC for approval in the first quarter of 2022.

ESMA consultation MiFID II best execution reporting

- **What?** On 24 September 2021, ESMA published for consultation a [draft RTS](#) containing proposed amendments to Delegated Regulation 2017/575 ('RTS 27') and Delegated Regulation 2017/576 ('RTS 28'). RTS 27 requires execution venues (such as trading venues and investment firms with SI) to report periodically on their execution quality. RTS 28 requires investment firms to report annually on their order execution. Under MiFID II Quick Fix, RTS 27 will not apply for two years. We also note that since last summer, as a result of the [amendment of Delegated Regulation 2017/565](#), the best execution obligations contained therein also apply (explicitly) to fund managers insofar as they provide the investment services of individual portfolio management and the reception and transmission of orders.
- **Who?** The proposed changes are relevant to execution venues and investment firms that execute, place and/or receive and transmit orders.
- **When?** The consultation period ended on December 23, 2021. ESMA intends to present proposals to the EC, if necessary, to amend the existing reporting regime in the first half of 2022.

ESMA review MiFID II OTF regime

- **What?** On March 23, 2021, ESMA published a [final evaluation report](#) containing its assessment of whether the MiFID II regime for Organized Trading Facilities (OTFs) is functioning and whether changes are appropriate. ESMA's findings are predominantly positive. However, it does make some suggestions to the EC to further clarify and improve the OTF regime.
- **Who?** Investment firms and market operators operating an OTF.
- **When?** It is up to the EC to assess whether the changes proposed by ESMA should lead to an amendment of MiFID II.

ESMA review MiFID II/MiFIR rules on algorithmic trading

- **What?** On September 29, 2021, ESMA published a [final assessment report](#) containing its opinion on whether revision of the MiFID II/MiFIR rules on algorithmic trading is necessary. ESMA concludes that there are no fundamental shortcomings, but does make some proposals to the EC to make the regime simpler and more efficient.
- **Who?** Investment firms respectively trading platforms that engage in (high frequency) algorithmic trading respectively allow or facilitate it.

- **When?** It is up to the EC to assess whether the changes proposed by ESMA should lead to amendment of MiFID II/MiFIR. ESMA itself will publish further proposals regarding amendments to 'Level 2' regulation in this area.

EBA guidelines on recovery plan indicators

- **What?** On November 9, 2021, EBA published [guidance](#) under the Recovery and Resolution of Credit Institutions and Investment Firms Directive (BRRD). The guidelines from EBA serve, among other things, to specify the minimum list of qualitative and quantitative indicators for recovery plans that must be included in recovery plans developed and assessed in accordance with Articles 5 to 9 BRRD. They replace the existing 2015 guidelines.
- **Who?** Investment firms within the meaning of MiFID II to which Article 9(1) IFD applies, which are subject to Articles 5 to 9 BRRD.
- **When?** The guidelines apply as of February 14, 2022.

ESMA 'call for evidence' MiFID II retail investment strategy

- **What?** On October 1, 2021, ESMA published a so-called '[call for evidence](#)' on its website as part of the retail investment strategy. For the purposes of the EC's development of a retail investment strategy - one of the actions mentioned in the Capital Markets Union Action Plan - ESMA asked the public for insights in the areas of (i) disclosures to investors, (ii) disclosures to investors through digital means and (iii) digital tools and channels, including robo-advice and online brokers.
- **Who?** All investment firms offering investment services to retail investors.
- **When?** Interested parties could respond to ESMA's call until January 2, 2022. By 30 April 2022, ESMA will present a technical opinion with proposed amendments to MiFID II to the EC.

EBA Peer Review Work Plan 2022-2023

- **What?** Once every two years EBA publishes a peer review work document under Article 30 (8) [EBA Regulation](#). For 2022-2023, EBA published its [EBA Peer Review Work Plan 2022-2023](#) in October 2021. EBA plans to conduct a peer review with respect to, among other things, the EBA RTS on prudential consolidation methods.
- **Who?** Investment firms that consolidate.

- **When?** The peer reviews as mentioned in the document under (i)-(ii) will have to take place in 2022. The peer reviews as mentioned in the document under (iii)-(iv) will have to take place in 2023.

DEVELOPMENTS IN REMUNERATION RULES²

Further remuneration rules for the financial sector

- **What?** In the summer of 2020, the Minister of Finance [submitted](#) a proposal for a Further Remuneration Measures for Financial Enterprises Act to the House of Representatives. The proposal aims to implement a number of changes to the current remuneration rules as contained in the Wft, including (i) the introduction of a statutory retention period of five years for shares paid as part of a fixed remuneration and (ii) a tightening of the averaging regime for non-CAO staff, who may be awarded a higher bonus than 20% under certain conditions.
- **Who?** Investment firms that fall within the scope of the Dutch remuneration rules.
- **When?** The proposal is currently pending before the House of Representatives. It is unclear when the amendment will take effect.

Controlled remuneration policy regulation 2021

- **What?** On October 1, 2021, the [Regulation on Sound Remuneration Policies in the Financial Supervision Act \(Wft\) 2021](#) (Rbb 2021) of DNB and the AFM was published in the Official Gazette. The Rbb 2021 replaces the Rbb from 2017 and implements (parts of) articles 30 to 34 IFD on remuneration.
- **Who?** Class 2 investment firms.
- **When?** As of October 19, 2021.

EBA guidelines controlled remuneration policy under CRDV

- **What?** On July 2, 2021, EBA published [revised guidelines](#) detailing obligations laid down in CRDV on controlled remuneration policies. The guidelines replace the existing 2015 guidelines and incorporate the changes made by CRDV to the remuneration rules.
- **Who?** Class 1 investment firms.
- **When?** The guidelines will apply as of December 31, 2021.

[2]. For a useful overview, also see our [Finnius' View \(blog\)](#) on the new remuneration rules for investment firms



ESMA consultation on guidance on remuneration rules under MiFID II

- **What?** On July 19, 2021, ESMA published a [consultation paper](#) containing draft guidance on the application of the remuneration rules under MiFID II. The guidelines build on ESMA's existing 2013 remuneration guidelines. The guidelines address, among other things, the design of remuneration policies and the management of risks that may be associated with remuneration and remuneration policies.
- **Who?** All investment firms.
- **When?** The consultation period ended on October 19, 2021. ESMA expects to publish final guidelines by the end of the first quarter of 2022.

Delegated Regulation on Article 30 IFD (remuneration policy)

- **What?** On December 7, 2021, [Delegated Regulation 2021/2154](#) was published in the Official Journal of the EU. The Delegated Regulation further details Article 30 IFD on remuneration policies, more specifically the categories of staff whose professional activities materially affect the risk profile of the investment firm.
- **Who?** Class 2 investment firms.
- **When?** The Delegated Regulation has been in effect since December 12, 2021.

Delegated Regulation on Article 32 IFD (variable remuneration)

- **What?** On December 7, 2021, [Delegated Regulation 2021/2155](#) was published in the Official Journal of the EU. The Delegated Regulation further details Article 32 IFD on variable remuneration, more specifically the classes of instruments that meet the conditions set out in Article 32(1)(j)(iii) IFD, and the possible alternative arrangements referred to in Article 32(1)(k) IFD.
- **Who?** Class 2 investment firms.
- **When?** The Delegated Regulation has been in effect since December 12, 2021.

OTHER DEVELOPMENTS, EXISTING LEGISLATION AND REGULATIONS

MiFID II Quick Fix

- **What?** In response to the corona crisis, the European Commission (EC) proposed a number of amendments to MiFID II in 2020. This resulted in [Directive 2021/338](#) amending MiFID II (MiFID II Quick Fix). The changes include (i) an easing of the disclosure requirements of investment firms in relation to professional investors, including with respect to cost transparency, best execution and product governance and (ii) a revision of the regime for position limits in commodity derivatives. As part of the implementation of the MiFID Quick Fix, the Ministry of Finance published a [draft implementation law](#) for consultation on October 5, 2021.
- **Who?** The MiFID II Quick Fix is in principle relevant to all investment firms.
- **When?** The consultation ran until November 16, 2021. Member states must apply the MiFID II Quick Fix rules from February 28, 2022. The question is whether this deadline will be met by the Dutch legislature.

Delegated Regulation MiFID II on integration of sustainability aspects

- **What?** In the summer of 2021, [Delegated Regulation 2021/1253](#) was published in the Official Journal of the European Union. This Delegated Regulation amends MiFID II Delegated Regulation 2017/565 and requires investment firms to integrate sustainability factors, risks and preferences into the conduct of their business. For example, investment firms must include client sustainability preferences when providing investment advice and portfolio management.
- **Who?** The changes are particularly relevant to investment firms that provide the services of investment advice and/or portfolio management.
- **When?** The changes will apply from August 2, 2022.

EC MiFID II/MiFIR review by European Commission

- **What?** In October 2021, the EC published the [results](#) of its 2020 consultation for a review of MiFID II/MiFIR. This consultation runs parallel to the review work that ESMA has been conducting for the EC since 2020 on various elements from MiFID II/MiFIR. The EC indicated to take the results of the consultation into account when



making proposals for amendments to MiFID II/MiFIR.

- **Who?** All investment firms.
- **When?** We expect more clarity on any EC proposals as part of the MiFID II/MiFIR review in 2022.

EC exploration retail investment strategy

- **What?** In the summer of 2021, the EC published a [consultation paper](#) for the retail investment strategy to be developed by the EC. Among other things, the EC wanted to know what stakeholders think about the comparability of financial products, financial illiteracy among consumers, sustainable investing and the impact of the digitization of financial services. In response to the EC's exploration, the AFM and the Ministry of Finance published a [non-paper](#) on December 13, 2021, containing their views on the position of retail investors.
- **Who?** All investment firms that provide investment services to retail investors.
- **When?** The consultation generated 186 responses. The EC expects to announce its retail investment strategy in the first half of 2022.

EC proposals MiFID II/MiFIR: revision of transparency regime and other changes

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

Against the above background, on November 25, 2021, the EC proposed an [amending directive](#) and [amending regulation](#) to amend MiFID II and MiFIR. First, the proposed amendments to MiFIR concern various adjustments to the transparency rules for trading venues, approved publication arrangements (APAs), consolidated tape providers (CTPs) and systematic internalisers (SIs). The aim of these amendments is to increase transparency with respect to market data and to remove existing barriers to the introduction of a consolidated tape. Consolidated tape refers to a single consolidated source of trading information for a particular financial instrument. For

example, the amendments include the obligation for 'market data contributors', such as trading venues and APAs, to provide market data for each asset class (equities, ETFs, bonds and derivatives) directly, exclusively and in a harmonized manner to CCPs authorized and selected by ESMA. Through the publication of consolidated tapes by these CCPs, investors should obtain the required insight into the trading of the aforementioned financial instruments.

Other proposed changes to the EC include:

- the removal of the authorization requirement in MiFID II for proprietary traders who have direct electronic access (DEA) to a trading venue, insofar as they do not provide other investment services or perform other investment activities;
- adjusting the derivatives trading obligation in MiFIR so that it is in line with the derivatives clearing obligation contained in EMIR Refit; and
- the introduction of a prohibition in MiFIR for investment firms to receive payments or non-monetary benefits from a third party for transmitting client orders for execution (so-called payment for order flow (PFOF)).

It is now up to the Council and the European Parliament to agree on the substance of the EC's proposals. In its [press release](#), the EC called on them to accelerate this process as much as possible.

Financial Markets Amendment Act 2021 - the group DNO

- **What?** At the end of 2019, the Ministry of Finance [consulted](#) on the Financial Markets (Amendment) Act 2021. The bill amends various laws and provides, among other things, for the introduction of a notification requirement with respect to changes that take place within a group, after a group DNO (as referred to in Article 3:102 (2) Wft) has been granted by DNB.
- **Who?** If the proposal becomes law, it will have relevance for group companies that have a group DNO from DNB in relation to an investment firm.
- **When?** At the time of writing, the Financial Markets Amendment Act 2021 has not yet been presented to the House of Representatives. It is unclear when/if this part of the 2021 Amendment Act will enter into force.

Financial Markets Amendment Decree 2021- the group DNO

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets Amendment Decree 2021](#) to the House of Representatives. This Amendment



Decree provides, among other things, for a more detailed elaboration of the obligation to report on the basis of a preventive license in the event of changes within a group.

- **Who?** Group companies that hold a group DNO from DNB in relation to an investment firm.
- **When?** This rule is related to the proposed amendment in the Financial Markets Amendment Act 2021 (see above). Thus, it is unclear when/if this rule will enter into force.

Financial Markets Amendment Act 2022 – asset segregation

- **What?** On October 25, 2021, the Minister of Finance presented the [Financial Markets Amendment Act 2022](#) to the House of Representatives. The bill provides, among other things, for the introduction of the possibility for (non-bank) investment firms to achieve asset segregation for funds belonging to clients through a ‘separate asset account’. This is an important development. A separate asset account is an account that an investment firm holds in its own name at a bank, but which is legally separated from the investment firm’s own assets. This means that the funds held in this account in principle serve exclusively to settle claims of the clients for whom funds are administered in the account, and of the bank concerned in connection with the administration of the account.
- **Who?** Investment firms that are subject to asset segregation rules due to the nature of their services.
- **When?** We expect more to be known about the bill’s handling in early 2022.

BRRD II Implementation Act

- **What?** At the end of 2021, the [Loss Absorption and Recapitalization Capacity of Banks and Investment Firms Implementation Act](#) was published in the Official Gazette. The Implementation Act aims to implement the Directive on loss absorption and recapitalization capacity of banks and investment firms (BRRD II). BRRD II amends the Recovery and Resolution of Credit Institutions and Investment Firms Directive and is implemented in the Netherlands in the Wft (in particular Part 3A thereof) and the Bankruptcy Act. The main objective of BRRD II is to increase the quality of the bail-inable buffer of credit institutions and investment firms (MREL).
- **Who?** Investment firms within the meaning of MiFID II to which Article 9(1) IFD applies.
- **When?** The Implementation Act came into force on December 21, 2021.

Amendments Essential Information Document (EID) PRIIPs Regulation

- **What?** The amended [Delegated Regulation](#) to the PRIIPs Regulation elaborates on the requirements for EID. The amendments include (i) new methods for calculating appropriate performance scenarios and a revised presentation of these scenarios, (ii) how costs should be presented, and (iii) how transaction costs should be calculated.
- **Who?** Investment firms that develop, sell and/or advise on investment products within the meaning of the PRIIPs Regulation.
- **When?** The amendments enter into force on January 9, 2022 and will apply from July 1, 2022.

General Review PRIIPs Regulation

- **What?** Currently, in view of Article 33 PRIIPs Regulation, a review of the overall functioning of the PRIIPs Regulation is underway. The EC has asked the ESAs to give [their opinion](#) on many different subjects in the PRIIPs Regulation. The ESAs themselves have subsequently [asked](#) the market for input on these issues. It is currently difficult to predict exactly where this evaluation will lead.
- **Who?** Investment firms that develop, sell and/or advise on investment products within the meaning of the PRIIPs Regulation.
- **When?** ESAs must provide their input to the EC by April 30, 2022.

Proposed amendment to House for Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House for Whistleblowers Act. This Act provides, among other things, for the obligation to establish a procedure for dealing with the reporting of suspected wrongdoing within an organization. Currently, with respect to this obligation, a threshold of at least fifty persons within the organization is still provided. One of the proposed amendments is that this threshold will no longer apply to companies active in the financial sector, including investment firms. The AFM will be appointed as the competent supervisor.
- **Who?** All investment firms.
- **When?** The legislative amendment was actually supposed to take effect on December 17, 2021. However, the proposal is currently pending before the House of Representatives. It is unclear when the amendment will take effect. We expect this to be in early 2022.

Consultation review Short Selling Regulation

- **What?** On September 24, 2021, ESMA published a [consultation document](#) containing proposed amendments to Regulation 236/2012 (Short Selling Regulation). ESMA's proposals address, among other things, the calculation of short positions, the prohibition of 'naked' short selling and the reporting obligation.
- **Who?** Investment firms that engage in short selling.
- **When?** The consultation period ran until November 19, 2021. ESMA expects to publish a final report by the end of the first quarter.

Amendment to Short Selling Regulation - adjustment threshold notification

- **What?** On September 27, 2021, the EC published the [draft Delegated Regulation](#) on the adjustment of the relevant threshold for the notification of significant net short positions in shares. This Delegated Regulation amends Article 5(2) of the Short Selling Regulation by setting the threshold for notification to the competent authorities of significant net short positions in shares at 0.1% of the issued share capital of the company concerned. Under the Short Selling Regulation, that threshold was originally set at 0.2%. However, during the COVID-19 pandemic, the notification threshold for net short positions in shares admitted to trading on a regulated market was lowered from 0.2% to 0.1%, in order to enable faster recognition of market developments. ESMA now intends to permanently lower this threshold and set it at 0.1%.
- **Who?** Investment firms with short positions in shares of publicly traded companies.
- **When?** Expected in 2022.

MiFIR - Criteria for deviation ESMA supervision of APAs and ARMs

- **What?** On December 17, the EC published a [Delegated Regulation](#) detailing the criteria for derogation from the principle that ESMA supervises providers of certain data reporting services (namely, approved publication arrangements (APAs) and approved reporting mechanisms (ARMs)). APAs and ARMs will remain under national supervision if their activities are of limited relevance to the internal market.
- **Who?** APAs and APRs and investment firms that use APAs and APRs.
- **When?** The Delegated Regulation will have direct effect three days after publication in the Official Journal of the European Union. We expect this to take place in early 2022.

NEW LEGISLATION AND REGULATIONS: IFR & IFD

IFD Implementation Act

- **What?** On October 19, 2021, the [Investment Firms Directive \(IFD\) Implementation Act](#) entered into force. The Implementation Act implements various provisions from the IFD in (mainly) the Wft. These include the discretionary power of DNB to subject an investment firm to the requirements of the IFR, the Supervisory Review and Evaluation Process (SREP) and the measures that DNB can impose if an investment firm does not meet the requirements of the IFR.
- **Who?** The IFD as implemented in the Wft is in principle relevant for Class 2 and 3 investment firms.
- **When?** As of October 19, 2021.

IFD Implementation Decree

- **What?** On November 25, 2021, the [Implementation Decree on the prudential supervision of investment firms](#) was published in the Official Gazette. The Implementation Decree implements various provisions from the IFD in, among others, the Bpr and the BGfo. These include requirements for risk management, internal governance and initial capital, solvency and liquidity. As a result of this Implementation Decree, (i) the DNB Regulations containing specific provisions on IFR and IFD aimed specifically at managers of October 28, 2021 and (ii) the DNB Regulations amending the Regulations on Statements of Financial Undertakings Wft 2011 of October 28, 2021, also entered into force on November 26, 2021.
- **Who?** The IFD as implemented in the Bpr and the BGfo is in principle relevant for Class 2 and 3 investment firms.
- **When?** As of November 26, 2021.

IFD Implementation Regulations

- **What?** On October 8, 2021, the [Implementation Regulations for the Directive on Prudential Supervision of Investment Firms](#) were published in the Official Gazette. The Implementation Regulations ensure that in the Regulations on the exercise of duties and cross-border cooperation of financial supervisors Wft the relevant articles from the IFD on the exercise of duties by, and information exchange and cooperation between, supervisors are implemented.



- **Who?** The IFD as implemented in the Regulations is in principle relevant to Class 2 and 3 investment firms.
- **When?** As of October 19, 2021.

Delegated Regulation on Article 5 IFD (to make CRR applicable)

- **What?** On December 7, 2021, [Delegated Regulation 2021/2153](#) was published in the Official Journal of the EU. The Delegated Regulation details certain parts of Article 5(1) IFD, which provides criteria for competent authorities to use the power to subject investment firms that are not necessarily covered by CRR to the requirements of CRR.
- **Who?** Investment firms that (potentially) fall within the scope of Article 5 IFD.
- **When?** The Delegated Regulation has been in effect since December 27, 2021.

Implementing Regulation on Article 54(3) + 49(2) IFR (reporting and disclosure)

- **What?** In December 2021, the [Implementing Regulation 2021/2284](#) was published in the Official Journal of the EU. The Implementing Regulation further details on Article 54(3) IFR on reporting requirements and on Article 49(2) IFR with respect to disclosure obligations.
- **Who?** Class 2 and 3 investment firms.
- **When?** The Implementing Regulation will apply from January 2022.

EBA work on IFR & IFD

- **What?** EBA is currently developing several technical standards (RTS) and guidance documents under IFR/IFD, including:
 - [RTS](#) on the threshold above which reclassification from investment firm to credit institution takes place in accordance with Article 8a CRDV. These RTS are relevant for Class 1 investment firms.
 - [RTS](#) on the disclosure of investment policy (voting policy) by investment firms under Article 52 IFR. These RTS are relevant to Class 2 investment firms.
 - [RTS](#) on 'Pillar 2 add-ons' (additional own funds requirements) that regulators may impose on investment firms subject to Article 40 IFD. These RTS are relevant to Class 2 and Class 3 investment firms.
 - [RTS](#) on specific liquidity requirements referred to in Article 42 IFD. These RTS are relevant to Class 2 and Class 3 investment firms.
 - [Guidelines](#) on controlled remuneration policies under IFD. These guidelines are relevant to Class 2 investment firms.

- [Guidelines](#) on internal governance under IFD. These guidelines are relevant to Class 2 investment firms.
- [Guidelines](#) (together with ESMA) on the Supervisory Review and Evaluation Process (SREP) under IFD. These guidelines are relevant to Class 2 and Class 3 investment firms.
- [Guidance](#) on the criteria for supervisors to exempt Class 3 investment firms from liquidity obligations set out in IFR.
- **Who?** The scope of application of the RTS/Guidelines varies from one RTS/Guideline to another, as follows from the above.
- **When?** The [roadmap](#) published by EBA in June 2020 provides an overview of the actions that the EBA will implement under IFD/IFR, including associated timelines. The guidelines on internal governance and controlled remuneration policies will apply from April 30, 2022.

EBA methodology for reclassifying investment firms as credit institutions

- **What?** In December, EBA published a package of two [final draft regulatory technical standards](#) (RTS) related to the reclassification of investment firms as credit institutions. These final draft RTS, which are part of the EBA's roadmap for the implementation of a new prudential regime for investment firms, provide clarity in calculating the EUR 30 billion threshold for investment firms seeking to know whether they need to apply for a license as a credit institution.
- **Who?** Large investment firms.
- **When?** The draft RTS will be submitted to the EC for endorsement, after which they will be examined by the European Parliament and the Council before being published in the Official Journal of the EU. The RTS will become applicable 20 days after their publication in the Official Journal. This is expected to occur during 2022.

OTHER NEW LEGISLATION AND REGULATIONS

DORA

- **What?** On November 24, 2021, the Council reached [agreement](#) on the text of the proposed Regulation on Digital Operational Resilience for the Financial Sector (DORA). DORA consists of the following five pillars:
 - ICT risk management;
 - Handling of ICT incidents;
 - Manage ICT risks in outsourcing;

- Oversight of critical ICT third-party service providers; and
- Cooperation and supervision/enforcement by supervisors.
- **Who?** DORA is an important development for all investment firms as defined in MiFID II. For class 3 investment firms, DORA proposes an alleviated regime.
- **When?** The next step is for the Council and the European Parliament to enter into trilogue negotiations on the content of the text of DORA. According to the most recent text, the regulation will be directly applicable in the Netherlands 24 months after its entry into force.

MiCA

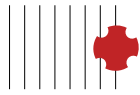
- **What?** On November 24, 2021, the text of the proposed Regulation on Markets in Crypto-assets (MiCA) was [agreed upon](#) within the Council. MiCA is a comprehensive legislative framework to achieve harmonized regulation for crypto-assets at the European level. Under MiCA, a whole range of crypto-asset related services and activities will be subject to authorization, or at least brought within the scope of supervision.
- **Who?** MiCA provides certain exemptions from the licensing requirement for investment firms offering crypto-asset services.
- **When?** The next step is for the Council to agree with the European Parliament on the content of the text of MiCA. According to the most recent text, the regulation will be directly applicable in the Netherlands 12 or 24 months (depending on the topic) after its entry into force.

Investment, Mergers and Acquisitions Security Test Act

- **What?** On June 30, 2021, the [bill](#) for the Investment, Mergers and Acquisitions Security Review Act was presented to the House of Representatives. The bill introduces a review mechanism for investments, mergers and acquisitions that may pose a risk to national security. This involves investments in (i) vital providers or (ii) companies that possess sensitive technology.
- **Who?** The bill identifies several financial companies as vital providers, including trading platforms.
- **When?** The Act is expected to take effect in early 2023.

Parliamentary questions on circumventing the inducement ban

- **What?** In September 2021, the Minister of Finance answered a number of [Parliamentary questions](#) about circumventing the inducement ban. One of the issues raised in this letter was whether annuity accounts in which the payment of the adviser or intermediary is transferred by the investment firm from the client's personal investment account to the account of the adviser or intermediary (hereafter: the facility) falls within the scope of the inducement ban. On this question the Minister did not give a definitive answer. The Minister did indicate, however, that he will enter into consultations with the AFM regarding this facility to see whether this construction gives rise to any measures.
- **Who?** Investment firms using the facility.
- **When?** Effective immediately; the inducement ban is an ongoing obligation that the House of Representatives has called attention to.



PAYMENT SERVICE PROVIDERS & EMIS

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

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

DNB SUPERVISION

- Supervision Plans 2022
- Amendment to FINREP/COREP reporting of electronic money and payment institutions
- New agreements on cash
- New information security monitor 2021

EBA

- EBA Work Programme 2022
- EBA Peer Review Work Plan 2022-2023
- Revised guidelines for major incident reporting under PSD2
- Consultation current regulatory technical standards strong client authentication and secure communications
- Draft guidelines regarding limited network exception
- Rapid growth in use of digital platforms in European banking and payments sector
- Deficiencies in application of guidelines for sales force compensation

ECB & EC

- New supervisory framework for electronic payment instruments, schemes and procedures (PISA framework)
- Exception policy under the new PISA framework
- Assessment methodology under the new PISA framework
- ECB action plan to address recommendations following TARGET2 incidents in 2020
- Request from EC to EBA on PSD2 assessment

EPC

- EPC annual report on threats and fraud trends in the payments industry: '2021 Payment Threats and Fraud Trends'
- Standardization and governance of QR codes for instant payments at the point of interaction

SEPA

- Various consultations EPC including amending various SEPA schemes
- Various updates to existing SEPA schemes
- Maximum amount for instructions under SEPA Instant Credit Transfer (SCT Inst) scheme
- Implementation Guidelines SEPA Request-to-Pay (SRTP) version 2.0
- Entry into force SEPA Request-to-Pay (SRTP) scheme version 2.0

DEVELOPMENTS IN EXISTING LEGISLATION AND REGULATIONS

- Financial Markets Amendment Act 2022
- Financial Markets Amendment Decree 2021
- Financial Markets Amendment Decree 2021 - the group DNO
- Amendment to the Financial Supervision Funding Decree 2019

NEW LAWS AND REGULATIONS

- DORA
- Consultation Act Implementation Directive Payment Service Providers
- Law on further remuneration rules for the financial sector still in preparation
- Proposed amendment to House for Whistleblowers Act
- Law on availability of basic payment account for Dutch citizens abroad

OTHER DEVELOPMENTS

- Extension and equalization of opening times of payment systems for cross-border payments
- FSB publishes progress report on stepping up cross-border payments
- Letter from the Minister of Finance regarding Parliamentary questions arising from consultations with the financial markets



DNB SUPERVISION

Supervision Plans 2022

- **What?** In December 2021, DNB presented its [2022 supervision plans](#). In it, DNB describes, among other things, its supervisory focal points for 2022. For payment and electronic money institutions this is integrity supervision. DNB will monitor whether the payment institutions' control measures sufficiently cover integrity risks. In addition, DNB also expects changes with respect to payment institutions market entering and exiting the market in 2022. Other points for attention are the protection of third-party funds, the recovery and exit plans of financially more vulnerable parties, data quality and the control of operational risks.
- **Who?** Payment institutions and electronic money institutions.
- **When?** Ongoing as part of DNB's supervision in 2022.

Amendment to FINREP/COREP reporting of electronic money and payment institutions

- **What?** On October 28, 2021, DNB [announced](#) an amendment to FINREP/COREP reporting for electronic money and payment institutions. This change took effect on December 31, 2021. To this end, DNB has published new reporting templates (the taxonomy). The new taxonomy and templates must be used from 31 December 2021. Payment and electronic money institutions must submit the new reporting via the Digital Reporting Desk.
- **Who?** Payment and electronic money institutions.
- **When?** As of December 31, 2021.

New agreements on cash

- **What?** In July 2021, DNB published the [report](#) 'The future of the cash infrastructure in the Netherlands' carried out by McKinsey. In that report, a further decline in the use of cash is anticipated. The report discusses possibilities for a better organization of the cash infrastructure, including the costs and funding, and possible measures to steer developments. The report contains a recommendation to develop and deploy alternative, digital means of payment for the fallback function. DNB [supports](#) this recommendation, with one comment. These digital payment instruments must be widely available and accessible to everyone (inclusiveness and accessibility) before they can replace the fallback function cash. In this regard, DNB advises the government to reflect on the role of the national government in the cash infrastructure. DNB further

believes that the legitimate use of cash should not be hampered and the accessibility of cash should not be reduced by banks' efforts to combat money laundering and fraud.

- **Who?** Payment service providers and banks.
- **When?** Multilateral agreements between the most concerned parties, to be laid down in a covenant with a duration of five years.

New information security monitor 2021

- **What?** DNB released its third [Information Security Monitor](#) (IS) in 2021. While the observations are based on surveys of pension funds and insurers, DNB considers them relevant for the entire Dutch financial sector. The main observations are that: (i) the risk management cycle within institutions focused on information security is insufficiently effective; (ii) controlling information security throughout the outsourcing chain is crucial; and (iii) resilience against cyberattacks needs to be strengthened.
- **Who?** Payment institutions and electronic money institutions.
- **When?** Effective immediately; DNB will monitor the follow-up of the necessary improvements in regular supervision.

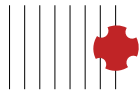
EBA

EBA Work Programme 2022

- **What?** EBA has published its [Work Programme](#) for 2022. It contains a wide variety of topics relevant to different market players, including on digital resilience, FinTech and innovation, as well as on anti-money laundering and terrorist financing. With regard to payment services, EBA will focus in particular on further contributing efficient, safe and convenient retail payments across the EU (*cross border payments*). Also, EBA will monitor the consistent application and implementation of the Guidelines on Strong Customer Authentication and Common and Secure Communication (Delegated Regulation (EU) 2018/389) and the Guidelines related to fraud reporting (EBA/GL/2018/05).
- **Who?** Payment institutions.
- **When?** 2022.

EBA Peer Review Work Plan 2022-2023

- **What?** Once every two years, EBA publishes a peer review work document under Article 30 (8) [EBA](#).



[Regulation](#). In October 2021, EBA published its [EBA Peer Review Work Plan 2022-2023](#). EBA plans to conduct a peer review with respect to the following topics: (i) the EBA Guidelines on Authorization and Registration under PSDII (EBA GL/2017/09; (ii) the RTS on the Exclusion of CVA of Non-EU Non-Financial Counterparties, (iii) the EBA RTS on the Methods of Prudential Consolidation, and (iv) the EBA Guidelines on the Application of the Definition of Default (EBA/GL/2016/07).

- **Who?** Given the nature of EBA's supervisory activities, the outcomes of the peer reviews will also be of interest to payment institutions.
- **When?** The peer reviews as mentioned in (i)-(ii) will take place in 2022. The peer reviews as mentioned in (iii)-(iv) will take place in 2023.

Revised guidelines for major incident reporting under PSD2

- **What?** The EBA published its [revised major incident reporting guidelines under PSD2](#) in June 2021. These guidelines include a new criterion for network or information system security breaches. The new criterion looks at malicious actions that have compromised network or information systems for the provision of payment services. It is now also possible to report additional security incidents that do not qualify as a "major incident" under the original guidelines but are significant. To reduce the reporting burden, unnecessary steps have been removed from the reporting process and more time is given for the submission of the final report.
- **Who?** Payment service providers
- **When?** The guidelines will apply from January 1, 2022.

Consultation current regulatory technical standards strong client authentication and secure communications

- **What?** On October 28, 2021, EBA launched a [consultation](#) on amending the RTS strong client authentication (SCA) and secure *open standards of communication* (CSC) with respect to the 90-day exemption for SCA. Because EBA identified problems in the application of this exemption, EBA proposes to introduce a mandatory application of the exemption for *account servicing payment service providers* (ASPSP) under conditions for SCA. This would include the situation where access is through an *account information services provider* (AISP), which is subject to certain safeguards and conditions to ensure the security of customer data. For the situation where customers have direct access to the data, the exemption remains

voluntary. In view of a level playing field, EBA proposes to make the 90-day period in Article 10 of the RTS on SCA and CSC renewal for SCA equal to the same 180 days for renewal when account access is through an AISP.

- **Who?** Payment service providers offering payment accounts (ASPSPs).
- **When?** The short consultation period ended on November 25, 2021. We expect EBA to publish a final report during 2022.

Draft guidelines regarding limited network exception

EBA held a consultation on July 15, 2021, regarding the [draft guidelines](#) it has prepared in relation to the limited network exception. The consultation period has ended as of October 15, 2021, and it is now up to EBA to finalize these Guidelines. Finnius made use of the consultation opportunity (see [here](#) for more information on our consultation response) and submitted several suggestions to EBA to further improve the Guidelines in some areas. EBA prepared the draft guidelines after having received several requests regarding the interpretation and application of this limited network exception, which led to the conclusion that the limited network exception is applied inconsistently and differently within the EU. This exception is very relevant for (exempt) payment service providers and EMIs.

The limited network exception is laid down in the Netherlands in Section 1:5a(2)(k) of the Financial Supervision Act (Wft) and offers an exception to the applicability of the rules laid down in the Wft that relate to the provision of payment services and the issuing of electronic money, including a licensing obligation for the performance of such activities. In practice, the limited network exception is used by card-issuing institutions in particular. Examples include issuers of gift cards, fuel cards, customer cards and savings cards. The limited network exception can be used when issuing payment instruments (such as gift cards and fuel cards) that meet a well-defined need and with which payment transactions can be made for the purchase of goods or services and that can only be used (i) within a *limited network of service providers* or (ii) for a *very limited number of goods or services*.

With the implementation of PSD2 in the Netherlands in 2019, the possibility of using the limited network exception has been further tightened. Unfortunately, due to a lack of clarity from the legislator and the (European) regulator, it is far from clear to practitioners when there is a *'limited network of service providers'* or a *'very limited number of goods or services'*. The guidelines that the EBA

is currently drafting are intended to provide more detail on each of these elements, with the aim of removing ambiguity and increasing the consistent application of the limited network exception within the EU. The draft guidelines introduce criteria and additional indicators for both parts of the limited network exception to assess whether specific payment instruments can only be used in a limited way, and therefore fall under the limited network exception.

The final guidelines are expected to enter into force on October 1, 2022. At the time these guidelines come into effect, it is advisable for market participants to assess whether they can (continue to) use the limited network exception in compliance with the guidelines.

Rapid growth in use of digital platforms in European banking and payments sector

- **What?** On September 21, 2021, EBA published a [report](#) on the use of digital platforms within banking and payments in the EU. EBA identifies rapid growth in the use of digital platforms to bridge the gap between customers and financial institutions. This is a trend that is expected to accelerate in line with the broader trend towards digitization of the financial sector in the EU. In order to channel this process, EBA proposes to create common questionnaires and share information. In this way, EBA aims to facilitate a coordinated approach at the EU level.
- **Who?** Banking and payments industry.
- **When?** The report has already been published and identifies 2022 as the year when EBA will provide additional support to national supervisors in this area.

Deficiencies in application of guidelines for sales force compensation

- **What?** On December 9, 2021, EBA published a [report](#) on the application of EBA guidelines on remuneration of sales personnel. This report shows that financial institutions generally consider prudential requirements and commercial interests more than consumer protection. In the report, EBA also formulated 17 *good practices* to increase compliance with regard to the relevant guidelines by payment institutions and electronic money institutions, among others.
- **Who?** Payment institutions and electronic money institutions.
- **When?** 2022.

ECB & EC

New supervisory framework for electronic payment instruments, schemes and procedures (PISA framework)

- **What?** On November 22, 2021, the ECB (the euro area monetary authority) [published](#) the supervisory framework that, among other things, sets new requirements for the *oversight* of electronic payment instruments and the *schemes* and *arrangements* related to them (the [PISA framework](#)). We already wrote about this new framework in our previous Outlook (2021). This PISA framework replaces the existing harmonized supervisory approach and standards for Eurosystem payment instruments and is particularly relevant for entities providing a *payment scheme* or arrangements. The supervisory framework also extends to *digital payment tokens* and services related to *crypto-assets*. The new framework includes an [exemption policy](#) and a new assessment methodology (both see below).
- **Who?** Payment institutions and electronic money institutions, among others.
- **When?** Entities already under Eurosystem *oversight* must comply with the new supervisory framework as of November 15, 2022. Other entities must comply with this new oversight framework within one year after it is notified that they are to be covered by the new oversight framework.

Exception policy under the new PISA framework

- **What?** In November 2021, the ECB further clarified its [exemption policy](#) under the new PISA framework. This policy defines the criteria used to determine which schemes/arrangements are supervised by the Eurosystem and which are exempt, taking into account their relevance to the payment system as a whole. The Eurosystem uses a points system to assess a scheme/arrangement against the following four criteria: (1) the size of the end-user or payment service provider base, (2) the degree of market penetration in terms of volume, (3) the degree of market penetration in terms of value and (4) geographical relevance.
- **Who?** Payment institutions.
- **When?** As of November 15, 2022, payment institutions to which the PISA Framework applies must follow the PISA Framework and therefore this policy.



Assessment methodology under the new PISA framework

- **What?** In November 2021, the ECB published the [assessment methodology](#) belonging to the PISA framework. The Eurosystem's oversight requirements for electronic payment instruments are set out in the form of principles contained in the PISA framework. This assessment methodology aims at the consistent harmonized application of the Eurosystem's oversight of payment systems.
- **Who?** Payment institutions.
- **When?** As of November 15, 2022, payment institutions to which the PISA framework applies must follow the PISA framework and also consider this EBA assessment methodology.

ECB action plan to address recommendations following TARGET2 incidents in 2020

- **What?** In response to a number of major incidents affecting TARGET2 and TARGET2 Collateral, ECB published an [action plan](#) on December 17, 2021. That action plan addresses the recommendations from an independent study by Deloitte. The action plan consists of six work streams: change and release management, business continuity management, failover and recovery testing, communication protocols, governance, and data center and IT operations. Measures related to several recommendations have already been agreed upon. Some have been implemented during 2021 and the remaining measures are to be implemented by the end of 2022. The measures will benefit all TARGET services, including TARGET *Instant Payment Settlement* (TIPS).
- **Who?** Users of TARGET2 systems.
- **When?** 2022.

Request from EC to EBA on PSD2 assessment

- **What?** On October 18, 2021, EBA was [asked](#) by the EC to provide an opinion on the review of the revised Payment Services Directive (PSD2). The opinion should cover almost the entire scope of PSD2 and aims to gather input on the application and impact of PSD2. In addition, the EC has asked EBA to identify areas where changes to PSD2 may be appropriate. The EC requests EBA to advise on, inter alia, the benefits and challenges associated with various areas of focus (such as the licensing and supervision of payment institutions, possible clarifications or adjustments in the areas of *Strong Customer Authentication* (SCA), access to and use of payment account data in relation to payment initiation services and account information services, as

well as cross-sectoral issues).

- **Who?** Payment institutions.
- **When?** The EC has asked EBA to deliver the report by 30 June 2022. For now, it remains to be seen what will come out of that and what possible impact this will have on changes under PSD2.

EPC

EPC annual report on threats and fraud trends in the payments industry: '2021 Payment Threats and Fraud Trends'

- **What?** The *European Payments Council* (EPC) published its [report](#) on November 24, 2021, which further examines threats surrounding payments as well as fraud trends. The report provides an overview of the main threats and other fraud drivers within the payments landscape. These include *social engineering* and *phishing*, *malware*, *Advanced Persistent Threats* (APTs), *(Distributed) Denial of Service* ((D)DoS), botnets and monetization channels. For each threat, the report by EPC analyzes the impact and context and describes proposals for control and mitigation.
- **Who?** Relevant to payment institutions, among others.
- **When?** There are no specific timelines or legislative proposals, but payment institutions are advised to take note of the contents of this report and form a further view of the risks highlighted in the report and how they can be mitigated.

Standardization and governance of QR codes for instant payments at the point of interaction

- **What?** The EPC published a [new document](#) on November 22, 2021, related to the standardization and governance of QR Codes for *Instant Payments* at the *Point of Interaction* (IPs at the POI). In particular, the document consists of two main parts, namely (i) the specification of a QR code standard for IPs at the POI, both for a merchant and consumer presented QR code, and (ii) the governance aspects related to the use of QR codes for IPs that should become part of the overall governance of an interoperability framework for IPs at the POI. The latter includes the establishment of a so-called registration authority for the issuance of IP service provider identifiers (*identifiers*).
- **Who?** Payment institutions.
- **When?** Several action items and deadlines have been put on the agenda for 2022 that should achieve the goals in this document.



SEPA

✚ Various consultations EPC including amending various SEPA schemes

The general purpose of the EPC is to support and promote European integration and development, in particular the *Single Euro Payments Area* (SEPA). In this regard, the EPC is mandated with the development and adoption of regulations. The SEPA payment schemes are contained in the *SEPA Credit Transfer* (SCT), *SEPA Instant Credit Transfer* (SCT Inst), the *SEPA Direct Debit Core* (SDD Core) and the *SEPA Direct Debit Business to Business* (SDD B2B) schemes.

The EPC has not been idle over the past year and recently published several consultations proposing changes to various SEPA regulations. Among others, the following SEPA change requests have been submitted for consultation by the EPC:

- [Consultation EPC change requests 2022 on SEPA Direct Debit B2B scheme](#)
- [Consultation EPC change requests 2022 on SEPA Instant Credit Transfer scheme](#)
- [Consultation EPC change requests 2022 on SEPA Credit Transfer \(SCT\) scheme](#)
- [Consultation EPC change requests 2022 on SEPA Direct Debit Core scheme](#)

The consultation period for these schedules was completed mid-December 2021. Following this, the updated versions of these schedules will be published by the EPC in May 2022 for implementation in November 2023. PSPs and their suppliers will thus have 18 months to implement the update of the schedules in their business operations before it comes into effect.

Various updates to existing SEPA schemes

- **What?** Leading up to the larger changes to the SEPA schemes as discussed in the previous section, the EPC is making several interim changes to the existing schemes. These include the following changes:
 - [Update rules for managing the SEPA payment scheme \(version 4.4\)](#)
 - [Update rules on SEPA Direct Debit B2B scheme \(version 1.1\)](#)
 - [Update rules on SEPA Direct Debit Core scheme \(version 1.1\)](#)
 - [Update rules on SEPA Credit Transfer \(SCT\) scheme \(version 1.1\)](#)
 - [Update rules SEPA Instant Credit Transfer \(SCT Inst\) scheme \(version 1.1\)](#)

- **Who?** Relevant to payment institutions.
- **When?** The aforementioned updates took effect on January 11, 2022 and will remain in effect until, in principle, November 18, 2023, being the time when the new schedules discussed in the previous section take effect.

Maximum amount for instructions under SEPA Instant Credit Transfer (SCT Inst) scheme

- **What?** In addition to the *SEPA Instant Credit Transfer* scheme, the EPC made available a [document](#) on December 13, 2021, which sets the maximum amount per instruction under this scheme. The document is a binding supplement to section 2.5 of the relevant SEPA scheme. The maximum amount set is EUR 100,000.
- **Who?** Payment institutions.
- **When?** This amendment will take effect in the first quarter of 2022.

Implementation Guidelines SEPA Request-to-Pay (SRTP) version 2.0

- **What?** Following the new version of the *SEPA Request-to-Pay* (SRTP) scheme, the EPC also [published implementation guidelines](#) on December 16, 2021. These implementation guidelines contain rules for the application of the relevant ISO 20022 XML message standards based on the aforementioned SEPA scheme, and relate in particular to SRTP-related messages in the service provider domains of both the payer and the payee.
- **Who?** Payment institutions.
- **When?** These implementation guidelines will enter into force along with the new version of the *SEPA Request-to-Pay* (SRTP) scheme on June 1, 2022.

Entry into force SEPA Request-to-Pay (SRTP) scheme version 2.0

- **What?** On November 30, 2021, the EPC published [a new version \(version 2.0\) of its SEPA Request-to-Pay \(SRTP\) scheme](#). This scheme covers the set of operational rules and technical elements (including messages) that enable a payee to request a payer to initiate a payment in a wide range of physical or online use cases. The new version of the scheme includes enhanced functionalities such as the possibility to enter a URL, the currency agnostic principle and the payment guarantee request.
- **Who?** Payment institutions.
- **When?** The new version of this SEPA scheme will take effect June 1, 2022.



DEVELOPMENTS IN EXISTING LEGISLATION AND REGULATIONS

Financial Markets Amendment Act 2022

- **What?** On October 25, 2021, the Minister of Finance presented a proposal for the [Financial Markets \(Amendment\) Act 2022](#) to the House of Representatives. It contains proposals for amending a number of laws, including the Financial Supervision Act (Wft). The main amendments for payment and electronic money institutions concern: (i) the possibility to open an account with segregated assets for the purpose of realizing asset segregation (which offers a future alternative to securing third-party funds through a foundation for third-party funds), and (ii) the becoming applicable of the mandatory audit of financial statements as laid down in article 3:72 paragraph 7 Wft. The second point is relevant for payment institutions, with the exclusion of payment institutions that only provide account information services.
- **Who?** The bill is relevant to payment institutions and electronic money institutions, among others.
- **When?** The bill was sent to the House of Representatives for consideration. We expect that more information about the bill's consideration will be available in early 2022.

Financial Markets Amendment Decree 2021

- **What?** On November 24, 2021, the [Financial Markets \(Amendment\) Decree 2021](#) was presented to the House of Representatives. Among other things, this Decree amends the Decree on Prudential Rules in the Financial Supervision Act ('Bpr') for payment institutions and EMIs with regard to intra-group outsourcing. From the moment this Decree takes effect, these institutions must also comply with Articles 29 to 31 Bpr, when outsourcing activities within their group. These articles stipulate, among other things, that an institution must have an adequate policy and established procedures and measures for the structural outsourcing of activities and the monitoring of outsourced activities. In addition, an outsourcing agreement must also be drawn up in the case of intra-group outsourcing.
- **Who?** Payment institutions and electronic money institutions, as well as group companies that hold a group DNO from DNB in relation to a payment or electronic money institution.
- **When?** This Decree will enter into force at a time to be determined by Royal Decree. We expect more to be clear about the exact date of entry into force in the first half of 2022.

Financial Markets Amendment Decree 2021 - the group DNO

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets \(Amendment\) Decree 2021](#) to the House of Representatives. This Amendment Decree provides, among other things, for a more detailed elaboration of the obligation to report changes within a group (in the context of a DNO notification requirement).
- **Who?** Group companies that have a group DNO from DNB with regard to a payment institution.
- **When?** This rule is related to a consulted amendment to the Financial Markets (Amendment) Act 2021. At the time of writing, the Financial Markets (Amendment) Act 2021 has not yet been presented to the House of Representatives. It is therefore unclear when/if this part of the Financial Markets (Amendment) Act 2021 will enter into force.

Amendment to the Financial Supervision Funding Decree 2019

- **What?** On September 23, 2021, the Minister of Finance submitted to the House of Representatives, through an [accompanying letter](#), the [draft decree](#) amending the Decree on Financial Supervision Costs 2019. This decree makes two changes to the charging of financial supervision to the financial sector. The second amendment is relevant to payment institutions, among others, and relates to charging payment institutions licensed in another Member State and operating in the Netherlands for supervisory costs. These institutions fall to a limited extent under the prudential supervision of DNB, but fully under the integrity supervision pursuant to the Wwft.
- **Who?** The regulation is relevant to, among others, payment institutions licensed in another European member state.
- **When?** The amendments entered into effect on January 1, 2022.

NEW LAWS AND REGULATIONS

DORA

- **What?** The [proposed regulation](#) provides comprehensive rules for (i) the management of IT risks by financial institutions, the reporting of "major ICT-related incidents" to the regulator and the testing of digital resilience by financial institutions, (ii) the design

of the contractual relationship between financial institutions on the one hand and ICT service providers on the other hand, (iii) the supervision of critical *ICT service providers* and (iv) the cooperation between regulators in the supervision of this regulation. The [proposed directive](#) aims to mend the various sectoral directives, including PSD2 (but other directives such as MiFID II), so that references to the regulation discussed above will appear in those directives.

- **Who?** The proposed scope of the Digital Operational Resilience Regulation and Directive is broad and includes payment institutions and electronic money institutions, among others.
- **When?** The next step is for the Council and the European Parliament to enter into trilogue negotiations on the content of the text of DORA. According to the most recent text, the regulation will be directly applicable in the Netherlands after 24 months after its entry into force.

Consultation Act Implementation Directive Payment Service Providers

- **What?** On February 18, 2020, the Council of the European Union adopted Directive (EU) 2020/284 (Payment Service Providers Directive). Under this directive, payment service providers are required to share all payment dates of cross-border transactions with the Tax Authorities, subject to conditions. The purpose of this [bill](#) is to implement this directive in national legislation. The implementation will lead to changes in the Turnover Tax Act 1968.
- **Who?** Payment service providers.
- **When?** The consultation period runs until January 20, 2022. The schedule regarding the consideration of this bill was not yet known when this Outlook was prepared.

Law on further remuneration rules for the financial sector still in preparation

- **What?** In July 2020, the Minister of Finance submitted a [proposal](#) for a Further Remuneration Measures for Financial Companies Act to the House of Representatives. Part of that proposal is a five-year retention period for shares when they are paid out as part of a fixed remuneration. It also tightens the averaging rule for non-CBA personnel.
- **Who?** Payment institutions and electronic money institutions.
- **When?** The proposal has been pending in the House of Representatives for a long time, but has not yet been voted on. It is unclear when the amendment will take effect.

Proposed amendment to House for Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House for Whistleblowers Act and aims to implement the European Directive ((EU) 2019/1937) on the protection of persons reporting violations of Union law. This law aims to improve the conditions for reporting social wrongdoing, by enabling investigation of wrongdoing and providing better protection for reporters of wrongdoing. The House for Whistleblowers Act already provides for a mandatory internal reporting procedure for employers employing at least fifty people. The House for Whistleblowers Act will become applicable to companies operating in the financial sector.
- **Who?** For payment institutions and Electronic Money Institutions, among others.
- **When?** The amendment to the law was actually supposed to take effect on December 17, 2021, but was still pending in the House of Representatives at that time. It is unclear when the amendment will take effect. We expect this to be in early 2022.

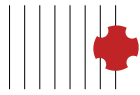
Law on availability of basic payment account for Dutch citizens abroad

- **What?** The [bill](#) entails an amendment of 4:71f Wft on the basis of which consumers who reside lawfully in the European Union, irrespective of their place of residence or nationality, also have the right to apply for and use a basic payment account in euros. A bank that offers payment accounts to consumers in the Netherlands will from then on also have to offer consumers from another EU member state the opportunity to open a basic payment account so that these consumers can also participate in payment transactions.
- **Who?** Specifically, banks and payment institutions.
- **When?** It is not yet clear when this bill will take effect. The bill was published some time ago, so enactment in 2022 should be feasible.

OTHER DEVELOPMENTS

Extension and equalization of opening times of payment systems for cross-border payments

- **What?** The Bank for International Settlements (BIS) published the [consultative report](#), issued as part of the G20's Cross-Border Payments Program and focused on the opening hours of RTGS (real-time gross settlement) systems. These settlement systems are considered crucial for promoting cross-border payments. Extending



the opening hours of RTGSs in all jurisdictions can help remove current barriers, allowing cross-border payments to be made faster and reducing liquidity costs and settlement risks.

- **Who?** (Central) banks and payment institutions.
- **When?** Affected market participants have until January 14, 2022 to submit a consultation response to BIS.

The report is primarily intended for central banks and payment system operators to further consider the costs and benefits of extending the opening hours of RTGS systems. It is unclear at this time what follow-up steps, if any, will result from this.

FSB publishes progress report on stepping up cross-border payments

- **What?** On October 13, the Financial Stability Board (FSB) published a [progress report](#) on the progress made in achieving the goals set out in its “Roadmap” to promote cross-border payments. The report also looks ahead to 2022. The next phase of work in 2022 includes the development of specific proposals for material improvements to the underlying systems and schemes, as well as the development of new systems to further promote interoperability of cross-border payments. Achieving these practical improvements and capitalizing on new developments will require global coordination, sustained political support, and investment in systems, processes, and technologies.
- **Who?** Banks and payment institutions.
- **When?** 2022.

Letter from the Minister of Finance regarding Parliamentary questions arising from consultations with the financial markets

- **What?** These [responses](#) from the Minister of Finance dated December 16, 2021 include the topic of cash. In recent years, the share of cash payments has decreased and the share of non-cash payments has increased. Nevertheless, certain groups within society depend on the use of cash in order to participate in the payment system and thus in society. According to the Minister of Finance, it is important that a cash payment system remains in place. We understand from the accompanying letter that DNB is currently in consultation with the main parties in the payment system about a cash covenant. The costs of withdrawing and depositing cash are part of these discussions. Once these discussions are completed, the Minister of Finance will inform the House of Representatives further. This is expected to be early 2022.
- **Who?** Banks and payment institutions.
- **When?** 2022.



FINANCIAL SERVICE PROVIDERS ADVISORS, INTERMEDIARIES AND AUTHORIZED AGENTS

This section discusses important developments for so-called financial service providers that play out in 2022. This collective category includes advisors and intermediaries in financial products such as credit and insurance. Authorized agents are also financial service providers.

Consumer credit providers and insurers are also designated as “financial service providers” in 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 ([Lenders](#) and [Insurers](#)). Furthermore, the section [General](#) for financial service providers is worth reading, because it discusses general developments in the field of supervision and enforcement, for example, which are also relevant for financial service providers.

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

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

AFM OVERSIGHT

- Support customers during term of financial product
- Additional guidance distinction between advising and informing
- Focus areas when working with other parties
- Focus areas when using advisory software
- Focus areas with respect to the personalization of premiums and terms and conditions
- Good practices outsourcing
- Enforcement of propriety requirement for ancillary insurance intermediaries

DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

- EIOPA Launches IDD Single Rulebook
- Expansion of rules on tied sales in the case of insurance
- Active commission transparency in non-life insurance
- Further remuneration measures for the financial sector
- Review of customer credit directive
- Consultation on the review of the Mortgage Credit Directive
- Consultation Revision Directive on Distance Marketing of Consumer Financial Services
- Expired EVC procedure for the recognition of prior learning
- Regulation on rate for the Central Examination Bank Wft 2022

- Amendment to regulation for final attainments and test targets requirements for financial services examinations

- Financial Markets Amendment Act 2022 - professional liability insurance

NEW LAWS AND REGULATIONS

- Quality requirements automated advice
- Proposed obligations (in)dependent advice

OTHER DEVELOPMENTS

- Parliamentary questions on circumventing the ban on commissions
- Postponement evaluation general duty of care Wft
- EIOPA Q&A on IDD



AFM OVERSIGHT

+ Support customers during term of financial product

In December 2021, the AFM [called on](#) financial undertakings, including financial service providers, to pay more attention to 'ongoing support' after the sale of a financial product. The AFM indicates that people's lives change, for example by having children, a divorce, or drastic career changes. The financial markets can also change structurally, for example due to long-term low interest rates. As a result, the financial products that consumers once concluded may no longer be suitable for the goals they pursue and may even lead to financial problems. In such cases, it may be wise for consumers to take timely action.

Against this background the AFM wants financial service providers to pay more attention to ongoing support for consumers after the sale of a financial product. The AFM has formulated three principles to help all parties in their efforts to provide ongoing customer support:

1) Formulate your ambition about customer care in the management phase and determine an approach

The AFM believes it is important for financial service providers to think about what role they want to play for their existing customers and how they help them to continue to achieve their goals. That ambition determines how they structure their services in the management phase.

2) Make it clear to the customer what to expect and what not to expect

The AFM considers it important that clients are informed in due time on what they can and cannot expect and that clear agreements are made about this where possible and, if necessary, are repeated during the management phase.

3) Put this into practice and continually test, evaluate and improve your services

The AFM considers it important that financial service providers test whether their service actually helps customers in practice and that they continue to develop and improve their service in the management phase.

The AFM also makes a plea to go beyond minimal norms of behaviour. The statutory duty of care already requires financial service providers to treat their customers with care during the entire term of a financial product. The AFM considers it important that financial undertakings go beyond the minimum standards of conduct of the duty of care. How exactly companies do that depends on the

specific product, service or circumstances.

Related to this topic, the AFM says (in its Legislative Letter 2021) it is in talks with the Ministry of Finance about promoting financial understanding and its delineation with the concept of advice. It is possible that these discussions will lead to a legislative wish regarding the supervision of the management phase of financial products.

Additional guidance distinction between advising and informing

- **What?** In December 2021, in response to questions about the distinction between informing and advising, the AFM drew up a new [guidance document](#) in which the distinction between informing and advising is further explained. Briefly put, there is an 'advising' situation within the meaning of the Wft when a personal recommendation is made to a (potential) client regarding a new financial product of a specific provider. In case of informing one or more of the aforementioned criteria do not apply (such as 'personal' or 'new financial product').
- **Who?** Financial service providers with direct customer contact.
- **When?** This is an ongoing interpretation.

Focus areas when working with other parties

- **What?** In November 2021, the AFM published an [overview report](#) on the developments in the intermediary market for the second time. In the report, the AFM notes that financial service providers are increasingly working together with other parties, but that financial service providers do not put these agreements in writing. The AFM also notes that many financial service providers pay freelancers variable remuneration, while this is not permitted.
- **Who?** Advisors and intermediaries who use freelancers.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

Focus areas when using advisory software

- **What?** In June 2021, the AFM informed the sector on a number of [focus areas](#) with regard to the use of advisory software. Among other things, the AFM indicated that an adviser must properly investigate how the software supports the advisor, and what else the advisor must do to formulate a good advice (and to give substance to the legal requirements).
- **Who?** Advisors.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

Focus areas with respect to the personalization of premiums and terms and conditions

- **What?** In June 2021, the AFM shared nine [focus areas](#) with the insurance industry for tailoring (personalizing) premiums and conditions based on behaviour and data. With these focus areas the AFM tries to reduce the risks associated with the use of personalized pricing. Examples include not making the sharing of behavioural data mandatory, ensuring the insurability of clients, and taking into account how influenceable the measured behaviour is.
- **Who?** Authorized agents, insofar as they have influence on the premium, terms and conditions and/or underwriting policy of an insurance.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

Good practices outsourcing

- **What?** In June 2021, the AFM published the [results](#) of its exploration of outsourcing risks at financial service providers. As a result of the survey, the AFM formulated a number of *good practices*. For example, the AFM advises the sector to make clear agreements with the service provider to whom certain services have been outsourced on how to deal with incidents, so that immediate action can be taken in response to an incident.
- **Who?** Parties that use outsourcing, and parties that take on outsourced tasks (such as credit servicers).
- **When?** Immediately; this is an ongoing obligation to which the AFM has drawn attention.

Enforcement of propriety requirement for ancillary insurance intermediaries

- **What?** Article 7 of the Exemption Regulation Wft includes, since the implementation of the IDD in 2018, an exemption for so persons practising insurance distribution as an ancillary activity (i.e. ancillary insurance intermediaries). These are intermediaries whose main profession is not insurance intermediation, and the insurance in which is intermediated is supplements its supply of goods or service provision. Examples include selling white goods or cell phones, travel agencies and car rental companies. Ancillary insurance intermediaries do not need a license as an intermediary, but must comply with a limited number of rules stipulated in the Wft. Since January 1, 2022, it has been clarified in the Exemption Regulation Wft that these rules also include the requirement for ancillary insurance intermediaries to check the propriety of

employees with customer contact and managers in the manner prescribed by Article 28 of the BGfo. It became clear in the market last year that the AFM will monitor compliance with this obligation as of January 1, 2022.

- **Who?** Ancillary insurance intermediaries.
- **When?** The AFM will monitor compliance from January 1, 2022.

DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

EIOPA Launches IDD Single Rulebook

- **What?** EIOPA launched the [IDD Single Rulebook](#) in 2021. The Single Rulebook is intended as a documentation tool, and to promote consistent application of the regulatory framework. The Single Rulebook contains references to IDD, but also to Delegated Regulations such as Regulation EU2017/2358 regarding product supervision and governance requirements and relevant guidelines and Q&As from EIOPA.
- **Who?** Insurance advisers and brokers, (sub)authorized agents and certain ancillary insurance intermediaries to whom the IDD applies.
- **When?** Ongoing.

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 Amending Decree was sent to the Senate and House of Representatives in November 2021 as part of a no-objection procedure. It is expected that the decree will enter into force in 2022.



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 or ongoing commissions are exempt provided that the condition is met that, in brief, the commission is disclosed free of charge at the client's request. Bonus or turnover commissions are not allowed.

The proposed Financial Markets (Amendment) Decree 2021 adds as a condition that the information requirements in Article 86i of the Market Conduct Supervision (Financial Institutions) Decree (*Besluit Gedragstoezicht financiële ondernemingen Wft*, BGfo). In addition, Article 86i Bgfo will be expanded to include new topics on which transparency must be provided, namely 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. Thus, the current 'passive' commission transparency obligation for non-life insurance is converted into an active obligation with the objective of actively 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).

The Minister of Finance has [indicated](#) that it is up to the intermediary or advisor to decide how he or she communicates the commission amount per product to the consumer and at what stage he or she already informs the consumer about the general principle of commission. Thus, the advisor or intermediary can - according to the Minister - also choose to inform the consumer at the beginning of the service process that he or she is being paid with commission, only to mention the exact commission amount just before closing. A verbal communication of the exact amount is one of the options. Moreover, if the exact amount cannot be calculated, the method of calculation can be communicated.

The market has its reservations about the enforceability of this new obligation. Against this background, the Minister sent a [letter](#) to the House of Representatives in the run-up to the entry into force in November 2021 regarding the enforceability of the proposed active commission transparency for non-life insurance. In response to [Parliamentary questions](#), the Minister further clarified his position on the enforceability of the active commission transparency in December 2021. In short, the Minister believes - of course - that this new obligation is enforceable and in line with existing laws and regulations.

At the request of the House of Representatives, the Minister also [submitted](#) the recommendation of the AFM, and the underlying recommendations or discussion reports with the (sector) organizations (Adfiz, OvFD, *Keurmerk Objectief Vergelijken* and the Dutch Association of Insurers) regarding the enforceability of active commission transparency in non-life insurance.

The Amending Decree was sent to the Senate and House of Representatives in November 2021 as part of the no-objection procedure. The decree is expected to enter into force in 2022.

Further remuneration measures for the financial sector

- **What?** Already on July 2, 2020, the Minister of Finance [submitted](#) a proposal for a Further Remuneration Measures for Financial Undertakings Act to the House of Representatives. The proposal 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?** Virtually all financial service providers.
- **When?** The proposal has been pending in the House of Representatives for a long time, but has not yet been voted on. It is unclear when the proposal will enter into force.

Review of customer credit directive

- **What?** On June 30 2021, the Commission published a [proposal](#) for a directive revising the Consumer Credit Directive. The proposal includes new rules on advisory services, rules of conduct when providing credit and competence requirements for staff. The proposal sets, inter alia, standards to ensure that when advice is provided by the credit intermediary, it is clear to consumers that it is advice, without introducing an obligation to provide advice.
- **Who?** Advisors and intermediaries with respect to consumer credit.
- **When?** The proposal is currently being discussed in the trilogue between the Commission, Council and Parliament. It is currently unclear when the revision will enter into force. We expect more clarity on this in 2022.

Consultation on the review of the Mortgage Credit Directive

- **What?** The Commission launched a [consultation](#) on the Mortgage Credit Directive in November 2021. This review will consider how: (i) to provide consumers with simplified, timely and relevant information; (ii) to adapt the rules to the digital environment; and (iii) make it easier to get a mortgage loan for a property in another EU country.
- **Who?** Advisors and brokers related to mortgage credit.
- **When?** The consultation will run until February 28, 2022. The Commission has indicated that it will come up with further proposals in Q4 2022.

Consultation Revision Directive on Distance Marketing of Consumer Financial Services

- **What?** Last autumn, the Commission held a [consultation](#) (again) on the Distance Marketing of Consumer Financial Services Directive. Since the Directive came into force in 2002, the retail financial sector has become increasingly digitized. New products, providers and sales channels have been added. Meanwhile, other EU legislation relevant to financial services has also been introduced or updated. In short: the Directive is outdated. This initiative aims to create a future-proof framework for the distance selling of financial services, protecting consumers in a digital environment and reducing unnecessary burdens on financial service providers.
- **Who?** Virtually all financial service providers.
- **When?** The Commission has indicated that it will come up with proposals in the first quarter of 2022.

Expired EVC procedure for the recognition of prior learning

- **What?** In October and November of last year, an amendment to the BGfo was [consulted](#) in connection with the cancellation of the Recognition of Prior Learning (*Erkenning van Verworven Competenties*, EVC) procedure. The EVC procedure will be abolished because of the limited interest in EVC procedures, the limited possibilities for the Board for Expertise in Financial Services (*College Deskundigheid Financiële Dienstverlening*, CDFD) to guarantee the quality of the professional competence requirements and the high implementation costs of EVC exams compared to regular exams.
- **Who?** Advisors.
- **When?** At this moment, the decree will take effect as of April 1, 2022 (also the start date of the next Wft Permanent Education (PE) period).

Regulation on rate for the Central Examination Bank Wft 2022

- **What?** In October and November last year, the (new) Regulation on the rate for the Central Examination Bank Wft 2022 was [consulted](#). This regulation changes the rate for initial exams, PE exams and special exams in the Regulation on the rate for the Central Examination Bank Wft 2015. The rate will be the same for all these exams. The rate payable by examiners per Wft exam taken will be set at EUR 70 with effect from April 1, 2022. The rates are set for the third PE period (April 1, 2022 to April 1, 2025). After this PE period, there will be a review of whether the fee needs to be adjusted based on the projected numbers of exams and the implementation costs.
- **Who?** Examination institutes and advisors.
- **When?** At this moment, the decree will take effect as of April 1, 2022 (also the start date of the next Wft Permanent Education (PE) period).

Amendment to regulation for final attainments and test targets requirements for financial services examinations

- **What?** In October and November of last year, an amendment to the Regulation for final attainments and test targets requirements for financial services examinations Wft was [consulted](#). The main purpose of the regulation is to update the Regulation as a result of the developments identified by the CDFD in its advice. Furthermore, the regulation provides a number of textual clarifications and other editorial improvements.
- **Who?** Advisors.
- **When?** At this moment, the decree will take effect as of April 1, 2022 (also the start date of the next Wft Permanent Education (PE) period).

Financial Markets Amendment Act 2022 – professional liability insurance

- **What?** In October 2021, the Financial Markets (Amendment) Act 2022 was [submitted](#) by the Minister of Finance to the House of Representatives. One of the proposed amendments is the cancellation of the third paragraph of Articles 4:75 and 4:76 Wft. This amendment is being made because the level of professional indemnity insurance coverage and the comparable provision for an advisor, intermediary or reinsurance intermediary is included in Delegated Regulation (EU) 2019/193.
- **Who?** Advisors, intermediaries and reinsurance intermediaries.
- **When?** The expected entry into force of the Financial Markets Amendment Act is mid-2022.



NEW LAWS AND REGULATIONS

+ Quality requirements automated advice

The proposed [Financial Markets Amendment Decree 2021](#) introduces quality requirements for fully automated advice to ensure that such advice meets the same requirements as advice given by a person. For example, 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). It is not required that the person in charge is able to modify the algorithm, but that he or she can ensure that the outcome, being automated advice, is suitable for the client in question in every scenario.

Prior to the commissioning of the automated system, analyses must be carried out to show that the automated system works and all the advice components match and connect with the information provided by the consumer (or client if it concerns insurance). This means, among other things, that prior to putting the automated system into operation, it must be determined what the suitable target group and financial product is for which automated advice can be given. The less complex the customer situation and the financial product in question is, the fewer variations there are that must be built into the automated system to generate automated advice that is suitable for the customer in question.

In addition, periodic checks 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 Amending Decree was sent to the Senate and House of Representatives in November 2021 as part of the no-objection procedure. The decree is expected to enter into force in mid-2022.

Proposed obligations (in)dependent advice

- **What?** The proposed [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 who advise on so-called impactful products.
- **When?** The Amending Decree was sent to the Senate and House of Representatives in November 2021 as part of the no-objection procedure. It is expected that the decree will enter into force in 2022.

OTHER DEVELOPMENTS

Parliamentary questions on circumventing the ban on commissions

- **What?** In September 2021, the Minister of Finance answered a number of [Parliamentary questions](#) about circumventing the ban on commissions. One of the issues raised in this letter was whether annuity accounts where the payment of the advisor or intermediary is transferred by the investment firm from the client's personal investment account to the account of the advisor or intermediary (hereafter: the facility) is covered by the ban on commissions. On this question the Minister did not give a decisive answer. The Minister did indicate, however, that he will enter into consultations with the AFM regarding this facility to see whether this construction gives rise to any measures.
- **Who?** Advisors and intermediaries using the facility described above.
- **When?** Effective immediately; this is an ongoing obligation that the House of Representatives has focussed on.

Postponement evaluation general duty of care Wft

- **What?** In December 2021, the Minister of Finance [informed](#) parliament about the postponement of the new evaluation of the general duty of care from article 4:24a Financial Supervision Act. During the previous evaluation of the general duty of care, a number of concerns emerged regarding the lack of (sufficient) legal protection. Since at the time of the evaluation the AFM had not yet formally enforced the law on the basis of Section 4:24a Financial Supervision Act and therefore

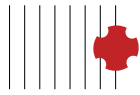


no administrative case law had been established, the Minister announced a new evaluation for 1 January 2022. However, the reason for the new evaluation - more insight into formal enforcement practice and development in administrative law jurisprudence - has not occurred in the meantime. To date, no formal enforcement action has been taken under Section 4:24a of the Financial Supervision Act. Against this background, the Minister has decided to postpone the evaluation.

- **Who?** All financial service providers.
- **When?** This is unclear. The Minister is holding off on the evaluation until further notice of formal enforcement practice and development in administrative law jurisprudence.

EIOPA Q&A on IDD

- **What?** EIOPA maintains a [Q&A](#) in which it provides further clarification on certain obligations under the IDD.
- **Who?** Advisors and insurance intermediaries, (sub) authorized agents and certain ancillary insurance intermediaries to whom the IDD applies. The latest Q&A is dated December 21, 2021.
- **When?** Ongoing.



FINTECH & CRYPTO

Note: While this chapter focuses on crypto service providers, among others, it is also of particular interest to other players in the financial sector because it describes topics that apply to the financial sector as a whole. The cross-sectoral sections [Integrity](#) and [Sustainability](#) may also be of interest to parties undertaking FinTech initiatives. Furthermore, other sections of the Outlook may of course be relevant, depending on the regulations that apply to the initiatives in question. In addition, we recommend that parties take note of the [General Developments](#) section, as it discusses topics that may be relevant to anyone operating in the financial market (such as the AFM's Fine Policy or the Consumer Choices Action Plan).

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

AFM OVERSIGHT

Trend Monitor 2022

Increase in signals about dubious investments in currencies and cryptocurrencies

DNB OVERSIGHT

Draft Q&A sanctions law screening by crypto service providers

DNB report 'Supervision in focus'

DNB report: 'Innovation and regulation: opportunities and obstacles'

DNB Report 'Developments in the relationship between BigTechs and financial institutions'

EUROPEAN PROPOSALS SUPERVISORY LEGISLATION

DORA

MiCA

DLT pilot regime Regulation

Proposal WTR2 Recast

Proposal AI Regulation

Strategy reporting to regulators

ESMA, EBA & EIOPA

ESMA Annual Work Programme 2022

ESMA guidelines on outsourcing to cloud service providers

ESMA report use of *distributed ledger technology* (DLT) by central securities depositories

EBA 2022 Annual Work Programme

EBA publishes report into the use of digital platforms

EBA analysis of RegTech in the European financial sector

EIOPA publishes report on artificial intelligence (AI) guidelines

ESA's 2022 Work Programme

EFIF - Procedural framework for innovation facilitator cross-border testing

ECB

Central Bank Digital Currency (CBDC) project.

BCBCS, FSB, FATF & CPMI/IOSCO

FSB progress report on global stablecoin arrangements

BCBS prudential treatment of exposures of banks to crypto-assets

CPMI/IOSCO consultation on application of FMI principles to stablecoin arrangements

IOSCO guidelines on AI and machine learning

FATF update Guidance Risk-Based Approach Virtual Assets and VASPs

DUTCH FINTECH ACTION PLAN

Overview of FinTech action plan progress



AFM OVERSIGHT

Trend Monitor 2022

- **What?** On November 4, 2021, the AFM published its annual [Trend Monitor](#) Report. In this report, as every year, the AFM identifies important trends and associated risks in the financial sector. Among other things, the AFM discusses the proposed Regulation on Markets in Crypto-assets (MiCA) (see also further in this Outlook). The AFM questions whether the risks in MiCA are sufficiently addressed. According to the AFM, the proposal strikes a balance between mitigating risks on the one hand and regulating the market proportionately on the other. In the eyes of the AFM, the final result is heading for lighter rules for crypto-asset service providers than the rules for investment firms, as rules for the duty of care and product development are missing in MiCA. In addition, important parts of the supervision, including market abuse, are invested at the member state level under MiCA. According to the AFM, this does not benefit the effectiveness of the supervision, because crypto-assets concern an international and turbulent market that requires supervision at least at European level. With regard to digitisation, the AFM notes that the increasing degree of digitisation in the financial sector also increases the risk of cybercrime. Cyber attacks have the potential to disrupt trading and payment systems and the theft of sensitive information about customers or the financial situation of businesses can have major consequences. Securing data and IT infrastructure against cyber attacks requires a continuous investment in resilience.
- **Who?** Trend Monitor 2022 is relevant to all financial institutions supervised by the AFM.
- **When?** The concrete implications of the trends and risks for the AFM's supervisory activities will be elaborated in its Agenda 2022, which will be published by the AFM in early 2022.

Increase in signals about dubious investments in currencies and cryptocurrencies

- **What?** On September 29, 2021, the AFM published a news release on its website containing the results of the signals monitor for the first six months of 2021. The AFM states that it receives many [questions and complaints](#) about trading in cryptocurrencies and points out that in principle it does not supervise this unless a crypto or token qualifies as a financial instrument. The AFM does warn, however, because in its view cryptocurrencies are complex, difficult to fathom, and vulnerable to deception, fraud and manipulation.

- **Who?** The publication is not specifically addressed to financial institutions, but primarily to consumers who are involved with cryptocurrencies.
- **When?** Ongoing.

DNB OVERSIGHT

Draft Q&A sanctions law screening by crypto service providers

- **What?** DNB has submitted for consultation a [draft Q&A](#) on compliance with the Sanctions Act with regard to relationship screening by crypto service providers. The Q&A deals specifically with how crypto service providers can give substance to sanctions screening in a crypto transaction. Following the consultation phase, DNB will publish a feedback statement explaining any further changes.
- **Who?** Crypto service providers.
- **When?** Market participants had until December 17, 2021 to respond. We expect DNB to finalize the Q&A in early 2022.

DNB report 'Supervision in focus'

- **What?** On December 7, 2021, DNB published its [report 'Supervision in focus'](#) in which it also looks ahead. One of its spearheads concerns responding to technological developments. DNB will continue to challenge financial institutions in 2022 on their strategy and sustainability of their business model, given the digitization of financial services. This digitization also makes institutions vulnerable to cyber and IT risks. New legislation such as the European Digital Operational Resilience Act (DORA) (see also on this subject later in this Outlook) seeks to address those vulnerabilities created by digitization. In addition to legislation at the European level, DNB itself will also take the necessary follow-up steps in its Digital Supervision Strategy and, in particular, will have an additional focus on IT risks and cybersecurity. By 2022, this means that all processes of the supervisory methodology will be digitized and data from institutions will be automatically translated into risk scores.
- **Who?** For players across the financial industry, including crypto service providers and payment institutions.
- **When?** 2022 and beyond.



DNB report: 'Innovation and regulation: opportunities and obstacles'

- **What?** The [report 'Innovation and regulation: opportunities and obstacles'](#) contains the main findings and follow-up steps from an exploratory study from DNB of obstacles and potential improvements in the supervisory legal framework in relation to innovation. DNB conducted this initiative in cooperation with industry associations, individual financial institutions (banks, insurers, payment institutions and electronic money institutions) and supervisors. The starting points of the report provide an indication of the opportunities and obstacles as observed by DNB in 2022 and beyond.
- **Who?** For players across the financial industry.
- **When?** The report has already been published. No concrete follow-up steps will result from this report, only points of interest.

DNB Report 'Developments in the relationship between BigTechs and financial institutions'

- **What?** On June 24, 2021, DNB published a [report](#) that takes a closer look at developments in the relationship between BigTechs and financial institutions. This topic has the attention of DNB. DNB concludes that the Dutch banking and insurance market may change dramatically due to further entry of BigTechs and developments in their cooperative relationships with financial institutions. This calls for a reconsideration of financial rules and supervision of institutions. According to DNB, the outlined developments have three implications for its policy and supervision: (i) firmly challenging financial institutions on earnings model sustainability, (ii) adapting regulation to new risks (e.g., with respect to concentration risks), and (iii) more European supervision and cooperation between regulators, including in the areas of cyber security and data protection.
- **Who?** Financial institutions, particularly relevant to banks and insurers.
- **When?** 2022.

EUROPEAN PROPOSALS SUPERVISORY LEGISLATION

DORA

- **What?** On November 24, 2021, the Council reached [agreement](#) on the text of the proposed Regulation on Digital Operational Resilience for the Financial Sector

(DORA). DORA consists of the following five pillars:

- ICT risk management;
 - Handling of ICT incidents;
 - Manage ICT risks in outsourcing;
 - Oversight of critical ICT third-party service providers; and
 - Cooperation and supervision/enforcement by supervisors.
- **Who?** DORA is an important development for a wide range of financial institutions, which the financial sector will have to deal with a lot in the coming years. We expect that there will also be an increasing focus on digital operational resilience from regulators.
 - **When?** The next step is for the Council and the European Parliament to enter into trilogue negotiations on the content of the text of DORA. According to the most recent text, the regulation will be directly applicable in the Netherlands 24 months after its entry into force.

MiCA

Introduction: a new framework for crypto-assets

On November 24, 2021, the text of the proposed Regulation on Markets in Crypto-assets (MiCA) was [agreed upon](#) within the Council. MiCA is a comprehensive legislative path to achieve harmonized regulation at the European level for crypto-assets that fall outside existing supervisory frameworks. MiCA distinguishes between four types of crypto-assets: (i) utility tokens, (ii) asset-referenced tokens (ARTs), (iii) e-money tokens (EMTs) and (iv) other crypto-assets. Thus, it potentially involves a very wide group of digital assets, but is intended to keep existing regulated financial products out of scope.

Under the latest text, MiCA should in principle become applicable to persons who (1) engage in the issuance/offering and listing of crypto-assets in the EU (issuers) or (2) provide crypto-asset services (crypto-asset service providers). Despite consumer protection being one of the objectives of MiCA, the scope of MiCA is not limited to offers and services to consumers. Offers and services to parties that do not qualify as 'consumers' are also within the scope, unless a specific exception applies. Furthermore, MiCA introduces a regime to counter market abuse. Below is a brief discussion of the regime for issuers, crypto-asset service providers and market abuse.

Issuers

The exact regulatory framework for the issuer depends on the type of crypto-assets. The 'lightest' regime applies to utility tokens and other crypto-assets that do not qualify as ART or EMT. For the issuance and/or listing of these types of crypto-assets, (one of) the main obligation(s) is that a



white paper is prepared and notified to the competent regulator. Stricter regimes apply to the issuance and listing of ARTs and EMTs. For the issuance and/or listing of ARTs, MiCA requires in principle that the issuer has obtained a license or has a license as credit institution. Issuers of EMTs must in principle be either a licensed credit institution or a licensed electronic money institution. If the ARTs or EMTs qualify as 'significant', additional requirements apply to their issuers. It is important to mention that MiCA does provide for several exceptions, such as for small offers and offers to solely qualified investors.

Providers of crypto-asset services

MiCA further introduces a licensing requirement for any person whose profession or business consists of providing one or more 'crypto-asset services' to third parties. MiCA distinguishes between nine different crypto-asset services in this regard, clearly taking inspiration from MiFID II and the FATF recommendations:

1. The custody and administration of crypto-assets on behalf of third parties;
2. The operation of a trading platform for crypto-assets;
3. The exchange of crypto-assets for funds;
4. The exchange of crypto-assets for other crypto-assets;
5. The execution of orders for crypto-assets on behalf of third parties;
6. Placing of crypto-assets;
7. The reception and transmission of orders for crypto-assets on behalf of third parties;
8. Providing advice on crypto-assets; and
9. Providing portfolio management services on crypto-assets.

For many institutions that are already regulated, such as credit institutions, electronic money institutions, investment firms and fund managers, MiCA provides (partial) exemptions from the licensing requirement.

Market Abuse

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

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

In addition, issuers/offerors of crypto-assets must disclose inside information directly concerning them as soon as possible, in a manner that enables fast access and complete, correct and timely assessment of the information by the public. However, the disclosure obligation does not apply as long as an issuer can make use of the delayed disclosure provision in MiCA.

Timing

The next step is for the Council to agree with the European Parliament on the content of the text of MiCA. According to the latest text, the regulation will be directly applicable in the Netherlands 12 months (for issuers of ARTs and EMTs) and 24 months (all other provisions) after its entry into force, respectively.

DLT pilot regime Regulation

- **What?** On November 24, 2021, the Council and the European Parliament [agreed on](#) the proposal for a regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT). The regulation introduces a pilot regime for multilateral trading facilities (MTFs) and central securities depositories (CSDs) using DLT. In doing so, these parties are temporarily exempted from certain requirements of MiFID II/MiFIR and CSDR, respectively.
- **Who?** The proposal is particularly relevant for MTFs and CSDs that (want to) use DLT in their activities.
- **When?** According to the most recent text of the regulation, the regulation will be directly applicable in the Netherlands after 9 months after its entry into force.

Proposal WTR2 Recast (Regulation on information to be attached to transfers of funds)

On July 20, 2021, the European Commission (EC) published a [proposal](#) containing rules on preventing the use of the financial system for money laundering and terrorist financing (AML/CFT). This proposal is part of the AML/CFT package that the Commission released on July 20, 2021. That package consists of the following four legislative proposals:

- The Anti-Money Laundering Regulation 2 (AMLR).
- The Sixth Anti-Money Laundering Directive (AMLD6).
- The Regulation establishing a European anti-money laundering authority; and
- The revision of Regulation (EU) 2015/847 (*Wire Transfer Regulation 2 - WTR2-Recast*).

The WTR2-Recast expands the already existing regulation on information to be attached to transfers of funds by adding crypto-assets and crypto-asset service providers to its scope. In this regard, the EC noted that adapting the existing regulation on information accompanying transfers of funds was the easiest option, as it allowed the use of the already existing framework that has long applied to regular transfers of funds. As a result of the extension of that regulation, it will become mandatory for institutions



designated in the regulation to share information about the sender and beneficiary of a crypto-asset transaction. This is already the case for regular money transfers. Based on this information, crypto-asset transactions can also be monitored to prevent money laundering and terrorist financing, and senders and beneficiaries can be effectively screened against the relevant sanctions lists. The information to be exchanged concerns the names of the sender and beneficiary, the (crypto) account number, and information to verify that it is actually the sender such as an address, personal document number, customer identification number or date and place of birth.

The sender's crypto-asset service provider must ensure that the beneficiary's name and (crypto) account number is sent with the transaction. Also, the beneficiary's crypto-asset service provider must implement effective procedures to detect whether this information has been added, and they must monitor real-time and ex-post whether any information is missing. The proposal further regulates that compliance with the regulation in question must be monitored. This proposal, combined with the provisions regarding crypto-assets in the other parts of the AML/CFT package, aligns the EU's regulatory framework regarding crypto-assets with the *Financial Action Task Force* (FATF) standards.

This proposed revision is very important for crypto service providers. The proposal is currently before the European Parliament for a first reading. It is not yet clear when the changes will take effect. Since the proposal contains amendments to both the future AMLR and AMLD6, it is expected that the WTR2-Recast will be aligned with these other legislative initiatives before it enters into force. This will mean that the WTR2-Recast will take some time to come into force and will not enter into force in 2022.

Proposal AI Regulation

- **What?** On April 21, 2021, the EC published a [draft regulation](#) establishing harmonized rules on artificial intelligence (AI Regulation). The AI Regulation aims to establish a uniform legal framework for the development, marketing and use of artificial intelligence. In doing so, the AI Regulation pursues a high level of protection of health, safety and fundamental rights, and serves to ensure the free movement of AI-based goods and services across borders. The core concept of the AI Regulation is 'AI system'; the proposed regulation contains rules for AI systems themselves, for providers of AI systems and for users of AI systems.
- **Who?** The proposed AI Regulation has a very broad scope and is therefore an important development for all financial institutions that (want to) use AI. However,

the interaction between existing European financial supervisory legislation and the proposed AI Regulation is not yet clear; the proposed AI Regulation only contains provisions in this area for credit institutions.

- **When?** The Council and the European Parliament must agree on the text of the proposal. This may take some time. After the final text enters into force, most of the AI Regulation will be directly applicable in the Netherlands after 24 months.

Strategy reporting to regulators

- **What?** On December 15, 2021, the EC published a [communication](#) setting out a strategy for revising the way financial firms have to report information to their national and/or European regulators. The EC wants to work towards a modernized, effective reporting system while minimizing the administrative burden on the financial sector. The new system should also enable the use of modern technologies, such as RegTech (technology to meet supervisory requirements more efficiently and effectively) and SupTech (technology that supports supervisors in their supervision).
- **Who?** Virtually all financial institutions, and in particular institutions that must report frequently to their regulator(s).
- **When?** The EC will develop its strategy in the coming period. By 2023, the EC will report on the progress made.

ESMA, EBA & EIOPA

ESMA Annual Work Programme 2022

- **What?** Once again for this year, ESMA has published its annual supervisory program - [Work Programme 2022](#). This publication took place on September 27, 2021. In its supervisory programme, ESMA sets out its supervisory priorities and specific focus areas for the next 12 months. Among other things, ESMA is preparing to further support initiatives stemming from the *new digital finance strategy* and the *fintech action plan*. One of the important themes from the Work Programme 2022 for this Outlook section concerns 'innovation & digitalization'. ESMA will continue to contribute to the development of a further elaboration and bundling of further legislation and regulations in the field of digital finance after the adoption of DORA and MiCA respectively and a further development of a pilot for market infrastructures based on DLT. In the coming years, this will result in various technical regulatory standards under the aforementioned regulations. ESMA will also provide analysis, market information and data, if available,



to support the efficient implementation of the new mandates included in the digital finance package, in coordination with the other European regulators, and will finalize the technical advice on digital finance requested by the EC.

- **Who?** For players across the financial sector, but in particular FinTech parties and crypto-asset service providers.
- **When?** ESMA's technical advice to the EC, referred to above, is expected to be completed by January 31, 2022. Furthermore, in 2022 and 2023, the necessary developments will occur in the field of innovation and digitalization.

ESMA guidelines on outsourcing to cloud service providers

- **What?** On May 10, 2021, ESMA published [final guidelines on outsourcing to cloud service providers](#). These guidelines are effective as of July 31, 2021. Institutions must review existing outsourcing agreements regarding cloud services to ensure compliance with these guidelines by December 31, 2022. If this review is not completed by December 31, 2022, the firm must notify its competent authority, specifying the actions it plans to take to complete the review or any exit strategy.
- **Who?** The Guidelines are relevant to all supervised financial institutions that use third-party cloud services, and in particular (among others) investment firm and UCITS managers, (bank) investment firms and CCPs.
- **When?** These guidelines have been in effect since July 31, 2021. Institutions should review existing outsourcing agreements regarding cloud services to ensure compliance with these guidelines by December 31, 2022.

ESMA report use of *distributed ledger technology* (DLT) by central securities depositories

- **What?** On August 6, 2021, ESMA published a [report](#) on the use of FinTech by *central securities depositories* (CSDs). The report contains suggestions in a number of areas where targeted changes at CSDs and further guidance could help CSDs adopt DLT. ESMA's recommendations will serve as input for a targeted review of the CSD Regulation.
- **Who?** CSDs.
- **When?** The report was published on August 6, 2021. It is expected that the EC will come up with a proposal to revise the CSD regulation in the first quarter of 2022.

EBA 2022 Annual Work Programme

In addition to ESMA, EBA has also published its annual supervisory work program for 2022 - [EBA 2022 Annual Work Program](#). This publication took place on September 27, 2021. In its supervisory program, EBA sets out its supervisory priorities and specific focus areas for the next 12 months. One of these priorities relates to digital finance, digital operational resilience and financial innovation.

The EBA will monitor and respond to technological innovation and ICT and cyber risks with regulatory and further supervisory responses, with a view to strengthening the operational resilience of financial services in its scope and ensuring that regulation and supervision are “tech ready”. In doing so, EBA will follow the principle of technology neutrality, ensuring that regulatory and supervisory approaches facilitate technological change and scalability in the single market while ensuring consumer protection, systemic resilience and stability. Continued work on platforms, crypto-assets and the impact of artificial intelligence (AI), among others, can be expected. In addition, in 2022, the EBA will continue to support knowledge sharing between regulators and share common regulatory and supervisory views, including through the EBA FinTech Knowledge Hub.

EBA will also be paying close attention to DORA and MiCA, two important legislative proposals under which EBA is mandated. In 2021, the EBA has begun reviewing these legislative proposals and has a number of planning considerations to be ready to take on supervisory duties. For example, a number of technical standards and guidelines will need to be developed by EBA for a supervisory role for crypto-asset issuers and a role in supervising third-party providers. Furthermore, output from EBA in 2022 can be expected at least in the areas of thematic reports on the supervision of financial innovation, artificial intelligence, FinTech, innovation products and emerging trends. But also, technical regulatory standards under the Crowdfunding Regulation and further opinions on *Digital Finance Strategy*, which will also be of interest to banks and payment institutions. With regard to DORA and MiCA, EBA specifically notes in the document that if these proposals are adopted in June 2022, EBA will include its further input in the form of technical regulatory standards and guidance in its 2023 work programme. Market participants should therefore be prepared for EBA to focus on technological innovations and associated ICT and cyber risks in 2022 (but also beyond).



EBA publishes report into the use of digital platforms

- **What?** EBA published a [report](#) on the use of digital platforms on September 21, 2021. There is no firm definition in financial regulatory law of 'digital platforms'. In this report, EBA means by a 'digital platform' a technical infrastructure that allows at least one financial institution to sell a financial product and/or service to customers, other than (i) a mobile banking app or online banking tool, (ii) a platform used by a crowdfunding provider, and (iii) a platform used exclusively for peer-2-peer (P2P) lending. As part of the response to the COVID-19 crisis, the EBA has noted a strong acceleration in the digitization of both front- and back-office processes in the banking and payments sector within the EU. This development offers new opportunities, but also has new risks. In this context, EBA notes that the use of digital platforms offers a range of potential opportunities for both customers and financial institutions in the EU, as well as significant transformative potential. For example, digital platforms can facilitate access to financial products and services, including cross-border products and services. However, new forms of financial, operational and reputational interdependencies are emerging, over which regulators have limited visibility. To minimize or prevent such risks, EBA makes some proposals. They mention, for example, developing common questionnaires on the use of digital platforms, sharing knowledge about financial institutions' dependence on their digital platforms.
- **Who?** Regulated financial institutions using digital platforms.
- **When?** To address the problem outlined above, by 2022 EBA will support national supervisors in shaping the aforementioned intended developments and EBA will increase its supervisory capacity.

EBA analysis of RegTech in the European financial sector

- **What?** On June 29, 2021, EBA published an [analysis](#) of the current RegTech landscape in the EU. It makes a number of proposals, including organizing activities to deepen knowledge and address any gaps in regulators' and supervisors' skills related to RegTech, supporting the convergence of supervisory practices across the EU when dealing with RegTech, and providing clarity on supervisory expectations.
- **Who?** For players across the financial industry.
- **When?** 2022.

EIOPA publishes report on artificial intelligence (AI) guidelines

- **What?** The European Insurance and Occupational Pensions Authority's (EIOPA) [Report on artificial intelligence governance principles](#), dated June 17, 2021, builds on recent international and EU developments in digitalization and AI. The report outlines the advantages and disadvantages of these developments. The report highlights the proliferation of AI in the insurance industry. For example, AI is enabling insurance companies to perform more granular risk assessments and pricing practices, to make claims management processes increasingly efficient, and to fight fraud more effectively. The main conclusion of the report is that EIOPA considers it essential to achieve a sound AI governance framework for a well-functioning, reliable and financially inclusive insurance industry. The report is intended to assist insurance companies in taking risk-based and proportionate measures by providing guidance on how key principles can be applied in practice throughout the lifecycle of an AI application. The guidelines are non-binding and illustrative.
- **Who?** Insurers.
- **When?** The report does not include further timelines. The guidelines can also be applied by insurers in 2022. We can imagine that such reports in the field of AI will be the prelude to further legislation and regulation in that area in the near future.

ESA's 2022 Work Programme

- **What?** The joint European financial supervisors (ESAs) have also presented their joint supervisory vision for 2022 in their [ESAs 2022 Work Programme](#). Technological innovation and cybersecurity is one of the focal points. Following the publication of the Digital Finance Package by the EC in September 2020, the ESAs are expected to implement additional actions. A first example is the request to EBA, EIOPA and ESMA to provide technical advice on digital finance and related issues. This technical advice should be provided by January 2022.
- **Who?** For players across the financial industry.
- **When?** 2022.

EFIF – Procedural framework for innovation facilitator cross-border testing

- **What?** Innovation facilitators in the EU currently operate at the national level. This has been identified as a problem by most national regulators (NCAs), the EC, ESAs and firms, as it can create constraints and difficulties for firms in scaling up financial innovations

in the EU. As a first step to address this issue, the European Forum for Innovative Facilitators (EFIF) was established in 2019 to bring about greater coordination and cooperation between innovation facilitators across borders. The [Procedural Framework for Innovation Facilitator Cross-Border Testing](#) establishes a common procedural framework that companies and national regulators can rely on to exchange information on experiments across borders in a structured manner. The objective of the Procedural Framework is to facilitate the scaling up of innovative products and solutions in the internal market and to simplify cross-border communication between national competition authorities and to improve the accessibility of information and transparency regarding cross-border sandbox testing. The Procedural Framework has a non-binding character and can be voluntarily applied by national regulators.

- **Who?** The document is primarily intended for national supervisors, but if applied, may have indirect effects through the supervision of financial sector players.
- **When?** 2022.

ECB

Central Bank Digital Currency (CBDC) project.

- **What?** After DNB already published a [comprehensive report](#) on central bank digital currency (CBDC) in April 2020 and the European Central Bank (ECB) conducted a [comprehensive exploration](#) of CBDC in October 2020, the ECB [announced](#) on July 14, 2021, to start a project on a digital euro. The project aims to answer key questions surrounding the design and dissemination of CBDC. A digital euro should meet the needs of Europeans while countering illegal activities. It should also prevent undesirable effects on financial stability and monetary policy. The project will be [led](#) by Evelien Witlox.
- **Who?** CBDC basically comes down to being able to hold a money account directly with a central bank, in the Netherlands DNB. The introduction of CBDC could thus make major changes to the current payment landscape, but also, for example, to the way banks are financed. The ECB's current exploration is therefore at least relevant to the payments and banking sector.
- **When?** The research phase will last for two years. The decision on whether to actually introduce a digital euro will follow at a later stage. The ECB emphasizes that a digital euro will in any case be a supplement to cash, and not a replacement for it.

BCBS, FSB, FATF & CPMI/IOSCO

FSB progress report on global stablecoin arrangements

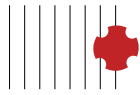
- **What?** On October 7, 2021, the Financial Stability Board (FSB) published a [follow-up report](#) on the regulation of 'global stablecoins arrangements' (GSAs). According to the FSB, stablecoins have the potential to make payments - especially cross-border payments - more efficient and increase financial inclusion. However, a globally accepted GSA could become systemically important in one or more jurisdictions. For this reason, in October 2020, the FSB made [ten recommendations](#) to governments to address the financial stability challenges of GSAs, with the goal of promoting consistent and effective regulation, and consistent and effective supervision, of GSAs. In the progress report, the FSB describes the progress that countries are making, and the efforts that international organizations such as BCBS, CPMI/IOSCO, and the FATF are making in this regard.
- **Who?** The progress report is relevant to parties concerned with crypto-assets, and stablecoins in particular.
- **When?** The FSB continues to support the implementation of its 2020 recommendations and will review these recommendations between 2022 and 2023.

BCBS prudential treatment of exposures of banks to crypto-assets

- **What?** On June 10, 2021, the Basel Committee on Banking Supervision (BCBS) published a [consultation paper](#) on the prudential treatment of bank exposures to crypto-assets.
- **Who?** This development is particularly relevant for banks with exposures to crypto-assets.
- **When?** BCBS noted in a news release dated November 9, 2021 that, taking into account the consultation responses received, it is in the process of further shaping a proposed prudential framework for crypto-asset exposures. As part of that process, it will publish an updated consultation paper in mid-2022.

CPMI/IOSCO consultation on application of FMI principles to stablecoin arrangements

- **What?** In October 2021, the Committee on Payments and Market Infrastructures (CPMI) and the Board



of the International Organization of Securities Commissions (IOSCO) published a [consultation report](#) on the application of the 2012 principles for financial market infrastructures (FMIs) to systemically important stablecoin arrangements.

- **Who?** Although guidance from the CPMI/IOSCO is not directly applicable, because of its influence on policymakers and regulators, the consultation report is relevant to parties concerned with crypto-assets, and stablecoins in particular.
- **When?** The consultation period ran until December 1, 2021. We expect the CPMI/IOSCO to include the responses from the public in further publications on stablecoin arrangements.

IOSCO guidelines on AI and machine learning

- **What?** On September 7, IOSCO published [guidance](#) on the application of artificial intelligence (AI) and machine learning (ML) by 'intermediaries' and 'asset managers'. The guidance covers six topics, including the governance, control and testing framework related to the use of AI and ML, staff training and transparency to investors, regulators and other stakeholders.
- **Who?** Although guidance from IOSCO is not directly applicable, because of its influence on policymakers and regulators, it is relevant to financial sector parties using AI and ML.
- **When?** Ongoing.

FATF update Guidance Risk-Based Approach Virtual Assets and VASPs

- **What?** In June 2021, the second annual review of FATF's updated standards for cryptocurrencies and virtual asset service providers (VASPs) found that more clarity is needed on FATF's application of the standards. This resulted in the publication of an updated [Guidance for a Risk-Based Approach to Virtual Assets and VASPs](#) on October 28, 2021. The Guidance includes updates on the following six topics:
 - clarification of the definitions of virtual assets and VASPs,
 - guidance on how the FATF Standards apply to stablecoins,
 - guidance on the risks and the tools available to countries to address the money laundering and terrorist financing risks for peer-to-peer transactions,
 - guidance on the licensing and registration of VASPs,
 - guidance for the public and private sectors on the implementation of the 'travel rule', and
 - principles of information-sharing and co-operation amongst VASP Supervisors

- **Who?** Although guidance from the FAFT is not directly applicable, it is relevant to crypto service providers because of its influence on policymakers and regulators.
- **When?** Effective immediately, as the FATF adopted the updated Guidance in October 2021.

DUTCH FINTECH ACTION PLAN

Overview of FinTech action plan progress

- **What?** The Ministry of Finance published a [report](#) on the progress of the Dutch FinTech Action Plan on October 13, 2021. This overview names and explains the results achieved so far. These include the completion of the evaluation of PSD2, the handling of the proposed AI Regulation in the Netherlands, an evaluation of the Payment Accounts Directive (PAD) and the further promotion of European harmonization by setting up a harmonization working group, where market participants are given the opportunity to identify, based on new proposals, where the harmonization of European regulations can be improved. Finally, it is announced that the results of the second FinTech census can be expected in the summer of 2022. The FinTech census is conducted to monitor the position of the Netherlands as a FinTech country.
- **Who?** Relevant for the entire financial sector.
- **When?** The report on the progress of the FinTech Action Plan has already been published. In it, it is announced that it is expected to reveal the results of the second FinTech census in the summer of 2022.

CAPITAL MARKETS: ISSUERS & CROWDFUNDING

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

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

In addition, it is useful for issuers and crowdfunding service providers to take note of the [General](#) section, as it also addresses issues that may affect these parties (such as developments with respect to the Benchmark Regulation, the Market Abuse Regulation and the Securities Financing Transactions Regulation (SFTR)).

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

AFM OVERSIGHT

Trend View 2022

Reporting listed companies for 2021

Commitment to good investor protection at European Retail Investment Strategy

ESMA

ESMA Work Programme 2022

STS notification for securitisations on the balance sheet under the amended Securitisation Regulation

Publishing 2021 EEF XBRL taxonomy files and ESEF conformance suite

EUROPEAN COMMISSION/ESAs

Proposal Regulation European Green Bonds

Consultation on making public capital markets more attractive

Consultation 'Business reporting - improving quality and enforcement'

ESA's Joint Committee Work Program 2022

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Consultation review of the Short-Selling Regulation

Amendment to Short-Selling Ordinance - adjustment threshold notification

CROWDFUNDING REGULATION

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ESMA final report technical standards on crowdfunding

Implementation scheme European crowdfunding

service providers for businesses

ESMA Q&A on the concept of a special purpose vehicle under the Crowdfunding Regulation

Individual loan portfolio management by crowdfunding service providers

Adoption of regulations for crowdfunding service provider under Crowdfunding Regulation

OTHER NEW LAWS AND REGULATIONS

Implementing law on covered bonds directive

Proposed amendment to House for Whistleblowers Act Investment, Mergers and Acquisitions Security Test Act



AFM OVERSIGHT

Trend View 2022

- **What?** For the year 2022, the AFM again presented its [Trend Monitor](#). In it, the AFM describes trends and associated risks that it observes, which will influence the financial sector and the supervision. With regard to issuers, it is mainly important to note that since last year the AFM has observed a trend in the use of so-called *Special Purpose Acquisition Companies* (SPACs). These are companies that go public without any business activities in order to raise money from investors. This requires the preparation of a prospectus with all the information about the SPAC itself, but not yet about the company to be contributed to the SPAC. This information is not published until that company is found. The AFM supervises the provision of this information. So SPACs still have to meet transparency requirements, but only in a different way. The AFM sees SPACs as products with high complexity and expects the product to be suitable for a limited number of investors. We expect that the AFM will pay extra close attention to the provision of information to investors in such prospectus procedures. In addition, the AFM indicates in its Trend Review that the risk of *greenwashing* continues to grow as a result of the rapid emergence of sustainable investment products. The AFM is therefore expected to pay extra attention to green investment products and the provision of information in this regard.
- **Who?** Among others, issuers wishing to issue securities to the public (whether through a SPAC or not), but also for trading venues.
- **When?** Continuing through 2022.

Reporting listed companies for 2021

- **What?** In the [European Common Enforcement Priorities \(ECEP\) 2021](#), ESMA provided an overview of the topics that listed companies, their audit committees and external auditors should pay particular attention to when assessing financial reporting for 2021. The focus over 2021 is on specific, high-quality reporting on climate-related issues, transparency regarding the consequences of the corona crisis, putting systems in place for reporting requirements over 2022 and the transition to the [ESEF Reporting Format](#). The AFM will take these points into account in its supervision, but also has its own points for attention for 2022. For example, research is being done into the “connectivity” between non-financial and financial reporting and the assurance provided by the accountant in this respect. It also examines the extent to which companies are preparing for new regulations on non-financial

information from the EU Taxonomy Regulation, the Corporate Sustainability Reporting Directive (which applies to reporting in 2023) and the international reporting standard for insurance contracts.

- **Who?** Including securities issuers listed on a regulated market.
- **When?** 2022.

Commitment to good investor protection at European Retail Investment Strategy

- **What?** The AFM and the Ministry of Finance support the ambitions of the European Commission to improve the access of private investors to the capital markets and to future-proof the laws and regulations in this respect. Good investor protection should be paramount in this respect, whereby private investors are offered suitable products, among other things. The AFM and the Ministry of Finance have drawn up a [joint non-paper](#). It sets out various priorities for increasing investor protection among the retail public, including more effective disclosure and reducing conflicts of interest. The document should serve as a starting point for discussions with Dutch and European stakeholders.
- **Who?** Among others, issuers offering securities to the public.
- **When?** In the coming period, the Ministry of Finance and the AFM will further communicate their commitment to consumer protection and enter into dialogue with various Dutch and European stakeholders. The European strategy for retail investing is expected to follow in the course of 2022.

ESMA

ESMA Work Programme 2022

Once again for this year, ESMA has published its annual supervisory program – [Work Programme 2022](#). This publication took place September 27, 2021. In its supervisory program, ESMA sets out its supervisory priorities and specific focus areas for the next 12 months. ESMA's planned activities are in response to the challenges facing the EU and its capital markets, including developing a broad retail investor base to support the Capital Markets Union (KMU), continuing to build on relevant laws and regulations related to environmental, social and governance disclosures (so-called *ESG disclosures*), but also addressing innovation and digitalization as a result of the entry into force of several regulations in the coming years (such as DORA and MiCA).

For issuers and capital markets respectively (in the broadest



sense), the ESMA Work Programme 2022 includes the following relevant topics:

- **Capital Markets:** ESMA intends to further contribute to the development of the regulatory and supervisory framework to support the further development of efficient and orderly capital markets. ESMA also intends to promote investor participation and greater cross-border investment through the further development of the capital markets union (CMA), in which the promotion of retail investment will play a central role. In this context, ESMA will, among other things, further contribute to the revision of sectoral legislation, such as the revision of the PRIIPs Regulation.
- **Disclosure obligations:** In this context, ESMA intends to continue to make a continuous contribution in the further development of disclosure rules under the Prospectus Regulation, Shareholders' Rights Directive and the Transparency Directive. ESMA also wants to contribute to the creation and adoption of high-quality corporate reporting standards, including standards for sustainability reporting, but also the enforcement of an updated framework for digital reporting.
- **Market Integrity:** ESMA will continue to make appropriate efforts in the area of market abuse. For example, ESMA is expected to develop and publish further guidance based on the outcomes of the 2020 MAR review report. ESMA will also consider the need for broader guidance on the definition of 'inside information'. Similarly, ESMA will look at the issue of 'investment recommendations via social media' to consider whether different forms of guidance to reach new generations of retail investors are appropriate. ESMA will continue its ongoing work on supervisory convergence through opinions on new or renewed accepted market practices, opinions on proposed emergency measures under the Short-Selling Regulation, its annual reports on accepted market practices (so-called AMPs) and on administrative and criminal sanctions under MAR.

STS notification for securitisations on the balance sheet under the amended Securitisation Regulation

- **What?** ESMA submitted to the European Commission on October 12, 2021 its [final report containing technical standards specifying the content and format of the STS notification for on-balance sheet securitisation under the amended Securitization Regulation](#) ((EU) 2021/557). STS stands for 'simple, transparent and standardization'. These draft guidelines are an elaboration of the amended Securitization Regulation and must now be approved by the European Commission. In the

meantime, *originators* can make the necessary information available to ESMA by using the preliminary STS synthetic notification templates.

- **Who?** Initiators of STS securitisations, sponsors and securitization special purpose vehicles (SSPE).
- **When?** The draft guidelines are now before the European Commission for approval, after which they are expected to enter into force in 2022.

Publishing 2021 EEF XBRL taxonomy files and ESEF conformance suite

- **What?** On December 10, 2021, ESMA published the 2021 [XBRL taxonomy files](#) and an update to the [ESEF conformance suite test files](#) to facilitate the implementation of the ESEF Regulation. FSMA aims to facilitate the implementation of the European Common Electronic Format (ESEF) by making available these XBRL taxonomy files and compliance test files that reflect the requirements contained in the [2021 draft amendment to the ESEF Regulation](#) and the 2021 [amendment](#) to the ESEF Reporting Manual. The ESEF Regulation requires all issuers with securities listed on an EU regulated market to prepare their annual financial reports in XHTML and to mark the consolidated IFRS financial statements contained therein using XBRL tags and iXBRL technology.
- **Who?** Securities issuers listed on a regulated market.
- **When?** The draft 2021 update of the ESEF Regulation was submitted by ESMA in May 2021, was approved by the European Commission on 29 November 2021, and is currently subject to the scrutiny of the European Parliament and the Council. If the co-legislators do not object, the 2021 update of the ESEF Regulation should enter into force around the beginning of March 2022.

EUROPEAN COMMISSION/ESAS

Proposal Regulation European Green Bonds

- **What?** On July 6, 2021, the European Commission introduced a [proposal](#) for the European Green Bonds Regulation. This proposal is part of the European Commission's broader agenda on sustainable finance and lays the groundwork for "European Green Bonds" (EuGB), bonds that pursue environmentally sustainable investments within the meaning of the Taxonomy Regulation ((EU) 2020/852). The European green bond standards can also be found on the European Commission [website](#). In a more general sense, the bill aims to make better use of the capital market union



and contribute to the achievement of the European Union's climate and environmental goals. Furthermore, the bill seeks more specifically to address barriers by setting and introducing a standard for high-quality green bonds, which, among other things, will enable investors to better identify such green bonds and verify their reliability.

- **Who?** Securities issuers offering and issuing green bonds.
- **When?** The Regulation for European Green Bonds has not yet entered into force at the time of this writing and is not expected to take effect until 2022 at the earliest.

Consultation on making public capital markets more attractive

- **What?** The European Commission launched a [consultation](#) on November 19, 2021. This targeted consultation is part of a European Commission initiative aimed at making the listing of both equity and non-equity securities on EU public markets more attractive to companies, and in particular to small and medium-sized enterprises. This would make it easier for issuers in the EU to finance their activities and to grow, innovate and create jobs, while maintaining a high level of investor protection and market integrity.
- **Who?** Securities issuers that are in the SME segment.
- **When?** In the period from November 19, 2021 to February 11, 2022, stakeholders can respond to the consultation. The results of this consultation will be incorporated into the planned legislative proposal for 2022.

Consultation 'Business reporting - improving quality and enforcement'

- **What?** This consultation from the European Commission concerns the amendment of the Transparency Directive (2004/109/EC). This Directive concerns the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. This corporate reporting initiative aims to improve the quality of corporate reporting and its enforcement by addressing deficiencies in the underlying ecosystem. Improving the framework for corporate governance, external audit and oversight will better protect investors and make the capital markets union (the single market for capital in the EU) more profound and attractive.
- **Who?** Issuers whose securities are admitted to trading on a regulated market.
- **When?** The consultation period runs from November 12, 2021 to February 4, 2022. The entry into force

of the amendment to the Transparency Directive is expected to take place in the last quarter of 2022.

ESA's Joint Committee Work Program 2022

- **What?** The joint supervisors, referred to as the European Supervisory Authorities (ESAs), seek to increase consistency in cross-sectoral supervision. The ESAs published their [Work Programme 2022](#) on September 29, 2021, in which they present various topics that are priorities in 2022. For issuers, the following topics are relevant: technical advice on the assessment of the current PRIIPs Regulation and level-3 regulation in this area (such as Q&As) and further development of level-3 regulation under the Securitization Regulation.
- **Who?** Issuers.
- **When?** 2022.

DEVELOPMENTS IN EXISTING LEGISLATION AND REGULATIONS

Different developments PRIIPs

Introduction

In the area of the PRIIPs Regulation, which is primarily known for the obligation to draw up a Key Information Document (Eid), various developments have been running in parallel for quite some time. As a result, it is easy to lose the overview. Nevertheless, 2022 appears to be the year in which concrete changes with regard to the PRIIPs Regulation and the EID will finally enter into force. Below we list the relevant changes in the usual Vooruitblik format. The PRIIPs Regulation is relevant for, among others, managers of investment funds that issue units to the public, for providers of convertible bonds and for the issue of depositary receipts for shares (so-called PRIIPs).

Yet another postponement of the Eid obligation

- **What?** An amendment to the UCITS Directive was published on December 20, 2021. In it, [two amendments were adopted](#) with respect to the PRIIPs Regulation and the mandatory Eid. The first amendment concerns (again) an extension of the exemption for retail AIFs and UCITS to prepare an Eid under PRIIPs (they must now prepare an Essential Investment Information (EII) document). This postponement allows market participants to comply with the amended rules



regarding the Eid (see below). The second change is an amendment to the UCITS Directive and provides that when a UCITS is only offered to professional investors, whereby PRIIPs in principle does not apply, the manager has the choice to draw up either an ECI or an EID.

- **Who?** Licensed managers of retail AIFs and UCITS offering securities to the public.
- **When?** January 1, 2023.

PRIIPs - Changes Eid

- **What?** On December 20, 2021, the [amendments](#) were published with respect to the Delegated Regulation to the PRIIPs Regulation, which further details the requirements with respect to the Eid. The amendments include (i) new methods for calculating appropriate performance scenarios and a revised presentation of these scenarios, (ii) how costs should be presented, and (iii) how transaction costs should be calculated. In addition, there are several changes that apply specifically with respect to retail AIFs and UCITS. For example, for certain types of AIFs and UCITS the obligation to provide information on past performance applies.
- **Who?** All parties offering PRIIPs.
- **When?** The changes will apply from July 1, 2022.

PRIIPs - General review PRIIPs

- **What?** Currently, in view of Article 33 PRIIPs Regulation, a study on the overall functioning of the PRIIPs Regulation is underway. The European Commission has asked the ESAs to give [their opinion](#) on many different subjects in the PRIIPs Regulation. In connection with this, the ESAs themselves then asked the market for [input](#) again. It is difficult to predict exactly where this evaluation will lead.
- **Who?** All parties issuing PRIIPs.
- **When?** ESAs must provide their input by April 30, 2022.

Consultation review of the Short-Selling Regulation

- **What?** ESMA published a [consultation paper](#) on the revision of the Short-Selling Regulation ((EU) 236/2012) on September 24, 2021. This document includes proposals for operational improvements and policy clarifications on a wide range of topics, including the calculation of net short positions, the prohibition of uncovered short-selling transactions and the *locate rule* under which short-selling transactions may take place, but also the introduction of a centralized notification and disclosure system to reduce the reporting burden, increase cost efficiency and enhance ESMA's monitoring capacity and coordination powers in case of potential threats at the EU level.

- **Who?** Including issuers of financial instruments admitted to trading or traded on a trading platform.
- **When?** The consultation period closed on November 19, 2021 and ESMA expects to publish its final report at the end of the first quarter in 2022. It will then be submitted to the European Commission for approval, after which it will enter into force. This is expected to be during 2022 at the earliest.

Amendment to Short-Selling Ordinance - adjustment threshold notification

- **What?** On September 27, 2021, the European Commission published the [draft delegated regulation on the](#) adjustment of the relevant threshold for the notification of significant net short positions in shares. This Delegated Regulation amends Article 5(2) of the Short-Selling Regulation by setting the threshold for notification to the competent authorities of significant net short positions in shares at 0.1% of the issued share capital of the company concerned. Under the Short-Selling Regulation, that threshold was originally set at 0.2%. However, during the COVID-19 pandemic, the notification threshold for net short positions in shares admitted to trading on a regulated market was lowered from 0.2% to 0.1%, in order to enable faster recognition of market developments. ESMA now intends to permanently lower this threshold and set it at 0.1%.
- **Who?** Market participants with short positions in shares of listed companies.
- **When?** Expected in 2022.

CROWDFUNDING REGULATION

General

On November 10, 2021, [the European Crowdfunding Regulation on crowdfunding service providers for businesses \(\(EU\) 2020/1503\)](#) (Crowdfunding Regulation) came into force and in all EU Member States. The Crowdfunding Regulation is part of the Capital Market Union and has direct effect. As of its entry into force, the Crowdfunding Regulation results in a new financial supervisory legal landscape for crowdfunding service providers (often referred to as crowdfunding service providers, CSPs).

A crowdfunding service is defined as matching a financing need of an SME project owner with the desire to provide this financing from the crowd. This can be



done by facilitating the provision of loans or the issuance of securities. In the case of securities, it involves the receipt and transmission of orders in the case of (issuing) securities and the placement thereof without a placement guarantee. A crowdfunding project amounts to a maximum of €5 million calculated over 12 months.

When facilitating the granting of loans, the possibility exists for the crowdfunder to also offer portfolio management with respect to the loans to the investor. This can be indicated at the time of the license application or at a later stage. The crowdfunding service provider should have the right knowledge and processes for this. Crowdfunding services do not include providing a financing need of consumers. For that service, the Credit section in this Outlook is relevant.

Under the Crowdfunding Regulation, a licensing requirement has been introduced for CSPs. There is a transitional period for service providers that already provide crowdfunding services and make use of an exemption for this purpose, for example. On November 10, 2022 at the latest, crowdfunding service providers must have a license from the AFM.

In addition to the Crowdfunding Regulation and the laws and regulations implemented therewith at the national level, in 2022 the Crowdfunding Regulation will be further elaborated or clarified in technical regulatory standards in various parts respectively. Some of these parts are further elaborated in this section related to the Crowdfunding Regulation. One thing is certain: 2022 will be a year in which a lot will happen in this field, both for crowdfunding service providers and the (European) legislator.

Permit application crowdfunding service providers

- **What?** In addition to the Crowdfunding Regulation that came into force on November 10, 2022, some changes to existing Dutch laws and regulations have also been implemented. Both the [AFM](#) and [DNB](#) note on their websites that existing crowdfunding service providers need to have submitted their license application to the AFM on May 10, 2022 at the latest in order to continue their (license required) services. These crowdfunding service providers, depending on the set-up of their business activities, currently often make use of an exemption. In this respect, it is important that these crowdfunding service providers meet all requirements that arise from the Crowdfunding Regulation, including organizational and operational requirements.
- **Who?** Existing crowdfunding service providers.
- **When?** Licenses must be submitted to the AFM no later than May 10, 2022. No later than November 10, 2022,

existing crowdfunding service providers must have a license under the Crowdfunding Regulation in order to continue their crowdfunding services as of that date.

ESMA final report technical standards on crowdfunding

- **What?** On [November 10, 2021](#), ESMA published its [final report](#) on regulatory technical standards under the Crowdfunding Regulation. The final report covers all aspects of investor protection covered by the Crowdfunding Regulation, including aspects on complaint handling, conflicts of interest, entry knowledge testing and loss bearing capacity simulation.
- **Who?** Crowdfunding service providers.
- **When?** ESMA has submitted the draft regulatory technical standards to the European Commission for approval, which is required to make a decision on them within three months (i.e. in the first quarter of 2022). It is expected that these regulatory technical standards will enter into force in mid-2022 at the earliest.

Implementation scheme European crowdfunding service providers for businesses

- **What?** On December 2, 2021, as a result of the entry into force of the Crowdfunding Regulation, the Exemption Regulation Wft and the Financial Supervision Funding Regulation for Businesses were amended via the [Implementation Regulation for European Crowdfunding Service Providers](#). Amongst other things, this amendment regulation introduced an exemption from the prohibition to provide investment services (Section 2:96 of the Financial Supervision Act) for crowdfunding service providers that are entitled to provide crowdfunding services pursuant to the Crowdfunding Regulation. In addition, this amendment act also provides an exemption for crowdfunding service providers that attract or obtain repayable funds by means of loans as referred to in the Crowdfunding Regulation. The Financial Supervision Costs Regulation for one-off acts includes the costs that crowdfunding service providers will have to incur in connection with, among other things, applying for a license.
- **Who?** Crowdfunding service providers.
- **When?** Despite being implemented in 2021, these amendments to the law will also be particularly important in 2022 as this is the transition year for crowdfunding service providers to apply for a license under the new regime.

ESMA Q&A on the concept of a special purpose vehicle under the Crowdfunding Regulation

- **What?** ESMA also published a [Q&A](#) for crowdfunding service providers in connection with the entry into force of the Crowdfunding Regulation and provided it with a final update on November 19, 2021. This Q&A from ESMA, which aims at the convergent application of provisions of the Crowdfunding Regulation, specifically further addresses the use of a *special purpose vehicle* (SPV) under the Crowdfunding Regulation. This will include the circumstances and conditions under which an SPV can be established to provide crowdfunding services and the types of instruments that can be offered by the SPV. ESMA has indicated that in the coming period it will further develop the topics in the Q&A and expand the Q&A further, also for other parts of the Crowdfunding Regulation.
- **Who?** Crowdfunding service providers.
- **When?** Effective immediately (2022). During 2022, ESMA will continue to add to the Q&A, so it remains important for crowdfunding service providers to monitor the timeliness of this document.

Individual loan portfolio management by crowdfunding service providers

On November 9, 2021, EBA published its [final draft regulatory technical standards on individual portfolio management by crowdfunding service providers](#). These draft regulatory technical standards (RTS) were prepared in accordance with Article 6(7) of the Crowdfunding Regulation. These draft regulatory technical standards specify the information that crowdfunding service providers offering individual portfolio management of loans must provide to investors regarding the method of assessing credit risk, as well as about each individual portfolio. The document also specifies the policies, procedures, and organizational arrangements that crowdfunding service providers must have in place in connection with each emergency fund they may offer to investors. These draft regulatory technical standards are the first of two mandates assigned to the EBA to contribute to a sound prudential and disclosure framework for crowdfunding service providers.

When investors invest in a portfolio of loans offered by crowdfunding service providers, they may face potential information asymmetries. To address this issue, investors should have access to all relevant information about the composition of this portfolio, including the projects in which their money is invested, as well as the quality of the loans financing such projects. Investors are exposed not only to risks associated with the projects or loans in which

their funds are invested, but also to how the crowdfunding service provider assesses the risk of these loans and projects and how it manages the selection of loans for the portfolio.

Against this background, these draft regulatory technical standards require crowdfunding service providers to demonstrate that the measurement techniques used for credit risk assessments are based on a sufficient number of elements and are appropriate for the complexity and level of risks underlying (i) the individual project, (ii) the portfolio of loans, and (iii) the project owner. In addition, the draft sets out the information that crowdfunding platforms must disclose, namely the key characteristics of each individual portfolio.

These draft technical regulatory standards are of interest to crowdfunding service providers and have now been submitted to the European Commission for approval. After going through the legislative process, the regulatory technical standards will enter into force, which we expect to be only during 2022.

Adoption of regulations for crowdfunding service provider under Crowdfunding Regulation

- **What?** In addition to the draft regulatory technical standards described above, on December 8, 2021, EBA launched a consultation on the [draft regulatory technical standards \(RTS\) further defining the information that crowdfunding service providers must provide to investors](#). The proposed requirements cover the methodology used to calculate credit scores and loan prices, the factors that providers must consider when conducting a credit risk assessment and performing a loan valuation, and the underlying policies and governance arrangements.
- **Who?** Crowdfunding service providers.
- **When?** On January 25, 2022, EBA will hold a public hearing on the draft in the form of a webinar. The consultation period will run until March 8, 2022, after which EBA will draft a final version of the regulatory technical standards for subsequent approval by the European Commission. It is not expected that these regulatory technical standards will enter into force before the end of 2022.



OTHER NEW LAWS AND REGULATIONS

Implementing law on covered bonds directive

- **What?** On September 10, 2021, the Ministry of Finance published the [bill to implement the Covered Bonds Directive](#) (Directive (EU) 2019/2162). With this bill, the Dutch legislator wants to implement the Covered Bonds Directive in, among others, the Financial Supervision Act. This Directive creates a harmonized framework for so-called 'covered bonds'. Covered bonds are debt instruments issued by banks, whereby the issuing bank segregates collateral as security for the bondholders. This collateral consists of a pool of assets, which is subject to strict qualitative and quantitative requirements (cover pool). In doing so, the issuing bank has the obligation to ensure that the value of the collateral is at all times at least equal to the value of the outstanding bonds. In addition to the Implementation Act, the Directive will be implemented through an Implementation Decree and Regulation. The consultation period for the [Implementation Decree](#) closed on November 26, 2021. It is expected to be offered to the Council of State soon.
- **Who?** A bank that offers and issues covered bonds in its capacity as a securities issuer.
- **When?** The provisions of the Covered Bonds Directive must be implemented in Dutch law and regulations by July 8, 2022. Therefore, it is foreseen that the Implementation Act, the Implementation Decree and the Implementation Regulation will enter into force on that date. The implementation of the Directive is expected to be completed in the first part of 2022. It is interesting to note that on September 29, 2021, the Netherlands was declared to be in default for exceeding the implementation deadline of the directive in question.

Proposed amendment to House for Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House for Whistleblowers Act. The purpose of this law is to improve the conditions for reporting social wrongdoing, by enabling investigation of wrongdoing and providing better protection for reporters of wrongdoing. The House for Whistleblowers Act already provides for a mandatory internal reporting procedure for employers who employ at least fifty people. The House for Whistleblowers Act will become applicable to companies operating in the financial sector, including securities issuers to which the Prospectus Regulation

applies. Under the Act, the AFM, among others, will be appointed as the competent supervisor.

- **Who?** Securities issuers.
- **When?** The legislative amendment was actually supposed to take effect on December 17, 2021. However, the proposal is currently pending before the House of Representatives. It is unclear when the amendment will take effect. We expect this to be early 2022.

Investment, Mergers and Acquisitions Security Test Act

- **What?** On June 30, 2021, the [bill](#) for the Investment, Mergers and Acquisitions Security Review Act was presented to the House of Representatives. The bill introduces a review mechanism for investments, mergers and acquisitions that may pose a risk to national security. This involves investments in (i) vital providers or (ii) companies that possess sensitive technology.
- **Who?** The bill identifies several financial companies as vital providers, including certain issuers.
- **When?** The law is expected to take effect in early 2023.

LENDERS

This section discusses important developments for consumer credit providers (mortgage and consumer credit) that will be at play in 2022. If these consumer credit providers (shortly: 'lenders') also provide additional services, such as advising on credit or intermediating in the conclusion of an insurance product, we recommend consulting the sections in this Outlook that are aimed at those additional services ([Financial Service Providers](#)). Furthermore, the section [General](#) is for Lenders worth reading, as it discusses general developments in the areas of supervision and enforcement, for example, that are also relevant to Lenders.

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

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

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AFM OVERSIGHT

Trend Monitor 2022

What: On November 4, 2021, the AFM published its [Trend Monitor 2022](#). In this document, the AFM points out a number of trends and associated risks in the financial sector for the year 2022. For lenders, the AFM identifies, among other things:

- The overheated Dutch housing market. The high house prices and the high debts that are taken on as a result, make households vulnerable in case of setbacks. To prevent households from getting too deeply into debt, it is important that lending standards are carefully applied. In addition, the AFM points to the need for other structural solutions, such as building more, reducing subsidies and critically reviewing incentive schemes, including the zero rate of transfer tax for young homebuyers and the expanded gift scheme.
- The substantial private debt mountain (mortgage and consumer credit) that makes households vulnerable to changes in personal circumstances or to an interest rate shock. In particular, people with flexible contracts and others affected by corona crises are susceptible to alternative financing, such as fit credit, *buy now pay later* and forms of (private) leasing, due to a deteriorated position.



- The accessibility of financial service providers to Dutch citizens with a migration background. The AFM comes to the cautious conclusion that there is as yet no (statistical) evidence that Dutch people with a migration background actually experience limited access to financial services and products, but calls on financial institutions to already think about how they will (be able to) respond to this target group in the future. The AFM will conduct further research. In doing so, it considers it useful to gain a better understanding of potentially unintended, counterproductive elements for (financially) low-literate Dutch people in the current legislation and regulations, such as the information and transparency provisions referred to above.

The trends and risks identified by the AFM will have its attention in 2022. The concrete implications of the risks for the AFM's supervision will be elaborated in the Agenda 2022 that will be published in early 2022.

Duty of care regarding consumers during term of financial product

- **What?** On December 15, 2021, the AFM [published](#) the document 'Principles for the ongoing support of customers' in which the AFM calls on financial institutions to pay more attention to the support after the conclusion and during the term of a product or service. This call has to do with changing circumstances after the sale of a financial product, for example in life circumstances or on the financial markets. The document contains three principles that can help financial institutions in providing ongoing customer support: (i) formulating an ambition about customer care in the management phase, (ii) making it clear to customers what they can expect and what they cannot, and (iii) testing whether the service actually helps customers in practice. Related to this topic, the AFM says (in its Legislative Letter 2021) it is in discussion with the Ministry of Finance about promoting financial insight and its delineation with the concept of advice. It is possible that these discussions will lead to a legislative wish posed by the AFM to the legislator on the supervision of the servicing phase of financial products.
- **Who?** All lenders.
- **When?** Effective immediately; according to the AFM, this is a continuing obligation.

Good practices outsourcing

- **What?** In June 2021, the AFM published the [results](#) of its exploration of outsourcing risks for financial service providers. As a result of the survey, the AFM formulated a number of *good practices*. For example, the AFM advises the sector to make clear agreements with the service

provider to whom certain services have been outsourced about how to deal with incidents, so that immediate action can be taken in response to an incident.

- **Who?** Lenders that outsource.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

Dealing with consumers in the event of payment problems

- **What?** In November 2021, the AFM published a [report](#) on arrears management in consumer credit. A direct reason for this research was the corona crisis and its predicted negative economic consequences. The AFM wants consumer credit providers to offer sustainable solutions in their arrears management, making use of insights from the behavioural sciences. The appendix to the report contains tips for positive communication, including avoiding jargon and archaic language, conducting research into the world of people in arrears, offering solutions and reassuring people. In addition, the AFM expects lenders to follow new developments and insights from behavioral sciences in the future and, where necessary, further improve their approach on the basis of these.
- **Who?** Consumer credit providers.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

Application EBA guidelines on on loan origination and monitoring

- **What?** In June 2021, the AFM published a [report explaining](#) the AFM's application of EBA's [guidelines on loan origination and monitoring](#). These guidelines specify the requirements related to the consumer's creditworthiness assessment. The AFM notes that the practice of mortgage lending in the Netherlands is currently not fully in line with some paragraphs in the Guidelines for which the AFM is the responsible supervisor. For example, the Guidelines require that providers, when assessing the creditworthiness of consumers, have appropriate evidence of regular expenditures at household level. In current Dutch law and practice, this obligation at household level is placed on the advisor and not on the provider. In the report, the AFM requests providers to submit a proposal on how to comply with the guidelines.
- **Who?** Mortgage credit providers.
- **When?** The AFM said it would inform mortgage credit providers no later than November 1, 2021, based on the proposals received, how they should interpret the guidelines. However, on January 1, 2022, nothing was publicly known about this.

DEVELOPMENTS IN EXISTING LEGISLATION AND REGULATIONS

Further remuneration rules for the financial sector

- **What?** Already on July 2, 2020, the Minister of Finance [submitted](#) a proposal for a Further Remuneration Measures for Financial Enterprises Act to the House of Representatives. The proposal aims to implement a number of changes to the current remuneration rules as contained in the Dutch Financial Supervision Act, including the introduction of a statutory retention period of five years for shares paid as part of a fixed remuneration and a tightening of the averaging scheme for non-CBA staff, who may be awarded a higher bonus than 20% under certain conditions.
- **Who?** All credit providers.
- **When?** The proposal has been pending in the House of Representatives for a long time, but has not yet been voted on. It is unclear when the amendment will take effect.

Review of the Consumer Credit Directive

On June 30, 2021, the Commission published a [proposal](#) for a directive to revise the Consumer Credit Directive. This is because the Commission identifies two problems in the consumer credit market. First, consumers take out loans that are harmful to them, but which can be prevented with proper protective measures. Second, there is little evidence of a properly functioning European internal credit market. With the proposed directive, the Commission wants to ensure a high level of consumer protection and promote the creation of an internal market for credit.

The proposed new directive, unlike the current directive, applies to:

- all rental or leasing agreements, i.e. also leasing agreements that do not involve an obligation to purchase the object that are exempted under the current directive.
- credit agreements without interest and other charges.
- credit agreements where the credit must be repaid within three months and only insignificant costs are charged.
- credit agreements up to EUR 100,000, i.e. also on credit agreements of less than EUR 200 that are exempted under the current directive.
- credit agreements granted in the form of an authorized overdraft that must be repaid within one month.

Furthermore, the proposal includes that in addition to the already known SECCI ('European Standard Consumer Credit Information'), a form 'European Standard Consumer Credit Overview' must also be provided, namely a one-page overview containing the main characteristics of the credit. The concept of 'considerable time' is no longer used in the EC proposal in terms of when the SECCI must be provided. The EC proposal provides that the pre-contractual information must be provided at least one day before the consumer is bound by an agreement or offer. If this is less than one day, then the consumer must be reminded of the possibility of withdrawing from the contract no later than one day after entering into the contract or accepting the offer. It is also noteworthy that tied sales is prohibited in principle in the proposal.

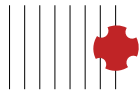
The proposal is currently being discussed in the triilogue between the European Commission, Council and Parliament. It is currently unclear when the revision will enter into force and what will remain of the proposals. We expect more to become clear here in 2022. A development with many implications for the entire credit market, so to keep a close eye on!

Consultation on the review of the Mortgage Credit Directive

- **What?** The Commission launched a [consultation](#) on the Mortgage Credit Directive in November 2021. This review will consider how: (i) provide consumers with simplified, timely and relevant information; (ii) adapt the rules to the digital environment; and (iii) make it easier to get a mortgage loan for a property in another EU country.
- **Who?** Mortgage credit providers.
- **When?** The consultation will run until February 28, 2022. The Commission has indicated that it will come up with further proposals in Q4 2022.

Consultation revision Directive on Distance Marketing of Financial Services

- **What?** Last autumn, the Commission held a [consultation](#) (again) on the Distance Marketing of Financial Services Directive. Since the Directive came into force in 2002, the retail financial sector has become increasingly digitized. New products, providers and sales channels have been added. Meanwhile, other EU legislation relevant to financial services has also been introduced or updated. In short: the Directive is outdated. This initiative aims to create a future-proof framework for the distance selling of financial services, protecting consumers in a digital



environment and reducing unnecessary burdens on financial service providers.

- **Who?** All lenders.
- **When?** The Commission has indicated that it will come up with proposals in the first quarter of 2022.

Maximum credit fee: does it remain 10%?

By [a decision](#) dated July 14, 2021, the reduction of the maximum credit fee from 14% to 10% was extended until July 1, 2022. The temporary reduction of the maximum credit fee was introduced on August 10, 2020 to ensure that consumers can borrow money at lower monthly costs for consumer spending while the Netherlands is affected by the effects of the corona crisis. This offers protection to consumers who, as a result of the crisis, need, for example, a personal loan or are forced to pay for a product with credit.

A structural reduction of the maximum credit fee is left to the new cabinet. In preparation for the decision-making process, a [consultation](#) was submitted to the sector on November 19, 2021. The aim of this consultation is to gain insight into the views of interested parties and the social views on this subject. A reduction in the maximum credit fee could - according to the Ministry of Finance - permanently protect consumers from high credit costs. The lower interest charges will also make consumers less likely to get into financial trouble, and once problematic debts have arisen, the reduction will ensure that the consumer's overall debt burden increases less rapidly. The consultation period for the proposed structural reduction ended on December 17, 2021.

During this consultation, the Netherlands Bankers' Association, for example, indicated that when considering whether to reduce the credit fee, the (burden-enhancing) effects of other forthcoming measures from Europe (including the amendment to the Consumer Credit Directive) must also be taken into account. It is currently unclear whether the new cabinet intends to permanently reduce the maximum credit fee. This will undoubtedly be the subject of considerable debate in 2022.

Lowering of the verification threshold to EUR 250

Currently, in order to prevent excessive crediting, lenders are required to obtain sufficient information, in writing or recorded on another durable medium, regarding the consumer's financial position (such as a pay slip and bank statements to support the data on income and expenses) for a credit of more than EUR 1,000. This is generally referred to as the verification requirement. Verbal

information about the financial situation of the consumer is not sufficient for credits over EUR 1,000.

The minister now intends to lower that amount to EUR 250 to protect consumers in small loans. This was already mentioned in a letter from the minister at the beginning of 2021. But now the intention has been taken another step further, according to the now-closed [consultation](#) of November 19, 2021 on the structural reduction of the maximum credit surcharge (as discussed above). If the Minister implements this reduction, lenders who offer credit between EUR 250 and EUR 1,000 will no longer be able to suffice with obtaining information as part of the creditworthiness check, but will have to verify the financial position of consumers. For relatively small credits, this has major consequences.

The consultation document states that lowering the verification limit to EUR 250 is currently under preparation. So more will be known about that in 2022.

Proposal to reduce frequency of audit cost 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 model correctly and fully allocates the advisory costs and distribution costs to the mortgage loan and whether there has been a material change. The cost model must now be audited annually by an auditor. If there is no material change, the frequency with which the auditor must check the cost model will be lower.
- **Who?** Providers of mortgage credit who conclude mortgages without the intervention of an intermediary (direct writers).
- **When?** The Amending Decree was sent to the Senate and House of Representatives in November 2021 as part of the pre-hanging procedure. It is expected that the decree will enter into force in 2022.

NEW LAWS AND REGULATIONS

Proposed amendment to House for Whistleblowers Act

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

dealing with the reporting of suspected wrongdoing within an organization. Currently, with respect to this obligation, a threshold of at least fifty persons within the organization is still provided. One of the proposed amendments is that this threshold will no longer apply to companies that are active in the financial sector, including providers. The AFM will be appointed as the competent supervisor.

- **Who?** All lenders.
- **When?** The legislative amendment was actually supposed to take effect on December 17, 2021. However, the proposal is currently pending before the House of Representatives. It is unclear when the amendment will take effect. We expect this to be early 2022.

Directive on credit servicers and credit purchasers

- **What?** On November 24, 2021, the Credit Servicers and Credit Buyers Directive was [published](#). This directive standardizes the rules for servicers and buyers of credit in the European Union and facilitates the sale of non-performing loans (or *non-performing loans*, NPLs). When providers are faced with a large accumulation of NPLs and do not have the staff or expertise to service them properly, they should be able to outsource the servicing of those loans to a specialized credit servicer or transfer the credit agreement to a credit buyer with the necessary risk appetite and expertise to manage them.
- **Who?** Buyers of credit who qualify as credit providers after purchase.
- **When?** The directive must be implemented by December 29, 2023. Next year we can expect a bill to implement it.

Regulation of private leasing?

- **What?** In the AFM's annual [legislative letter](#) to the Minister of Finance dated April 21, 2021, the AFM once again drew attention to the statutory regulation of private lease to consumers. Private lease, also known as operational lease, concerns for example the lease of cars, installations and goods and is currently exempt from the rules for consumer credit. This is despite the fact that private lease has many similarities with a (regulated) purchase credit. In response to the AFM's legislative request from 2020, the minister commissioned [research](#) into the leasing market in the Netherlands. Meanwhile, the European Commission's proposal to revise the Consumer Credit Directive of June 30, 2021, already included the removal of the exception of leasing contracts in the scope of the directive. On September 3, 2021, the Minister of

Foreign Affairs [informed](#) the House of Representatives of his support for the new commission proposals. The proposal to revise the Consumer Credit Directive is currently being discussed in the triilogue between the European Commission, the Council and the Parliament. However, it is questionable whether the proposal to remove the exception for lease contracts will make it. From [Answers to Parliamentary Questions from Consultation Financial Markets - Consumers and Services](#) it follows that there is little support for it within the Council. However, the Finance Minister has emphasized that he is positive about the proposal to bring private leasing within the scope of the directive and promises, if this proposal is not successful, to look at a possible national approach through legislation or self-regulation.

- **Who?** Private lease providers.
- **When?** It is currently unclear when the revision to the Consumer Credit Directive will come into force. We expect more to become clear about this in 2022.

OTHER DEVELOPMENTS

Non-bank small business lending (SME financing).

- **What?** There are currently no statutory protection rules for offering credit to business customers. (Note: the Wwft does apply to this type of service). However, self-regulation does apply by means of the Code of Conduct for Small Business Financing of the NVB and the Code of Conduct for SME Financiers of the Stichting MKB Financiering. Following a motion, the Minister of Finance commissioned a study into the market for non-bank lending to small businesses. This study, which also included an earlier [AFM study](#) from April 2021, made it clear that there are concerns about whether entrepreneurs can make a proper assessment when choosing a lender and the costs that are charged. The Minister entered into a dialogue with the market and published the [outcomes](#) on June 30, 2021. This states that the Minister is aware of the vulnerable position in which small entrepreneurs find themselves. The Minister now wants to give the previously initiated self-regulation a chance to develop further. If the results are insufficient in mid-2022, legal measures will be considered. These are already being investigated and prepared.
- **Who?** Lenders of loans to the small business market.
- **When?** By mid-2022, it should become clear whether there will be any regulation of SME financing under the Financial Supervision Act, such as capping the costs for the entrepreneur or to a uniform measure of costs



Progress on the Consumer Choices Action Plan and Principles for Using Consumer Behavioral Insights

- **What?** The Consumer Choices Action Plan, launched in 2019, aims to look for ways to ensure a better consumer choice environment, such as examining whether the maximum loan amount steers consumers toward more expensive homes and higher mortgages. In February 2021, the Minister of Finance provided an [overview of progress](#). Completed initiatives include different communication messages to target customers with installment-free mortgages and exploring communication strategies to better protect customers with revolving consumer loans and prevent future payment problems. The knowledge gained was published via the Wijzer in geldzaken website. Specific attention was paid to research into the possible steering effect of informing consumers of the maximum mortgage amount they can borrow on the basis of the lending standards in the [Temporary Regulation on Mortgage Loans](#). The research showed that this maximum mortgage amount can act as an anchor effect in all phases of the mortgage selection process, steering consumers towards higher mortgages. Expert advice reduced - only for those with lower incomes - that starting point. Consumers are helped by designing services and the choice environment in such a way as to encourage financially sound behavior. In line with this, the AFM published its three [Principles for the Use of Consumer Behavior Insights](#) at the end of March 2021: (i) stay abreast of the most relevant consumer behavior insights, (ii) use these insights to promote that consumers make wise financial choices, and (iii) measure the effect of using these insights.
- **Who?** All credit providers.
- **When?** This is a policy statement of the AFM that is not enforceable. However, we expect that the AFM will refer to these principles in its ongoing supervision.

- more insight into formal enforcement practice and development in administrative law jurisprudence - has not occurred in the meantime. To date, no formal enforcement action has been taken under Section 4:24a of the Financial Supervision Act. Against this background, the Minister has decided to postpone the evaluation.

- **Who?** All credit providers.
- **When?** This is unclear. The Minister is holding off on the evaluation until further notice of formal enforcement practice and development in administrative law jurisprudence.

Evaluation general duty of care Financial Supervision Act on hold

- **What?** In December 2021, the Minister of Finance [informed](#) parliament about the postponement of the new evaluation of the general duty of care from article 4:24a Financial Supervision Act. During the previous evaluation of the general duty of care, a number of concerns emerged regarding the lack of (sufficient) legal protection. Since at the time of the evaluation the AFM had not yet formally enforced the law on the basis of Section 4:24a Financial Supervision Act and therefore no administrative case law had been established, the Minister announced a new evaluation for 1 January 2022. However, the reason for the new evaluation

TRUST OFFICES

Note: The cross-sector [Integrity](#) section is also important for trust offices. In addition, we recommend that trust offices take note of the [General](#) section, as it discusses topics that are relevant to anyone operating in the financial market.

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

DNB OVERSIGHT

Supervisory strategy 2021-2024

Supervision in focus (DNB outlook 2022)

Legislative Letter 2021

Confidential counsellors at DNB screening process

Evaluation of DNB policy rule on social propriety

DEVELOPMENTS IN EXISTING LEGISLATION AND REGULATIONS

Amendment to the Financial Supervision Costs

Regulation for one-off actions relating to the UBO reputation test

Bill on Data Processing by Partnerships

Financial Markets Amendment Act 2022

Bill on Plan of Action for Money Laundering - Update

Banning trust services in relation to high risk countries

NEW LAWS AND REGULATIONS

Act on Implementation of the registration of UBOs of trusts and similar legal arrangements

OTHER DEVELOPMENTS

Research on the future of the trust sector

Recommendations Committee on Conduit Companies

Tackling illegal trust service providers

Possible adaptation of *FATF Recommendation 24* (on standards for identifying the UBOs of legal persons)

DNB SUPERVISION

Supervisory strategy 2021-2024

- **What?** In the [strategy document](#), DNB has set out how it implements its supervisory task. The document was published in November 2020, but is also relevant for 2022 because it outlines the focal points of DNB's supervision. These are (i) technological innovation, (ii) sustainability and future orientation and (iii) combating financial-economic crime.
 - With regard to technological innovation, DNB points to the increasing importance of data integrity. Institutions are expected to have their data in good order (quality, completeness and accuracy of data) and to provide good security against, for example, cyberattacks. In addition, DNB points to the importance of the privacy aspects of data management and use.
 - In recent years, DNB has studied how climate change, the energy transition and loss of biodiversity can affect financial institutions. DNB focused on the impact for banks and insurers. DNB indicates that as a next step it wants institutions to assess the potential impact and integrate it into their policies and risk management. DNB will pay attention to this aspect in its day-to-day supervision.
 - DNB expects financial institutions to take more structural measures aimed at managing integrity risks and preventing financial-economic crime more effectively. DNB describes that the gatekeeper function has reached maturity, but there is still much room for improvement. This relates in particular to the management of integrity risks, which to the opinion of DNB is not yet sufficiently embedded in the primary processes of financial institutions. Specifically for trust offices, DNB announces active enforcement with respect to the requirement to appoint a person responsible for Wwft within



the management board and with respect to the requirement to have an independent and effective internal compliance function. In addition, DNB points to the instrument of re-assessment of policymakers in case an institution is subject to criminal prosecution. Furthermore, DNB makes the remarkable statement that it can, if necessary, fine *de facto managers* in criminal investigations.

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

Supervision in focus (DNB outlook 2022)

- **What?** On December 7, 2021, DNB published the document [Supervision in focus](#). In this document, DNB presents a retrospective view. With respect to trust companies, DNB notes that political and social attention, both nationally and internationally, for trust companies remained as high as ever in 2021 and that the integrity risks of the trust sector in the Netherlands are perceived to be high. DNB further notes that the number of trust offices is declining along with the volume of services provided, although the volume of services is declining less rapidly than the total amount of trust offices. Furthermore, DNB sets out its focal points for supervision in 2022. With regard to trust supervision, 'illegal trust services' are the focus of DNB's attention. DNB has the impression that the potential scale of illegal trust services is increasing. In view of its efforts in this area, DNB will expand its enforcement capacity.
- **Who?** Trust companies and unregulated parties providing trust services.
- **When?** DNB's supervision in 2022.

Legislative Letter 2021

- **What?** In its [Legislative Letter 2021](#), DNB indicated that clarification of the term 'on behalf of' in the definition of a trust service is desirable. The Minister of Finance responded by stating that he would enter into discussions with DNB on this topic. After that, things went quiet. So far DNB has not made any interpretation of this concept public. There is, however, a [ruling](#) from the CBB in 2009 that provides guidance, but this is not followed by DNB. It is unknown if and how this point of attention of DNB will lead to further explanation (by DNB or the Minister of Finance) or a possible legislative amendment of the Wtt 2018. In the Legislative Letter 2021, DNB reiterated its wish for a total ban on the provision of tax advice by a trust office. DNB had previously included this wish in its 2020 legislative letter. The Minister of Finance responded by

saying that he was favourably disposed to this wish and would enter into consultations with DNB. This did not lead to a concrete bill. In its '[Position paper Commissie doorstroomvennootschappen](#)' from May 2021, DNB reiterated its position. But this has not yet led to a concrete initiative by the Minister of Finance. It is obvious that this subject will become part of the investigation into the future of the trust sector in the Netherlands.

- **Who?** Trust companies.
- **When?** Investigation on the future of the trust sector in the summer of 2022.

Confidential counsellors at DNB screening process

- **What?** DNB offers persons whose integrity and/or suitability is being assessed the opportunity to make use of [confidential advisers](#) if dissatisfaction arises with the assessment process. Jaap van Manen and Diana Monissen act as the confidential advisors with whom the person involved can discuss his/her comments in confidence. If the person involved agrees, the confidant can also contact the relevant supervisors at DNB.
- **Who?** Persons who will be tested under the Wtt 2018.
- **When?** Ongoing (for review processes).

Evaluation of DNB policy rule on social propriety

- **What?** DNB's policy rule on social propriety/decency has been in place for trust offices since January 2020. The policy rule is process-oriented and describes the processes and procedures that trust offices must have in place to prevent socially improper conduct. The policy rule does not describe what activities should be considered as socially improper. An [evaluation](#) of this policy rule examined the impact of the policy rule on the business operations of trust offices and whether this policy rule helps to clarify what DNB expects from trust offices. As a result of this evaluation, DNB concludes that the policy rule is sufficiently effective to be retained and there are no indications that the policy rule needs to be amended. DNB will therefore maintain this policy rule unchanged for the trust sector. The evaluation gives DNB no reason to extend the operation of the policy rule to institutions that fall under the Wft.
- **Who?** Trust companies.
- **When?** Ongoing.

DEVELOPMENTS IN EXISTING LEGISLATION AND REGULATIONS

Amendment to the Financial Supervision Costs Regulation for one-off actions relating to the UBO reputation test

- **What?** This [regulation](#) of the Minister of Finance amends the Financial Supervision Costs Regulation for one-off acts. The amendments are related to the implementation of the amended Fourth Anti-Money Laundering Directive, which stipulates that the ultimate beneficial owners (UBOs) of, among others, trust companies must be suitable and reliable. The requirement for UBOs was implemented with the Financial Markets Recovery Act 2020 in, among others, the Wtt 2018. This part of the Financial Markets Recovery Act 2020 entered into force on May 1, 2021. The regulation adds the act of the reputation test and also sets the fee that the DNB charges for this. It also adjusts the fee for handling the license application (part Wtt D1.01). The new fees include an assessment of the UBO when applying for the license as a trust office. In addition, the act on the suitability and reliability assessment of directors at trust offices is added (part Wtt.D3.01), as well as the reliability assessment of members of a supervisory body of a trust office and of natural persons holding a qualifying holding (Wtt. D3.02). These actions were previously not provided with an independent fee, but included in the fee for handling the license application. The costs for these actions amount to EUR 2,000 for a suitability test, EUR 1,100 for a reliability test and EUR 1,300 for a reputation test.
- **Who?** The regulation is relevant to trust companies.
- **When?** This regulation came into effect on May 1, 2021. The above-mentioned market participants would do well to be aware of the expansion of UBOs testing and relevant fees in 2022.

Bill on Data Processing by Partnerships

- **What?** This [bill](#) is aimed at creating a legal basis for the systematic sharing and processing (e.g through profiling) of personal data by partnerships. Among other things, the proposal amends the secrecy obligation for DNB as laid down in the Wtt 2018. Partnerships are associations of administrative bodies and private parties that jointly process data for serious public interests, such as the fight against fraud and organized crime. For the financial sector, the most relevant partnerships are the Financial Expertise Centre

(FEC) and the Infobox Criminal and Inexplicable Wealth. DNB has a seat in both bodies. The bill was passed by the House of Representatives in December 2020, but during its consideration in the Senate various additional opinions were requested from, amongst others, the Council of State, the Human Rights Board and the Authority for the Protection of Personal Data.

- **Who?** Trust companies and all other financial institutions.
- **When?** At the time of publishing this outlook, the proposal was still pending before the Senate.

Financial Markets Amendment Act 2022

- **What?** An amendment to the General Administrative Act in the spring of 2021 unintentionally removed the possibility for supervisors in the financial sector to publish measures imposed for violating the duty to cooperate in Section 5:20 of the Awb. The [Financial Markets \(Amendment\) Act 2022](#) rectifies this omission by making corrections to the various supervisory laws (including the Wtt 2018).
- **Who?** Trust companies (and other financial institutions).
- **When?** The bill was still pending in the House of Representatives in December 2021. We expect more to be known about the bill's handling in early 2022.

Bill on Plan of Action for Money Laundering - Update

- **What?** In the [Finnius Outlook 2021](#) we already wrote extensively about new national regulations in the fight against money laundering (the Money Laundering Action Plan Bill). That proposal provides - in brief - for the following changes: (i) a ban on cash payments from EUR 3,000 for professional or business traders; (ii) in the case of enhanced customer due diligence with respect to 'high-risk clients', information about integrity risks at institutions in the same category must be requested; (iii) the possibility of outsourcing (transaction) monitoring to a third party; and in line with this (iv) allowing institutions to jointly perform transaction monitoring and to share information about transactions with each other. After the third [progress letter](#) from December 2020, there was silence on this initiative for some time. However, several [letters](#) were sent to the House of Representatives in 2021 regarding the plan of action on money laundering and related issues. A concrete bill is expected to be available early 2022.
- **Who?** Trust offices and other service providers that fall within the scope of the Wwft.
- **When?** The Minister of Finance recently [indicated](#) that he expects the bill to be sent to the House of Representatives for consideration early 2022.



Banning trust services in high risk countries

- **What?** In May 2020, the Minister of Finance consulted on an [amendment](#) to the Wtt 2018. One of the proposed amendments was the introduction of a ban on trust services if the client, the target company or the UBO of the client or target company is resident or established or has its registered office in a high risk country. Consideration is given to the idea that the combination of trust services with high risk countries creates unjustifiably high integrity risks. This proposal to amend the Wtt 2018 is attached to the Money Laundering Action Plan Bill.
- **Who?** Trust companies.
- **When?** Early 2022.

NEW LAWS AND REGULATIONS

Act on Implementation of the registration of UBOs of trusts and similar legal arrangements

- **What?** On November 23, 2021, the Senate passed the Bill on Implementation of the Registration of UBO's of trusts and similar legal arrangements (Official Gazette II 35,819). The Act was published in the Official Gazette on December 16, 2021 ([2021, 610](#)). The Act introduces the obligation to maintain and centrally register information on the beneficial owners of trusts and similar legal arrangements. The Act constitutes the implementation of rules laid down in the amended Fourth Anti-Money Laundering Directive. The Act amends the Wwft, Wed, Awb and the Trade Register Act 2007.
- **Who?** Trust companies (and other financial institutions) that have business relationships with client trusts and similar legal arrangements.
- **When?** The new rules will take effect via an implementation decree. At the time of writing this Outlook, that (draft) decree was still being considered by the Council of State. A timeline for the entry into force of the Implementation Decree is unknown, but it is clear that the Tax and Customs Administration has indicated in its implementation review that it does not expect the Trust Register to be operational before October 2022. We advise market parties to follow the developments on this point closely.

OTHER DEVELOPMENTS

Research on the future of the trust sector

In the fall of 2021, the Minister of Finance promised the House of Representatives to initiate a study on the future of the trust sector. On November 10, 2021, a schedule was announced (see [Official Gazette 31477, no. 64](#)) that should result in the study being delivered in the summer of 2022.

This study into the future of the trust sector has a broad scope, with the central question being whether the integrity of trust services in the Netherlands can be sufficiently guaranteed. In addition to the supervisory dimension, the study will also look at the financial-economic and social added value of the trust sector for the Netherlands. The remark made by the Minister of Finance to completely forbid the provision of trust services in the Netherlands is one of the scenarios to be analyzed in the study.

Following the focus of the Parliamentary Inquiry Committee on Fiscal Structures (in 2017) on the trust sector and the subsequent major revision of the supervisory legislation on trust companies as of January 2019, this inquiry is expected to generate an intense and fundamental debate on the *raison d'être* of services provided by trust companies and (the effectiveness of) the supervision of that sector.

Recommendations Committee on Conduit Companies

- **What?** On November 22, 2021, the House of Representatives was informed about the research results of the Committee on Conduit Companies (the report '[The road to acceptable conduit activities](#)'). This Committee conducted research into the activities of conduit companies. Particular attention was paid to (i) the role of tax factors on the presence of conduit companies, (ii) the role of non-tax factors thereon and (iii) the connection between tax avoidance and money laundering. The Committee concludes that more transparency about conduit companies is desirable, supervision of the sector can be strengthened and such entities should report more on their activities. This would make the Netherlands less attractive to such letterbox firms and should give the Netherlands a more normal position with respect to conduit companies (relative to the maverick it is considered to be now). Furthermore, in an international context, countries should jointly remove tax advantages for shell entities (think of the participation exemption)

and actively share data with each other on conduit companies. Furthermore, the committee believes that an international UBO register should be created. When informing the Lower House, the outgoing State Secretary of Finance did not take a position on the committee's recommendations; that is left to the new cabinet.

- **Who?** Trust companies and conduit companies.
- **When?** A Cabinet position on the recommendations of the Committee on Conduit Companies is expected in the first half of 2022.

also affect trust companies.

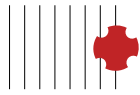
- **When?** The consultation phase has been completed and the FATF has indicated that it will come up with an update to Recommendation 24 in 2022.

Tackling illegal trust service providers

- **What?** In July 2021, the Minister of Finance informed the Lower House by [letter](#) of the results of a study by SEO into illegal trust services in the Netherlands. The conclusion was that around 3,800 parties provide the trust service 'directorship' and around 690 parties provide the trust service 'domiciliation and ancillary services', which may also lead to illegal trust services. These conclusions are included in this Outlook because it is a reason for intensive enforcement in 2022. Efforts will be made to gain a better understanding of illegal parties, with an explicit role for DNB as supervisor of trust offices and the Financial Supervision Office as supervisor of domiciliaries. The Minister has also announced an exploration of a possible registration requirement for domiciliaries. Furthermore, the project launched by the Financial Expertise Center in January 2021 targeting illegal trust service providers, will be continued in 2022. The aim is to deal with parties under criminal or administrative law. Finally, the Minister of Finance and the Minister of Justice and Security are investigating whether the current penalty level with respect to violating the licensing obligation with respect to trust services should be increased.
- **Who?** Trust service providers, domiciliaries and regulators.
- **When?** 2022.

Possible adaptation of FATF Recommendation 24 (on standards for identifying the UBOs of legal persons)

- **What?** The FATF is considering amending [Recommendation 24](#) on the transparency and UBOs of legal persons and has issued its proposal for consultation (the consultation closed on December 3, 2021). The proposed amendments are intended to ensure greater transparency about the UBOs of legal entities.
- **Who?** Regulatory authorities and supervisors. Possibly resulting in changes to laws and regulations that will



INSURERS

This section discusses foreseeable developments in 2022 that are specifically addressed to insurers. Insurers that also provide ancillary services are advised to consult the sections in this Outlook that relate to them. For example, the [Lenders](#) section is relevant to insurers to the extent that there is mortgage lending by the insurer.

We would also like to point out that the [Financial Service Providers](#) section in this Outlook is also important for insurers, because as a provider of insurance they also qualify as a financial service provider within the meaning of the Wft. The cross-sectoral components [Integrity](#) and [Sustainability](#) are also relevant to insurers. Subjects relating to these are, with a few exceptions, not discussed in this section but only in the aforementioned special.

Finally, it is useful for insurers to take note of the [General](#) section because it also covers topics that may affect insurers (such as developments regarding the Benchmark Regulation, the Market Abuse Regulation and the Securities Financing Transactions Regulation (SFTR)).

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

DNB SUPERVISION: GENERAL

Supervision in focus - insurers

Legislative Letter 2021 - review and modernization of outsourcing rules

Conservatrix Evaluation Committee Report

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

Q&A and Good Practice on the treatment of saving-based mortgages under Solvency II

Q&A on the contract boundaries in individual disability insurance

Consultation Good Practice Valuation Mortgage Loans under Solvency II

DNB SUPERVISION: INTERNAL GOVERNANCE

Use test internal models

Feedback research Internal Control Frameworks

New information security monitor 2021

Feedback sector-wide analysis operational and IT risks

DNB SUPERVISION: OTHER

Outcomes thematic survey COVID-19 risk management

Feedback on sector wide analysis of non-financial risks 2021 and 2020

Supervisory approach to long-term interest insurers

Qualitative reporting to DNB

AFM SUPERVISION

Trend Monitor 2021

Focus areas with respect to the personalization of premiums and terms and conditions

Transparency of cover conditions

Recommendations to mitigate behavioural risks of benchmark transition

EIOPA

EIOPA analyzes use of exceptions to Solvency II reporting requirements

Revised Guidelines on Legal Entity Identifier (LEI). Financial Stability Report

EIOPA Q&A on IDD

Launching IDD Single Rulebook

Revised Single Programming Document 2022-2024

Supervisory Handbook

Risk-Free Rates

Consultation guidance on 'climate change materiality assessment' and use of 'climate change scenarios' in the ORSA.

EIOPA shares knowledge on failures and near misses in the insurance sector

The digital transformation strategy

Revision Solvency II Guidelines on Contract Boundaries and Guidelines on Valuation of Technical Provisions

EIOPA statement on run-off undertakings

Retail risk indicators: methodology update



EIOPA 2021 Financial Stability Report

ESAs

ESAs on PRIIPs

DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

Solvency II review

Active commission transparency in non-life insurance – update

Legal embedding of disciplinary law for insurers

Financial Sector Further Remuneration Rules Act

Hold evaluation general duty of care Wft

Proposed amendment to House of Whistleblowers Act

Financial Markets Amendment Act 2021 – the group

DNO

Financial Markets Amendment Decree 2021- the group

DNO

Financial Markets Amendment Act 2021 - relevant changes for insurers

Financial Markets Amendment Decree 2021- cost price model

Change mapping external credit rating agencies

NEW LAWS AND REGULATIONS

Integrating sustainability risks into governance of (re) insurers

DORA (Digital Operational Resilience Act).

OTHER DEVELOPMENTS

Investigating costs of insurance guarantee scheme

Plans of the Dutch Association of Insurers

Progress in implementing IAIS strategic plan

FSB progress report on implementation of FSB

Principles and Standards

FSB 2021 Resolution Report

DNB SUPERVISION: GENERAL

Supervision in focus – insurers

- **What?** On December 7, 2021, DNB presented the document [Supervision in focus](#). This is a summary that reflects what DNB is working on and has worked on in the past and coming year. Supervision with respect to insurers in 2022 has a number of priorities, including sustainability and cybersecurity. A third theme concerns the implementation of the legislation that came into effect as of 2020 regarding the treatment of deferred taxes in the calculation of the Solvency II capital requirement and eligible own funds. The final European legislative proposals in the area of Solvency II are also expected to become clear in 2022. DNB will also start preparations for an intended entry into force of the amended Solvency II in 2023 or 2024.
- **Who?** Insurers.
- **When?** DNB will incorporate the points mentioned in this document into its supervision.

Legislative Letter 2021 – review and modernization of outsourcing rules

- **What?** In its annual [legislative letter](#) to the Minister of Finance dated March 18, 2021, DNB notes that the outsourcing rules as laid down in chapter 5 of Decree on Prudential Rules under the Wft (*Besluit prudentiële regels Wft*, Bpr Wft) are due for revision and considers it important that they are brought more into line - in a cross-sectoral consistent manner - with international standards. The regulations also need to be clarified in certain respects. For example, with regard to the TIBER tests that DNB performs together with financial institutions and the AFM to test the digital resilience of institutions. The Minister has indicated that he will continue to consult with the AFM (and DNB) on this point to see what is needed after implementation of the European processes, including the Digital Operational Resilience Act (DORA) and the revisions of MiFID II and PSD2.
- **Who?** Insurers.
- **When?** We expect more clarity in 2022 on how the Minister of Finance will deal with DNB's wishes on this topic.

Conservatrix Evaluation Committee Report

In December 2021, the Minister of Finance sent the [Conservatrix Evaluation Committee's report](#) to the House of Representatives. The committee concludes that DNB



made a huge effort in terms of time and staff to steer the Conservatrix file in the right direction, but also concludes - in line with DNB's own evaluation - that earlier and stronger intervention by DNB in the early days could possibly have resulted in a different turn of events. The committee emphasizes that the primary responsibility for the insurer's products lay with Conservatrix itself and that the governance structure at Conservatrix made supervision and further redirecting difficult. The committee is also critical on a number of points regarding the actions of DNB with respect to the forced transfer of Conservatrix. The committee has made a number of recommendations in this respect. The committee did not make any recommendations about DNB's supervision in the period 2018-2020.

The Supervisory Board of DNB has provided a [response](#) to the committee's findings. In its response, the Supervisory Board discusses and comments on the committee's findings and recommendations. For example, the Supervisory Board recognizes the committee's conclusion that, in DNB's supervision, great importance is attached to the legal framework. After all, that is the legal basis within DNB operates. As a supervisor, DNB can and must sometimes take far-reaching measures that should withstand judicial review. It is in the policyholders' interest that DNB exercises this legal due diligence. If there is a solution that has a real chance of success without a reduction in policyholders' benefits, DNB is obliged to give it serious consideration.

DNB has promised to inform the minister in February 2022 about how it will incorporate the committee's recommendations into its risk-based supervision. Discussions are also being held on this between the Ministry and DNB. The outcome of these discussions will be included in a detailed response, explaining how the committee's recommendations will be implemented. The Minister aims to send this detailed response to the House of Representatives in March 2022.

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

Q&A and Good Practice on the treatment of saving-based mortgages under Solvency II

- **What?** In the fall of 2021, DNB published a [Q&A](#) and a [Good Practice](#) on the treatment of saving-based mortgages under Solvency II. For example, the Q&A addresses how Solvency II treats different manifestations

of saving-based mortgages at insurers. This Q&A does not address how an insurer can comply with laws and regulations regarding the balance sheet valuation of the assets related to savings mortgages. For this DNB refers to the Good Practice. The Dutch Association of Insurers has amended its [guidance](#) in response to this guidance.

- **Who?** Insurers offering saving-based mortgages.
- **When?** Effective immediately; DNB will incorporate this new guidance in its supervision.

Q&A on the contract boundaries in individual disability insurance

- **What?** In November 2021, DNB published a [Q&A](#) on the contract boundaries in individual disability insurance. When asked whether an insurer can apply a shorter contract boundary than the end date of the individual disability insurance contract when it has done an individual risk assessment at the time the insurance contract is concluded, the answer is no.
- **Who?** Insurers offering disability insurance.
- **When?** DNB will include the interpretation of the law as included in this Q&A in its supervision starting July 1, 2023, when it starts its assessment of the Q2 2023 quarterly statements.

Consultation Good Practice Valuation Mortgage Loans under Solvency II

- **What?** DNB [consulted](#) the Good Practice Valuation of Mortgage Loans under Solvency II in the summer of 2021. The Good Practice contains examples of possible applications that, in DNB's opinion, give a good interpretation of the obligations from the applicable laws and regulations, including Solvency II. In particular, the Good Practice addresses valuation aspects specific to the valuation of mortgage loans: setting the discount rate, making adjustments to variables used for the discount rate and the uses prices with respect to Residential Mortgage-Backed Securities (RMBS).
- **Who?** Insurers that have mortgage loans on their balance sheets.
- **When?** The consultation ran until the end of September 2021 and we expect DNB to publish the final version of this Good Practice within a few months.

DNB SUPERVISION: INTERNAL GOVERNANCE

Use test internal models

- **What?** DNB conducted on-site research in 2021 (and 2020) on the [use test](#) for internal models for calculating solvency capital. DNB, inter alia, tested whether insurers also use their internal model for decision-making and risk management and not solely as a means of calculating the capital requirement. The conclusion is that the insurers surveyed use the internal model more broadly and not only to calculate the required capital. The internal model is also used for decision-making and risk management, as Solvency II requires. However, the extent to which insurers meet the governance and documentation requirements varies greatly in this respect.
- **Who?** Insurers.
- **When?** Immediately; DNB wants insurers to address the identified issues.

Feedback research Internal Control Frameworks

- **What?** In December 2021, DNB provided [feedback](#) on its investigation into Internal Control Frameworks at medium-sized and large insurers. The study showed that the structure of assessment and reporting is reasonably in order, but that the design, existence and operation of the frameworks is often insufficient. Improvements can also be made by replacing manual controls with automated (system) controls and by bringing control frameworks more into line with new technological developments such as the application of Agile working and the implementation of RPAs.
- **Who?** Insurers.
- **When?** Effective immediately; DNB will monitor the follow-up of the necessary improvements in regular supervision.

New information security monitor 2021

- **What?** DNB released its third [Information Security Monitor](#) in 2021. The main observations are: (i) the risk management cycle within institutions focused on information security is insufficiently effective, (ii) controlling information security throughout the outsourcing chain is crucial; and (iii) resilience against cyber-attacks needs to be strengthened, this is where urgent attention is needed.
- **Who?** Insurers.
- **When?** Effective immediately; DNB will monitor the follow-up of the necessary improvements in its ongoing supervision.

Feedback sector-wide analysis operational and IT risks

- **What?** In December 2021, DNB provided [feedback](#) on its annual sector-wide analysis of, among other things, the identification and management of operational and IT risks. DNB notes that the basic elements of a risk management framework, and as part of it an internal control framework, are in place at most insurers. DNB indicates that there is room for improvement (i) in the speed of processing 'high-risk findings' identified by the Risk Management Function (RMF) and/or Internal Audit Function (IAF) and (ii) by replacing manual controls with automated (system) controls. Furthermore, DNB has noticed that in many cases insurers do not have their control measures in order with regard to information security, outsourcing and data quality.
- **Who?** Insurers.
- **When?** Effective immediately; DNB will monitor the follow-up of the necessary improvements in its ongoing supervision.

DNB SUPERVISION: OTHER

Outcomes thematic survey COVID-19 risk management

- **What?** In December 2021, DNB presented the results of its [thematic review](#) of risk management during the COVID-19 pandemic. During the pandemic, insurers could fall back on existing documents, such as the business continuity plan and the ORSA. In DNB's opinion, the ORSA requirement under Solvency II has thus contributed positively to good preparation for an unexpected event, such as the COVID-19 pandemic. The results of the thematic review have been elaborated in the [Good Practice 'Risk management in times of stress'](#). In the guidance document, good practices are given for each sub-section. Although these *good practices* were drawn up in response to the COVID-19 pandemic, they are intended to offer insurers a broader guide to risk management during stressful situations.
- **Who?** Insurers.
- **When?** Effective immediately; DNB expects insurers to address the identified issues.

Feedback on sector wide analysis of non-financial risks 2021 and 2020

- **What?** DNB published an industry-wide [feedback](#) on the integrity risk component in November 2021, based



on the responses provided to the 2020 and 2021 sector wide analysis of non-financial risks (SBA-NFR). The survey showed that the insurance sector has made steps in the right direction, but that there is room for improvement on some parts. In the feedback, DNB highlights the following issues: (i) SIRA and Integrity Risk Appetite; (ii) conflicts of interest; (iii) sanctions screening; (iv) compliance and audit; and (v) training. For example, according to DNB, it is notable that 20% (in 2020 this was 30%) of insurers indicate that they do not screen new customers against the national terrorism sanctions list (the Dutch sanctions list) and the sanctions lists based on EU regulations (the EU sanctions lists). The responses to the annual integrity risk questionnaire also indicated shortcomings in screening after (a) a change in the sanctions lists, (b) relevant changes on the part of the client and (c) upon pay-out.

- **Who?** Insurers.
- **When?** Effective immediately; DNB expects insurers to address the identified issues.

Supervisory approach to long-term interest insurers

- **What?** DNB has updated its [supervisory approach](#) for dealing with long-term low interest rates and the Ultimate Forward Rate (UFR) in line with the Solvency II framework. With this new approach, DNB itself performs forward-looking and risk-based analyses of the regulatory (Solvency II) solvency position and sources of capital generation. DNB's aim is to identify risks and, if necessary, initiate a dialogue with individual insurers. This approach applies to insurers with long-term liabilities (maturity greater than 20 years) that report annually on the impact of an alternative extrapolation method.
- **Who?** Insurers.
- **When?** Effective immediately; DNB includes the method in its ongoing supervision, and in assessing capital management policies, on which the insurer reports on in its supervisory reporting.

Qualitative reporting to DNB

- **What?** In November 2021, DNB informed insurers through its [newsletter](#) about preventing overlap between qualitative reports. DNB formulated three principles that insurers can observe. These are, firstly, to avoid unnecessary repetition, to use, secondly, references and to submit, thirdly, 'single' reports for insurance groups. With regard to reporting, DNB had previously [reported](#) that for 2021 it opted for a proportional interpretation of the statutory requirement

for the submission of the Regular Supervisory Report (RSR). As a result, most insurers were not required to submit a full RSR in 2021.

- **Who?** Insurers.
- **When?** At regular reporting times of insurers.

AFM SUPERVISION

Trend Monitor 2021

- **What?** The AFM published its [Trend Monitor](#) for 2022 in November 2021. The AFM indicates, among other things, that the prolonged low interest rate will continue to affect the profitability and solidity of financial institutions, particularly insurers. This is because the return on investments remains low, while the long-term liabilities increase. This can also create an area of tension in the careful treatment of customer interests and the sustainable design of the business model. In addition, the AFM sees that sustainability risks confront financial institutions, including insurers, with major challenges. The increasing damage caused by natural disasters raises important issues, particularly for the insurance sector. For example, it may lead to adjustments in coverage and premiums, with the downside that for consumers and businesses, some forms of climate damage risk becoming uninsurable.
- **Who?** Insurers.
- **When?** Effective immediately; we expect that the AFM will (continue to) draw attention to these issues in 2022.

Focus areas with respect to the personalization of premiums and terms and conditions

- **What?** In June 2021, the AFM shared nine [focus areas](#) with the insurance industry for tailoring (personalizing) premiums and conditions based on behaviour and data. With these focus areas the AFM tries to reduce the risks associated with the use of personalized pricing. Examples include not making the sharing of behavioural data mandatory, ensuring the insurability of clients, and taking into account how influenceable the measured behaviour is.
- **Who?** Insurers who personalize premiums and terms based on behaviour and data.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

Transparency of cover conditions

- **What?** The AFM has called on the insurance sector to communicate transparently on cover conditions and changes thereto, so that it is clear to consumers and entrepreneurs what is and is not compensated (for example, after a flood). This call follows the report [‘The impact of climate change on non-life insurance’](#) published by the AFM in October 2021. In the report, the AFM also discusses the consequences of the limited insurability of damage caused by climate change. The AFM calls on the government and the sector to jointly seek solutions for climate-related damage that is difficult to ensure.
- **Who?** Non-life insurers.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

Recommendations to mitigate behavioural risks of benchmark transition

- **What?** In June 2021, the AFM issued [recommendations](#) to mitigate behavioural risks related to the benchmark transition. These are risks that arise when there are differences in knowledge and bargaining power between the financial institution and their customers, or when products are changed in the interim. To limit behavioural risks, it is important that institutions, inter alia, are transparent towards their clients. This means that choices and considerations must be shared. A fallback provision must also at least include a procedure that describes the steps that will be taken if the current benchmark falls through. In December 2021, DNB (and the AFM) provided [feedback](#) on the report for the first half of 2021. In addition, DNB and the AFM announced a new request for information from, inter alia, a selection of insurers. The deadline is February 23, 2022.
- **Who?** Insurers working with interest rate benchmarks, and in the process of transitioning to alternative interest rate benchmarks.
- **When?** Effective immediately; the deadline to switch to alternative interest rate benchmarks expired on December 31, 2021.

EIOPA

EIOPA analyzes use of exceptions to Solvency II reporting requirements

- **What?** EIOPA keeps track (on an annual basis) of the [exceptions](#) that national supervisors grant to insurers with respect to regular reporting requirements. This shows that for 2020 and early 2021 exceptions were

granted to hundreds of ‘solo undertakings’ and dozens of ‘insurance groups’. This also shows that there is ample attention at national level for the proportional application of reporting requirements under Solvency II. It is striking that Dutch insurers make proportionally less use of this possibility than the average in the EEA (14% of the NL population versus EEA 28% of the population).

- **Who?** Insurers looking to reduce their reporting requirements.
- **When?** Ongoing.

Revised Guidelines on Legal Entity Identifier (LEI).

- **What?** EIOPA published [revised guidelines](#) on December 20, 2021, regarding the use of the LEI code as a unique identifier for legal entities. EIOPA promotes the use of the LEI code to achieve harmonization with respect to the identification of legal entities and to ensure the quality and reliability of data involved.
- **Who?** Insurers, reinsurers, branches and intermediaries and national supervisors such as DNB.
- **When?** These guidelines will take effect as of July 1, 2022.

Financial Stability Report

- **What?** EIOPA released its [Financial Stability Report](#) on December 13, 2021. In it, EIOPA describes macroeconomic developments and key risks for insurers and the pension industry. EIOPA cites the ongoing threats of the Covid-19 pandemic, the low interest rates and the relatively high inflation as risky for life insurers and pension funds in particular. However, EIOPA notes that ‘environmental risk’ and ‘cyber risk’ constitute the biggest risks, while these risks are still (too) poorly understood, in EIOPA’s view. A more general study of the European (re)insurance market by EIOPA is available in EIOPA’s [European Insurance Overview](#).
- **Who?** Insurers.
- **When?** To be consulted by insurers as part of ongoing risk management.

EIOPA Q&A on IDD

- **What?** EIOPA maintains a [Q&A](#) in which it provides further clarification on certain obligations under the IDD.
- **Who?** Insurers, to the extent they fall within the scope of the IDD.
- **When?** The Q&A can be accessed on an ongoing basis.



Launching IDD Single Rulebook

- **What?** EIOPA launched the [IDD Single Rulebook](#) in 2021. The Single Rulebook is intended as a documentation tool and to promote consistent application of the regulatory framework. The Single Rulebook contains references to IDD, but also to Delegated Regulations such as Regulation 2017/2358 regarding product supervision and governance requirements and relevant guidelines and Q&As from EIOPA.
- **Who?** Insurers, to the extent they fall within the scope of the IDD.
- **When?** Available on an ongoing basis.

Revised Single Programming Document 2022–2024

- **What?** On September 30, 2021, EIOPA published its [Revised Single Programming Document 2022–2024](#) (SPD) of which the *Annual Work Program 2022* is a part. EIOPA's agenda in 2022 will continue to be influenced by the COVID-19 pandemic, the macroeconomic environment and the overall European agenda. In light of ensuring consumer protection and safeguarding financial stability, EIOPA will continue to support recovery and will build on green and digital transitions. More specifically, in the *Annual Work Program 2022*, EIOPA describes six strategic areas of focus (i) integrating sustainable finance considerations across all areas of work, (ii) supporting the market and supervisory community through digital transformation, (iii) improving the quality and effectiveness of supervision, (iv) ensuring technically sound prudential policies and operations, (v) identifying, assessing, monitoring and reporting risks to financial stability and behaviour and promoting preventive policies and mitigating actions, and (vi) ensuring good governance, flexible organization, cost-effective resource management and a strong corporate culture.
- **Who?** Insurers and national regulators, such as DNB.
- **When?** The *Annual Work Program 2022* as included in the SPD describes EIOPA's focus areas in 2022.

Supervisory Handbook

- **What?** EIOPA published the introduction and table of contents of its Supervisory Handbook on October 14, 2021. The creation of the Supervisory Handbook is based on Article 29(2) of the [EIOPA Regulation](#) and enables EIOPA to develop practical and convergent tools to promote common supervisory approaches and practices. The Supervisory Handbook aims to provide the good practices that can guide national supervisory

authorities to perform optimal supervision within the framework of the [Solvency II Directive](#) and facilitate supervisory convergence among EIOPA members and observers.

- **Who?** National regulators, such as DNB.
- **When?** We expect the content of the Supervisory Handbook to become more fleshed out and made available (in stages) during 2022.

Risk-Free Rates

- **What?** There is a transition process underway with respect to interest rate benchmarks. This involves a transition from Interbank Offered Rates (IBORs) to Risk-Free Rates (RFRs). These benchmark reforms may affect insurers' products and services. EIOPA published its [approach](#) regarding this transition process in September 2021. EIOPA has an updated methodology for calculating the RFR as of January 2022 for some currencies (British pound, Swiss franc and Japanese yen). In 2022, EIOPA will continue to [publish](#) calculations on risk-free interest rate term structures on a monthly basis. In November 2021, EIOPA published adjusted [representative portfolios](#) for the purpose of calculating volatility adjustments (VA) to the relevant risk-free interest rate term structures for Solvency II.
- **Who?** Insurers.
- **When?** As of January 2022.

Consultation guidance on 'climate change materiality assessment' and use of 'climate change scenarios' in the ORSA.

- **What?** EIOPA consults on its [guidance](#) on implementing sustainable financial goals in practice. It provides concrete case studies and examples on how to incorporate risks around climate change into the ORSA. This consultation follows an earlier consultation of EIOPA's [opinion](#) on the selection of climate change scenarios and the release of EIOPA's [position](#) on the ORSA in relation to the Covid-19 pandemic. It is thought that small and medium-sized insurers in particular will be helped by the final guidance document to conduct climate change assessments and develop scenarios on them.
- **Who?** Insurers and regulators (DNB).
- **When?** The consultation period runs from December 10, 2021 through February 10, 2022. Final EIOPA guidance is expected in June 2022.

EIOPA shares knowledge on failures and near misses in the insurance sector

- **What?** EIOPA released an interesting [report](#) in October 2021 that shares information on supervisory experiences in preventing and managing failures and near misses in the insurance sector. It is based on 219 cases about insurers from 31 European countries from EIOPA's database. The report is intended to provide insight into the actions taken by insurers and supervisors in two specific crisis situations. Namely, (i) the recovery phase and the use of measures to prevent underperformance of capital requirements (more specifically known as preventive measures) and measures taken after the capital requirements have been exceeded and (ii) the resolution phase with a description of the actions taken by supervisors/authorities responsible for the resolution and/or winding-up process. A number of related topics such as possible policyholder losses, external financing and cross-border aspects of insurer failures and near misses are also discussed.
- **Who?** Insurers and regulators (DNB).
- **When?** Available on an ongoing basis.

The digital transformation strategy

- **What?** EIOPA presented its [report](#) on EIOPA's digital transformation strategy on December 10, 2021. The report is intended to support insurers (among others) in engaging in digital transformation through "*a technology-neutral, future-proof, ethical and secure approach to financial innovation and digitization.*" EIOPA identifies five priorities:
 - Leverage the development of a solid European data ecosystem;
 - Support artificial intelligence and promote financial inclusion;
 - Ensure a forward-looking approach to financial stability and resilience;
 - Realize the benefits of the European single market;
 - Strengthening the supervisory capabilities of EIOPA and national competent authorities.
- **Who?** Insurers.
- **When?** Available on an ongoing basis.

Revision Solvency II Guidelines on Contract Boundaries and Guidelines on Valuation of Technical Provisions

- **What?** EIOPA completed consultations related to the revision of the Solvency II Guidelines on [Contract Boundaries](#) and the Guidelines on the [Valuation of Technical Provisions](#) in November 2021. EIOPA is elaborating the revisions in response to the reactions received.
- **Who?** Insurers.

- **When?** A concrete timeline for the next steps is not known, but the revised Guidelines are expected to be published in the first half of 2022.

EIOPA statement on run-off undertakings

- **What?** EIOPA is working on a statement on the supervision of run-off undertakings. The reason is the increasing interest of private equity parties and others in run-off portfolios and run-off undertakings. EIOPA believes that it is important to specify the expectations of supervisors regarding the risks associated with such undertakings and portfolios, including risks associated with 'change of ownership'. In addition, the Solvency II framework lacks specific regulation for run-off firms. EIOPA's [consultation](#) on the statement is completed in October 2021.
- **Who?** Insurers and investment vehicles.
- **When?** A concrete timeline for the next steps is not known, but the revised Guidelines are expected to be published in the first half of 2022.

Retail risk indicators: methodology update

- **What?** EIOPA developed a "retail risk indicators methodology" that it recently updated. On December 9, 2021 EIOPA presented the [update](#). The update is based on market data from the EU member states. The updated risk indicators are intended to provide a (preventive) assessment of how features and distribution processes of insurance products may affect consumers.
- **Who?** Insurers and regulators.
- **When?** The document can be used in the PARP process of insurers.

EIOPA 2021 Financial Stability Report

- **What?** EIOPA examined key macroeconomic developments and risks critical to the insurance (and pension) industry and compiled its findings in the [2021 Financial Stability Report](#). The list does not surprise and includes the Covid-19 pandemic, long-term low interest rates, rising inflation, environmental risk and cyber risk.
- **Who?** Insurers.
- **When?** The report is available on the FSB website.

ESAS

ESAs on PRIIPs

- **What?** The European Commission has asked the ESAs in a '[call for advice](#)' to advise on the Packaged Retail



and Insurance-based Investment Products (PRIIPs) Regulation. This concerns the practical application of the existing Key Information Document (KID) and its use by financial advisors, the functioning of the concept warning in KIDs, the use of digital media, the effectiveness of administrative sanctions and the scope of the regulatory framework for PRIIPs. The ESAs subsequently issued a [‘call for evidence’](#) in October 2021. The input subsequently received from the financial sector will be used in the technical advice to the European Commission in the revision of the key information document (KID) for PRIIPs. That advice is due April 30, 2022. As an interim step, another ‘stakeholders event’ will be organized by the ESAs in the first quarter of 2022 before the advice is finalized.

- **Who?** Insurers.
- **When?** ESAs must provide their input to the EC by April 30, 2022.

DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

Solvency II review

At the end of September 2021, the European Commission gave the green light for a [revision of the Solvency II](#). The revision consists of the following components:

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

With the revision, the Commission aims to strengthen the contribution of European insurers to the financing of the COVID-19 recovery, further develop the capital markets union and channel resources to the European Green Deal.

Solvency II review

The changes relate to proportionality, supervisory quality, long-term guarantee measures, macroprudential instruments, sustainability risks, group supervision and cross-border supervision.

Changes to the size thresholds will narrow the scope of the Solvency II regime, excluding a greater number of small companies. The proposals also introduce a new

category of insurers and reinsurers with low risk profiles that will benefit from lighter requirements, reflecting a more proportionate approach to supervision.

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

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

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

Proposal for a directive on the recovery and resolution of insurance and reinsurance undertakings

There is currently no harmonized EU approach to the recovery and resolution of insurance and reinsurance undertakings. The proposed Directive will apply to all insurance and reinsurance undertakings in the EU that are subject to the Solvency II.

Under the directive, each Member State will have to establish a resolution authority that will require insurers to prepare preventive recovery plans. Such a preventive recovery plan must contain measures to be taken by the company concerned to restore its financial position when that position has deteriorated significantly. The regulator is given the power in the directive to direct the resolution of deficiencies in the plan and obstacles to recovery. Resolution plans will need to be updated annually and upon any material change in the insurer’s business (such as an acquisition or corporate restructuring).

If the conditions for resolution are met, the resolution authorities have at their disposal the following resolution tools: (i) a solvent run-off; (ii) the sale of business units; (iii) the creation of a bridge undertaking (iv) carve-out of assets and liabilities; and (v) write-down or conversion of capital instruments, debt instruments and other eligible liabilities (i.e. a bail-in).

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

The proposal is currently being discussed in the trilogue between the Commission, Council and Parliament. After the proposals are adopted, Member States have 18 months to transpose the directives into national regulations. It is not clear at present when the new directives will come into force. DNB itself expects this to be in 2023 or even 2024 (see also above). When it comes to implementation in the Netherlands, it will be interesting to see how the new Recovery and Resolution Directive will relate to the Dutch Act on Recovery and Resolution of Insurers (see also the Dutch government's [Fiche](#) on this point).

Active commission transparency in non-life insurance – update

- **What?** In short, intermediaries and advisors are not allowed to provide or receive commissions for intermediating or advising on non-life insurance, other than payment protection, individual disability insurance or life insurance, except for the excepted commissions (see the section on Financial Service Providers in this Outlook for more information). In order to also allow clients to compare distribution channels, both direct non-life insurance providers and advisors and/or intermediaries should disclose the characteristics of their services. If direct providers have a 'self-service model' whereby, for example, there is no additional support from the insurer in handling a claim, this must be clear to the client. After all, in that case no commission is paid, but no 'extra' service is provided either. In addition, direct providers must disclose what they pay third parties, other than intermediaries or advisors, as a contribution fee. Third parties are, for example, price comparison sites that are not also brokers or advisors, who receive a fee from an insurer for each policyholder who comes to the insurer's site via the price comparison site and then takes out insurance there. In answers to [questions of Parliament](#) the Minister went into further detail about the tenability of this (new) relief in light of the IDD (the Minister believes that the obligation is in line with the IDD).
- **Who?** Direct providers of certain non-life insurance policies, as well as intermediaries and advisors who mediate and advise on certain non-life insurance policies.
- **When?** The [Amending Decree](#) was sent to the Senate and House of Representatives in November 2021 as part of the preliminary scrutiny procedure. It is expected that the decree will enter into force in 2022.

Legal embedding of disciplinary law for insurers

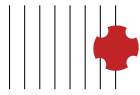
- **What?** The Minister for Legal Protection has [announced](#) that, in order to implement a motion of the House of Representatives, efforts will be made to introduce a statutory obligation for insurers to submit to disciplinary law. To this end, the Wft will be amended and a requirement will be included that insurers must be subject to a disciplinary system that meets certain conditions. Unlike banks, however, the disciplinary regime for insurers will not focus on individual employees, but on the company. The Minister of Finance addressed this development in more detail in response to [Parliamentary questions](#). In December 2021, the Minister also answered further [Parliamentary questions](#) about the filing of disciplinary complaints about insurers.
- **Who?** Insurers with a registered office in the Netherlands.
- **When?** To date, no concrete bill has been presented. We expect the minister to provide further information on this topic in 2022.

Financial Sector Further Remuneration Rules Act

- **What?** Already on July 2, 2020, the Minister of Finance [submitted](#) a proposal for a Further Remuneration Measures for Financial Enterprises Act to the Lower House of Parliament. The proposal aims to implement a number of changes to the current remuneration rules as contained in the Wft, including the introduction of a statutory retention period of five years for shares paid as part of a fixed remuneration and a tightening of the averaging scheme for non-CBA staff, 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 proposal has been pending in the House of Representatives for a long time, but has not yet been voted on. It is unclear when the amendment will take effect.

Hold evaluation general duty of care Wft

- **What?** In December 2021, the Minister of Finance [informed](#) Parliament about the postponement of the new evaluation of the general duty of care (Section 4:24a Wft). During the previous evaluation of the general duty of care, a number of concerns emerged regarding the lack of (sufficient) legal protection. At the time of the evaluation the AFM had not yet formally



enforced the law on the basis of Section 4:24a Wft and no administrative case law has been established. Therefore, the Minister announced a new evaluation for January 1, 2022. However, the reason for the new evaluation – i.e. more insight into formal enforcement practice and development in administrative law jurisprudence – has not occurred in the meantime. To date, no formal enforcement action has been taken under Section 4:24a of the Wft. Against this background, the Minister has decided to postpone the evaluation.

- **Who?** Insurers.
- **When?** This is unclear. The minister is holding off on the evaluation until further notice of formal enforcement practice and development in administrative law jurisprudence.

Proposed amendment to House of Whistleblowers Act

- **What?** A [bill](#) is currently pending to amend the House for Whistleblowers Act. This Act provides, among other things, for the obligation to establish a procedure for dealing with the reporting of suspected wrongdoing within an organization. Currently, a threshold (of at least fifty persons within the organization) is still in place with respect to this obligation. One of the proposed amendments is that this threshold will no longer apply to companies active in the financial sector, including insurers. DNB will be appointed as the competent supervisor.
- **Who?** All Insurers.
- **When?** The legislative amendment was supposed to take effect on December 17, 2021. However, the proposal is currently pending before the House of Representatives. It is unclear when the amendment will take effect. We expect this to be early 2022.

Financial Markets Amendment Act 2021 – the group DNO

- **What?** At the end of 2019, the Ministry of Finance [consulted](#) on the Financial Markets (Amendment) Act 2021. The bill amends various laws and provides, among other things, for the introduction of a notification requirement with respect to changes that take place within a group, after a group DNO (as referred to in Article 3:102 (2) Wft) has been granted by DNB.
- **Who?** If the proposal becomes law, it will be relevant for group companies of an insurer, who have been granted a group DNO by DNB.
- **When?** At the time of writing, the Financial Markets (Amendment) Act 2021 has not yet been presented to

the House of Representatives. It is unclear when/if this part of the 2021 Amendment Act will enter into force.

Financial Markets Amendment Decree 2021– the group DNO

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets \(Amendment\) Decree 2021](#) to the House of Representatives. This Amendment Decree provides, among other things, for a more detailed elaboration of the obligation to report on the basis of a preventive licence in the event of changes within a group.
- **Who?** Group companies related to an insurer, who hold a group DNO granted by DNB.
- **When?** This rule is related to the proposed amendment in the Financial Markets Amendment Act 2021 (see above). Thus, it is unclear when/if this decision will take effect.

Financial Markets Amendment Act 2021 – relevant changes for insurers

- **What?** In late 2019, the Ministry of Finance [consulted](#) on the Financial Markets Amendment Act 2021. The Amending Act contains a number of relevant changes for insurers. For example, it adds, among other things, to Section 3:73c(1) of the Wft that an insurer with a limited scope of risk shall include information on its solvency and financial position in the notes to the financial statements. Furthermore, the bill contains an amendment to Book 7 of the Dutch Civil Code. The purpose of this amendment is to entitle the insurer to a refund of premiums in the event that the insurer invokes the lapse of benefits in the event that the policyholder breached the duty of disclosure in good faith.
- **Who?** Insurers.
- **When?** At the time of writing, the Financial Markets (Amendment) Act 2021 has not yet been presented to the House of Representatives. It is unclear when/if this part of the 2021 Amendment Act will enter into force.

Financial Markets Amendment Decree 2021– cost price model

- **What?** On November 24, 2021, the Minister of Finance presented the [Financial Markets \(Amendment\) Decree 2021](#) to the House of Representatives. In this Amendment Decree, as part of the further regulations for financial advice, article 86g BGfo is also amended. The second subsection, which stipulates that the auditor must annually check whether the budgeted advisory costs and distribution costs have been correctly and fully

allocated to the financial products, will lapse. It will be replaced by annual reporting by the provider combined with an audit at regular intervals.

- **Who?** Insurers.
- **When?** It is unclear when/if this decision will take effect.

Change mapping external credit rating agencies

- **What?** The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) [published](#) in June 2021 two amended Implementing Technical Standards (ITS) for the mapping of credit assessments of External Credit Assessment Institutions (ECAIs). The amendments reflect:
 - The recognition of two new credit rating agencies (CRAs);
 - The result of a monitoring exercise on the suitability of existing mappings; and
 - The deregistration of a number of rating agencies.The ITS are part of the EU Single Rulebook for Banking and Insurance and aim to create a sound regulatory framework in the EU. The European Commission adopted the amended ITS in the Implementing Regulation (EU) 2021/2006 of November 16, 2021 (amending Implementing Regulation (EU) 2016/1800).
- **Who?** Insurers (and banks).
- **When?** The [amended ITS](#) were published on November 17, 2021 and entered into force on December 6, 2021.

NEW LAWS AND REGULATIONS

Integrating sustainability risks into governance of (re)insurers

- **What?** On April 21, 2021, the European Commission adopted [Delegated Regulation \(EU\) 2021/1256](#). This leads to an amendment of Delegated Regulation (EU) 2015/35 regarding the integration of sustainability risks into the governance of insurance and reinsurance undertakings. To ensure proper compliance with the governance system, this amended regulation clarified that sustainability risks must be reflected in the governance of (re)insurance undertakings and in the assessment of their overall solvency needs. You can read more about the relevant developments on this subject in the Sustainability chapter of this Outlook.
- **Who?** Insurers and reinsurers.
- **When?** The Delegated Regulation will take effect on August 2, 2022.

DORA (Digital Operational Resilience Act).

- **What?** On November 24, 2021, the Council reached [agreement](#) on the text of the proposed Regulation on Digital Operational Resilience for the Financial Sector (DORA). DORA consists of the following five pillars:
 - ICT risk management;
 - Handling of ICT incidents;
 - Manage ICT risks in outsourcing;
 - Oversight of key ICT service providers; and
 - Cooperation and supervision/enforcement by supervisors.
- **Who?** DORA is an important development for all (re)insurers.
- **When?** The next step is for the Council and the European Parliament to enter into trilogue negotiations on the content of the text of DORA. According to the most recent text, the regulation will be directly applicable in the Netherlands 24 months after its entry into force.

OTHER DEVELOPMENTS

Investigating costs of insurance guarantee scheme

- **What?** During the discussion in the Senate with respect to the bill on Recovery and Settlement of Insurers, the Minister of Finance promised to [investigate](#) the costs and benefits of introducing an *Insurance Guarantee Scheme* (IGS) in the Netherlands, after EIOPA would have published an expected opinion on IGS (this [opinion](#) came on December 17, 2020). The Minister has asked the researcher to investigate the costs and benefits of introducing an IGS for the various insurance sectors, which are aimed at consumers and micro and small enterprises, and for which no IGS is currently set up in the Netherlands. The study will include design options, financing options and costs. The researchers will assume the scenario that there will be no minimum harmonization of IGSs at the European level and that it would therefore be a matter of introducing an IGS at national level. In addition, the researchers will also take into account the scenario that the EC does come up with a proposal regarding IGSs (the Commission has indicated that it will not make any proposals regarding the harmonization of national IGSs at this time).
- **Who?** Insurers.
- **When?** The delivery of the report by researchers to the minister was due in December 2021. We expect the Minister to form Parliament in 2022 on the findings in the report, including an appreciation. In doing so, the minister will also include, where possible, the results of the evaluation conducted by the Evaluation Committee Conservatrix.



Plans of the Dutch Association of Insurers

- **What?** On December 15, 2021, the Dutch Association of Insurers presented a medium-term plan called '[Stronger Together MLT 2022-2024](#)'. This plan consists of five themes:
 - Solutions through insight and expertise;
 - Solutions for a sustainable future;
 - Customer focus;
 - Responsible with data for customer and society; and
 - A vital and innovative sector.The Dutch Association of Insurers' [Annual Plan 2022](#) has also become available. The concrete plans tie in with the five themes from the Medium Term Plan.
- **Who?** Insurers.
- **When?** The plans cover the period 2022 and 2022-2024 respectively.

Progress in implementing IAIS strategic plan

- **What?** In June 2019, the International Association of Insurance Supervisors (IAIS) published its [strategic plan](#) for the period 2020-2024. Progress on the strategic plan was discussed at the Annual Meeting in mid-November 2021. There, it was confirmed that an Insurance Capital Standard (ICS) suitable for implementation by insurer supervisors will be delivered by the end of 2024. Furthermore, progress has been made on reviewing the Aggregation Method (AM), although work on the draft comparability criteria started later due to Covid-19 circumstances. The draft comparability criteria are still under consultation. Also approved was a report on the Global Monitoring Exercise (GME), which uses data from about 60 of the largest international insurance groups and nearly 40 insurance regulators, covering more than 90% of global gross written premiums. The GME is the IAIS' risk assessment framework for monitoring key risks and trends and detecting the potential build-up of systemic risk in the global insurance industry. The analysis results are published in the Global Insurance Market Report ([2021 GIMAR](#)). In November 2021, the [consultation](#) started for the development of liquidity metrics - phase 2. This is part of the process of developing an additional indicator for the GME that will serve as a tool for IAIS to monitor and assess insurers' exposure to liquidity risk. In addition, IAIS issued a [statement](#) on November 16, 2021, on the importance of diversity, equality and inclusion (DE&I) to the goals of insurance supervision.
- **Who?** Insurers.
- **When?** The information is available through the IAIS website. The consultation regarding the draft comparability criteria is expected to take place in the first half of 2022. The consultation regarding the liquidity metrics - phase 2 has already started and runs until January 23, 2022.

FSB progress report on implementation of FSB Principles and Standards

- **What?** The Financial Stability Board (FSB) has published a [progress report](#). The report discusses the implementation of the FSB *Principles for Sound Compensation Practices and Implementation Standards* in financial institutions. The report covers the practices of the largest financial institutions in the banking, insurance and asset management sectors. FSB concludes that there is no equal progress in implementing the principles and standards. It is more advanced with respect to banks than for insurers and asset managers.
- **Who?** Insurers and regulators.
- **When?** Ongoing.

FSB 2021 Resolution Report

- **What?** FSB has issued a [report](#) in which it discusses how the 'Key Attributes of Effective Resolution Regimes' drawn up by FSB have found their way into resolution regimes and practice. FSB states that much has been achieved, but also that there are still steps to be taken. With respect to the insurance sector specifically, it is indicated that progress on resolution reforms and implementation of resolution planning in the insurance sector is mixed. Systemically important insurers and/or internationally active insurance groups have been identified in a number of EU Member States. Work on resolution planning and resolvability assessments for these institutions has begun or is underway. Other Member States are lagging behind in this regard. The FSB is going to publish two memoranda that present practices related to financial and operational interdependencies in resolution planning and funding in resolution.
- **Who?** Insurers and regulators.
- **When?** A timetable regarding FSB's announced notes on insurer resolution is not known.



INTEGRITY

By Integrity Laws and Regulations, we mean the European and Dutch regulations on combating money laundering and the financing of terrorist activities. This subject is also known by its English acronym AML/CFT (*anti-money laundering and countering the financing of terrorism*). The subject has been extremely relevant to every licensed financial undertaking for some years now and can count on a great deal of attention from the supervisory authorities (and, by extension, the media).

But market participants without a license from the ECB, DNB or the AFM are also subject to the Dutch Prevention of Money Laundering and Terrorist Financing Act (Wwft). You may think of exempted payment service providers or exempted fund managers (so-called light managers), but also credit providers active on the small business market (providers of SME loans) or corporate finance offices.

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

AFM OVERSIGHT

- AFM Trend Monitor 2022
- 'Gatekeepers portrayed' report - Transaction monitoring deserves attention
- Manual Wwft BES amended

DNB OVERSIGHT

- Supervision in view - Fighting financial-economic crime
- Risk-based approach to compliance with the Sanctions Act
- Draft Q&A on sanctions screening for inbound and outbound crypto transactions
- Consultation Good practice Wwft BES

EBA

- Risk Factor Guidelines
- Revised guidance on risk-based AML/CFT supervision
- Guidelines on cooperation and information exchange in relation to AML/CFT
- EBA & ESMA guidelines on the assessment of the suitability of members of the management body and key function holders
- Guidelines on the authorisation of banks
- Consultation on new guidelines on remote onboarding
- Consultation new guidance on the role of AML/CFT compliance officers
- Opinion on money laundering and terrorist financing risks
- Proposal central AML/CFT database
- Opinion on the risks involved in money laundering and terrorist financing in SREP

DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

- Consultation on general directive for implementation

Wwft

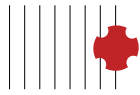
- Increase in reporting limit for non-cash transactions (Wwft BES)
- Parliamentary questions about bottlenecks in application of Wwft

NEW LAWS AND REGULATIONS

- New European package of AML/CFT legislation
- UBO register for trusts and FGRs
- Consultation legislative proposal Strengthening the approach to undermining crime II
- Consultation Banking Information Reference Portal Amendment Act
- Legislative proposal on anti-money laundering action plan - update

FATF

- Update Guidance on the application of the standards to mitigate money laundering and terrorist financing through crypto-currencies
- Update FATF Recommendations
- Consultation on amending the standards for identifying the UBOs of legal entities
- Mitigating unintended consequences of FATF standards Outlook 2022
- Report on the implementation of the FATF standards for cross-border payments
- Guidance on proliferation financing risk assessment and mitigation
- Digital transformation of AML/CFT efforts
- Investigation into environmental crime and money laundering
- Evaluation of compliance of FATF standards by the



Netherlands

OTHER DEVELOPMENTS

Draft framework for AML/CFT risk assessment of a remittance corridor

Ban on cash payments in fight against fraud not contrary to EU law

Report on European anti-money laundering approach in the banking sector

AFM OVERSIGHT

AFM Trend Monitor 2022

- **What?** In November 2021, the AFM [published](#) its Trend Monitor 2022. The AFM indicates, among other things, that money laundering affects the integrity of the financial and economic system and touches on the broader social issue of subversion. Financial institutions function as gatekeepers in the financial system in order to prevent criminals from bringing illegally acquired assets into the financial system or using the financial system to conduct illegal activities. Against this background, the AFM has intensified its supervision of the use of the financial sector for criminal purposes in recent years and indicates that this will remain a focus of attention in the coming year.
- **Who?** The entities subject to the supervision of the AFM.
- **When?** Immediately; the report provides insight into topics that the AFM will focus on in its supervision.

'Gatekeepers portrayed' report - Transaction monitoring deserves attention

- **What?** In October 2021, the AFM [published](#) the report 'Gatekeepers portrayed', in which the AFM provides an analysis of the feedback from managers on the annual Wwft and Sw questionnaire. The AFM notes that most fund managers take measures to comply with the Wwft and Sw. According to the AFM, transaction monitoring and the duty to report still require attention.
- **Who?** All managers.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has again drawn attention.

Manual Wwft BES amended

- **What?** The [manual](#) for the Money Laundering and Terrorism Financing (BES Islands) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme BES* (Wwft BES)) has been updated following the new Wwft BES regulations that came into effect on July 1, 2021.
- **Who?** Life insurance intermediaries, investment firms and fund managers that fall within the scope of the Wwft BES.
- **When?** Effective immediately; the AFM published the manual in September 2021.

DNB OVERSIGHT

Supervision in view – Fighting financial-economic crime

- **What?** On December 7, 2021, DNB presented the document [Supervision in focus](#). This is a summary that reflects what DNB is working on and has worked on in the past and coming year. Supervision with respect to the prevention of financial-economic crime remains a priority for DNB. DNB sees that the efforts of institutions in this area have increased, but the effect is still insufficient. This needs to be done smarter through better cooperation, both between public and private parties and at the European level.
- **Who?** The entities subject to the supervision of DNB, but entities subject to the supervision of the AFM may also find it useful to consider this.
- **When?** DNB will incorporate the points mentioned in this document into its supervision.

Risk-based approach to compliance with the Sanctions Act

- **What?** DNB has [indicated](#) that it sees room for a more risk-based approach to compliance with the Sanctions Act 1977, in terms of establishing that the declared person is actually the recipient or sender of a crypto is concerned. Relations must always be screened.
- **Who?** Crypto service providers.
- **When?** Effective immediately; DNB has updated its website on this subject.

Draft Q&A on sanctions screening for inbound and outbound crypto transactions

- **What?** DNB has submitted for consultation a [draft Q&A](#) on sanctions screening for inbound and outbound crypto transactions. The Q&A deals specifically with how crypto service providers can give substance to sanctions screening in a crypto transaction. Following the consultation phase, DNB will publish a feedback statement explaining any further changes.
- **Who?** Crypto service providers.
- **When?** Market participants had until December 17, 2021 to respond. We expect DNB to finalize the Q&A in early 2022.

Consultation Good practice Wwft BES

- **What?** In October and November 2021, DNB submitted for [consultation](#) the new Good practice that provides guidance on compliance with the Money

- Laundering and Terrorism Financing (BES Islands) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme BES* (Wwft BES)). In addition to an explanation of the obligations regarding, among others, transaction monitoring and client acceptance, monitoring and review, the Good practice also contain examples illustrating how institutions on the BES islands can organize their daily operations.
- **Who?** The Good Practice is applicable to financial institutions that fall under the scope of the Wwft BES and are supervised by DNB.
 - **When?** Market participants had until November 30, 2021 to respond. We expect DNB to finalize the Good Practice by mid-2022.

EBA

Risk Factor Guidelines

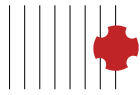
- **What?** The revised [Risk Factor Guidelines](#) entered into force on October 7, 2021. The Risk Factor Guidelines provide for specific guidance in respect of the client investigation and (transaction) monitoring to be performed by institutions subject to the Wwft. These are important guidelines for market parties.
- **Who?** The entities subject to the supervision of DNB, but entities subject to the supervision of the AFM may also find it useful to consider this.
- **When?** DNB has so far not indicated whether it will apply the new Risk Factor Guidelines in its supervision.

Revised guidance on risk-based AML/CFT supervision

- **What?** EBA [published](#) revised guidance on risk-based AML/CFT supervision in December 2021. The amendments address key barriers to effective AML/CFT supervision that the EBA identified during its review of the existing guidance, including the effective use of different supervisory tools to achieve supervisory objectives.
- **Who?** National supervisors, including DNB.
- **When?** The Guidelines are now being translated into all official EU languages and published on the EBA website. The Guidelines will enter into force three months after all translations have been published.

Guidelines on cooperation and information exchange in relation to AML/CFT

- **What?** EBA [published](#) new guidelines on cooperation and information exchange between prudential



supervisors in December 2021. The guidelines set out how prudential supervisors, AML/CFT supervisors and financial intelligence units (FIUs) should cooperate and exchange information with respect to AML/CFT, in line with the provisions set out in the Capital Requirements Directive.

- **Who?** National supervisors, including DNB.
- **When?** The guidelines will take effect from 1 June 2022.

EBA & ESMA guidelines on the assessment of the suitability of members of the management body and key function holders

- **What?** On July 2, 2021, EBA and ESMA published their [revised joint guidance](#) on the assessment of the suitability of members of the management body and key function holders. The Guidelines replace the existing 2017 Guidelines and incorporate the changes made to the suitability requirements by CRDV and IFD. Based on the guidelines, banks and investment firms will be expected, among other things to self-assess his or her board member/supervisory board members in the event of a Wwft violation. Should the institution come to the conclusion that a board member/supervisory board member is not or no longer suitable, then this board member/supervisory board director should be replaced by the institution. See also a previous [Finnius View](#) blog on this subject.
- **Who?** All banks and investment firms.
- **When?** The guidelines are effective as of December 31, 2021.

Guidelines on the authorisation of banks

- **What?** In November 2021, EBA [published](#) new guidelines on a common assessment methodology for granting authorisation as bank. The guidelines also contain language on money laundering and terrorist financing risks.
- **Who?** National supervisors, including DNB. Parties considering applying for a banking license can also refer to the document.
- **When?** The Guidelines are now being translated into all official EU languages and published on the EBA website. The Guidelines will enter into force three months after all translations have been published.

Consultation on new guidelines on remote onboarding

- **What?** In December 2021, EBA launched a [consultation](#) on its new guidelines on the use of remote customer

onboarding solutions. The (draft) guidelines set common EU standards for the development and implementation of processes with respect to remote onboarding. The guidelines outline the steps financial institutions should take when choosing tools for remote onboarding. In addition, the guidelines state how firms should assess the adequacy and reliability of such instruments to effectively meet their AML/CFT obligations.

- **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 consultation runs until March 2022. It is unclear when EBA plans to adopt the final version of the guidelines.

Consultation new guidance on the role of AML/CFT compliance officers

- **What?** EBA [launched](#) a consultation on new guidance on the role, tasks and responsibilities of AML/CFT compliance officers in the summer of 2021. The Guidelines also include provisions on the wider AML/CFT governance set-up, including at the level of the group
- **Who?** All financial institutions, insofar they fall within the scope of the Wwft.
- **When?** The consultation ran until November 2, 2021. EBA expects to publish the final version of the Guidelines in the summer of 2022.

Opinion on money laundering and terrorist financing risks

- **What?** EBA issued its biennial [opinion](#) in 2021 identifying and analysing current and emerging money laundering and terrorist financing risks for the financial sector in the European Union.
- **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?** Immediately; we expect DNB (and AFM) to include these risks in their supervision.

Proposal central AML/CFT database

- **What?** EBA [published](#) its proposal for a central AML/CFT database in December 2021. The central database, called: EuReCA, will contain information on AML/CFT weaknesses identified by competent authorities across the EU in relation to individual financial institutions. The database will also contain information on the measures taken by competent authorities to correct these material AML/CFT weaknesses.



- **Who?** National supervisors, including DNB.
- **When?** EBA has submitted its proposal to the Commission for approval. EBA expects EuReCA will start to receive data in Q1 2022.

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

- **What?** On November 4, 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 institutions that fall under the supervision of DNB.
- **When?** EBA expects to publish the new SREP guidelines in March 2022.

DEVELOPMENTS IN EXISTING LAWS AND REGULATIONS

Consultation on general directive for implementation Wwft

- **What?** In the summer of 2021, the Ministry of Finance, together with the Ministry of Justice and Security, launched a [consultation](#) on the revised version on the general directive with respect to the implementation of the requirements set out in the Wwft. The current directive needs to be adjusted, among other things, as a result of the implementation of AMLD5.
- **Who?** All financial institutions subject to integrity supervision by the AFM and DNB.
- **When?** The consultation ended in July 2021. We expect the updated directive will be published in 2022.

Increase in reporting limit for non-cash transactions (Wwft BES)

- **What?** The Minister of Finance has decided to amend the BES [Regulation](#) on the Prevention of Money Laundering and Terrorist Financing in order

to increase the reporting threshold with respect to non-cash transactions for banks. Practice showed that a reporting limit of USD 11,000 for non-cash transactions was too low. After the amended regulation took effect, the amount was raised to USD 250,000.

- **Who?** Banks operating in the Dutch Caribbean.
- **When?** Effective immediately; the rule went into effect on January 1, 2022.

Parliamentary questions about bottlenecks in application of Wwft

- **What?** In November 2021, the Minister of Finance [responded](#) to Parliamentary questions about the bottlenecks in the application of the Wwft. The minister noted that the increased focus on preventing money laundering can mean that sectors and client groups are confronted with stricter requirements from banks than before. The Minister indicated that he considers it important that these requirements do not lead to socially undesirable situations and that persons are wrongfully denied access to the payment system. The new version of the General directive on the implementation of the Wwft will clarify, among other things, that the fact that certain types of clients or products entail an inherently increased risk cannot be a reason to categorically refuse these types of clients or products.
- **Who?** All financial institutions subject to integrity supervision by the AFM and DNB.
- **When?** Immediately. The Minister's comments should be placed in the context of ongoing monitoring.

NEW LAWS AND REGULATIONS

New European package of AML/CFT legislation

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

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



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

AML Regulation - European AML/CFT Authority

The Commission proposes to establish a new European AML/CFT Authority (AMLA). The AMLA is scheduled to be established on January 1, 2023. Once established, the AMLA will focus (among other things) on:

- The coordination of supervision by national supervisors and investigations by national FIUs;
- exercising direct AML/CFT supervision of selected financial institutions (certain institutions with a high inherent risk profile and operating in several Member States);
- Exercising indirect AML/CFT supervision of non-selected institutions; and
- Issuing guidance for the uniform application of AML/CFT rules in the EU.

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

AML/CFT Regulation – *inter alia* rules for CDD

Secondly, the Commission is introducing an AML/CFT regulation. This proposed regulation sets out the requirements for customer due diligence (CDD), the outsourcing of AML/CFT tasks, business-wide risk assessment, the compliance function and the reporting of suspicious transactions to the FIU. These requirements currently largely follow from the fourth anti-money laundering directive (AMLD4) as amended by the fifth anti-money laundering directive (AMLD5). The AML/CFT regulation will therefore become the primary source of legislation for institutions subject to AML/CFT supervision in the future.

If the AML/CFT regulation enters into force at any time, this will mean that many provisions of the Dutch Money Laundering and Terrorist Financing (Prevention) Act will lapse. After all, a regulation is directly applicable in all EU Member States. It will be interesting to see what this will mean for Dutch phenomena such as the objective reporting indicators and the relatively low threshold for reporting transactions to the FIU based on the subjective indicator.

Sixth anti-money laundering directive – *inter alia* rules for enforcement by national supervisors

Thirdly, the Commission proposes a sixth anti-money laundering directive (AMLD6). This directive, which unlike the AML/CFT Regulation must first be implemented in the Netherlands, is intended to replace AMLD4/5. Based on the proposed AMLD6, Member States may, for example in the future propose to the Commission to also place sectors other than those mentioned in the AML/CFT regulation under AML/CFT supervision in their country.

Extension of regulation on information accompanying transfers of funds to crypto-assets

Finally, the Commission presents a proposed revision of the Regulation on information accompanying transfers of funds. As a result of this revision, the scope of the regulation will be extended to cover transfers of crypto-assets where a crypto-asset service provider, as referred to in the proposed MiCA regulation, is involved. This means that crypto-asset service providers of the originator must ensure that transfers of crypto-assets are accompanied by information on the originator and the beneficiary, whereas crypto-asset service providers of the beneficiary must implement effective procedures to detect whether the information on the originator and beneficiary is included in, or follows, the transfer of crypto-assets.

Entry into force

The comprehensive package of proposals is currently being discussed in the trilogue between the Council, the Commission and the Parliament. Given the application dates proposed by the Commission, it is going to be several years before most of the proposed measures will enter into force, by the end of 2024 at the earliest. It is expected that the AMLA will start its direct supervision in 2026.

🇳🇱 UBO register for trusts and FGRs

On November 23, 2021, the Senate [adopted](#) the Implementation Act on Registration of Ultimate Beneficial Owners of Trusts and Similar Legal Arrangements (the Implementation Act). The Implementation Act regulates the implementation of the obligation to maintain and centrally register information about the ultimate beneficial owner(s) (UBOs) of trusts and similar legal arrangements (the Trust Register). This obligation stems from AMLD4 and AMLD5. In the Netherlands, a fund for joint account (*fonds voor gemene rekening*, (FGR) is regarded as a 'similar legal arrangement'.



UBOs of an FGR?

In any case, the following (legal) persons should - in sum - be considered as a UBO of an FGR:

- The manager;
- The legal title holder; and
- All participants with an interest of at least 3%.

Ultimately, only natural persons can qualify as UBOs. In practice, this will mean that the UBOs of the manager and the legal title holder will (also) qualify as UBOs of an FGR. In cases where none of the participants has an economic interest of at least 3% in an FGR, a description of the group on whose behalf the FGR was primarily established or operates will suffice. This could be, for example, be 'unitholders in an AIF'.

Information to be included in the Trust Register

The following information of a trust or FGR becomes publicly available:

- Name and type of trust/FGR;
- Date and place establishment; and
- The purpose for which trust/FGR was created.

The following information of a UBO becomes publicly available:

- Name;
- Month and year of birth;
- Country of residence;
- Nationality;
- Nature and size of economic interest (in ranges of probably 3%-25%, >25-50%, >50-75%, >75-100%).

Entry into force

The Implementation Act was published in the [Official Gazette](#) in December 2021, but the Royal Decree that should set the implementation date has not yet been published. The legislator has chosen a relatively short transition period of three months. This means that market participants will have three months, after the Implementing Act takes effect, to collect the relevant information and submit it to the Chamber of Commerce.

It is not clear at this time when the Trust Register will go into effect. The current expectation is that this will take place sometime in mid-2022.

Implementation Decree

In the summer of 2021, the Minister submitted the Implementation Decree on registration of beneficial owners

of trusts and similar legal arrangements (the Implementation Decree) for [consultation](#). The Implementation Decree regulates, among other things, the 3% threshold and lists documents that must show the nature and extent of the economic interest of the UBO concerned.

It is expected that the Trust Register will not enter into force until the Implementation Decree is published in the Official Gazette. It is currently unclear when this will happen. The Dutch Tax and Customs administration, for example, has indicated in their implementation test that they do not expect the Trust Register to be operational before October 2022. It is important that market parties continue to monitor these developments closely.

Consultation legislative proposal Strengthening the approach to undermining crime II

- **What?** In November 2021, the Minister of Justice and Security submitted the legislative proposal Strengthening the Approach to Undermining Crime II for [consultation](#). One of the proposals is that the FIU will be empowered to request a bank to temporarily suspend the execution of a transaction. A bank must comply with such a request without delay, on pain of enforcement action.
- **Who?** Banks.
- **When?** The consultation will run until January 31, 2022. We expect the Minister will take further steps with regard to this legislative proposal in 2022.

Consultation Banking Information Reference Portal Amendment Act

- **What?** The Minister of Finance submitted the Banking Information Reference Portal Amendment Act for [consultation](#) in the autumn of 2021. The Amendment Act implements, among other things, a national policy wish from the anti-money laundering action plan, namely to enable balance and transaction data to be claimed via the reference portal from banks with more than 2.5 million account holders.
- **Who?** Banks.
- **When?** The consultation ran until November 2021. We expect the Minister will take further steps with regard to this Amendment Act in 2022.

Legislative proposal on anti-money laundering action plan - update

- **What?** In the [Finnius Outlook 2021](#) we already wrote extensively about new national legislation in the fight against money laundering (the legislative proposal on



an anti-money laundering action plan). The proposal legislation provides - in brief - for three changes: (i) Aa ban on cash payments upwards of EUR 3,000 for professional traders and traders in a commercial capacity; (ii) 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; (iii) the possibility of outsourcing (transaction) monitoring to a third party; (iv) further to that: the option of joint transaction monitoring by Wwft institutions by allowing them to share transactions.

- **Who?** Financial institutions that fall within the scope of the Wwft.
- **When?** After the third [progress letter](#) from December 2020, it was quiet for some time regarding this initiative. The Minister of Finance recently [indicated](#) that he expects that the legislative proposal will be submitted to the House of Representatives in early 2022.

FATF

Update Guidance on the application of the standards to mitigate money laundering and terrorist financing through cryptocurrencies

- **What?** In June 2021, the second annual review of FATF's standards for virtual assets and virtual asset service providers (VASPs) found that there was a need for greater clarity on the application of the FATF's standards. This resulted in adjustments to the [guidance](#). The amended guidance clarifies, among other things, the definition of virtual assets and VASPs and goes further into the application of the FATF standards to so-called stablecoins.
- **Who?** National supervisors and crypto service providers.
- **When?** Effective immediately; the FATF adopted the updated guidance in October 2021.

Update FATF Recommendations

- **What?** The FATF updated the [FATF Recommendations](#) in June and October 2021. Among other things, the definition of a 'financial group' has been clarified and the types of offenses covered by the term 'environmental crime' have been specified.
- **Who?** Regulatory authorities and supervisors. The update may possibly result in changes to laws and regulations that will also affect financial institutions.
- **When?** Immediately.

Consultation on amending the standards for identifying the UBOs of legal entities

- **What?** The FATF is considering amending [Recommendation 24](#) on the transparency and beneficial ownership of legal person. The proposed amendments are intended to ensure greater transparency about beneficial ownership (i.e. the UBOs) of legal persons.
- **Who?** Regulatory authorities and supervisors. The update may possibly result in changes to laws and regulations that will also affect financial institutions.
- **When?** The consultation ran until December 2021. FATF has indicated that it will come up with an update to Recommendation 24 in 2022.

Mitigating unintended consequences of FATF standards

- **What?** In February this year, the FATF started a [project](#) on the unintended side effects that arise from the incorrect implementation of the FATF standards. The signals relate to de-risking, financial exclusion, undue targeting of *Non-Profit Organizations* and curtailment of human rights. In the plenary session of October 2021 it was decided that, in the next phase of the study, possible solutions to mitigate these unintended consequences would be examined.
- **Who?** Countries and financial institutions.
- **When?** The study is now in its next phase. We expect the FATF to publish the results of this research in 2022, and, where necessary, introduce proposals to amend the FATF standards.

Outlook 2022

- **What?** The FATF outlined its priorities for 2022 in its [annual report](#). For example, the FATF announced, among other things, that Recommendation 24 in the FATF Standards on UBOs will be amended (see also above). In addition, the FATF expects to complete two other (major) projects in 2022, namely: (i) the mapping of financial flows and ML/TF risks linked to migrant smuggling networks and their transnational route; and (ii) the use of art and antiquities for money laundering and terrorist financing.
- **Who?** Regulatory authorities, supervisors and financial institutions.
- **When?** This year; for example, FATF expects to issue two reports in June 2022 on the topics described above.

Report on the implementation of the FATF standards for cross-border payments

- **What?** The FATF, in collaboration with the Basel Committee on Banking Supervision, conducted a [survey](#) of AML/CFT rules that cause problems in cross-border payments. The results indicate a lack of a risk-based approach and inconsistent implementation of AML/CFT requirements, which negatively affects the cost and speed of cross-border payments.
- **Who?** Regulatory authorities and supervisors. The update may possibly result in changes to laws and regulations that will also affect financial institutions.
- **When?** FATF has indicated that it will work with other parties to identify possible solutions to the problems that have been put forward. We expect that FATF will take follow-up steps on this issue in 2022.

Guidance on proliferation financing risk assessment and mitigation

- **What?** The FATF published [guidance](#) in June 2021 that looks at analysing and mitigating proliferation financing (in short, financing weapons of mass destruction, including nuclear weapons). The guidelines address, among other things, how the public and private sectors should conduct risk assessments in the context of proliferation financing, and how to mitigate the risks they identify.
- **Who?** The guidelines cover countries and financial institutions, including crypto service providers.
- **When?** Effective immediately; market participants can include this guidance in their risk assessments.

Digital transformation of AML/CFT efforts

- **What?** The FATF is exploring the opportunities that technology can provide to improve AML/CFT efforts. New technologies refer to: (i) innovative skills, methods and processes used to achieve goals related to the effective implementation of AML/CFT requirements; or (ii) innovative ways to use established technology-based processes to meet the AML/CFT obligation. In this context, FATF has issued [three](#) reports on this topic in the past year.
- **Who?** Regulatory authorities.
- **When?** Effective immediately; the FATF will take follow-up steps on this issue in 2022.

Investigation into environmental crime and money laundering

- **What?** The FATF has published a [report](#) on the extent and methods used for money laundering in environmental crime. The report concludes, inter alia, that money

laundering supervisors should cooperate with those investigating and prosecuting environmental crime. At the October 2021 plenary session, it was decided to add some examples of environmental crime to the definition list of the FATF standards to clarify exactly what forms of environmental crime are meant. This, together with the report on methods and trends of environmental crime, can help investigating agencies track the money flows and stop criminal networks behind illegal environmental dumping, illegal timber trading and other forms of environmental crime.

- **Who?** Regulatory authorities, investigative agencies and supervisors.
- **When?** Effective immediately; environmental crime and money laundering remains a hot topic for the FATF. It is expected that FATF will monitor this topic closely in 2022.

Evaluation of compliance of FATF standards by the Netherlands

- **What?** The Netherlands was evaluated by the FATF in 2021. This evaluation was divided into two parts; an assessment of technical compliance with the FATF standards and an assessment of whether these are effectively implemented. The Caribbean Netherlands is also included in this assessment.
- **Who?** The Netherlands as a legislator. It may result in amendments to laws and regulations that will also affect financial market parties.
- **When?** The results of the evaluation will, in all likelihood, be discussed at the plenary session in March 2022.

OTHER DEVELOPMENTS

Draft framework for AML/CFT risk assessment of a remittance corridor

- **What?** A joint IMF/World Bank [report](#) was released in the fall of 2021 proposing a draft framework and methodology for the AML/CFT risk assessment of a 'remittance corridor' (the formal channel for international remittance between the sender's country and the recipient's country) that has the potential to be identified as a 'safe remittance corridor'. The proposed framework is expected to be piloted in a number of corridors to test and further refine the assessment methodology.
- **Who?** Regulatory authorities and supervisors. Possibly resulting in changes to laws and regulations that will also affect financial companies.
- **When?** It is unclear when the proposed framework will be tested. We expect that this will become clearer in 2022.



Ban on cash payments in fight against fraud not contrary to EU law

- **What?** The Court of Justice of the EU [ruled](#) in October 2021 that it is not contrary to EU law that cash payments exceeding a certain threshold amount are prohibited and that deposit into a payment account is required. This also applies if the payment is a dividend distribution.
- **Who?** Regulatory authorities.
- **When?** Immediately; this ruling is relevant in light of the upcoming ban on cash payments from EUR 3,000 (see anti-money laundering action plan).

Report on European anti-money laundering approach in the banking sector

- **What?** The European Court of Auditors issued a [special report](#) in June 2021 concluding that EU-level action to combat money laundering and terrorist financing has weaknesses, and that the EU's oversight framework is fragmented and poorly coordinated and thus fails to ensure a coherent approach and a level playing field.
- **Who?** European institutions, EU member states, European regulators and national supervisors.
- **When?** The European Court of Auditors reports that the upcoming legislative reform (the European Commission's AML/CFT package) provides an opportunity to address the identified shortcomings and end the fragmentation of the EU AML/CFT framework.



SUSTAINABILITY

This is the third year that we have published a special on Sustainable Finance regulation in the Outlook, and it looks like many years are yet to come. The regulation is becoming more and more extensive, and the attention of regulators, investors, other clients and counterparties to this topic is increasing by the day. This topic is far from static, but the overview below already gives a good overview of what the financial markets at least may expect in the coming year in the area of sustainability.

The introduction included at the beginning of this section outlines a general framework after which the alerts for 2022 are listed in more detail.

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

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- ESMA Vision in the context of proposed changes CSRD from a sustainability perspective
- ESMA Letter to European Commission regarding ESG Ratings
- ESMA Work Programme 2022
- ESMA Preliminary Report EU Carbon Market
- EBA Work Programme 2022
- EBA Report management and supervision of ESG risks for credit institutions and investment firms
- EIOPA Revised Single Programming Document 2022-2024
- EIOPA Sustainable finance activities 2022-2024 and Annual Work Programme 2022
- EIOPA Opinion on monitoring the use of climate risk in ORSA
- EIOPA Consultation on 'CCM assessment' and use of 'climate change scenarios' in ORSA.
- EIOPA Pilot natural catastrophe protection mechanism
- EIOPA Paper: Climate change, catastrophe and macroeconomic benefits for insurance
- EESC Financing in view of European Green Deal

NATIONAL REGULATORS

- AFM Trend Monitor 2022
- AFM Publication Investment funds can improve the informing investors about sustainability



AFM Enforcement SFDR to start by March 2022
DNB Sustainable Finance Strategy 2021-2025
DNB Supervision Strategy 2021-2024
DNB Publication Financial sector must take more account of sustainability risks
DNB Publication Measurability of sustainability risks based on limited data
DNB Good Practice and Q&A on integrating climate risks into risk management
DNB Theme study on climate risks in the ORSA
DNB Q&A Climate risks at insurers
DNB Attention to climate change in ECB monetary strategy implementation
DNB Biodiversity Working Group of the PDF Roadmap to Counter Biodiversity Loss
MinFin Answers Parliamentary questions on sustainability risk management by European banks
MinFin Answers to questions on financial markets - stability and institutions
COP26 declaration and implications for Dutch financial market

OTHER EUROPEAN DEVELOPMENTS

BCBS Consultation on effective management and oversight of climate-related financial risks
IOSCO Consultation on sustainability-related oversight expectations for asset management
IOSCO Consultation Regarding ESG Ratings and Data Providers

INTRODUCTION

Prior to discussing the sustainability developments that will be relevant in 2022, it is important to provide insight into the overarching sustainability framework within which the vast majority of developments are taking place.

In a global context, sustainability goals have been relevant since 2015 in the context of the Paris Climate Agreement. Over time, multiple (global) sustainability initiatives have emerged, including the creation of the Intergovernmental Panel on Climate Change (IPCC) which published a Climate Change 2021 [report](#). From the European perspective, the [Green Deal](#), the [EU Action Plan for Financing Sustainable Growth](#) (from 2018) and the [Sustainable Finance Package](#) (from 2021) are the important “drivers” of sustainability in the EU.

Currently, a number of regulations form the basis of sustainability legislation in European Member States. Some of these were discussed previously in the Outlook 2020 and Outlook 2021. A brief review of this sustainability legal framework will be made before looking at the sustainability signposts for 2022 in more detail.

The following regulations are relevant to keep in mind in the context of sustainability legislation:

- The [Taxonomy Regulation](#);
- The [Sustainable Finance Disclosure Regulation](#) (SFDR);
- The [Non-Financial Information Directive](#) (NFRD).

The [Taxonomy Regulation](#) introduces a classification system for sustainable activities. Financial institutions must use this classification system to classify investments, products, et cetera. This classification is used to determine which information must be published.

Based on the [SFDR](#), financial institutions must be transparent about their compliance with *Environmental, Social & Governance* (ESG) factors. Information on ESG factors must be included in pre-contractual and periodic reporting. Institutions must publish their analysis - which is based on the data under the NFRD (and CSRD) and the Taxonomy Regulation - (i) on their website, (ii) in periodic reports, (iii) in promotional materials, and (iv) in pre-contractual disclosures. The method of publication depends on which article of the SFDR is applicable.

The [NFRD](#) requires companies to publish non-financial information. The reporting rules introduced by the NFRD contain important principles for certain large companies to annually report sustainability information. The NFRD introduced ‘dual materiality,’ meaning that companies must report on, first, how sustainability issues affect the company (the ‘*outside-in risks*’) and, second, the



company's impact on people and the environment (the 'inside-out risks').

In light of the above, the European Economic and Social Committee previously issued an [opinion](#) on the proposed [Corporate Sustainability Reporting Directive](#) (CSRD). From the [Q&A](#) on the CSRD dated April 21, 2021, it follows that the scope of the NFRD requirements will be extended to all large companies, whether listed or not, and without the previous threshold of 500 employees. The CSRD would ensure alignment with other EU initiatives on sustainable finance, notably the SFDR and the Taxonomy Regulation. The goal is to reduce complexity and the potential for duplicate reporting requirements.

Legislative changes have also been announced in other areas that aim to provide for the next steps in European sustainability. These include a proposal for a regulation in the area of [green bonds](#) and further elaboration on topics such as deforestation, nuclear energy and (climate) benchmarks. These and other developments for 2022 will be discussed in this Outlook.

This Outlook 2022 builds on the knowledge shared in the Outlook 2021 and Outlook 2020. The legislation as mentioned above has already been outlined in the previous versions. We recommend readers interested in the general framework to start with the sustainability chapter in the Outlook 2020 and Outlook 2021.

EUROPEAN LAWS AND REGULATIONS

Sustainable Finance Disclosure Regulation (SFDR).

- **What?** The SFDR is a [regulation](#) regarding sustainability disclosures for financial products. For a more detailed explanation, please refer to the introduction. The SFDR is applicable for the most part as of March 10, 2021. However, there are a number of provisions that will enter into force on January 1, 2022 or later. For example, as of January 1, 2022, Article 11 (1)-(3) SFDR will apply. Pursuant to this, financial market participants must, as of January 1, 2022, include in periodic reporting information on financial products that promote environmental or social characteristics or have sustainable investments as their objective within the scope of Article 8 and Article 9 SFDR. In addition, information on adverse impacts on sustainability factors must be provided by December 30, 2022 for each financial product offered under Article 7(1) SFDR. Pursuant to Article 25 of the Taxonomy Regulation, a new article was added regarding the 'do not significantly

- *harm*'-principle and Articles 8, 9, 11 and 20 SFDR were amended.
- **Who?** Relevant to managers, investment firms, financial services companies, insurers, among others.
- **When?** The majority of the rules came into effect as of March 10, 2021 but as of January 1, 2022, parties must comply with a number of additional provisions of the SFDR. Please refer to the overview of the key dates as set out below.

Taxonomy Regulation

- **What?** As already mentioned in the Outlook 2021, the [Taxonomy Regulation](#) introduces a classification system to determine whether, and if so to what extent, economic activities can be qualified as ecologically sustainable, taking into account six objectives set out in that regulation. It will serve as a framework in the EU for the taxonomy to qualify certain economic activities as environmentally sustainable. The Taxonomy Regulation aims to increase investor confidence and awareness of the environmental impact of financial products, create visibility and address concerns about 'greenwashing'.
- **Who?** Relevant to, among others, managers, investment firms, financial services companies, insurers.
- **When?** Certain parts of the Taxonomy Regulation will enter into force on January 1, 2022. This relates to disclosure requirements in pre-contractual information and periodic reporting, as well as transparency on the first two environmental objectives: contribution to climate mitigation and climate adaptation.

EU Taxonomy Delegated Regulation technical screening criteria for climate mitigation and -adaptation

- **What?** The Taxonomy Regulation requires the European Commission to establish technical screening criteria for each environmental objective. This is accomplished through the issuance of delegated regulations. The [Delegated Regulation](#) establishes the technical screening criteria for determining when an economic activity qualifies as substantially contributing to the first two environmental objectives, being mitigation of and adaptation to climate change, and for determining whether that economic activity does not significantly undermine one or more of the other relevant environmental objectives.
- **Who?** This Delegated Regulation is relevant to all financial market participants that fall within the scope of the Taxonomy Regulation, including, for example, alternative investment fund managers, insurers and pension providers.



- **When?** The Delegated Regulation is effective January 1, 2022.

EU Taxonomy Delegated Regulation technical screening criteria other environmental objectives

- **What?** The Taxonomy Regulation required the European Commission to establish technical screening criteria for each environmental objective. This is accomplished through the issuance of delegated regulations. Apart from the technical screening criteria included in the [Delegated Regulation](#) on the first two environmental objectives (mitigation of and adaptation to climate change), the other delegated regulations on the remaining four environmental objectives are not yet available.
- **Who?** These anticipated delegated regulations will become relevant to all financial market participants that fall within the scope of the Taxonomy Regulation, including, for example, alternative investment fund managers, insurers and pension providers.
- **When?** More information is expected to become available about the further development of the technical screening criteria in the area of the other four environmental objectives during 2022. We recommend that market participants keep a close eye on this development.

EU Taxonomy Delegated Regulation further interpretation of reporting under Article 8 TV

- **What?** On March 1, 2021, ESMA issued its [final report](#) under Article 8 under the Taxonomy Regulation. The [Delegated Regulation](#) supplementing Article 8 of the Taxonomy Regulation was published on December 10, 2021. This Delegated Regulation specifies the content, methodology and presentation of information to be disclosed by financial and non-financial companies regarding the share of environmentally sustainable economic activities as part of their business, investment- or credit activities. Article 10 of this Delegated Regulation specifies the information to be disclosed by non-financial companies for the period starting from January 1, 2022 to December 31, 2022 and the information to be disclosed by financial companies for the period starting from January 1, 2022 to December 31, 2023. A [FAQ](#) document was issued in December 2021 in relation to this Delegated Regulation. Despite this FAQ, the AFM states in its [news release](#) on December 23, 2021, that it detected that there is still uncertainty in the market regarding the application of reporting requirements pursuant to the Delegated Regulation. The AFM has indicated that it is important

for issuers of securities to reflect the required KPIs (as listed in the annexes to the Delegated Regulation) in their non-financial statement and to properly explain how they calculated them. If the analyses have not been completed, the AFM requires these entities to be transparent about this.

- **Who?** This Delegated Regulation is relevant to all financial market participants that fall within the scope of the Taxonomy Regulation, including, for example, alternative investment fund managers, insurers and pension providers.
- **When?** This Delegated Regulation entered into force on December 30, 2021. As described above, the obligations for non-financial and financial companies differ, as does the period over which the various disclosures must be made.

European Climate Law

- **What?** The core objective of the [European Green Deal](#) is to achieve a climate-neutral European economy and society by 2050. The European Commission has sought to enshrine this objective in law by means of an introduction of a [European Climate Act](#). This act has already been addressed in the Outlook 2021. In short, the objectives of the European Climate Act are (i) to set a long-term European vision to achieve the goal of climate neutrality by 2050 in a social and cost-effective manner, (ii) to set a more ambitious EU target for 2030 to ensure that Europe is climate neutral by 2050, (iii) creating a system for monitoring progress in this respect and, if necessary, taking further action(s) in light hereof, (iv) ensuring predictability for economic actors (including businesses, employees, investors and consumers), and (v) ensuring an irreversible transition to climate neutrality. On December 11, 2020, the European Council [agreed](#) on the Commission's proposal to increase the central greenhouse gas reduction target for 2030 from 40% to at least 55% (compared to 1990). The European Climate Act was [published](#) on July 9, 2021.
- **Who?** All economic and social sectors (including the financial sector).
- **When?** The European Climate Act came into force from July 29, 2021 and will continue to be relevant in 2022.

EC Proposal and Q&A CSRD

- **What?** On April 21, 2021, the European Commission presented its [proposal](#) for a Corporate Sustainability Reporting Directive (CSRD). The CSRD aims to revise and tighten the existing rules of, among others, the NFRD, and to align - over time - sustainability reporting with financial reporting. Companies will have to report on the impact of sustainability issues on their business and the



impact of their activities on people and the environment. The proposal envisages the following main changes: (i) the extension of EU sustainability reporting requirements to all large companies and all listed companies (excluding listed micro-enterprises), (ii) the development of binding EU sustainability reporting standards (whereby for listed SMEs, separate proportionate standards will be established, which unlisted SMEs would be allowed to apply voluntarily), (iii) the application of mandatory third-party verification of the sustainability information, and (iv) the disclosure of the information as part of board reports in a digital, machine-readable format. The disclosure requirements as part of the proposal would not apply to SMEs having transferable securities listed on SME growth markets or multilateral trading facilities. Delegated regulations that will provide further color to the obligations that apply under the CSRD are to be issued. On April 21, 2021, the European Commission also issued a [Q&A](#) in respect of the CSRD proposal.

- **Who?** Listed and unlisted companies, banks, insurers and listed SMEs (excluding listed micro companies).
- **When?** Currently, the proposal still needs to be negotiated into a final text. If agreed in the first half of 2022, the European Commission should be able to adopt the first set of reporting standards under the new legislation by the end of 2022. This would mean that companies would apply the standards for the first time to reports published in 2024, which relate to the 2023 financial year.

EC Delegated Regulations MiFID II, AIFMD, Solvency II and IDD integration of sustainability risks into business processes

- **What?** In the Outlook 2021, extensive attention was given to the delegated regulations regarding the integration of sustainability risks in business processes. In short, in June 2020, the European Commission shared draft delegated regulations on the adaptation of various delegated regulations and directives. These are listed separately below:
 - Amendment and rectification of [Delegated Regulation 2017/565](#) as regards the integration of sustainability factors, risks and preferences into certain organizational requirements and operating conditions for investment firms (Delegated Regulation [2021/1253](#) and Delegated Regulation [2021/1254](#));
 - Amendment to [Delegated Directive 2017/593](#) (supplementing MiFID II) as regards the integration of sustainability factors into product governance requirements (Delegated Directive [2021/1269](#));
 - Amendment of [Delegated Regulation 231/2013](#) as regards sustainability risks and sustainability factors to be taken into account by alternative investment fund managers (Delegated Regulation [2021/1255](#));

- Amending [Directive 2010/43/EU](#) as regards sustainability risks and sustainability factors to be taken into account for UCITS (Delegated Directive [2021/1270](#));
- Amending [Delegated Regulation 2015/35](#) as regards the integration of sustainability risks into the governance of insurance and reinsurance undertakings (Delegated Regulation [2021/1256](#)); and
- Initiated amendments to [Delegated Regulation 2017/2358](#) and [Delegated Regulation 2017/2359](#) regarding the integration of sustainability factors, risks and preferences into product supervision and governance requirements for insurance companies and insurance distributors and into business conduct and investment advice rules for insurance-based investment products (Delegated Regulation [2021/1257](#)).

The European Commission's proposals are based on the technical advice previously prepared by ESMA and EIOPA. The delegated regulations provide greater clarity on how, and where, these market participants should integrate sustainability risks and sustainability factors into their business models and procedures. For example, investment firms must take into account client sustainability preferences when providing investment advice and asset management.

- **Who?** These delegated regulations are relevant to investment firms, fund managers, insurers and insurance intermediaries.
- **When?** The changes as contained in the above regulations apply as follows:
 - The provisions of Delegated Regulation [2021/1253](#), Delegated Regulation [2021/1256](#), and Delegated Regulation [2021/1257](#) shall apply from August 2, 2022;
 - The provisions of Delegated Directive [2021/1269](#) must be enacted and published by the Dutch legislature no later than August 21, 2022, and will have to enter into force as of November 22, 2022;
 - The provisions of Delegated Regulation [2021/1255](#) will apply from August 1, 2022;
 - The provisions of Delegated Directive [2021/1270](#) must be enacted and published by the Dutch legislature no later than July 31, 2022, and will have to enter into force as of August 1, 2022.

EC Communication EU taxonomy, sustainability reporting and preferences, and fiduciary duties

- **What?** The publication of the above mentioned now published in the Official Journal of the EU [Delegated Regulation](#) on sustainable activities for climate



mitigation and adaptation was accompanied by the adoption of a European Commission [Communication](#) on 'EU taxonomy, corporate sustainability reporting, sustainability preferences and fiduciary duties: leading finance to the European green deal'. This Communication builds on the Transition Finance [Report](#) adopted by the [Platform on Sustainable Finance](#) in March 2021.

- **Who?** This is relevant to all financial market participants that fall within the scope of the Taxonomy Regulation, including, for example, alternative investment fund managers, insurers and pension providers.
- **When?** The obligations under the Delegated Regulation referred to above shall apply as of January 1, 2022.

EC Strategy for financing the sustainable economy

On July 6, 2021, the European Commission [adopted](#) an ambitious and comprehensive package of measures. This package subsumes a new [Sustainable Finance Strategy](#), an introduction of the [European Green Bond Standard](#) and the [Delegated Regulation](#) - now published in the Official Journal of the EU - regarding the transparency obligations under Article 8 Taxonomy Regulation that financial and non-financial companies must comply with (see also the alert above). The above package builds on the [2018 Action Plan](#), the [transition finance report](#) and the [consultation as held between April and July 2020](#).

In 2022, there are many different developments in the pipeline across the entire spectrum of sustainability regulation, which will therefore also affect many different market parties. The [Annex](#) to the European Commission's announcement in respect of the strategy for financing the transition to a sustainable economy lists the following developments on which the European Commission will continue to work in 2022 at least:

- **Labels for bonds:** The European Commission will continue to work on bond labels (*obligatielabels*), such as transition or sustainability bond labels. This means an official standard by which truly green bonds can be identified. This should be completed by 2022 at the latest.
- **Labels for financial products and benchmarks:** The European Commission will explore the feasibility of an ESG benchmark, taking into account the evolving nature of sustainability indicators and the methods used to measure them. By December 31, 2022, the minimum standards for both EU climate transition benchmarks and Paris Agreement-aligned benchmarks will be reviewed by the European Commission to ensure that the selection of underlying assets is consistent with the EU taxonomy. The European Commission will propose minimum sustainability criteria, or a combination of

criteria for financial products covered by Article 8 SFDR, to ensure minimum sustainability performance of such products;

- **Prospectus Disclosure:** Under the Prospectus Regulation, the European Commission will introduce prospectus disclosures for green, social and sustainable securities during 2022 to improve the comparability, transparency and harmonization of the information provided for such instruments and help combat "greenwashing."
- **Green bonds and mortgages:** the European Commission will request the EBA to issue an opinion on the definition of green retail loans and green mortgages and possible support instruments for them by the second quarter of 2022. With respect to mortgages, the European Commission will consider how to support the use of energy-efficient mortgages as part of the review of the Mortgage Credit Directive by the end of 2022;
- **Better protection against climate and environmental risks under insurance cover:** The European Commission will request EIOPA to continue the development of the natural catastrophe dashboard by mid-2022, and will explore the possibility of using the dashboard for diagnostic assessment by Member State. The European Commission, with the support of the insurance industry, national and local authorities and other stakeholders, will initiate a climate resilience dialogue by 2022 to share *best practices* and identify ways to address the climate protection gap and increase climate resilience, either through recommendations or voluntary commitments;
- **RTS SFDR:** Before December 2022, the European Commission will consult with the European Supervisory Authorities to revise the regulatory technical standards under the SFDR and to clarify indicators related to the main negative impacts related to climate and environment, but also to the main negative impacts on social and human resources issues, respect for human rights, and fight against corruption and bribery;
- **ESG risks in ratings and rating outlooks:** The European Commission invites ESMA to: (i) by the third quarter of 2022, provide its assessment on the implementation of the updated guidelines to improve disclosure of information on how ESG factors are taken into account in ratings and rating outlooks, (ii) by the second quarter of 2022, provide its findings on how ESG factors are incorporated by credit rating agencies into their methodologies;
- **Mitigate systemic risks in the context of long-term financial stability:** By 2022, the European Commission will prepare a report to present a methodological framework and assess the potential financial risks associated with biodiversity loss and ecosystem degradation at the micro and macro levels, as well as identify any changes to sustainable finance policies that may be required;

- *Enhancing European collaborations towards Green Deal objectives:* By 2022, the European Commission will strengthen its collaboration with the European Central Bank, the European Systemic Risk Board, European Supervisory Authorities and the European Environment Agency to develop a common methodological basis and integrate the dual materiality perspective consistently and coherently across the EU financial system. This cooperation could lead to recommending policies, tools and methodologies for implementing forward-looking adaptation strategies and addressing risks to financial stability, for the benefit of supervisors, regulators and financial sector entities in the EU.

EC Proposal for coordinated European access point (European Single Access Point)

- **What?** On November 25, 2021, the European Commission [proposed](#) a regulation to establish a *European Single Access Point (ESAP)*. This ESAP would provide centralized access to publicly available information relevant to financial services, capital markets and sustainability in an efficient and non-discriminatory manner by 2024. ESAP will contribute to (i) the further integration of financial services and capital markets into the *single market*, (ii) a more efficient allocation of capital across the EU, and (iii) promoting the development of smaller, national capital markets and economies by giving them greater visibility. ESAP will also allow unlisted entities (including small and medium-sized enterprises (SMEs)) to make information available on a voluntary basis. This will facilitate access to capital by these market participants.
- **Who?** ESAP is primarily aimed at users such as investors, financial analysts and intermediaries, for example asset managers, consultants or *data aggregators*. Other types of users - such as regulators and other government agencies such as statistical authorities - may also be interested in accessing information through ESAP.
- **When?** We expect the ordinance bill to receive further consideration during 2022.

EC bill on sustainable corporate governance

- **What?** Regarding the bill on sustainability in corporate governance, the proposed directive was initially expected in December 2021, but due to push-back from the Regulatory Scrutiny Board, an updated text for the proposal will now have to be drafted.
- **Who?** Financial institutions and non-financial institutions.
- **When?** An updated text for the directive is expected in 2022. We recommend that market parties keep an eye on the [legislative train](#) in this context.

✚ EC Delayed entry into force of RTS - practical challenges

The [draft RTS](#) were submitted by the ESAs to the European Commission on October 22, 2021. However, they have not yet been finally adopted by the EC. The EC has indicated that it needs more time for the final adoption of these RTS and, for that reason, has changed the date as of which the RTS will apply. In a [letter dated](#) November 25, 2021, the European Commission informed the European Parliament that the RTS relating to the SFDR will be implemented as of January 1, 2023, instead of July 1, 2022.

The delay is due to the fact that thirteen different RTS are being developed for the SFDR (of which the initial RTS dated [February 2021](#) has now been amended into a consolidated version of the RTS dated [October 2021](#), in respect of which we would like to point out that the considerations of both the initial RTS as well as the consolidated RTS remain relevant for the interpretation of the provisions in the SFDR) and the fact that the European Commission, in consultation with the ESAs, considers it desirable - given the length and technical content of the RTS - to bundle all 13 RTS into one document and have them enter into force at one time.

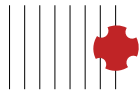
Finally, the European Commission notes that, due to the postponement of the application date, the transitional arrangements that had been proposed for the disclosure of so-called *principal adverse impacts* (PAIs) in Article 4(3) of the RTS are no longer necessary.

The difficulty for market participants will be to perform the disclosure of information under the SFDR and Taxonomy Regulation, while the version of RTS on the SFDR and the delegated regulations related to the interpretation of the environmental objectives under the Taxonomy Regulation (which function as Level 2 legislation) have not yet been adopted. The developments of the RTS on the SFDR have been delayed, but we recommend that market participants closely monitor developments in this area.

Despite the fact that the implementation of the RTS for the SFDR will take until 2023, it is relevant that the AFM has confirmed that nevertheless, it expects market participants subject to the SFDR to act in accordance with the SFDR and the draft RTS as they are currently known.

EC Green Bonds Strategy

- **What?** The European Commission issued its [new strategy](#) on green bonds on July 6, 2021. The voluntary European Green Bond Framework ([EUGBS](#)) will provide guidance to companies and governments on how to use green bonds to raise capital in capital markets to



finance ambitious investments, while meeting stringent sustainability requirements and protecting investors from greenwashing. This will (i) provide green bond issuers with a robust tool to demonstrate that they are financing green projects that are in line with the EU taxonomy, and (ii) make it easier for investors who buy the green bonds to see that their investments are sustainable, thus reducing the risk of greenwashing. The EUGBS will be available to any issuer of EU green bonds (incl. issuers outside the EU). The application of the EUGBS is subject to four main requirements: (a) funds raised by the bond must be fully allocated to projects that are aligned (*aligned*) with the EU taxonomy; (b) there must be full transparency on how bond proceeds are allocated through detailed reporting requirements; (c) all EU green bonds must be audited by an external reviewer to ensure that they comply with the Regulation and that funded projects are aligned with the taxonomy; and (d) the external reviewers providing services to EU green bond issuers must be registered with and supervised by ESMA. The European Commission also issued a [Q&A](#) on the European Green Bonds Regulation on July 6, 2021.

- **Who?** The new EUGBS is open to any issuer of green bonds, including issuers outside the EU.
- **When?** On November 30, 2021, there was feedback from the reporting officer and proposals for additional requirements, including aligning with the '*do not significantly harm*' principle under the Taxonomy Regulation. We therefore recommend that parties keep an eye on the [legislative train](#) on this topic.

EC Reaction and expert consultations on nuclear energy under the Taxonomy Regulation

- **What?** Following the political agreement on the Taxonomy Regulation, the European Commission began work in 2020 to assess whether or not nuclear energy should be included in the EU taxonomy of environmentally sustainable activities. As a first step, the Joint Research Centre, the internal science and knowledge service of the European Commission, prepared a technical report on the aspects that do not cause significant harm to nuclear energy. This report was reviewed in June 2021 by two groups of independent experts, the [Group of Experts on Radiation Protection and Waste Management under Article 31 of the Euratom Treaty](#) and the [Scientific Committee on Health, Environmental and Emerging Risks on Environmental Impacts](#). The two assessment reports, together with the [JRC report](#), will constitute the Commission's decision. Subsequently, in the [news release](#) on January 1, 2022, the European Commission announced that on December 31, 2021, it started

expert consultations with the Member States Expert Group on Sustainable Finance and the Platform on Sustainable Finance. These expert consultations concern a delegated regulation that will cover certain activities in the field of gas and nuclear energy. Also, from a transparency point of view, the European Commission aims to adapt the existing delegated regulation in the context of reporting requirements under the Taxonomy Regulation so that market participants can identify whether and to what extent activities include gas and nuclear activities.

- **Who?** This is relevant to market participants who are engaged in the exploitation of nuclear power and gas. We would imagine that it may also be relevant to financial companies that make products available that have (partial) exposure to nuclear power and gas and where such exposure (might) affect the qualification of "environmentally sustainable activity" under the Taxonomy Regulation.
- **When?** The expert consultations run until January 12, 2022. The European Commission will consider the responses and is expected to formally adopt the delegated regulation in the area of gas and nuclear energy in January 2022, after which the other legislators and the European Parliament will consider the delegated regulation. If no further objections are raised, the delegated regulation will enter into force. We recommend that market participants closely monitor developments in this area as further concretization of the legislation may become available in 2022.

EC Recommendation use of environmental footprint methods for measuring and disclosing environmental performance

- **What?** The European Commission [Recommendation](#) dated December 15, 2021, addresses the use of environmental footprint methods in policies and regulations related to measuring and/or disclosing the environmental performance of all kinds of products. These environmental footprint methods allow companies to measure and disclose their environmental performance and thus, compete in the marketplace based on reliable environmental data. The methods contain detailed instructions for modeling and calculating the environmental impacts of products and organizations. The use of environmental footprint methods is already envisaged in the context of EU policies and legislation, such as the Taxonomy Regulation, for example. Among other things, the Recommendation states that members of the financial community (such as banks, investors, and insurance companies) should promote the use of the methods listed in the Recommendation as part of the financial risk assessment of environmental performance



over the life cycle of the entity in question. This Recommendation does not apply to the implementation of mandatory EU legislation that provides a specific methodology for calculating the environmental performance of products or organizations during their life cycle.

- **Who?** This Recommendation is addressed to Member States and to private and public organizations that measure and/or disclose the life cycle environmental performance of their product or organization to private and public sector stakeholders and civil society in the EU, or intend to do so. This includes banks, investors and insurance companies.
- **When?** It is possible that the content of the recommendation will be given further legislative content. Given the sustainability developments expected in 2022, we recommend that market participants closely monitor developments on environmental footprint methods.

EUROPEAN REGULATORS

ECB opinion on CSRD proposal

- **What?** On September 7, 2021, the ECB published its [opinion](#) on the [CSRD proposal](#). The ECB indicates the proposed directive to be an important step towards the completion of the capital markets union and, in particular, towards the development of integrated, comprehensive and mature green capital markets in the EU that transcend national borders. The ECB supports the proposed obligations for large EU companies and listed companies on regulated EU markets (incl. credit institutions) to (have to) disclose a set of sustainability objectives and the progress towards achieving them. To improve transparency and promote sound oversight, in particular of climate- and environment-related risks, the ECB also believes that financial institutions should disclose their plans for the transition to sustainability and a low-carbon economy, including intermediate and long-term targets and information on how they plan to reduce their carbon footprint.
- **Who?** Financial institutions and non-financial institutions.
- **When?** The ECB opinion has already been published and is expected to be included in the process of negotiating the final CSRD text. If the final CSRD text is agreed upon in the first half of 2022, the European Commission should be able to adopt the first set of reporting standards under the new legislation by the end of 2022. This would mean that companies would apply the standards for the first time to reports published in 2024, covering the 2023 financial year.

✚ ECB Climate-related risks: stress tests and management

2022 ECB Climate Risk Stress Test

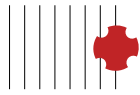
In October 2021, the ECB sent a [letter](#) to all significant banks announcing the implementation of a climate-related risk stress test in 2022. This stress test is also known as the 2022 ECB Climate Risk Stress Test (CST). In addition to the letter, the ECB also [published](#) an explanatory note. The explanatory note is based on the ECB's [guide](#) to climate and environment-related risks published in 2020, which includes the ECB's expectations with banks' management of these risks, and the EBA's [report](#) on the management and supervision of ESG risks for banks and investment firms. In this context, please also refer to the EBA Report on ESG Risk Management and Supervision as mentioned below under "*Overview of ECB and EBA publications with regard to climate risks*".

Earlier in 2021, the ECB published an ambitious [roadmap](#) (July) outlining climate-related issues and priorities, a [report](#) (July) analyzing the impact of climate-related risks on financial stability, and an [opinion](#) (September) on the CSRD, following a request by the European Commission.

The ECB views the CST as a learning opportunity for both banks and supervisors. It aims to identify vulnerabilities, industry *best practices* and challenges faced by banks. The exercise will also help to improve the availability and quality of data and enable supervisors to better understand the stress tests. The output of the stress test will be integrated into the Supervisory Review and Evaluation Process (SREP) using a qualitative approach. At this time, it is not anticipated that the output will directly lead to additional capital requirements in Pillar 2. However, the findings may lead to additional capital requirements for a specific bank through the SREP.

The stress test consists of three different modules:

1. A comprehensive questionnaire to assess how banks build their climate stress test from a risk management perspective (what capabilities and capacity does the bank have).
2. A peer benchmark analysis to compare banks based on a common set of climate risk statistics. These statistics reveal how much banks rely on income from carbon-intensive industries and the share of greenhouse gas emissions that banks finance.
3. A bottom-up stress test focused on transition and physical risks. The stress test assesses how extreme weather events will affect banks over the next year, how vulnerable banks are to a sharp increase in the price of



carbon emissions over the next three years, and how banks would respond to transition scenarios over the next 30 years.

The CST will be conducted at significant banks from March through July 2022. The CST consists of two phases, first collecting data from banks and then analyzing this data and drawing conclusions.

Call for better management of climate-related risks

In addition, the ECB [calls](#) on banks to better manage climate-related risks. In a [report](#) on the state of climate and environmental risk management in the banking sector published on November 22, 2021, the ECB analyzes how European banks are adapting their practices to manage climate and environmental risks. The ECB concludes that banks have taken the first steps to incorporate climate-related risks, but no bank comes close to meeting the ECB's expectations as published in the ECB's [Guide](#) to Climate and Environmental Risks. Banks have made efforts to meet these expectations in terms of governance, risk appetite and operational risk management. However, they are lagging behind in areas such as internal reporting, market and liquidity risk management, and stress testing. For example, half of the banks have not planned concrete measures to integrate climate and environmental risks into their business strategies, and less than a fifth have developed key risk indicators to monitor. In doing so, the quality of the plans is too low and progress too slow. The ECB has sent individual feedback letters to banks asking them to address their shortcomings. In some cases, banks will receive an additional capital requirement as part of the SREP.

As a next step, the ECB will conduct a full assessment of how banks are prepared to manage climate and environmental risks, with a deep dive into their integration into strategy, governance and risk management. The evaluation will take place in the first half of 2022, at the same time as the 2022 ECB Climate Risk Stress Test.

Overview of ECB and EBA publications on climate risks

- November 2020 - ECB's [guide](#) to climate and environment-related risks outlining the ECB's expectations with banks' management of these risks;
- March 2021 - [consultation](#) by EBA for Implementing Technical Standards (ITS) on how ESG risks are disclosed under CRR;
- June 2021 - EBA [report](#) on ESG risk management and supervision for banks and investment firms;
- July 2021 - [roadmap](#) with overview of climate-related issues and priorities;
- July 2021 - ECB and ESRB [report](#) and on climate-related

risks and financial stability;

- August 2021 - ECB [study report](#) on the development of tools and mechanisms for the integration of ESG factors into the EU prudential framework for banks and into banks' business strategies and investment policies;
- September 2021 - [opinion](#) on a proposal for a directive on corporate sustainability reporting;
- September 2021 - [press release](#) with the [results](#) of the economy-wide climate stress test;
- October 2021 - ECB [commentary](#) on the 2022 Climate Risk Stress Test (CST);
- November 2021 - ECB [report](#) on the state of climate and environmental risk management in the banking sector.

ESA Joint Committee Work Programme 2022

- **What?** On September 29, 2021, the Joint Committee of European Regulators (ESAs) published its [2022 Work Programme](#). In the area of sustainability, it follows that the ESAs will develop technical standards under the SFDR and, subject to the outcome of the review of the NFRD, contribute to the development of disclosure standards for non-financial information. Further, the 2022 Work Program identifies that ESAs are required by Article 18 SFDR to provide a report to the European Commission by September 10, 2022 and each subsequent year. In that annual report, ESAs will report on *best practices* with respect to entity- and product-level disclosures of the most significant adverse impacts of investments on sustainability factors and make recommendations in view of the voluntary reporting standards. Whether the first version of this report can be completed by the anticipated deadline is affected by the delay related to the Tier 2 legislation underlying SFDR. ESAs will also be requested by the European Commission to review, by the end of 2022, the new draft RTS that clarify the indicators for environmental and climate-related *principal adverse impacts* (PAI) and PAIs on social and labor issues (related to human rights, anti-corruption and extortion).
- **Who?** Through the Joint Committee, the ESAs coordinate their activities with a view to ensuring consistency of EU rules and their supervision by local supervisors. Given the areas of work of the ESAs and the nature of the subjects mentioned, the Work Programme is relevant to a large part of the Dutch financial sector.
- **When?** ESAs Joint Committee Work Program describes the focus areas of the ESAs in 2022.

ESA Q&A on SFDR applicability

- **What?** On July 14, 2021, the European Commission issued a [response](#) to questions from the ESAs



regarding the (applicability of the) SFDR, including, for example, whether the SFDR applies to registered alternative investment fund managers and whether the SFDR applies to non-EU alternative investment fund managers, for example, if they offer a sustainable EU alternative investment fund under the local regime (national private placement regime).

- **Who?** The Q&A on the applicability of the SFDR is relevant to financial market participants and financial advisors as defined in the SFDR, including, for example, alternative investment fund managers, insurers and pension providers.
- **When?** The SFDR has been applicable to the above financial market participants since March 10, 2021.

✚ ESA Overview of Key Dates Applicability Obligations under SFDR and Taxonomy Regulation

The [joint statement](#) of the ESAs dated February 25, 2021 addresses the different times when information must be published under the SFDR and Taxonomy Regulation (TV).

These different times for disclosures in 2022 and 2023 are outlined below:

- **Article 7(1) SFDR:**
What information? The considerations in the context of the *principal adverse impact* (PAI) statement at product level must be provided. This means that the financial market participant must (i) provide a clear and reasoned explanation of whether, and if so how, the principal adverse impacts on sustainability factors are taken into account in the relevant financial product, and (ii) include a statement that information on the principal adverse impacts on sustainability factors is available in the mandatory disclosures under Article 11 SFDR.
As of when. As of December 30, 2022.
- **Article 8 SFDR and Article 6 TV in conjunction with Article 5 TV:**
What information? If a financial product promotes, inter alia, environmental or social characteristics while also meeting governance requirements at the participation level, Article 8 SFDR requires pre-contractual disclosures on (i) how those characteristics are met and (ii) if an index is used as a reference benchmark, whether and how that index is consistent with the characteristics being promoted. In addition, if a financial product promotes environmental characteristics, Article 6 TV in conjunction with Article 5 TV requires disclosure of (a) what environmental objective(s) as described in the Taxonomy Regulation the financial product promotes and (b) a description of how and to what extent the investments underlying the financial product are investments in economic activities that qualify as

environmentally sustainable within the meaning of the Taxonomy Regulation. In addition, the pre-contractual and periodic reporting under Article 6 TV must include the following statement “*The “do no significant harm” principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities. The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities.*”

As of when. As of March 10, 2021, and as of January 1, 2022 for taxonomy-related disclosures for environmental purposes referred to in Section 9(a)-(b) TV (in relation to Section 8(2a)(i) SFDR) and as of January 1, 2023 for taxonomy-related disclosures for environmental purposes referred to in Section 9(c)-(f) TV (in relation to Section 8(2a)(ii) SFDR).

- **Article 9 SFDR and Article 5 TV:**
What information? If a financial product’s objective is to invest in economic activities that contribute to an environmental objective under the SFDR, in addition to the mandatory disclosures under Article 9 SFDR about the financial product, the Taxonomy Regulation requires the following information to be included in the pre-contractual documentation; (i) information on the environmental objective(s) as described in the Taxonomy Regulation to which the financial product contributes and (ii) how and to what extent the underlying investments of the financial product qualify as economic activities that qualify as environmentally sustainable within the meaning of the Taxonomy Regulation.
As of when. Effective January 1, 2022 for taxonomy-related disclosures for environmental purposes referred to in Section 9(a)-(b) TV (in relation to Section 9(4a) (i) SFDR) and effective January 1, 2023 for taxonomy-related disclosures for environmental purposes referred to in Section 9(c)-(f) TV (in relation to Section 9(4a)(ii) SFDR);
- **Article 11 SFDR and Article 5-6 TV:**
What information? In addition to the obligation under Article 11 SFDR to publish the relevant information required under Articles 8 and 9 SFDR, respectively, in the pre-contractual documentation, Articles 5 and 6 TV (in conjunction with Article 11 SFDR) state that the periodic reporting also should include the mandatory information under Articles 5 and 6 TV.
By when? Periodic reports issued beginning January 1, 2022, including taxonomy-related disclosures for environmental objectives referred to in Section 9(a)-(b) TV (in relation to Section 11(1) SFDR) and January 1, 2023 for taxonomy-related disclosures for environmental objectives referred to in Section 9(c)-(f) TV (in relation to Section 11(1)(c) and (d) SFDR).



The information to be provided pre-contractually to investors under the SFDR and Taxonomy Regulation in accordance with the above timelines should be included in the prospectus by licensed fund managers. In this context, the AFM has informed market participants that it expects them to submit prospectus amendments to the AFM while using an Excel template provided by the AFM. We advise market parties to contact the AFM directly or through their advisers if such a template has not yet been provided to them, so that the relevant information can be submitted in accordance with this market practice.

Joint ECB/ESRB report uneven impact of climate change for the European financial sector

- **What?** The ECB and the European Systemic Risk Board (ESRB) published a joint [report](#) on July 1, 2021, which takes a closer look at how climate change drivers affect international and financial firms in the European Union. The report identifies future risks to financial stability and creates the analytical basis for the further development of more targeted and effective policy actions. The report addresses measurement gaps and, building on previous work in this area, establishes a detailed topology of physical and transitional risks due to climate change across regions, sectors and firms. It also applies a scenario analysis with a long-term financial risk horizon to identify future financial losses resulting from the timeliness and effectiveness of climate policies and technologies.
- **Who?** The findings included in the report seem particularly relevant to European banks, insurers and investment funds.
- **When?** Ongoing.

ESMA Sector-specific contributions to sustainable finance

- **What?** ESMA highlights on its [website](#) its commitment to contribute to a more sustainable financial system. ESMA is committed to contributing to a more sustainable financial system, as part of the European Green Deal and global efforts to achieve the United Nations COP26 goals on combating climate change. In the context of issuers, ESMA puts emphasis on advising on development of methodology for sustainability indicators in accordance with Article 8 of the Taxonomy Regulation. In the context of benchmarks, ESMA puts emphasis on promoting effective and consistent supervision between national supervisory authorities in relation to climate benchmarks and the application of sustainability disclosure requirements for benchmarks. With respect to investment institutions and investment firms, ESMA will provide the European Commission with technical

advice to facilitate the integration of sustainability risks and sustainability factors into the internal processes of these institutions and firms (through product governance guidelines). Furthermore, ESMA will actively contribute to the development of standards for sustainability reporting and promote common supervisory approaches in this area.

- **Who?** This contribution from ESMA is relevant, among others, to securities issuers, investment firms and investment companies and to parties using (climate) benchmarks.
- **When?** Starting in 2022 and beyond.

ESMA Vision in the context of proposed changes CSRD from a sustainability perspective

- **What?** In the context of the European Commission's CSRD proposal, the Chair of ESMA stated during the [speech](#) dated November 19, 2021 that in the area of governance, a key focus will be to find appropriate mechanisms to ensure (compared to how (the extent in which) this is currently shaped) that issuers and their directors take into account a broader range of stakeholder interests in their business decisions. Such an approach would also contribute to a more robust identification of potential sustainability risks to which issuers may currently or in the future be exposed. It would also generally make it easier for issuers to make more long-term decisions.
- **Who?** CSDs, CCPs, trading venues and market participants such as (bank) investment firms.
- **When?** Currently, the proposal still needs to be negotiated into a final text. If agreed in the first half of 2022, the European Commission should be able to adopt the first set of reporting standards under the new legislation by the end of 2022. This would mean that companies would apply the standards for the first time to reports published in 2024, which relate to the 2023 financial year.

ESMA Letter to European Commission regarding ESG Ratings

- **What?** Through [a letter dated January 28, 2021](#), ESMA provided feedback to the European Commission its views on (i) the unregulated and uncontrolled nature of the market for "ESG" ratings and ESG assessment tools and (ii) the need to match the growing demand for these products with appropriate regulatory requirements to ensure their quality and reliability. ESMA stated in its letter that (i) a legally binding definition and (ii) comparability between providers of ESG ratings and (iii) legal requirements to ensure transparency of the underlying methodologies of such ratings are lacking. In

In addition, ESMA highlighted its concern about protection against conflicts of interest that may arise in the business models of these providers. As a result, the risks of less optimal allocation of capital, mis-selling of products and greenwashing are high, while there are currently no appropriate legal instruments to address these issues. ESMA provides a number of recommendations for this in its letter such as the need to develop a common legal definition for an ESG rating that covers the broad spectrum of rating tools. A broad approach to defining these products would future-proof this regulatory framework with respect to subsequent innovations and prevent potential restructuring opportunities to circumvent the requirements (as also recently addressed in a [position paper](#) by the AFM together with the French regulator AMF).

- **Who?** Parties who are providers of ESG ratings or market participants who use ESG ratings.
- **When?** We expect ESMA's recommendations to be looked at further in the development of the Renewed Sustainable Finance Strategy and legislation in this framework in 2022, and to be regulated at some point.

ESMA Work Programme 2022

- **What?** ESMA published its [2022 Annual Work Programme](#) on September 28, 2021. In it, ESMA describes its supervisory priorities for 2022. ESMA has identified five main priorities for 2022, including cross-sector priorities such as sustainability. Among other things, ESMA will continue to monitor and assess ESG-related market developments and risks and to work on further integrating environmental risks, in particular with regard to the ESG value chain for investments, and will seek to increase knowledge and understanding of the risk of greenwashing.
- **Who?** Particularly relevant to banks, investment firms, and managers of investment institutions, UCITS and from 2022 also benchmark users, crowdfunding service providers and *fintechs*, and Tier 2 CCPs.
- **When?** The 2022 Annual Work Program describes ESMA's focus areas in 2022.

ESMA Preliminary Report EU Carbon Market

- **What?** The European Commission had asked ESMA to provide an initial preliminary assessment of European carbon markets by November 15, 2021. The European Commission also instructed ESMA to analyze emissions trading in early 2022. On November 15, 2021, ESMA published a [preliminary report](#) on the EU carbon market. The report provides an overview of the financial regulation of the carbon market under MAR, MiFID II and EMIR and the tools available to regulators to fulfill their responsibilities.

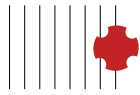
- **Who?** This development is relevant to parties that hold a position in European emission allowances or hold derivative positions on such emission allowances.
- **When?** ESMA will conduct an in-depth analysis of the EU carbon market based on sources available to regulators under European legislation. ESMA will deliver its final report to the EC in early 2022. Taking into account ESMA's final report, the EC will assess the need for targeted actions in the EU carbon market.

EBA Work Programme 2022

- **What?** EBA published its [2022 Annual Work Programme](#) on September 30, 2021. In it, EBA describes its supervisory priorities for 2022. Five key strategic themes and 25 activities have been identified. With respect to cross-cutting priorities from a policy perspective, EBA's Annual Work Programme with respect to sustainability stipulates that it should provide tools to identify and manage relevant risks. Based on the European Commission's consultation on the renewed Sustainable Finance Strategy, EBA could receive potential mandates in the areas of green securitization, green bonds, ESG risk management tools and ESG reporting standards.
- **Who?** Particularly relevant to banks and investment firms.
- **When?** The Work Program 2022 describes EBA's focus areas in 2022.

EBA Report management and supervision of ESG risks for credit institutions and investment firms

- **What?** On June 23, 2021, EBA published a [report](#) containing a comprehensive proposal on how ESG factors and ESG risks should be incorporated into the regulatory and supervisory framework for credit institutions and investment firms. The report focuses on the resilience of institutions to the potential financial impact of ESG risks over different horizons. This requires careful assessments by institutions and supervisors who must take a comprehensive and forward-looking view, as well as early, proactive actions. In addition to the impact of ESG risks, EBA also makes recommendations in the context of ESG risks and proposes a gradual ('*phase-in*') approach, starting with the inclusion of climate-related and environmental factors, risks in the supervisory business model and the analysis of internal governance. Institutions and supervisors are encouraged to build data and tools to develop quantification approaches to expand the scope of supervisory analysis to other elements. This report



should be read in conjunction with the EBA's and ESAs' publications under the Capital Requirements Regulation (CRR), the Taxonomy Regulation, and the SFDR, which provide important metrics to support strategies and risk management. The EBA will later publish Pillar 3 disclosure requirements on ESG risks, transition risks and physical risks, as defined in this report.

- **Who?** The information in EBA's report is particularly relevant to credit institutions and investment firms.
- **When?** We expect EBA to publish the disclosure requirements during 2022. We recommend that market participants closely monitor developments in this area.

EIOPA Revised Single Programming Document 2022-2024

- **What?** On September 30, 2021, EIOPA published its (revised) [Revised Single Programming Document 2022-2024](#) (SPD) of which the *Annual Work Program 2022* is a part. EIOPA's agenda in 2022 will continue to be influenced by the COVID-19 pandemic, the macroeconomic environment and the overall European agenda. In light of ensuring consumer protection and safeguarding financial stability, EIOPA will continue to build on green and digital transitions. More specifically, EIOPA's *annual work program 2022* describes six strategic focus areas, including integration of sustainable finance considerations across all work areas. Under its *Annual Work Program 2022*, EIOPA will continue to focus on the contribution of insurers and pension funds to sustainability, as well as the impact of sustainability risks (and in particular climate change risks) on insurers and pension funds. In this regard, EIOPA will also seek to expand its sustainable management and working practices. EIOPA will develop a number of initiatives that, on the one hand, take into account the consideration that insurers and pension funds can fulfill the role of managing large parts of societal risks and important long-term investors, and on the other hand, keep the enforcement approach founded on an evidence- and risk-based approach that also ensures consistency with supervisory objectives. EIOPA will continue to focus on integrating ESG risks into the prudential framework of insurers and pension funds by developing tools and guidance for identifying and managing sustainability risks with a focus on climate change.
- **Who?** Particularly relevant to the insurance and pension industries.
- **When?** The *Annual Work Program 2022* as included in the SPD describes EIOPA's focus areas in 2022.

EIOPA Sustainable finance activities 2022-2024 and Annual Work Programme 2022

- **What?** On December 7, 2021, EIOPA formulated its sustainability priorities as [Sustainable finance activities 2022-2024](#), which document also includes the EIOPA Annual Work Programme 2022. Through its work on sustainable finance, EIOPA aims to ensure that (re) insurers and occupational pension funds integrate sustainability risks into their risk management to protect consumers and ensure financial stability. EIOPA will intensify its analysis of, among other things, the prudential capital treatment of natural catastrophe liabilities, climate-resilient investments, insurance products and services related to sustainable objectives, as well as the integration of sustainability considerations into funding and internal conduct of business principles. In its [news release](#), EIOPA responded positively to the European Commission's Solvency II proposals on the expansion of EIOPA's mandates related to sustainable finance.
- **Who?** Particularly relevant to the insurance and pension industries.
- **When?** The sustainable finance strategy describes EIOPA's focus areas in 2022.

EIOPA Opinion on monitoring the use of climate risk in ORSA

- **What?** On April 19, 2021, EIOPA shared an [opinion](#) that shows EIOPA's view of how national regulators are handling the analysis of short-term and long-term climate risks as part of the ORSA. The opinion takes a risk-based and proportionate approach, recognizing that methodologies are still evolving and insurers need to gain experience. Insurers are expected to further develop the sophistication of scenario analyses, taking into account the size, nature and complexity of their exposure to climate change risks. The opinion provides practical guidance on selecting and using climate change scenarios. For national supervisors, EIOPA expects them to collect qualitative and quantitative data to conduct a supervisory review to analyze short- and long-term climate change risks in the ORSA.
- **Who?** Insurers and regulators (DNB).
- **When?** The consultation as described below is a follow-up step to the opinion mentioned above.

EIOPA Consultation on 'CCM assessment' and use of 'climate change scenarios' in ORSA.

- **What?** On December 10, 2021, EIOPA consulted its [guidance](#) on implementing sustainable financial



goals in practice. It provides concrete case studies and examples of how to incorporate risks around climate change into the ORSA. This consultation follows an earlier consultation of EIOPA's [opinion](#) on the selection of climate change scenarios and the release of EIOPA's [position](#) on the ORSA in relation to the Covid-19 pandemic. The idea is that small and medium-sized insurers in particular will be helped by the final guidance to conduct climate change assessments and develop scenarios on them.

- **Who?** Insurers and regulators (DNB).
- **When?** The consultation period runs from December 10, 2021 through February 10, 2022. Final EIOPA guidance is expected in June 2022.

EIOPA Pilot natural catastrophe protection mechanism

- **What?** EIOPA designed a first [pilot dashboard](#) on December 4, 2020 that reflects the gap in insurance protection for natural disasters. The goal is to identify the causes of a climate-related gap in insurance protection, and then to identify appropriate measures to help reduce society's losses in the event of natural disasters.
- **Who?** Insurers.
- **When?** EIOPA aims to publish an updated version in 2022.

EIOPA Paper: Climate change, catastrophe and macroeconomic benefits for insurance

- **What?** On July 6, 2021, EIOPA published a [paper](#) highlighting insights on the interaction between, among others, climate change, natural disasters, economic impacts and (the extent to which mitigation of their effects is achieved by) insurance. EIOPA emphasizes that the cross-border nature and potential systemic risks from climate change, warrants an approach at the European level.
- **Who?** This information is relevant to insurers and governments.
- **When?** EIOPA's insights are expected to remain relevant in 2022, partly in light of the various legislative proposals at the European level when it comes to climate (change).

EESC Financing in view of European Green Deal

- **What?** On September 22, 2021, the European Economic and Social Committee (EESC) published an [opinion](#) in which it appoints that economic activities and projects defined as "sustainable" in the European [Delegated Taxonomy Regulation](#) must be attractive to investors

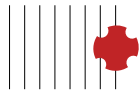
in the real economy. The EESC assumes that investors in sustainable projects expect them to be realistic, feasible, reasonably profitable and predictable for market participants. The EESC calls on the European Commission to take further initiatives to improve the taxonomy system along the lines outlined in its opinion, so that the taxonomy system can have a broader reach and better serve as a tool to support the EU's climate policy objectives through efficient implementation of EU environmental legislation. The EESC underlines the key role of renewable energy in the sustainability transition and points out the need to ensure appropriate transitional solutions, including to ensure the proper functioning of logistics value chains, while avoiding lock-in effects.

- **Who?** The opinion is relevant to all financial market participants.
- **When?** The opinion is for information purposes only. We expect that, partly in view of the above-mentioned signalling of sustainability developments at European level, the European Commission will take the EESC's opinion into consideration in this context.

NATIONAL REGULATORS

AFM Trend Monitor 2022

- **What?** The AFM published its [Trend Monitor 2022](#) on November 4, 2021. With regard to sustainability, the AFM states that sustainability risks present financial institutions with major challenges. Below, we present a number of elements that are highlighted by the AFM with regard to asset management in its Trend Monitor 2022. In addition to the transition to a sustainable asset management sector and the role of legislation and regulation in this regard, the AFM states that because the standards are still being developed, ESG ratings play an important role in sustainable investment choices because an ESG rating provides information about a company's performance in the areas of *environment*, *social* policy and *good governance*. In practice, the AFM sees that a variety of methods are used to produce sustainability ratings, but these are not always consistent, comparable and reliable based on sustainability data. Therefore, more transparency is needed on the creation of ESG ratings and other sustainability data. See also the section '*AFM Publication Investment funds can better inform investors about sustainability*' in this Outlook.
- **Who?** The developments identified in Trend Monitor 2022 are generally relevant to all financial companies that are (also) supervised by the AFM. The abovementioned asset management developments are particularly relevant for investment firms and managers of AIFs and UCITS.



- **When?** The spearheads look at the AFM's supervision in 2022.

AFM Publication Investment funds can improve the informing investors about sustainability

- **What?** On September 14, 2021 the AFM published the results of an initial exploratory [market survey](#) of fund managers' compliance with the SFDR. The survey covered prospectuses sent to the AFM in March 2021. The AFM concludes that there is room for improvement for the mandatory disclosures under SFDR, particularly for so-called "Article 8" and "Article 9" investment funds. The AFM notes that the disclosures required under the SFDR are often still too general and the sustainable objective formulated is often broad. Therefore, based on the information provided, the AFM questions the sustainability classification of a significant number of funds, especially those funds that have sustainable investments as their objective. See also our [Finnius View blog](#) dated October 19, 2021. Furthermore, the AFM mentions that it understands that managers look forward to the adoption of technical standards (RTS) but expects these managers to already commit to improved disclosure.
- **Who?** Primarily licensed managers of AIFs and UCITS, to whom the research related, but in principle equally relevant to AIFMD light managers, now that the EC has ruled that the SFDR applies to this group as well.
- **When?** Effective immediately; this is an ongoing obligation to which the AFM has drawn attention.

AFM Enforcement SFDR to start by March 2022

- **What?** On December 8, 2021, the AFM confirmed in an article in the *Financieel Dagblad* and in messages posted on its LinkedIn profile that, as of March, it will be able to take enforcement action against market participants who do not act in accordance with the SFDR.
- **Who?** All financial market participants falling within the scope of the SFDR.
- **When?** As of March 2022.

DNB Sustainable Finance Strategy 2021–2025

On July 13, 2021, DNB published its [Sustainable Finance Strategy 2021-2025](#). In it, DNB states that sustainability is a strategic priority for DNB because it touches on the financial-economic system and thus on DNB's core tasks. By 2025, DNB aims to have sustainability integrated into all elements of its task performance.

DNB expects financial institutions, such as banks, pension funds, trust offices and other financial institutions, to have knowledge of sustainability risks and to have their controls in order. DNB tests directors of institutions for suitability and weighs knowledge of sustainability and aims to work with the institutions to find ways to put sustainable finance better on the map.

In the Sustainable Finance Strategy, DNB translates this ambition, by task area, into the following objectives:

- *A financial system resilient to sustainability risks:* DNB aims to incorporate sustainability risks in the DNB supervisory methodology and in its own (digital) supervisory processes, DNB maps macro-prudential sustainability risks in a structured way (e.g. via stress tests or scenario analysis). Furthermore, DNB will continue to shape the legislative and regulatory framework, standards and tools and use its influence in the various (international) forums to advance the development of standards and supervisory tools (such as stress tests and scenario analysis) for the identification and assessment of sustainability risks. Finally, DNB looks at the implications of its supervision for the access of social (sub-) groups to financial services and products such as current accounts, pensions, insurance and mortgages.
- *More sustainable monetary and payments services:* DNB aims to bring monetary services more in line with climate objectives, whereby it is actively involved, from its expertise and in a pioneering role, in the ECB's action plan to implement climate considerations in monetary policy and operations, thus supporting EU climate policy. It also aims to reduce the environmental impact of payments (including the environmental impact of money), seeking to link up with international targets such as the Paris Agreement. DNB also monitors the accessibility of payments for vulnerable groups in the face of technological and social changes.
- *Informed debate on a more sustainable economy:* DNB aims to feed and stimulate the public debate on sustainable prosperity with economic research and advice on themes such as climate change, the energy transition, sources of prosperity and inclusion. Impacts on the living environment will be incorporated into economic models, taking into account changes in the living environment and their long-term welfare effects.
- *Robust sustainability data and statistics:* by 2025, DNB aims to have reliable sources and methods for compiling and using sustainability statistics. In addition, DNB will exert its influence to advance the development of (inter) national data, statistics and standards (e.g., to keep track of the current and predicted CO2 emissions of the Dutch financial sector and money system, including through adequate reporting by financial institutions).
- *Sustainable organization:* By 2025, DNB's management



of reserves will need to be designed in a responsible, sustainable way and in line with internationally leading ESG standards and international climate targets, with the internal organization (including housing) also to be climate neutral and maximally circular.

DNB Supervision Strategy 2021–2024

- **What?** DNB published its [supervisory strategy for 2021-2024](#) in a [news release](#) on November 24, 2020. In it, it further elaborates on three spearheads from the previous supervision strategies. In short, this concerns the following three spearheads: (i) responding to technological innovation, (ii) steering for sustainability and future orientation, and (iii) combating financial-economic crime. In steering for *sustainability and future orientation*, DNB stated that it considers it important that: (A) the management of sustainability risks is adequately embedded at institutions, (B) robust international regulations for sustainability are elaborated by institutions, to which development DNB wants to contribute, for example through further elaboration of international standards from EBA or the *Basel Committee on Banking Supervision* (BCBS), (C) institutions are (operationally) agile(d) (or where necessary, will become) operationally more flexible in the face of changing market conditions in order to safeguard their earnings model (not only at the management level but also at the executive level within the institutions), and (D) the institutions are aware of their risk profile, the basic principle being that the risk profiles must be appropriate for the social function that the institutions perform.
- **Who?** All financial companies that are (also) supervised by DNB, such as banks, pension funds, trust offices and other financial institutions.
- **When?** The spearheads look at DNB's supervision in 2022.

DNB Publication Financial sector must take more account of sustainability risks

- **What?** In its [news release](#) of December 7, 2021, DNB paid attention to the fact that banks, insurers and pension funds should take more account of sustainability risks (this follows from DNB's study '[Towards a sustainable balance](#)'). DNB concludes that this is still the case to a limited extent. Financial institutions are aware of sustainability risks, but do not sufficiently manage these risks. Sustainability risks are often not included in the risk management cycle. DNB believes that although sustainability risks are not yet explicitly mentioned in CRD and CRR, integrating them into banks' risk management is in line with this legislation. In 2022, according to its news release,

DNB will its supervisory expectations for managing sustainability risks more concrete and submit them to the industry for consultation. These financial institutions are required to have sound and controlled operations, so that they have insight into all material risks and can also control them. This applies in full to sustainability risks.

- **Who?** Banks, insurers and pension funds, under this article, must be more thoughtful about implementing sustainability risks in their processes.
- **When?** In 2022, DNB will specify its supervisory expectations for the management of sustainability risks and submit them to the sector for consultation. The intention is to align with the [ECB Guide](#) to the supervisory expectations for banks, taking into account the specific features of Dutch financial institutions (see also the report on the ECB Guide in the Banks section of this Outlook).

DNB Publication Measurability of sustainability risks based on limited data

- **What?** In a [news release](#) dated December 7, 2021, DNB also states that even on the basis of limited data, it can be determined that sustainability risks for the Dutch financial sector are material. In that context, DNB states that it is important that financial institutions do not wait to measure sustainability risks until 'perfect data' is available. According to DNB, experience has shown that data actually improves when you start working with it. For the time being, it is unavoidable to use estimates and modeled data until better data based on harmonized standards becomes available. In this context, the International Financial Reporting Standards Foundation (IFRS Foundation) has announced the establishment of a *Sustainability Standards Board*, with the ambition of transforming various existing initiatives in the area of sustainability reporting into a harmonized global reporting standard.
- **Who?** Banks, insurers and pension funds, under this article, must be more thoughtful about implementing sustainability risks in their processes.
- **When?** This obligation is relevant to the aforementioned parties on an ongoing basis. In 2022, DNB is expected to further concretize its expectations regarding the management of sustainability risks and submit them to the financial sector for consultation.

DNB Good Practice and Q&A on integrating climate risks into risk management

- **What?** After closing the [consultation](#) under the Good Practice and Q&A issued on July 16, 2021, DNB published a [Good Practice](#) on December 9, 2021 with



guidance on how to integrate climate-related and environmental risks into the strategy, governance, risk management and disclosure of, among others, licensed fund managers, according to DNB's [news release](#) dated December 22, 2021. The Q&A in which DNB provides its interpretation of how existing laws and regulations apply to the management of climate-related and environmental risks by those same fund managers was decided in the Good Practice.

- **Who?** Authorized managers of AIFs and authorized managers of UCITS.
- **When?** Effective December 9, 2021. This is a further clarification of the requirements regarding the risk management function.

DNB Theme study on climate risks in the ORSA

- **What?** DNB conducted a [thematic survey](#) in 2021 - as it did in 2020 - on the extent to which insurers pay attention to climate risks in the ORSA. DNB sees that insurers pay more attention to climate risks in the 2020 ORSA compared to the 2019 ORSA. At the same time, it is noticeable that the quality of disclosures and substantiation can be improved in about half of the cases. For example, DNB identifies, among other things, that the number of insurers describing in the ORSA the impact of climate-related risks on their risk profile has increased. This analysis by insurers could be made more concrete by focusing the analysis in the ORSA more on the insurer's own risk profile and indicating whether and to what extent climate risks affect the risk profile. If possible, this explanation should be not only qualitative but also quantitative.
- **Who?** Insurers.
- **When?** DNB assumes that insurers will include climate-related risks in the next ORSA (again) by analyzing and describing the impact of these risks on their risk profile.

DNB Q&A Climate risks at insurers

- **What?** On February 2, 2021, DNB issued a [Q&A](#) on whether Dutch insurers should take climate-related risks into account. The answer is yes: The European supervisory framework Solvency II requires that an insurer's ORSA must be forward-looking and include the following: *'the risks to which the company is or could be exposed, taking into account potential future changes in its risk profile resulting from the company or from the economic and financial environment, including operational risks'*.
- **Who?** Insurers.
- **When?** Ongoing.

DNB Attention to climate change in ECB monetary strategy implementation

- **What?** On September 21, 2021, DNB's [news release](#) called attention to climate change in the implementation of ECB's monetary strategy. The ECB will take climate considerations into account when implementing its new monetary strategy. An action plan drawn up for this purpose provides for an adjustment of models and statistics, which will give the ECB a better insight into the impact that climate change has on the economy and the financial sector. Moreover, the ECB is going to take climate risks directly into account in its activities on financial markets, such as when purchasing corporate bonds. The ECB will also publish the climate risks to which it is itself exposed. These measures are an important signal to market participants to do the same.
- **Who?** Governments and banks.
- **When?** Ongoing in the context of climate risk integration.

DNB Biodiversity Working Group of the PDF Roadmap to Counter Biodiversity Loss

- **What?** On December 16, 2021, DNB's [news release](#) addressed the Platform's introduced [roadmap](#) on sustainable finance in the context of halting biodiversity loss. With the roadmap, the working group aims to help financial institutions (further) on their way to determining impact, setting goals and reporting on the theme of biodiversity. The document contains guidelines for financial institutions that have already started doing this or are in an advanced stage of doing so. The document also offers guidance on formulating policy and objectives, identifying risks, making an impact and how to report on this. The step-by-step plan provides insight into the various biodiversity reports available and helps institutions to discuss biodiversity with their clients. For each step, examples are given of how financial institutions are already implementing this in practice in their own way.
- **Who?** The roadmap is relevant to all financial institutions.
- **When?** Ongoing.

MinFin Answers to Parliamentary Questions on BNC Communication Sustainable Financing Strategy

- **What?** On November 17, 2021, [answers](#) to parliamentary questions were provided by Minister Hoekstra in response to the September 10, 2021, [fiche](#) on the European Commission's Sustainable Financing Strategy (as highlighted above in this Outlook).
- **Who?** The Dutch perspective on European developments is relevant for all market participants active in the Dutch financial markets.

- **When?** We expect these developments to take more shape in the Netherlands also in 2022 after more details become known at the European level.

MinFin Answers Parliamentary questions on sustainability risk management by European banks

- **What?** On December 8, 2021, the Minister was [asked](#) how the European Commission's new CRR/CRD proposals would better enable the ECB to monitor and ultimately capitalize on climate and environmental risks within the SREP. The answer to that question, according to the minister, is that the European Commission's new CRR/CRD proposals include a series of measures to better integrate sustainability risks into the prudential framework for banks. In these measures, the Commission puts ESG risks at the center. Where the prudential review and evaluation process is concerned, the European Commission proposes first and foremost that ESG risks should always be assessed in the SREP. This then involves the actual exposures of a bank, but also the strategy to manage these risks. Indeed, the European Commission proposes that banks be required to better identify and manage ESG risks, for example through forward-looking risk analyses. Outcomes of the SREP may lead the regulator to require additional control measures. In addition, the European Commission proposes to harmonize the way ESG risks are taken into account in the SREP. The EBA will make a proposal for this. In addition, the EBA, together with the other European regulators, will be mandated to develop forward-looking ESG scenario analyses. These analyses can be used for stress tests. These scenarios will be developed primarily for environmental risks, but subsequently also for other components of ESG risks.
- **Who?** Banks.
- **When?** Ongoing.

MinFin Answers to questions on financial markets – stability and institutions

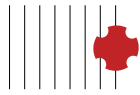
- **What?** December 16, 2021, published [responses](#) from the Minister of Finance to various issues presented in the context of the stability of financial markets and institutions operating within them. The financial sector has an important role in sustainable development. Through their choices regarding capital flows, financial institutions play a decisive role in the development of the real economy and thus of a sustainable society. Among other things, the Cabinet expects financial institutions to act in accordance with the OECD Guidelines and the United Nations Guiding Principles. The government also expects the financial institutions

involved in the climate commitment to ambitiously implement this commitment, in particular when drawing up the action plans to reduce the CO2 intensity of their balance sheets in line with the objectives of the Paris Agreement. For this, it is important to continue working on reliable, widely available and standardized high-quality sustainability data throughout the investment chain. The same paper also addresses the question of what the current commitment of the financial sector is in light of DNB's urging of financial institutions to better factor climate risks into their risk analyses, despite the lack of perfect data. The minister considers it of great importance that financial institutions take sustainability risks into account, but notes that DNB has concluded that this is still taking place to a limited extent. The minister encourages the fact that next year DNB will come up with concrete expectations for financial institutions to integrate sustainability into their risk management.

- **Who?** Financial institutions operating in the Dutch market.
- **When?** It is possible that in the course of 2022, more focus will be added to DNB's supervision in the context of the above, including the consideration of sustainability risks by financial institutions.

COP26 declaration and implications for Dutch financial market

- **What?** The [report](#) of a written consultation on financial markets - stability and institutions asks whether the COP26 in Glasgow is the inspiration for a more active stance of the Netherlands in the context of the energy transition. The report shows that at COP26 the Netherlands joined several international declarations, including the Declaration on *Aligning International Public Support for the Clean Energy Transition* (the COP26 Declaration). This means that the Netherlands will prioritize the transition to a green energy supply and will work on new policies for ending international public support for the fossil energy sector in 2022, particularly with regard to export credit insurance. This decision was further explained in the [Governmental Letter dated November 8, 2021](#). Furthermore, a [set of answers](#) from the Minister for Foreign Trade and Development Cooperation was published on December 8, 2021, addressing questions about the COP26 Declaration and aligning international government support with the green energy transition. It follows, in any case, that together with stakeholders, including businesses, we will look at what is feasible and necessary for a green transition while preserving knowledge and jobs and a sustainable, reliable and affordable energy supply in developing countries.
- **Who?** The steps the government will take could potentially lead to regulations that affect Dutch financial



companies. In any case, a changed policy on export credit insurance will have an effect on Atradius Dutch State Business, which acts as an exporter of export credit insurance.

- **When?** The cabinet is expected to come up with new policies during 2022. We recommend that market participants keep a close eye on these developments.

OTHER EUROPEAN DEVELOPMENTS

BCBS Consultation on effective management and oversight of climate-related financial risks

- **What?** The *Basel Committee on Banking Supervision* (BCBS) issued a [consultation](#) on [principles](#) for effective management and supervision of climate-related financial risks on November 16, 2021. The consultation paper aims to provide an incentive to adopt a principles-based approach to improve banks' risk management practices and supervisory practices with respect to climate-related financial risks. Banks should manage climate-related financial risks in a manner commensurate with the nature, scale and complexity of their operations and the overall level of risk that each bank is willing to accept.
- **Who?** This information is particularly relevant to banks.
- **When?** The consultation will run until February 16, 2022. It is expected that these principles will be finally adopted in 2022.

IOSCO Consultation on sustainability-related oversight expectations for asset management

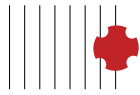
- **What?** The International Organization of Securities Commission (IOSCO) has issued its final report in response to its [consultation](#) regarding its proposed recommendations in relation to sustainability-related supervisory expectations for asset management. The [report](#) looks at issues related to investor protection and suggests that regulators consider shaping supervisory expectations for asset managers with respect to sustainability-related risks and opportunities. The recommendations cover five areas: (i) asset managers' practices, policies, procedures and disclosure, (ii) product transparency, (iii) monitoring and enforcement, (iv) terminology and (v) financial and investor education.
- **Who?** These developments are particularly relevant to asset managers (including alternative investment fund managers).

- **When?** The final report is due in November 2021.

IOSCO Consultation Regarding ESG Ratings and Data Providers

- **What?** On [July 26, 2021](#), IOSCO issued a [consultation](#) on ESG ratings and data providers with which the consultation aims to assist IOSCO members in understanding the implications of the activities of ESG ratings and data providers and in shaping frameworks to mitigate the risks arising from these activities. On November 23, 2021, IOSCO published its [recommendations](#) in this regard. The recommendations include, among other things, promoting greater transparency about the methodologies, which ESG ratings and data providers use in the development of their products, and ensuring that their procedures, for example, with regard to managing conflicts of interest are appropriate. It also concerns the recommendation to improve the communication channels between providers and the entities covered by their ESG ratings or data products without compromising their impartiality.
- **Who?** ESG rating and data providers and market participants using their services.
- **When?** Ongoing.





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