



KINGDOM OF THE NETHERLANDS— THE NETHERLANDS

FINANCIAL SECTOR ASSESMENT PROGRAM

June 2024

TECHNICAL NOTE ON SECURITIES REGULATION AND SUPERVISION

This paper on the Kingdom of the Netherlands—The Netherlands was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed on May 28, 2024.

Copies of this report are available to the public from

International Monetary Fund • Publication Services
PO Box 92780 • Washington, D.C. 20090
Telephone: (202) 623-7430 • Fax: (202) 623-7201
E-mail: publications@imf.org Web: <http://www.imf.org>

**International Monetary Fund
Washington, D.C.**



INTERNATIONAL MONETARY FUND

KINGDOM OF THE NETHERLANDS—THE NETHERLANDS

FINANCIAL SECTOR ASSESSMENT PROGRAM

May 28, 2024

TECHNICAL NOTE

SECURITIES REGULATION AND SUPERVISION

Prepared By
**Monetary and Capital Markets
Department**

This Technical Note was prepared by IMF staff in the context of the Financial Sector Assessment Program (FSAP) in the Netherlands. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP can be found at <http://www.imf.org/external/np/fsap/fssa.aspx>

CONTENTS

| | |
|--|-----------|
| Glossary | 3 |
| EXECUTIVE SUMMARY | 5 |
| INTRODUCTION AND CONTEXT | 9 |
| TRADING VENUE | 10 |
| A. Securities and Derivatives Trading Venues in the Netherlands | 10 |
| B. Regulation of Securities and Derivatives Trading Venues | 15 |
| C. Licensing and Supervision of Trading Venues | 18 |
| COLLECTIVE INVESTMENT SCHEMES | 20 |
| A. Dutch CIS in National and European Context | 20 |
| B. Regulation and Supervision of CISs and their Operation | 23 |
| INSTITUTIONAL FRAMEWORK | 26 |
| TABLES | |
| 1. Securities Regulation/Supervision—Main Recommendations | 7 |
| 2. Trading Venue, SI, DRSP Applications, 2017-May 2023 | 12 |
| FIGURES | |
| 1. Number of Trading Venues and SIs, Selected EU Countries, 2020 | 12 |
| 2. Turnover of OTC Interest Rate Derivatives by Country, 2022 | 13 |
| 3. Types of Investor in CISs in the Netherlands and Europe | 21 |
| 4. CIS AUM, Selected European Countries | 21 |
| 5. AUM NL-Domiciled AIFs and UCITS in EU Context, end 2023Q2 | 22 |
| 6. CIS AUM (UCITS and AIFs) by Asset Class, end Q2 2023 | 23 |
| APPENDIX | |
| I. Actions Taken by the Authorities to Address 2017 Recommendations on Securities Regulation and Supervision | 30 |

Glossary

| | |
|-------|---|
| AIF | Alternative Investment Fund |
| AIFM | Alternative Investment Fund Manager |
| AIFMD | Alternative Investment Fund Managers Directive |
| AFM | Autoriteit Financiële Markten (Authority for the Financial Markets) |
| APA | Approved Publication Arrangement |
| ARM | Approved Reporting Mechanism |
| ATS | Alternative Trading System |
| AUM | Assets Under Management |
| CCP | Central Counterparty |
| CIS | Collective Investment Scheme |
| CLOB | Central Limit Order Book |
| CNAV | Constant Net Asset Value |
| CTP | Consolidated Tape Provider |
| DNB | De Nederlandsche Bank – the Central Bank of the Netherlands |
| DLT | Distributed Ledger Technology |
| DORA | Digital Operational Resilience Act |
| DRSP | Data Reporting Services Provider |
| DTO | Derivatives Trading Obligation |
| EBA | European Banking Authority |
| ECB | European Central Bank |
| EIOPA | European Insurance and Occupational Pensions Authority |
| EMIR | European Market Infrastructure Regulation |
| ESAs | European Supervisory Authorities (EBA, EIOPA, ESMA) |
| ESMA | European Securities & Markets Authority |
| ESRB | European Systemic Risk Board |
| ETF | Exchange Traded Funds |
| EU | European Union |
| FMC | Fund Management Company |
| FNAV | Fixed Net Asset Value |
| FSAP | Financial System Assessment Program |
| GFC | Global financial crisis |
| IMF | International Monetary Fund |
| IOSCO | International Organization of Securities Commissions |
| ISDA | International Swaps and Derivatives Association |

| | |
|----------|---|
| IT | Information Technology |
| LMT | Liquidity Management Tool |
| MiCAR | Markets in Crypto Assets |
| MiFID II | Markets in Financial Instruments Directive and Regulation |
| MMF | Money Market Funds |
| MMFR | Money Market Funds Regulation |
| MOF | Ministry of Finance of the Netherlands |
| MTF | Multilateral Trading Facility |
| NAV | Net Asset Value |
| NCA | National Competent Authority |
| OTC | Over the Counter |
| OTF | Organised Trading Facility |
| RFQ | Request for Quote |
| RM | Regulated Market |
| RPO | Recovery Point Objective |
| RTO | Recovery Time Objective |
| RTS | Regulatory technical standards |
| SI | Systematic Internaliser |
| SREP | Supervisory Review and Evaluation Process |
| SSM | Single Supervisory Mechanism |
| STO | Share trading obligation |
| TTF | Title Transfer Facility |
| UCITS | Undertakings for Collective Investment in Transferable Securities |
| WFT | Wet op het Financieel Toezicht (Financial Supervision Act) |

EXECUTIVE SUMMARY¹

Regulation of securities and derivatives markets in the European Union (EU) has changed materially since the last Netherlands FSAP, with further reforms underway. Major reforms for securities and derivatives trading were implemented through Markets in Financial Instruments Directive and Regulation II (MiFID II) in 2018, and revisions agreed in 2023 will bring further changes in the coming years, including plans to support greater consolidation of transaction data. In asset management, the Alternative Investment Fund Managers Directive (AIFMD) review is incorporating among other changes enhanced provisions on liquidity management, and for Undertakings for Collective Investment in Transferable Securities (UCITS) a new regulatory regime for depositories was put in place.

The securities market landscape in the Netherlands has also changed markedly since the last FSAP, largely in response to Brexit. Before Brexit, securities trading within the EU took place largely in the UK. However, because EU rules require certain trading to take place only on EU venues or ‘equivalent’ third-country venues, and no UK trading venues have been deemed to be ‘equivalent’, many trading venues sought to establish a base within the EU, and many of them chose the Netherlands.

The Netherlands is now of EU-wide significance in relation to the trading of securities, particularly equities, which has brought challenges for the national authorities. As well as new players in equity markets, some of the new arrivals offered fixed income and derivatives using different trading functionalities. In addition to the work involved in assessing a significant number of applications for authorization, this change increased the scale and variety of institutions and types of business needing ongoing supervision.

The Autoriteit Financiële Markten (AFM), the main securities supervisor, has so far dealt effectively with the increased number, variety and significance of trading venues for which it is responsible. It has increased and upskilled its staff. It has applied regulatory requirements in a thoughtful way taking account of differences between asset classes and trading modalities, and with a keen eye on areas of material risk. In addition to proactive and reactive firm-specific work it has carried out a number of thematic studies on key issues relevant to operational and market resilience, such as algorithmic trading.

Further enhancements of its approach and a continuing focus on trading system operational resilience are now needed. The established venues are growing and diversifying their offerings, and ‘fintech’ new entrants with business models combining trading and post-trading operations in new ways are on the horizon. The AFM needs to take stock of learning from the last few years and re-set its risk-based strategy for the years ahead, with reinforced resources including enhanced data

¹ This Technical Note was prepared by Jennifer Long, Short Term Expert, Monetary and Capital Markets Department, in the context of the 2024 Netherlands Financial Sector Assessment Program.

analytics infrastructure. It will need to be ready to draw on the full range of supervisory tools, including more formal and intrusive tools where appropriate.

Given the significant changes in market structure, the AFM and European counterparts need to update their assessment of the significance of closing auctions and ensure that sufficiently robust contingency arrangements are now in place. Earlier analysis showed that liquidity is highly concentrated in closing auctions, and that closing auction failures have wider impacts on benchmarks, Collective Investment Schemes (CIS) and derivatives. Now that expectations of how to prepare for and handle such incidents have been articulated by the European Securities and Markets Authority (ESMA), supervisory attention needs to return to the adequacy of individual venues' arrangements, with a particular focus on the primary listing venues for equities.

Periodic assessments are also needed of trading venue and Systematic Internaliser (SI) substitutability, and any action that may be needed where substitutability is limited. As the trend towards on-venue execution continues in many markets, for some instruments or types of transactions, venues may not be easily substitutable because of their specialist nature. It is important that the AFM and its European counterparts understand the extent to which trading is able to continue where a particular specialist venue is unavailable and any risks of market disruption that may arise where parties cannot easily transition to using other ways to continue trading.

In its work on CISs, the AFM has carefully considered potential financial stability issues in relation to open-ended funds. It has assessed the extent of liquidity mismatch, particularly in real estate funds, and found that the combination of investor type, asset composition and CIS redemption terms has moderated the extent of liquidity mismatch in the real estate CIS currently available. It has also carried out supervisory work to ensure the availability and likely use of different techniques for reducing and managing liquidity shocks in appropriate conditions, and with DNB contributed to the EU and international policy response. The evolution of liquidity mismatch will need to be kept under review, particularly in the light of second-round effects from the upcoming pension reforms, and assurance gained that sufficient tools continue to be in place to manage the impact of a liquidity shock if it were to arise. Enhanced EU-wide data on CIS credit lines could help in this regard.

Enhancements to the legislative framework are now needed to ensure that the AFM can continue to supervise efficiently and effectively an expanded and more diverse market, and to engage credibly with international counterparts. The EU's regulatory arrangements still rely on national legal frameworks to give competent authorities the independence, autonomy, and technical powers they need to do their job. The Dutch arrangements fall short of international standards in several areas – these risks weakening the regulators' credibility with EU and international counterparts. Other enhancements are possible which would allow the AFM to take timely, responsive, and proportionate action as new market practices and risks emerge. These enhancements will help the AFM make the best use of available resources and ensure that the burden of regulation is kept to the minimum necessary to achieve the result.

Table 1 sets out the main recommendations on these aspects of securities regulation and supervision. In line with the above, many of the recommendations are addressed to the Ministry of Finance (MOF), rather than to the AFM.

| Table 1. The Netherlands: Securities Regulation/Supervision — Main Recommendations¹ | | | | |
|---|---|------------------|-----------------|------------------|
| # | Recommendation | Addressee | Priority | Timeframe |
| Trading Venue Regulation and Supervision | | | | |
| 1. | Periodically assess the degree of substitutability of key trading venues and actions needed to address risks arising where substitutability is limited (¶18). | AFM | M | ST |
| 2. | Assess the degree of substitutability of SIs in different asset classes, taking account of typical SI transaction sizes (¶11). | AFM | M | ST |
| 3. | Update analysis of intra-day trading patterns and closing auction role and impacts, with European counterparts (¶13). | AFM | H | I |
| 4. | Reconsider arrangements for the exercise of the powers under MiFID II Article 69(2)(e) and 69 (2)(r) to enable the AFM to use them more directly and efficiently (¶21). | MOF, AFM | M | ST |
| 5. | Clarify that bank-operated MTFs and OTFs are subject to the same standards as those operated by investment firms and that their ability to demonstrate fulfilment of obligations will be assessed before an extension to their license to operate such a venue will be granted (¶24). | MOF, DNB, AFM | M | ST |
| 6. | Give the AFM an explicit legal power to require appointment of independent non-executive directors (¶26). | MOF, AFM | H | ST |
| 7. | Liaise with ESMA to ensure coherent, risk-based supervision of linked trading venues and Data Reporting Services Providers (DRSP) (¶28). | AFM | M | ST |
| 8. | Carry out thematic work and joint supervisory action with relevant European counterparts on the resilience of core trading systems, including closing auctions recovery and contingency planning (¶31). | AFM | H | ST |
| 9. | Refocus the AFM's data program to provide timely, user-friendly access to data and analytics for trading venue supervision (¶34). | AFM | H | I |

Table 1. The Netherlands: Securities Regulation/Supervision - Main Recommendations (Concluded)

| Asset Management Regulation and Supervision | | | | |
|--|---|---------------|---|----|
| 10. | Review the transposition of insolvency provisions for depositories and check robustness of other client asset protection under Dutch insolvency law (¶141). | MOF, MOJ, AFM | H | I |
| 11. | Continue to monitor liquidity mismatch in CIS real estate and corporate bond funds, including risks arising from credit lines, and availability/use of appropriate liquidity management tools (¶146). | AFM | H | ST |
| 12. | Contribute to revision of AIFMD reporting requirements Regulatory technical standards (RTS), to obtain data about the size, source and commitment status of CIS credit lines (¶149). | AFM | H | ST |
| Institutional Framework | | | | |
| 13. | Commission an assessment on additional supervisory powers, drawing on external advice, and make recommendations for change to Ministry of Finance (¶156). | AFM | H | I |
| 14. | Amend legislation to give the AFM greater autonomy and a wider range of powers, in line with international standards and peer comparators (¶155). | MOF | H | ST |
| 15. | Periodically benchmark supervisors' salary levels against the financial services industry, at working and senior levels (¶159). | AFM | M | ST |
| ¹ In terms of priorities, H, M, and L stand for high, medium and low. In terms of time frame, I, ST, and MT stand for immediate (within one year), short-term (within 1–2 years), and medium-term (within 3–5 years). | | | | |

INTRODUCTION AND CONTEXT

1. Regulation and supervision of securities and derivatives markets by the Dutch authorities is carried out within the broader context of the EU environment. Regulation is increasingly, though not yet exclusively, at EU level. Framework legislation is proposed by the European Commission, and once adopted by the European Parliament and Council of Ministers (Member States), technical implementing measures are put in place by ESMA² and the Commission. There is a trend towards using legal instruments that allow less discretion to Member States and are directly applicable without transposition into national legal systems. However, in older legislation there may be less technical specificity and more need and scope for Member States to adapt or add requirements through legislation and rules. In some areas that interact with broader national law, such as insolvency, there may be a need for legislative change at the national level, beyond what falls within the remit of financial regulators or even finance ministries, to give full effect to the EU-level requirements. The European Commission monitors the extent to which Member States transpose and comply with legislation,³ while ESMA monitors the extent to which National Competent Authorities (NCA) indicate they will abide by ESMA's guidelines⁴, support convergence in supervisory practice and monitor application of requirements by tools such as peer review of NCA supervision. Although there are some types of entity for which ESMA has direct supervisory responsibility,⁵ there is no equivalent of the EU's SSM arrangement for banks in place for securities firms or trading venues.⁶ Supervision of most types of entity is carried out exclusively at national level.

2. The mission focused on two areas with potential financial stability implications where the market and international standards have evolved materially since the last FSAP: regulation and supervision of CISs and of trading venues. For CISs, developments such as the market turmoil of March 2020⁷ and resultant policy work by the FSB and IOSCO⁸ has underlined the potential stability risks associated with liquidity mismatch and the need for appropriate liquidity management tools. For trading venues, the EU regulatory landscape changed significantly in 2018 with the implementation of MiFID II, which included important post-GFC reforms, brought more

² ESMA's decisions are formally taken by its Board of Supervisors, which includes senior regulators from the relevant national competent authorities in each EU Member State.

³ At the time of the mission in November 2023, there were no open infringement cases against the Netherlands in relation to capital markets issues.

⁴ ESMA's [guideline tracker](#) includes links to 'compliance tables' for each finalized guideline. The AFM generally commits to following ESMA guidelines.

⁵ Credit rating agencies, securitization and (derivatives) trade repositories and, since 2022, most DRSPs.

⁶ Under the SSM, the European Central Bank is directly involved in the supervision of the largest and most systemically-important banks.

⁷ IMF, MCM GFSN No. 2020/02 [The Behavior of Fixed-income Funds during COVID-19 Market Turmoil](#).

⁸ FSB, [Addressing Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds](#), July 2023. IOSCO, [Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes](#). July 2023.

types of trading venue within the scope of regulation, and imposed more stringent operating requirements on them. International awareness has also grown of the importance of maintaining operational resilience in trading given the wider consequences outages can have on fund and derivative pricing, and of focusing supervisory oversight in this area.⁹ Trading venue resilience is a matter of increased significance in the Netherlands, given the increase in trading platforms and trading activity there post-Brexit.

3. The mission focused on the activities for which the Dutch authorities are responsible within the wider EU regulatory and supervisory system. The mission accordingly focused on supervision, and on areas where the national authorities had discretion to add regulatory requirements. The mission was informed by meetings with both the authorities and with a range of interested stakeholders, as well as analysis of data and information provided by the authorities and from a range of other sources.

4. The rest of the note is divided into three sections: The first covers the market context, regulation and supervision of trading venues. The second considers the market context, regulation and supervision of CISs with a particular focus on identification and management of liquidity mismatch risks. The third section considers the Dutch institutional framework for the regulation and supervision of securities in the light of the evolving market and supervisory context considered in the first two sections. Appendix 1 provides an overview of the authorities' actions in response to recommendations from the 2017 FSAP. Follow-up and issues arising from relevant recommendations in the last FSAP is also discussed in each of the three sections below.

TRADING VENUES

A. Securities and Derivatives Trading Venues in the Netherlands

5. The regulatory classification and treatment of trading venues in the EU changed with the implementation of MiFID II in 2018, which brought new categories of trading venue and expanded the regulatory perimeter.¹⁰ Until 2018, trading venues were regulated either as 'regulated markets' (RMs), typically including the traditional stock exchanges, or 'multilateral trading facilities' (MTFs) which often functioned along similar lines. However, other sorts of venues which involved more discretion and negotiation in the conclusion of transactions, typically used for fixed income and commodity markets, had been outside the perimeter. With MiFID II, a new venue type, the 'organised trading venue' (OTF) was added to capture more of these venues, in parallel with

⁹ See IOSCO, *Operational resilience of trading venues and market intermediaries during the COVID-19 pandemic and lessons for future disruptions*, Final Report, July 2022.

¹⁰ 'MiFID II' is a package of two pieces of legislation on markets in financial instruments, a regulation ([EU No 600/2014](#) which is directly applicable in EU Member States, and a directive [2014/65/EU](#) which must be transposed by each Member State into the national law.

similar expansions in other jurisdictions, such as the development of the swap execution facility regime in the U.S..¹¹

6. The landscape for securities trading in the Netherlands and Europe also changed profoundly with the exit of the UK from the EU.¹² According to ESMA analysis, before Brexit the UK was the main trading hub for the EU, in every class of instrument ESMA considered.¹³ Since then, some trading activity has relocated from the UK to the EU. A significant share of trading taking place within the EU, and a significant number of the trading venues through which such trading occurs, are now located in the Netherlands.

7. The movement in share trading was the most immediate and pronounced, driven by EU regulatory requirements. Cboe Europe's Dutch venue Cboe NL reported that average daily notional value (ADNV) increased from €0.03 billion in December 2020 to €4.9 billion in January 2021,¹⁴ much of it having moved from London. Trading in shares was particularly affected by Brexit because MiFID II requires EU investment firms to trade shares on EU organized trading venues or SIs, rather than Over the Counter (OTC). This 'share-trading obligation' (STO)¹⁵ can also be satisfied by trading on organized venues outside the EU where they are recognized as 'equivalent'. However, because the EU did not recognize any UK venues as 'equivalent', after 31 December 2020 all entities subject to the STO had to ensure that transactions were carried out on venues inside the EU. In 2021 and 2022 ESMA reported that the proportion of share trading taking place on organized venues had increased, and that by far the largest proportion of share trading on Multilateral Trading Facilities (MTF) was taking place in the Netherlands. In 2022, 57 percent of MTF trading was taking place in the Netherlands (compared to 29 percent in France and 9 percent in Germany), as well as 12 percent of trading on regulated markets (RM, compare 24 percent in Germany, 20 percent in France and 11 percent in Italy). With 42 percent of total share trading now taking place on RMs and 32 percent on MTFs (compared to 29 percent and 27 percent respectively in 2020),¹⁶ the Netherlands is now a significant venue for share trading. In the year after Brexit, the Netherlands was the largest venue in the EU for trading in Exchange Traded Funds (ETF).¹⁷

¹¹ Changes introduced by MiFID II are discussed further in paragraphs 13ff below.

¹² The UK formally left the EU on 31 January 2020, but with a number of arrangements left intact until 31 December 2020.

¹³ ESMA, [EU Securities markets annual statistical report 2020](#), p6.

¹⁴ [Cboe Reports Trading Volume for January 2021](#), February 5, 2021.

¹⁵ See paragraph 14 for a description of the STO.

¹⁶ ESMA, [Evolution of EEA share market structure since MiFID II](#). October 30, 2023.

¹⁷ ESMA, [EU Securities Markets Annual Statistical Report 2021](#).

8. The number of trading venues in the Netherlands has increased in the light of Brexit, and they are significant in a range of markets beyond share trading. ESMA data from 2020 showed that the Netherlands had the second highest number of trading venues in the EU, after Germany (which in addition to large national venues has a network of regional exchanges, Figure 1). Although there were significant venues in the Netherlands before Brexit, Table 2 illustrates the number of new formal applications received since 2017 (the year before MiFID II entered into effect, when the range of venues needing authorization was expanded).¹⁸ These new arrivals included the firms operating the three largest MTFs for bond trading in the EU pre-Brexit.¹⁹ The trading venues operating from the Netherlands at the time of the mission were significant in bonds, repos, Title Transfer Facility (TTF) gas futures (gas being a key commodity in Europe) and other exchange-traded derivatives as well

as cash equities. Calculations based on ESMA's periodic data about the bond trading venues with the highest volumes indicate that for nearly 80 percent of the over 35,000 ISINs included in the exercise, the EU venue with the highest trading volume was located in the Netherlands.²⁰

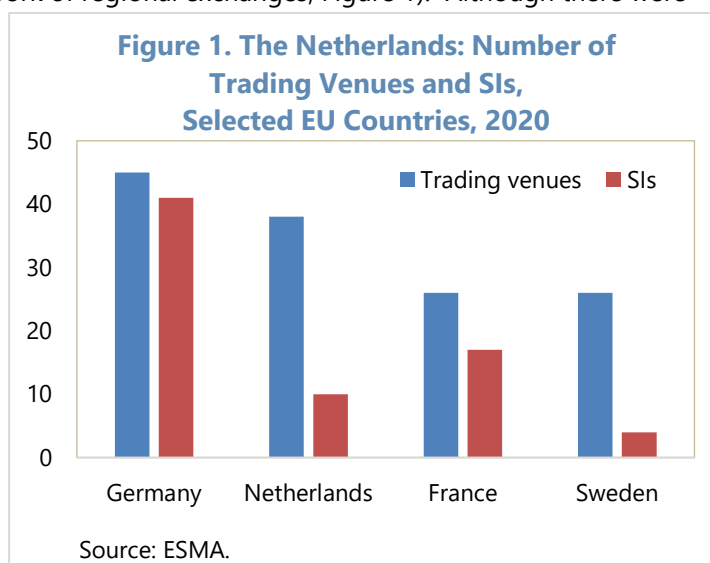


Table 2. The Netherlands: Trading Venue, SI, DRSP Applications, 2017-May 2023¹

| | Total applied | Withdrawn | Refused | Approved | Not yet decided |
|--|---------------|-----------|---------|----------|-----------------|
| Regulated Market (RM) | 2 | | | 2 | |
| Multilateral Trading Facility (MTF) | 15 | | | 11 | 4 |
| Organized Trading Facility (OTF) | 6 | 1 | | 4 | 1 |
| Systematic Internalisers (SI) | 10 | | | 10 | |
| Approved Publication Arrangement (APA) | 6 | | | 6 | |
| Approved Reporting Mechanism (ARM) | 6 | | | 6 | |

Source: AFM.

¹ Many market operators would operate more than one type of venue plus one or both types of DRSP, but there would be specific requirements for each license

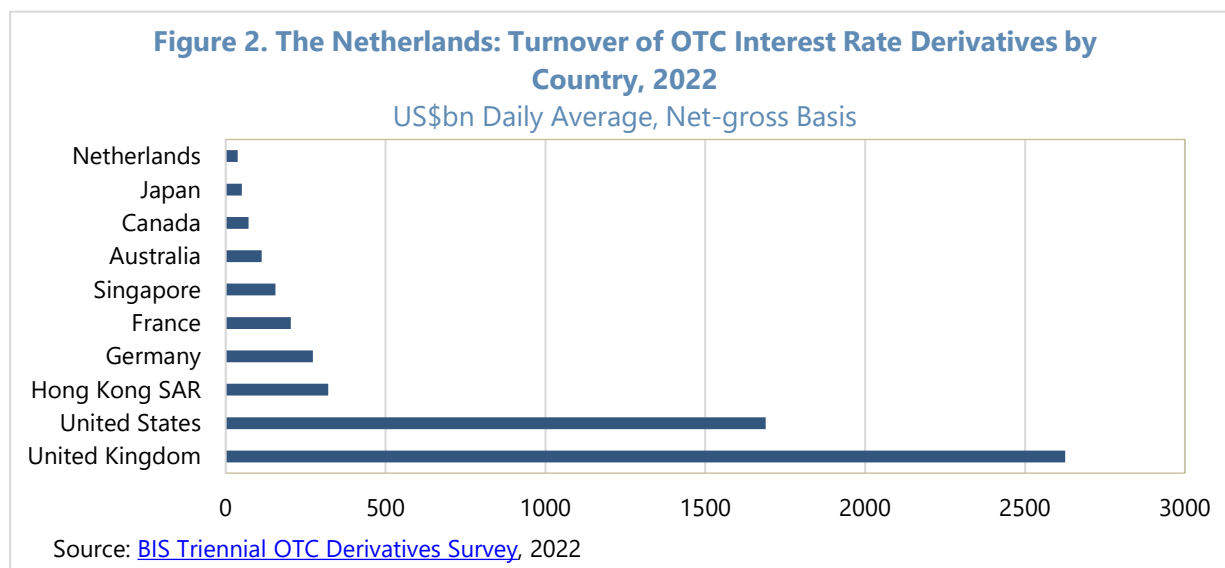
¹⁸ Some entities approached the authorities for informal discussions and then decided not to apply for authorization. The table also includes the DRSPs which were authorized and initially supervised by the Dutch authorities, but whose supervision has since transferred to ESMA.

¹⁹ ESMA, [EU Securities markets annual statistical report 2020](#), p59.

²⁰ ESMA, [Trading Venues with the Highest Turnover for Bonds – for CSDR Cash Penalties Calculation: data for 2023Q3](#).

9. Recommendation: Given the diversity of trading venues now operating in the Netherlands and the potential for some to be highly significant in particular market segments, the authorities should regularly assess, with European counterparts, the extent to which substitutes are available; the ways in which friction may materialize in the system should those substitutes need to be relied on; and the action the authorities and market participants may need to take to minimize the risk of market disruption arising.

10. Although not globally significant, derivatives trading in the Netherlands is also increasing. While the term ‘derivatives’ covers diverse markets, in many most activity and most open interest arises from OTC contracts. The largest open interest globally is in interest rate swap contracts. In 2022 the UK remained the largest venue globally for turnover of interest rate swaps, but the Netherlands had joined the top 10 (Figure 2). As part of its post-GFC reforms, the EU also introduced an obligation for a subset of derivatives that are deemed both sufficiently standardized and sufficiently liquid to be traded on organized venues.²¹ This obligation can be fulfilled by trading on licensed organized venues in the EU, or on venues outside the EU where an equivalence decision is in place. Equivalence decisions are in place for certain categories of US and Singapore venues, but not for any UK venues.²²



12. The ‘systematic internalisers’²³ (SIs) in the Netherlands operate on a smaller scale than those elsewhere in the EU or in the UK. ESMA analysis shows that before Brexit, SIs in the UK

²¹ The instruments subject to the derivatives trading obligation (DTO) are a subset of the instruments which under EMIR are required to be centrally cleared. See ESMA [Public Register for the Trading Obligation for derivatives under MiFIR](#).

²² Ibid, pages 7-8.

²³ ‘Systematic internalisers’ are dealers that internally match client orders using the dealer’s own capital. Under MiFID II they are subject to some requirements but not regarded as organized trading venues. Investment firms subject to the STO are allowed to trade shares on SIs, but SIs do not count as organized trading venues for the purposes of the DTO.

were significant execution venues in the EU. These execution venues were typically owned by the large investment banks. For example, ESMA's analysis of 2019 data (pre-Brexit) showed that the five largest equity SIs and four largest bond SIs in the EU were all bank-owned. Of these, the largest equity SI was the second largest execution venue, and the largest bond SI was the largest bond trading execution venue of any type by volume in the EU.²⁴ At the time of the mission there were twelve SIs in the Netherlands, of which only a couple were bank-owned. Those banks who did choose to enlarge their operations within the EU as a result of Brexit tended not to relocate to the Netherlands post-Brexit, perhaps in part because there is a 20 percent cap on bonuses of key staff rather than the 100 percent cap applied elsewhere in the EU.²⁵ Dutch SIs are more usually part of proprietary trader firms, of which many were established in the Netherlands pre-Brexit and others have since established. ESMA analysis shows that the proportion of EU share trading taking place on SIs in 2021 and 2022 was materially lower than in 2019 and 2020, pre-Brexit.²⁶ However, International Swaps and Derivatives Association (ISDA) note in their analysis of execution venues for interest rate derivatives, that the average transaction size of all trades executed by SIs is significantly larger than those executed on trading venues.²⁷ This may mean that they are of greater significance in the market structure and less easily substitutable than consideration of transaction volumes alone might suggest.

13. Recommendation: The AFM should ensure that its risk-profiling of SIs takes account of the size as well as the number of transactions and, with European counterparts, the degree of substitutability for SIs in different asset classes.

14. Trading outages, which as in many other jurisdictions have occurred in recent years, may have a particularly significant impact in Europe given the market structure and trading patterns. In equity markets, there is a high concentration of trading activity in the 'closing auctions' of the main market of listing. The prices emerging from these closing auctions are used in CIS valuations and portfolio rebalancing, in related derivative contracts and in benchmark calculations. These operations become difficult if a closing price is not available, or is uncertain, meaning that there are implications for the wider financial system from such an outage. Although other trading venues are available, they generally take a 'reference price' from the main market of listing. Effectively, trading on such venues ceases in relation to instruments affected by a main market outage. This is different from the situation in the US, where routing to alternative venues would enable trading to continue. Analysis by the French regulator, the AMF, in 2019 observed that the trend towards concentration in the closing auction was increasing and showed how both volumes and concentration increase on certain types of trading day.²⁸ On certain days, there is therefore both increased pressure on trading venue systems, and greater impact if a problem arises. At that time,

²⁴ ESMA, [EU Securities Markets Annual Statistical Report 2020](#), pages 51 and 59.

²⁵ See PWC, [The Dutch Disadvantage?](#)

²⁶ ESMA, [Evolution of the EEA share market structure since MiFID II](#), October 2023, p8.

²⁷ ISDA, [Demystifying Derivatives Trading in the EU](#), June 2022.

²⁸ AMF, [The growing importance of the closing auction in share trading volumes](#), October 2019.

the trend was also evident in various other EU markets, though it was less pronounced in the Netherlands than in some other markets.

15. As the Dutch authorities recognize, it is hard to compile and update a systematic view of developments in EU capital markets and how developments in the Netherlands fit in that wider context. Many of the datasets available to ESMA and NCAs were originally designed with other purposes in mind, such as the detection of market abuse or the calculation of specific thresholds. The AFM has started to publish annual ‘State of the Capital Markets’ publications, but these have not yet sought to fully contextualize the Netherlands in the EU and international context.²⁹

16. Recommendation: Given the significant changes in equity market structure since Brexit, the AFM should work with European counterparts to update the analysis of intra-day trading patterns, with a particular focus on the extent to which liquidity remains concentrated in the closing auctions of primary listing venues; the mechanisms through which a closing auction failure could cause wider market impacts; and the dates on which particular stresses are likely to arise. It should then incorporate the findings in its own supervisory program and propose development of a joint supervisory action on trading system resilience and recovery through ESMA’s Senior Supervisory Forum and other supervisory forums.

B. Regulation of Securities and Derivatives Trading Venues

17. Since the last Netherlands FSAP, the EU’s MiFID II framework has been implemented. MiFID II introduced a wide range of changes in the regulation of securities and derivatives markets. These changes included determining new categories of regulated trading venues for non-equity securities and derivatives and extending trading venue regulation to non-equities; increasing the robustness of requirements on trading venues and their participants on the testing of algorithms and availability of trading halts and circuit breakers to manage extreme market conditions. The range of financial instruments within scope of the regulation was also expanded to include a wider range of commodity derivatives, and a system of position limits was implemented for all in-scope contracts, a much broader regime than the US regime which covered only a small number of agricultural commodity derivatives. Pre- and post-trade transparency requirements were refined for equities, with a ‘double volume cap’ introduced on the proportion of ‘dark’ trading permissible, and extended to non-equities. In each case various waivers were put in place, and methods for calibrating where and how the requirements applied. These led to a range of requirements for the submission of data to ESMA for periodic calculations on (for example) the volume and proportion of trading taking place under different waivers and the venues where the greatest depth of open interest was available for bonds.

18. MiFID II introduced obligations for shares and certain derivatives to be traded on organized trading venues. The STO requires EU investment firms to trade shares on an organized

²⁹ See AFM, [AFM calls for a European set of capital market data](#), 10 October 2023.

EU venue or SI, or a third-country venue deemed to be ‘equivalent’.³⁰ European Market Infrastructure Regulation (EMIR) provides a mechanism for derivatives contracts that are deemed sufficiently-standardized to be made subject to mandatory central clearing, and MiFID II currently requires that where one of those contracts is also deemed sufficiently liquid, it must be traded on an organized EU venue (not an SI) or a third-country venue deemed to be ‘equivalent’.

19. The regulatory regime that MiFID II introduced for entities that make trade data available to the market or facilitate transaction reporting to regulators has since been revised.

DRSPs include APAs that make trade data available to the market and ARMs that facilitate transaction reporting to regulators for the purpose of market abuse surveillance. Provision was also made for Consolidated Tape Providers (CTP) – entities that would aggregate all the trade data across the market to provide a complete picture of pre- and/or post-trade price and volume data. However, no such CTP emerged, and data provision remained fragmented. Initially, DRSPs were supervised by national competent authorities, but subsequent changes transferred responsibility for DRSPs meeting certain size thresholds to ESMA.

20. Political agreement has been reached in 2023 on further reform to be implemented in the coming years.³¹

The political agreement simplifies the transparency and waiver regime and associated calculations (for example, shifting to a single ‘volume cap’). It also contains enhanced provisions to encourage the emergence of a consolidated tape. Other reforms include a prohibition by 2026 of the practice permitted in some EU Member States of ‘payment for order flow’ (PFOF).³² PFOF came under the spotlight in light of the trading in the US of Gamestop and other ‘meme stocks’ where brokers offered commission-free trading being instead remunerated by the dealers to whom they routed orders for execution. The Dutch authorities supported the prohibition on PFOF.

21. MiFID II leaves limited scope for national discretion and in the Netherlands such discretion has been used mainly for retail investor protection measures. Before MiFID II, the Netherlands had introduced a prohibition on inducements (such as payment of commission) in sales to retail clients, which it has chosen to maintain. Along with other Member States it has also prohibited sales of binary options to retail clients and introduced restrictions on contracts for difference sold OTC to retail clients. It has also gone further than other Member States by introducing restrictions/prohibitions on similar exchange-traded products, known as ‘turbos’.³³

22. Parts of the MiFID II package requiring transposition into national law include powers for competent authorities, and the AFM itself has not been given all the relevant powers.

³⁰ In line with clarifications proposed by ESMA, the political agreement on revisions to MiFID II will clarify that the scope of the obligation relates to shares with an EEA ISIN only, that are actually traded on one or more trading venues.

³¹ See political agreement texts of revised [MiFIR](#) and revised [MiFID II](#), 13 October 2023.

³² This is where Firm A receives payment from Firm B for forwarding client orders for execution to that Firm B, which may call into question whether Firm A is able to fulfil its obligation to its clients to provide best execution in the light of its incentive to route orders to Firm B.

³³ See ESMA [Opinion on the product intervention measures relating to turbos proposed by the Dutch AFM](#), June 2021.

While many of the substantive rules on financial services providers are in the form of a regulation which is directly applicable law in the Member States, matters related to the competent authorities are in a directive that must be transposed into the national law. MiFID II aimed to ensure that competent authorities in all Member States shared a common minimum set of powers to provide a basis for robust and consistent supervision and enforcement. The AFM has most, but not all of these powers. The two missing powers are: the power under Article 69(2)(e) to request the freezing and/or attachment of assets and the power under Article 69(2)(r) to request existing overviews of data traffic in possession of a telecommunications provider.³⁴ The last FSAP recommended that both powers should be given to the AFM. The powers can be exercised in the Netherlands, but only by investigators and the public prosecutor. This makes it significantly more difficult and time-consuming for the AFM to pursue market abuse investigations, and may risk the loss of client assets before powers to freeze assets can be used. Some countries have found solutions by embedding staff with formal investigatory powers within the competent authority. Doing so here would be likely to increase the efficiency of supervision.

23. Recommendation: The authorities should reconsider arrangements for the exercise of the powers under Article 69(2)(e) and 69 (2)(r) to enable the AFM to use them more directly and efficiently.

24. A range of other recent and planned regulation will affect at least some trading venues and may bring more new regulated entities in the Netherlands and elsewhere. Primary legislation called the Markets in Crypto Assets Regulation (MiCAR) will provide a regulatory framework for the trading of crypto assets in situations where they are not tokenized securities that are already captured by the existing MiFID II regime. Many of the existing crypto asset trading platforms blend trading, clearing and settlement as well as lending to traders, which may make them hard to regulate and supervise. At the time of the mission, the Dutch authorities were expecting to receive several applications with these characteristics and are planning collaborative work with other NCAs on the risks and how to address them, particularly in cases where part of the business may operate like a Central Counterparty (CCP) without meeting the criteria to be regulated as a CCP. Cross-sectoral legislation applicable to banks and insurers as well as investment firms and trading venues called Digital Operational Resilience Act (DORA) aims to raise standards of digital operational resilience by those firms and also to make critical third-party information technology (IT) suppliers subject to direct supervision at the EU level. Detailed implementing measures were being prepared and consulted on at the time of the mission and MiCAR and DORA are due to be implemented from June 2024 and January 2025 respectively. Finally, the EU has legislated for a ‘sandbox’ to enable financial market infrastructures including trading venues that use distributed ledger technology (DLT) the possibility to operate with exemptions from specific rules that may not

³⁴ The former power is assigned to investigators, and the AFM does not have such investigators, and the latter is assigned to the Public Prosecutor under Article 126n of the Dutch Code of Criminal Procedure.

be workable with DLT arrangements.³⁵ At the time of the mission, the authorities had started to receive applications under the pilot, including one for the operation of an MTF.

C. Licensing and Supervision of Trading Venues

25. The formal licensing process differs according to the type of trading venue and the type of owner/operator. Authorization to operate a regulated market must formally be granted by the Minister of Finance. No opinion or recommendation from the AFM to the Ministry is formally required, but an opinion is generally given. Where a market operator of a regulated market also operates an MTF or OTF, this is treated as an addition to the RM license. Banks who wish to provide investment services need to apply to DNB for an extension of their permissions under Wft 3:33. This Article requires such banks who wish to operate an MTF, but not an OTF, to comply with certain provisions including those relating to trading rules, in Wft 4:91a, but not the provisions relating to market surveillance for the purposes of ensuring compliance with those rules and detection of market abuse which are set out in Wft 4:91ab and 4:91b. This approach may increase the risk that the necessary controls (for example, in relation to trade surveillance for the purposes of detecting potential market abuse) are not in place initially. Furthermore, it is not clear that the relevant Article of the Wft, 3:33, explicitly provides for the same level of obligation on bank-operated MTFs/OTFs as for those operated by investment firms, for example in relation to such trade surveillance.

26. Recommendation: The authorities should clarify that bank-operated MTFs and OTFs are subject to the same standards as those operated by investment firms and that their ability to demonstrate they can fulfil their obligations, including in relation to market surveillance, will be assessed before any extension to their license to operate such a venue will be granted under Wft Article 3:33.

27. For ‘Brexit firms’, in addition to the usual substantive requirements, the authorities paid close attention to whether there was sufficient ‘substance’ within the EU. Conscious that many authorities would be facing this challenge and in order to support a consistent assessment, ESMA put in place arrangements for approaches to be discussed by competent authorities before decisions were made. ESMA also carried out a retrospective peer review of the decisions made.³⁶ The authorities’ substantive assessment of license applications takes account of the full range of MiFID II requirements, including fitness and propriety of senior staff; adequacy of internal systems, controls and resources; and plans for market surveillance. The mission found evidence that the AFM approached the ‘substance’ question thoughtfully and has continued to scrutinize this carefully in the years following authorization. However, the AFM would benefit in future from having a stronger basis on which to require the appointment of an independent non-executive director from outside the group and such other corporate governance arrangements as it considers necessary to mitigate risk.

³⁵ [Regulation \(EU\) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology.](#)

³⁶ ESMA, [Peer review into the NCAs’ handling of relocation to the EU in the context of the UK’s withdrawal from the EU.](#) 8 December 2022.

28. Recommendation: The authorities should amend legislation to explicitly enable the AFM to require the appointment of independent non-executive directors and such other corporate governance arrangements as it considers necessary to mitigate risk.

29. DRSPs were initially authorized and supervised alongside trading venues, but responsibility for supervision of the five Dutch DRSPs has since transferred to ESMA. DRSPs are often, though not exclusively, operated by entities that operate trading venues because the DRSP can capitalize on infrastructure also needed to run the trading venue business. As the authorities are aware, care therefore needs to be taken with a split supervisory responsibility to ensure that supervision of the trading venue and DRSP activities is coherent and proportionate as well as effective.

30. Recommendation: The AFM should continue formal and informal interaction with counterparts in ESMA to ensure a coherent, risk-based approach to supervision of trading venues and DRSPs belonging to the same operator and a coherent communication of the combined approach to regulated entities.

31. Ongoing supervision of trading venues has been robust and is carried out through a mix of firm-specific and horizontal thematic work. Firm-specific work includes a mix of proactive and reactive work, and a schedule of regular engagement, much of it on-site, the frequency and intensity of which is driven by an assessment of risk. The AFM was already taking a risk-based approach before the ‘Brexite venues’ arrived but has adapted its assessment of trading venues to reflect the arrival of a wider range of venues, including fixed income platforms often using Request for Quote (RFQ) rather than Central Limit Order Book (CLOB) trading protocols. Thematic work has included key topics such as algorithmic trading, information security, incident reporting and cost of data. The AFM’s practice is to publish a digest of findings from thematic work as well as providing individual feedback and findings to participating firms. Findings may include areas where the AFM’s assessment differed from the firm’s own self-assessment of compliance or risk management, and areas where changes are needed in order to meet the AFM’s expectations. In such cases, the AFM would typically require the firm to remediate the problem rather than initially moving to impose a sanction.

32. However, given the continuing challenges and findings to date, the AFM will need continued supervisory focus on the resilience of critical trading systems and effectiveness of trading venue recovery procedures. The AFM’s published thematic work suggests that some trading venues had levels of maturity in their governance of IT change and incident recovery that seem rather low given how central IT infrastructure is to their core business. At the time of the mission, some venues had recently completed large IT migrations and others were ongoing. ESMA’s position on outages affecting closing auctions emphasized improved preparation and recovery but stopped short of requiring contingency arrangements enabling an auction to be held on alternative venues. It is too soon to say whether that approach is sufficient.

33. Recommendation: The AFM should carry out thematic work focusing specifically on the resilience of systems critical to the core trading functionality, including closing auctions on those

markets that have them. The work should explicitly cover the adequacy of Recovery Time Objectives (RTO) and Recovery Point Objectives (RPO) and assurance of the ability to meet those objectives. It should also include the adequacy of contingency arrangements for closing auctions where applicable, and testing and activation of failover procedures.

34. Recommendation: The AFM should seek opportunities to carry out the above work in parallel with counterparts responsible for the supervision of other significant equity primary listing venues in Europe, and through joint action in relation to venues governed by supervisory college arrangements.

35. In the years ahead, there is the potential for trading activity in Amsterdam to grow, diversify, and innovate, and the authorities need to prepare for this next phase now.

Operations in the Netherlands that initially mirrored those in the UK are likely to diverge commercially and there may also be differences in the applicable regulatory requirements in future. New entrants with different business models and operating arrangements are likely to arrive in the coming years, making use of innovative technologies. The authorities would benefit from a stocktake of lessons learned from the initial period of supervision about both inherent and control risks in the population and areas of focus in the next phase. The core supervisory team will need enhanced access to timely data analytics, as envisaged under the AFM’s strategic ambition to be a data-led supervisor, as well as continuing to grow and embed operational risk and IT expertise. As discussed further in the third section of the note, the supervisory team will also need the widest possible range of supervisory tools to enable them to address evolving risks in a responsive but proportionate and efficient manner.

36. Recommendation: The AFM should refocus its ‘data-led’ change program to intensify its focus on providing timely, user-friendly access to data and analytics in a form relevant for trading venue supervision, which will often differ from what is needed for the detection and investigation of potential market abuse. This is likely to include adapting the governance and direction of the current work program.

COLLECTIVE INVESTMENT SCHEMES

A. Dutch CIS in National and European Context

37. Investment in CIS in the Netherlands is dominated by pension schemes/funds. Under 4 percent of AUM is invested directly by households, while pension schemes/funds account for 69 percent of AUM (Figure 3, left panel). Only 4 percent of AUM is invested by other financial institutions and 3 percent by non-financial corporates. This contrasts with a different profile across Europe as a whole (right panel). The composition of the investor base has a bearing on the likelihood of liquidity and redemption shocks. Pension funds/schemes are less likely than some other investor types to need to redeem funds quickly and likely to have more liquid assets that can be realized before turning to funds with more significant potential liquidity mismatch, such as corporate bond or real estate funds.

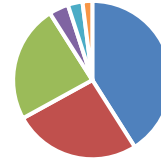
Figure 3. The Netherlands: Types of Investor in CISs in the Netherlands and Europe
(in percent of assets under management)

The Netherlands, May 2023



- Pension plans/funds
- Insurance companies
- Other CIS (e.g. fund of funds)
- Other financial institutions
- Households
- Non-financial corporations
- Banks
- General government
- Unknown

Europe, end 2023Q2



- Pension plans/funds and insurance companies
- Other financial intermediaries
- Households
- Non-financial corporations
- General government

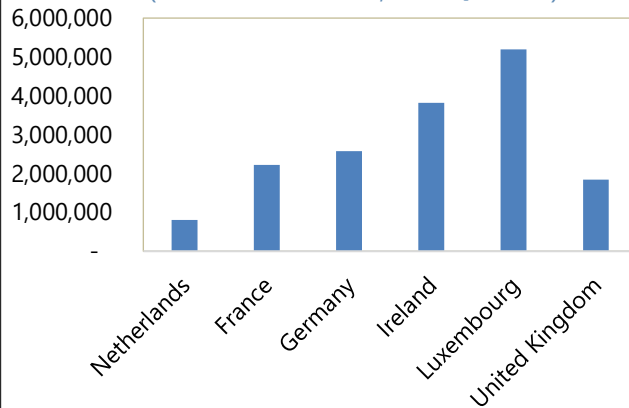
Source: AFM, EFAMA based on ECB and OECD data.

38. Funds under management in Netherlands-based CIS are relatively small in the context of the European countries with the largest funds, and predominantly fall under the AIFMD rather than the Undertakings for Collective Investments in Transferable Securities (UCITS) regime.

Total assets under management (AUM) in Netherlands-based CIS are significantly smaller than in the EU Member States with the largest AUM in Alternative Investment Funds (AIFs, France and Germany) and in UCITS (Ireland and Luxembourg), or in the UK (Figure 4). In the European market as a whole, there is around €7 trillion AUM in AIFs compared with €12 trillion in UCITS.³⁷ However, in the Netherlands significantly more AUM are in AIFs than in UCITS, and the UCITS funds are a negligible share of the European total (Figure 5).

Figure 4. CIS AUM, Selected European Countries

(in millions of euro, end Q2 2023)

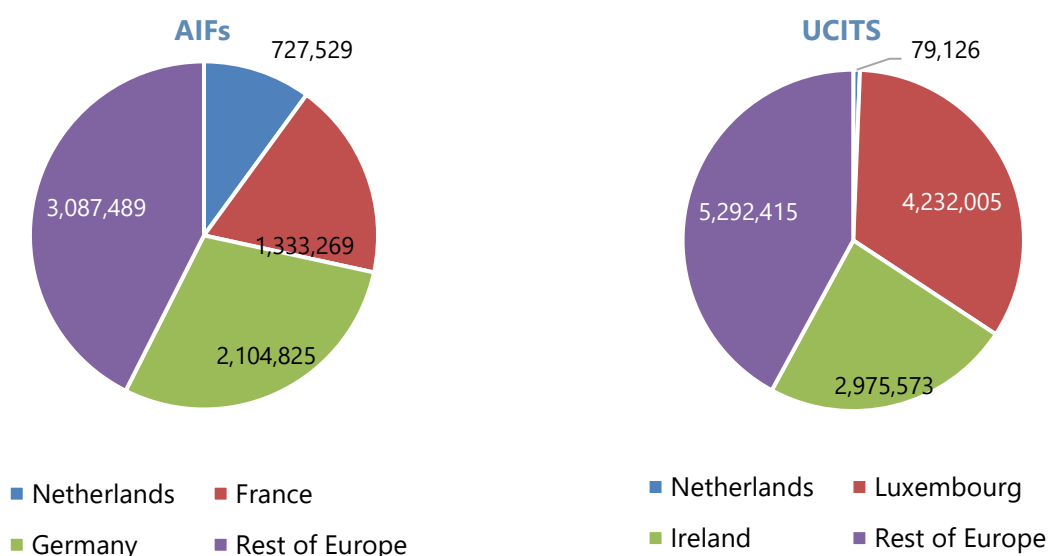


Source: EFAMA based on OECD and ECB data.

³⁷ EFAMA [Quarterly Statistical Release Q2 2023](#). Data covers 24 countries, including some EU Member States and UK.

39. Not all the funds managed by Dutch Fund Management Companies (FMCs) are domiciled in the Netherlands and not all funds in the Netherlands are managed by Dutch FMCs. In May 2023, there were around 20 UCITS managers and 168 UCITS funds authorized in the Netherlands, with 126 managed by a Dutch FMC, having total AUM in the region of €39bn, and 42 funds managed by non-Dutch FMCs, having total AUM of around €14bn. At that time, the authorities indicated there were 103 authorized AIFMs in the Netherlands, with around €877bn AUM in 953 EEA AIFs and around €4bn in seven non-EEA AIFs. There were additionally 688 AIFMs who are subject to the *de minimis* exemption³⁸ from authorization. The 533 of those AIFMs for whom data is available have around €23.9bn AUM.

Figure 5. The Netherlands: AUM NL-Domiciled AIFs and UCITS in EU Context, end 2023Q2
(in millions of euro)

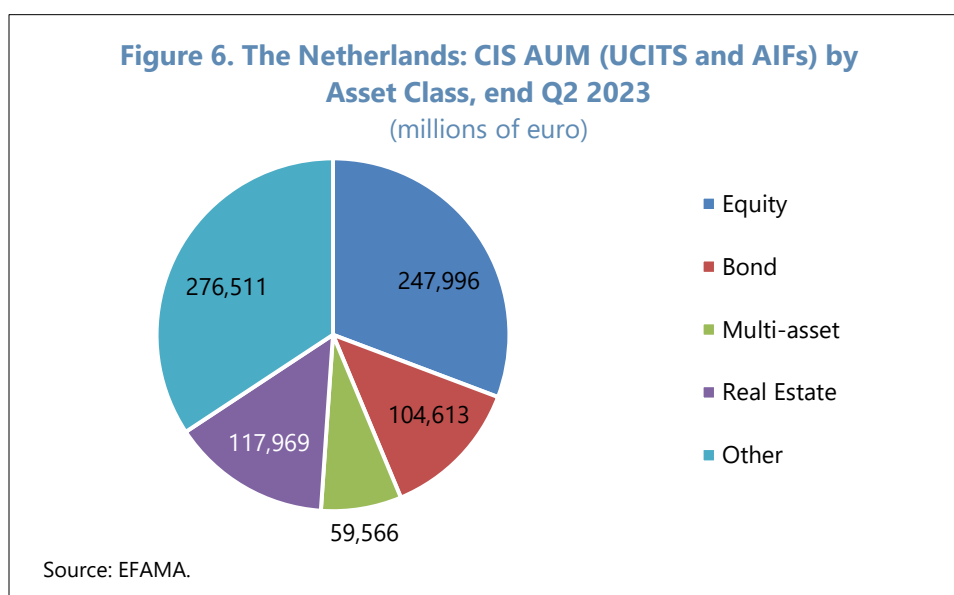


Source: EFAMA based on OECD and ECB data.

Note: data includes both UCITS and AIFs but may not capture all types of fund in all jurisdictions.

³⁸ Under AIFMD, AIFMs with total AUM less than €100m or, if not leveraged or redeemable within five years, €500m are subject only to registration requirements rather than the full regulatory regime.

40. There are sizeable funds investing in bonds and real estate, but Money Market Funds (MMFs) are negligible (Figure 6). Some of the largest funds with exposure to real estate are not investing directly in property but are instead making equity investments in the real estate sector which do not have the same liquidity profile as investing in physical assets. At the time of the last FSAP, MMFs had been growing, but this trend has since reversed, with the authorities indicating that MMF AUM had reduced to around €620m. The remaining funds all have floating rather than fixed NAV. There are, however, other sizeable funds with material holdings of money market instruments.



B. Regulation and Supervision of CISs and their Operation

41. The AFM is primarily responsible for the authorization and supervision of fund managers, with prudential input from DNB, and for the registration or licensing of CIS themselves. For fund managers, the AFM consults DNB before licensing. As part of ongoing supervision, the DNB has ultimate responsibility for the Supervisory Review and Evaluation Process (SREP), drawing on input from the AFM. For CIS, the requirements differ between UCITS and AIFs, reflecting the different EU regulatory regimes applicable given the nature of the funds. UCITS are subject to extensive requirements on matters such as asset eligibility, diversification and custodianship as they are intended to be suitable for sale to retail clients. For AIFs, which include hedge funds, the regime is in some respects less restrictive, given the inclusion of a wide range of structures, strategies and funds not intended for distribution to retail clients.

42. Since the last FSAP, changes have been implemented to the EU regulatory regime for UCITS. These included the introduction of a new regulatory regime for the depositories that are used to ensure appropriate custodial arrangements for the CIS's funds and that are not already licensed as banks. In the transposition of these requirements, the Dutch authorities decided no change was needed to the law to give effect to the requirement in Article 22(8) of the consolidated UCITS directive which requires provision to be made to protect the assets of a UCITS held in custody from being available to pay creditors in the event of insolvency of a depository or other third party. The existing provisions in Section 4:45 of the Wft were considered to be sufficient. However, it is not

clear whether the wording is sufficiently broad to protect the UCITS assets in all the situations that could potentially arise under the new regime. Furthermore, the existing provisions appear to allow the assets of the UCITS to be used for other purposes than paying the debts of the UCITS and returns to unitholders. Further consideration should be given to whether this transposition is adequate and compatible with the UCITS legislation.

43. Recommendation: The Ministry of Finance and the AFM should commission external legal advice on the adequacy of the transposition of UCITS Article 22(8) and include any necessary changes in its next annual ‘legislative letter’. If problems are found, a wider review of the adequacy of client asset protections under Dutch insolvency law should be initiated. The Ministry of Finance should commit to finding an early opportunity to making any necessary changes and committing the necessary resources to do so.

44. The AFM has licensed around a half dozen new depositories under the regime and begun to supervise them alongside the bank-owned depositories. In the early phase of implementation, when it was receiving license applications, the AFM published a sector letter drawing attention to important points in the organization of depositories.³⁹ The supervisory approach includes the submission of periodic data reports and a program of on-site inspections which include adequacy of controls in relation to matters such as compliance with the investment mandate, any net asset value (NAV) calculation errors and how they are addressed, and use of sub-depositories. In addition to firm-specific feedback from on-sites and data review, the AFM published a further sector letter in 2021.⁴⁰ The authorities consider the new regime to be a useful control in its own right and a helpful additional input to its risk assessment of CIS managers.

45. A new EU regulatory regime for MMFs has also been implemented. This regime sets stringent eligible asset and liquidity requirements for MMFs, particularly those operating with constant NAV (CNAV). It also prevents the fund manager or other third party from injecting funds to meet redemptions.⁴¹ All MMFs operating in the Netherlands at the time of the mission had been licensed under this new regime. The European Commission reported on the implementation and effect of the Money Market Funds Regulation (MMFR) in July 2023. Even though, as has been noted in previous FSAPs in EU countries, there was scope for further enhancement, it decided not to propose changes to the legislation at that time.⁴²

46. At the time of the mission further reforms to both the UCITS and AIFM regime had just been agreed, including in relation to liquidity management tools. Once formally enacted,

³⁹ AFM, [Aandachtspunten voor een beter inrichting van de bewaardersorganisatie](#), 1 November 2018.

⁴⁰ AFM, [Terugkoppeling bewaardersrapportage](#), 30 July 2021.

⁴¹ See [Regulation \(EU\) 2017/1131](#) on money market funds (consolidated), Article 35 *External Support*.

⁴² European Commission, [Commission adopts report on the functioning of the Money Market Funds Regulation](#), July 2023. For examples of policy tools that could have been used to strengthen the EU’s MMFR See IMF Monetary and Capital Markets Department, [Investment Funds and Financial Stability: Policy Considerations](#), 2021 and IMF, Ireland FSAP Technical Note, [Oversight of Market-based Finance: Investment Funds and Special Purpose Entities](#), 27 July 2022, para 73.

the reforms would introduce standardized data reporting in relation to UCITS funds (a significant gap in the current framework), introduce a more structured framework for the management of liquidity mismatch and deployment of liquidity tools in both AIFs and UCITS and put in place a harmonized framework for loan-origination funds.⁴³ During the negotiations it was considered whether authorities should have powers to directly use a wider range of liquidity management tools in addition to the ability to suspend redemptions and concluded that it was preferable for the use of such tools to be directly triggered by the fund manager. The AFM already has powers to require funds to suspend redemptions, but not to require funds to use other Liquidity Management Tools (LMT) and does not envisage that position changing given the outcome of the negotiations.

47. Meanwhile, the Dutch authorities had already analyzed the risk of liquidity mismatch in its fund population and carried out thematic work to establish the availability, use and reporting of LMTs by funds.⁴⁴ The authorities concluded that the extent of liquidity mismatch and risk of shocks arising in relation to real estate was partly mitigated. This mitigation was due to the fact that many property funds in the Netherlands are closed-ended; some invest primarily in equities in the sector rather than physical real estate potentially reducing the lead time to liquidate assets, and some have only a few pension fund investors, reducing the likelihood of a need for short-term withdrawals. Many funds have redemption terms that include significant notice periods and other limitations on redemption. Nevertheless, supervisory work has been carried out on LMTs. Not all the supervisory work is in the public domain, but published outputs include a 2018 sector letter on liquidity risk and associated reporting by CISs,⁴⁵ contribution to ESMA’s work with NCAs on fund liquidity in the light of the ESRB’s recommendations,⁴⁶ a 2021 occasional paper on liquidity risks associated with margin calls in March 2020,⁴⁷ and a 2023 follow-up to the 2020 work with a sector letter on LMTs.⁴⁸ Through their own work and collaboration with ESMA, the Dutch authorities have established that all LMTs other than mandatory liquidity buffers are legally available for use in the Netherlands and already incorporated in many funds.

48. Recommendation: The authorities should continue to periodically assess the extent of liquidity mismatch in relation to CIS investments in both real estate and corporate bonds, and ensure that any change to the risk profile is reflected in the focus of supervision of liquidity risk management.

⁴³ The [provisional text](#) of the [political agreement](#) between the Council and Parliament, 9 November 2023, had been published at the time of the mission. The official version of [Directive \(EU\) 2024/927](#) was published on 13 March 2024, with most of the new provisions applicable from 16 April 2026.

⁴⁴ See AFM [Sector Letter: Availability of Liquidity Management Tools](#), September 2023, which follows work in 2020 carried out on behalf of ESMA.

⁴⁵ AFM & DNB, [Onderzoek Liquiditeitsrisico bij open-end beleggingsinstellingen die worden beheerd door AIFMs](#), 12 June 2018.

⁴⁶ ESMA, [Recommendation of the European Systemic Risk Board \(ESRB\) on liquidity risk in investment funds](#), 12 November 2020.

⁴⁷ AFM, [Liquiditeitsrisico van margin calls in maart 2020](#). December 2021.

⁴⁸ AFM & DNB, [Availability of Liquidity Management Tools](#). September 2023.

49. The AFM also led the preparation of the ESRB’s response to the FSB’s consultation on liquidity mismatch in open-ended funds, with significant input from DNB.⁴⁹ The ESRB work stresses the importance of tools such as notice periods and matching redemption frequencies to underlying assets to reduce the likelihood of redemptions triggering liquidity issues, as well as having LMTs in place to help manage any shock that arises. The redemption terms and conditions of the largest open-ended property funds in the Netherlands appear to envisage long notice periods, infrequent opportunities for redemption, and in some cases caps on the proportion of fund assets which can be redeemed at each of those opportunities. However, there is no formal requirement under AIFMD currently or Dutch national law for that to be the case.

50. The revision of the AIFMD provides an opportunity to gather enhanced data on fund credit lines which would give better visibility of one potential transmission mechanism for systemic risk. Article 1(10) of the provisional text of the revision to AIFMD allows for further specification of the data to be reported by AIFMs under Article 24 about fund composition and risks, including arrangements for managing liquidity. The further specification will be developed through RTS based on drafts by ESMA. This specification will help to further standardize AIFM reporting and make the data easier to use alongside other datasets, increasing its value. The Dutch authorities have confirmed that while they receive data on existing borrowing by funds, they do not receive data on committed credit lines which may be drawn down in times of stress, for example to meet redemption requests. Having this data would make it easier to identify dependencies on particular banks before stresses arise.

51. Recommendation: The AFM should actively contribute to the development of the draft RTS further specifying the AIFMD Article 24 reporting requirements, with a view to including specific data about the size and source of credit lines available to each fund, and whether the credit lines are committed.

52. The AFM’s risk-based approach prioritizes higher risk/impact fund managers, typically those with larger AUM, but it does risk assess smaller managers and has used its formal powers in relation to such smaller managers when needed. In this regard the AFM has found implementation of the SREP process, carried out in collaboration with DNB, has given an enhanced basis for risk-based determination of firms and topics requiring focus.

INSTITUTIONAL FRAMEWORK

53. The AFM is the main Dutch authority with responsibility for securities and derivatives markets supervision and, within the constraints of the EU framework and legislative framework for which the Ministry of Finance is responsible, regulation. Under the Dutch ‘Twin Peaks’ regulatory structure, the AFM leads on market conduct and the DNB on prudential issues. For trading venues, primary responsibility lies with the AFM, with the DNB consulted on prudential

⁴⁹ ESRB, [Issues note on policy options to address risks in corporate debt and real estate investment funds from a financial stability perspective](#). September 2023.

aspects of authorization and supervision decisions.⁵⁰ The AFM consults the DNB on prudential aspects of authorization decisions for asset managers, including AIFMs and UCITS managers, and the DNB takes decisions under Pillar 2⁵¹ of the prudential framework, with input from the AFM. The AFM is responsible for the registration and authorization of funds. Given this division of responsibility, it is primarily the AFM rather than DNB that participates in ESMA.

54. The AFM has adapted its approach since the last FSAP, not only in relation to securities and derivatives markets supervision, with the aim of adapting to cover an enlarged mandate more efficiently and effectively. The organization has restructured, grown, and embedded centers of expertise in specialist skills including data management and analytics, IT and operational risk. It publishes its strategy,⁵² clearly-identified priorities for the year ahead,⁵³ and its annual report and accounts⁵⁴ for the previous year. It has changed its supervisory model to apply a more intensive ‘account management’ model with higher risk firms. It has dedicated more staff and management resources to both asset management and trading venue supervision. It has also intensified its engagement with policy-making, risk assessment and supervisory convergence at EU and international levels, including chairing ESMA’s Senior Supervisors’ Forum and joining ESMA’s Management Board and the IOSCO Board.

55. However, while many of the substantive recommendations from the last FSAP have been implemented, some problematic aspects of the institutional framework identified in 2017 remain. These include the requirement for budgetary approval by the Ministry of Finance;⁵⁵ the lack of an autonomous rule-making power in areas where such powers are not explicitly accorded by EU legislation;⁵⁶ and the Ministry of Finance’s power to overturn rules made by the regulatory authorities.⁵⁷ These aspects of the framework are difficult to reconcile with IOSCO’s Objectives and Principles and of Regulation, the core international standards for securities regulators, of which the AFM is now a Board member. The mission recognized that the approach

⁵⁰ There are some distinctions in supervisory responsibilities and processes depending on the type of entity operating the venue, as discussed further below.

⁵¹ SREP of the firm’s internal capital and liquidity adequacy assessment processes. Banks and some investment firms operating trading venues will be subject to the EU’s Capital Requirements Directive and Regulation (Directive EU 2013/36/EU and Regulation (EU) No 575/2013 respectively), while others are subject to the bespoke prudential regime for investment firms established under the Investment Firms Directive and Regulation (Directive 2019/2034/EU and Regulation (EU) 2019/2033 respectively.) EBA and ESMA [Joint Guidelines on common procedures and methodologies for the SREP](#), July 2022, further specify the SREP process for those subject to the IFD/IFR.

⁵² AFM, [Strategy 2023-2026](#).

⁵³ AFM, [Agenda 2023](#).

⁵⁴ AFM, [Annual Report 2022](#).

⁵⁵ The authorities note that budgetary approval is only required for budget expansion, not for the (re-)allocation of budget within the organization, and supervisory budgets are further protected by the Cost Framework (*kostenkader*) which provides a medium-term framework for funding levels.

⁵⁶ The authorities note that the AFM regularly assesses its regulatory powers and expresses shortcomings to the Ministry of Finance.

⁵⁷ The conditions under which the Ministry of Finance has the power to set aside rules of the supervisor is clarified in article 1:29 of the Financial Supervision Act (Wft)

envisaged under IOSCO's Principles would be different from the norm applying to other Dutch administrative bodies. However, many jurisdictions have recognized the need for a distinctive treatment of the financial services sector, just as central bank independence has become orthodox in recent years.

56. The changing market context makes it increasingly important that the institutional framework within which the regulatory authorities are working facilitates a timely, efficient, and proportionate response to emerging risk. The AFM recognizes the international nature and interconnectedness of EU and global capital markets. As a result, it sensibly sees the merit in common EU and international standards and invests effort in shaping and applying them. However, the reality is that in markets of EU-wide and potentially in future global significance, risks will emerge and need to be addressed before such solutions are formalized in binding international norms. The authorities are more likely to be able to address these issues proportionately, efficiently, and effectively if they have greater autonomy to adapt their approach as markets innovate. The alternative is that supervision is ineffective, with the consequent potential for both financial stability and reputational risks to the Netherlands, or that it is unduly cumbersome and inefficient because only tools that are resource-intensive to apply and not well designed to address the matter in hand are available. In particular, the AFM needs the widest possible range of supervisory tools to deal with new market developments and to differentiate and, where necessary, escalate its approach on the basis of risk.

57. Recommendation: The AFM should commission an assessment of additional supervisory powers which could be beneficial in enabling it to address risk efficiently and effectively, drawing on external advice with detailed knowledge of international peer comparators, and make recommendations for change to the Ministry of Finance.

58. Recommendation: The Ministry of Finance should review the legislation governing the powers of the AFM to give it greater autonomy in regulation and a wider range of supervisory powers, taking into account the recommendations from the last FSAP, the AFM's recommendations following the above review, and the IOSCO Objectives and Principles of Regulation.

59. Delivering efficient supervisory outcomes in the years ahead will depend on the harnessing of IT capabilities as well as access to people with specialist IT, analytics and financial markets expertise. The AFM has already been building its IT infrastructure to make better use of large data sets and it is important that this investment continues with appropriate focus on end-user availability and supervisory 'use cases' for data. The AFM may need additional expertise in wholesale financial markets in future, as well as others with scarce expertise. It may benefit from bringing in some former market practitioners with relevant skills as senior advisers to act as internal consultants and sounding boards for both Board members and the management team. For different reasons, this was recommended in the 2016 Ottow evaluation of certain AFM/DNB processes.⁵⁸ Although the AFM does not aim to match industry salaries, it is important

⁵⁸ Ottow Committee, [External evaluation of the assessment procedure performed by the AFM and DNB](#), November 2016.

that periodic benchmarking is carried out against the market, particularly for scarce, specialist expertise, and that decisions on the AFM's overall staff remuneration and benefits are informed by such benchmarking.

60. Recommendations: The AFM should institute periodic benchmarking of remuneration against industry remuneration packages, including for senior staff.

61. The highest standards of corporate governance will also be needed to maintain the authorities' credibility as a supervisor and ensure it is perceived to be robust and independent. In some areas the AFM has robust policies and procedures. For example, these govern the identification and management of potential staff conflicts of interests, and restrictions on securities dealing to avoid potential exploitation of inside information, or the perception of such exploitation. However, in other areas improvements could be made. The most recent appointment of the chair of the supervisory board, a former minister, was made without the vacancy being publicly advertised. Such a process does not enhance public confidence in the appointment. When questions were raised in the press shortly before the mission about the failure of several members of the AFM's supervisory board and one executive director to file accounts for their own companies⁵⁹ on time, the response of the AFM was limited to explaining why this had not previously been identified and why it was not such a big problem even though it acknowledged that the documents should have been filed. A response better reflecting the AFM's leadership role would have been for the AFM and individuals concerned to have acknowledged that this was not the right example to set, to commit to learning lessons and to put in place procedures to avoid a recurrence.

⁵⁹ The companies in question were private companies 'bvs'. A Dutch Government web page called [Private limited company \(bv\) in the Netherlands](#) describes the characteristics of 'bvs' and confirms that bvs are required to produce annual accounts and deposit them with the KVK, the chamber of commerce.

Appendix I. Actions Taken by the Authorities to Address 2017 Recommendations on Securities Regulation and Supervision

This Annex sets out the authorities' self-assessment of action taken in response to the recommendations from the 2017 securities regulation and supervision workstream. It does not reflect an assessment by the mission team.

| # | Recommendation | Action |
|----|---|---|
| | Regulator | |
| 1. | Grant the supervisors a high level of autonomy for deciding on exceptions to the salary cap that is proposed to apply to staff of the supervisors | Not Implemented. The Law on Standards for Remuneration for Senior Officials in the Public and Semi-Public Sector (WNT-3) would impose the mentioned salary cap on DNB and the AFM. Due to incongruence with its coalition agreement and in line with the advice of the Council of State, the current government decided not to submit the proposal for the WNT-3 to parliament thereby preventing enactment of the law altogether. |
| 2. | Amend the legislation to provide that a board member may only be removed for specified, objective causes | Not Implemented. The legal grounds for dismissal of board members of DNB and the AFM are drafted in accordance with the Statute of the European System of Central Banks (ESCB) and of the European Central Bank (ECB) (see e.g. Article 14.2 of the Statute of the ESCB and ECB in comparison with Article 12 section 4 of the Bank Act 1998 and Article 1:276 section 2 of the Financial Supervision Act). Dismissal of board members can only take place by Royal Decree if board members no longer fulfil the conditions required for the performance of their duties or if they have seriously failed to do so (apart from dismissal at own request). With this, the MoF considers sufficient safeguards in place, no further action was deemed necessary. |
| 3. | Pursue legal reform to expand the rule-making authority of the AFM and the DNB | Not Implemented. The powers of DNB and the AFM to introduce technical regulations have not been enhanced. No actions to do so are currently foreseen. In the Dutch constitutional system, the Government usually initiates new legislation. Regulatory powers can primarily only be granted to independent administrative bodies, such as the DNB and the AFM, when said powers concern organizational or technical topics, or for extraordinary cases and on the condition that the minister has the power to approve the regulation. Should DNB and the AFM see reason to expand their rule-making authority, the Ministry of Finance is of course willing to enter discussions. Although under Dutch constitutional law the possibility |

| # | Recommendation | Action |
|----|--|--|
| | | to provide for technical regulations is limited, DNB and the AFM have the power to adopt so-called policy rules (according to Article 4:81 of the General Act on Administrative Law) which are in principle self-binding on DNB and the AFM but are not, as such, legally binding for supervised institutions. However, since DNB and the AFM take these policy rules into account when exercising the relevant supervisory powers, these policy rules are (even though not legally binding) relevant for supervised entities aiming to comply with the regulatory requirements. In addition, DNB and the AFM have delegated regulatory powers based on specific provisions included in, for instance, the Financial Supervision Act or directly applicable EU law. By using those regulatory powers DNB and the AFM can adopt legally binding requirements for supervised entities, usually of a technical nature and further specifying requirements in the relevant 'higher' legislation. |
| 4. | Clarify the conditions under which the MoF power to set aside rules of the supervisors would be exercised and make these transparent to the public | Not implemented. The conditions under which the MoF has the power to set aside rules of the supervisors are already clarified in law (see article 1:29 of the Financial Supervision Act). Should this power be applied, it would result in public decisions and thus transparency to the public is assured. The power of the MoF to repeal generally binding regulations adopted by DNB or the AFM and to make regulations of his own in their place stems from the primacy of the legislature as an important democratic constitutional principle in the Dutch constitutional system. At the same time Additionally, the specific cases in which the law permits intervention by the MoF combined with the procedural safeguards provide sufficient protection of the independence of the supervisor. Given this, no further action was deemed necessary. |
| 5. | Amend the legislation to expand the AFM's authority to obtain information from telecom providers and freeze assets | Not implemented. In 2015-2016, during the implementation of EU Regulation 596/2014 on market abuse and EU Directive 2014/57/EU on criminal sanctions for market abuse, the AFM requested the NL legislator to extend the AFM's powers to (i) obtain records kept by providers of telecommunication and data exchange; and (ii) freeze securities/bank accounts. The NL legislator assigned and extended these powers to the NL public prosecutor. The NL legislator considered that all necessary supervisory powers mentioned in article 23 of the MAR were available in the Dutch legal order. Hence no further implementation was deemed necessary (please see the explanatory memorandum accompanying the act implementing EU Directive 2014/57/EU and regulation in Dutch law). |
| 6. | Amend the legislation to expand the | Not implemented. DNB and the AFM have the ability to involve outside expertise in conducting their supervisory examinations based on Article 1:72 Wft, in conjunction with Article 5:15 Awb. For example, the AFM is able to appoint an expert of its choosing without the regulated firm's |

| # | Recommendation | Action |
|----|--|--|
| | authority of both the DNB and the AFM to conduct examinations and investigations using outside experts | consent and require the expert to report to the AFM. The AFM is not able to then require the regulated firm to reimburse the AFM for the cost of using such an expert. Alternatively, the AFM is able to require firms to verify their results, or enact a change program, with external experts at their own expense, however in that case the firm is able to select the expert(s) itself. |
| | Market-based finance | |
| 7. | Amend the legislation to broaden the supervisory authority of the AFM with regard to loan-based crowdfunding | Fully Implemented. In its 2016 annual legislative letter (wetgevingsbrief) the AFM requested the Ministry of Finance to introduce general provisions regarding loan-based crowd-funding to be added to the Act on Financial Services (Wft). By introducing a uniform legislative framework, the current split system should be addressed and the AFM's supervisory authority with regard to loan-based crowd-funding platforms broadened. During the public consultation on possible legislative action concerning crowdfunding, it became clear that the European Commission planned to propose a regulation on crowdfunding services, including loan-based crowdfunding. The Netherlands chose to focus on the European proposal first as it was unclear if the regulation would leave Member States with any authority to keep or develop a national legislative regime with regard to crowdfunding. In October 2020 Regulation 2020/1503 on European crowdfunding service providers for business was published, introducing a fully harmonized regime for the provision of crowdfunding services in the EU. The regulation went into force on 10 November 2021 and Dutch law has been amended accordingly to ensure faithful application of the regulation and ensure supervision by the AFM and DNB. |
| | Auditor oversight | |
| 8. | Enhance transparency by requiring all public issuers and auditors to make prompt public disclosure of auditor/audit firm changes or resignations | Fully implemented. Authorities consider this sufficiently covered by existing rules and regulations. More specifically: in case a publicly listed firm changes auditors during the financial year, this qualifies as inside information which has to be publicly disclosed. In case there is a change in auditor of a publicly listed firm, the shareholders assembly (AVA), and thereby the shareholders, will have to be duly informed. Additionally, audit firms are obliged to inform the AFM of interim termination during the fiscal year of an audit assignment of PIE, which the AFM can then match with the PIE firm's public disclosure. Given these circumstances, the AFM does not foresee a need to require additional public disclosure of auditor changes or resignations. |
| 9. | Devote more resources to routine on-site reviews of PIE-audit firms other than the four largest international firms and to | Partially implemented. The supervisory focus has been mainly on PIE audit firms. The AFM received additional budget to further intensify its oversight of PIE audit firms from 2023 onwards. This intensification allows for a higher periodic cycle of inspections and/or more thematic reviews on specific subjects. Starting in 2021, the AFM has received incremental growth in the AFM budget for non-PIE supervision. At the end of 2024, the AFM will have 35 FTE for non-PIE supervision. In 2022, the AFM started the execution of |

| # | Recommendation | Action |
|-----|---|---|
| | periodic spot-checking at non-PIE-audit firms | supervision by conducting thematic reviews, other on-site activities and interviews, and by building its data position for more risk-based and data-driven audit methodology. |
| 10. | Renegotiate the agreements with the accounting professional associations to give the AFM express control over key issues on the reviews of non-PIE firms | Fully implemented. Non-PIE audit firms: Until 2021, the oversight of non-PIE audit firms was primarily done by two professional bodies under a delegation agreement with the AFM. Since 2022 the AFM is the sole oversight body of non-PIE audit firms with regard to their statutory audits, and as such increased its contacts with the non-PIE audit firms and performed thematic reviews to gain a better picture of the quality of their statutory audits. |
| | Fund management | |
| 11. | Work to ensure the significant shareholders of AIFMs are subject to the same supervisory assessments of their suitability and financial soundness as apply to MiFID firms and UCITS fund managers | Partially implemented. The larger AIFMs in NL are subject to MiFID requirements. For the smaller ones without such a top-up, such arrangements have been considered disproportionate and consequently no additional requirements have been put in place. |
| 12. | Keep a close watch on the growth of MMFs and ensure that any new funds authorized comply with the safeguards of the IOSCO policy recommendations for MMFs | Fully implemented. Since 21 July 2018, investment funds must apply for an additional MMF top-up to be able to offer a money market fund. This follows from the EU Money Market Funds Regulation (MMFR). A transitional arrangement until 21 January 2019 was applied to existing money market funds. Over this period, all managers of existing money market funds successfully applied for the additional MMF top up. The MMFR sets additional requirements for, among other things, the investment policy of money market funds and the assets in which they are allowed to invest. The application for a MMF license extension is in addition to the mandatory notification that already applies to new funds (AIFs and UCITS). The top up can only be granted to managers who already have a UCITS or AIFM license. The use of the term money market fund or MMF (or a similar name suggesting that it is a money market fund) was no longer permitted without a license after the entry into force of the MMFR. |

| # | Recommendation | Action |
|-----|--|--|
| | | <p>To obtain an extension of the license, the manager must be able to demonstrate that they meet the conditions arising from the MMFR, which includes for managers:</p> <ul style="list-style-type: none"> • know your client policy • internal credit quality assessment procedure • data reporting obligations. <p>Since the MMFR a manager must not only extend their license with a MMF top up but must also register all offered and/or managed MMFs separately. In order to register a MMF with the AFM, the manager must be able to demonstrate that the MMF meets the requirements arising from the MMFR. Which include:</p> <ul style="list-style-type: none"> • the investment policy • the valuation method. <p>There are no additional national requirements for Money Market Funds on top of the MMFR in NL. In NL there are six MMFs from three fund managers registered with a total AuM of EUR 623 million (as of May 2023). In terms of the total European MMF market, the size of Dutch MMFs is very insignificant.</p> |
| 13. | Enhance liquidity risk management requirements for UCITS fund managers; consider requiring routine reporting of liquidity data and stress testing results by UCITS fund managers | <p>Partially implemented.</p> <p>After the initial analysis of regulatory data in 2017 in the joint work with DNB, the AFM started to develop a more structural monitoring of the reporting AIFMD data in 2020 by developing data dashboards. The development of these dashboards is an important pillar of the supervisory activities of the AFM. A dedicated team of data analysts is constantly developing and refining these dashboards and therefore these make up a major part of the AFM's current regulatory work. These dashboards not only use regulatory AIFMD data, but also fund related data from data vendors for funds that are not subject to regulatory reporting (e.g. UCITS). In these dashboards supervisors can look at general characteristics of funds, the level of liquidity mismatch of individual funds and fund type level, the reported stress test results, the presence of a liquidity buffer if the fund uses derivatives, and available LMTs. Because the size of the AIF sector in the Netherlands is significantly larger than that of the UCITS fund sector, however, more supervisory capacity is devoted to the monitoring of risks in AIF funds</p> |
| 14. | Develop a practical approach to measuring investment fund leverage and continue to | <p>Partially implemented. For AIFs the measurement of leverage is defined and harmonized by European legislative (AIFMD) reporting regime. The AFM adheres to this regime and together with DNB it monitors the use of leverage (DNB is responsible for article 25 of the AIFMD). For UCITS, there is no additional national reporting regime. UCITS make up less than 5 percent of Dutch investment funds (largely AIFs), and</p> |

| # | Recommendation | Action |
|-----|---|--|
| | contribute to international work to harmonize the leverage calculation method | therefore, due to the AFM's risk-based approach to supervision, the AFM has not implemented regular reporting requirements for Dutch UCITS. It should be noted that the AFM is advocating for a uniform reporting scheme on an EU level, consistent with that of AIFMD. |
| 15. | Assess the risks from the use of related depositaries and consider requiring additional safeguards to address these risks | Fully implemented. In the light of UCITS V, the AFM has established a regulatory regime for depositaries including licensing of those not already authorized as a bank or investment firm. On 1 November 2018 it published a sector briefing Points of attention for the organization of the depositary, Aandachtspunten voor een betere inrichting van de bewaardersorganisatie (afm.nl). The briefing includes guidance on independence and management of conflicts of interest. Further feedback on a range of issues was provided to the sector in 2021 (Sectorbrief terugkoppeling rapportage bewaarders) in the light of semi-annual reporting introduced in May 2020. Other than during the pandemic the AFM has visited and expects to visit 3-4 depositaries a year. |
| 16. | Provide guidance to the marketplace on what is expected to be in place when a depositary is a related party of a CIS manager | Fully implemented. Provided in the sector briefings referenced in the previous question. |
| 17. | Contribute to the EU level discussions on the development of a common approach to asset segregation requirements for CIS | Fully implemented. The AFM contributed to the ESMA Opinion on asset segregation (2017), which was in turn formalised in the final Delegated Regulations in respect of the UCITS Directive and the Alternative Investment Fund Managers Directive. The AFM considers this framework to be sufficient. |
| 18. | Both supervisors should conduct more on-site examinations of firms and consider conducting some comprehensive examinations to get | Fully implemented. The AFM has established 'account management' for the 20 biggest fund managers (UCITS and AIF). The AFM visits them on a quarterly basis and conducts approximately 2 deep dives each year to look into specific themes (for instance on issues around as AML or delegation). The AFM also conducts (on site) examinations with depositaries. DNB conducts 4 visits/interviews a year with each of the 16 largest investment managers. 2 with the executive board, 1 with risk management, and 1 with Internal Audit. In addition, DNB conducts several (on-site) examinations with a lower frequency in the context of thematic reviews. |

| # | Recommendation | Action |
|-----|---|--|
| | a fuller view of actual practices | |
| 19. | Work with ESMA and fellow supervisors on improving the AIFMD reporting template and related guidance, particularly with respect to clarification of the definitions of the terms used and continue to work with the industry, through workshops and additional “how to” guidance, to enhance industry’s understanding of the requirements | See answer to 21 below. |
| 20. | Consider whether prudential reporting for fund managers should be more frequent than semi-annual as large changes can occur in six months | <p>Partially implemented.</p> <p>The large fund managers in the Netherlands report on a quarterly basis because they all have a MiFID top-up. The AFM considers this an appropriate frequency. The smaller managers (without MiFID top-ups) report semi-annually.</p> |
| 21. | Ensure that all data needed for supervision and systemic risk monitoring is available on a timely basis and strive for enhanced international | <p>Fully implemented. <i>Cross-sectoral:</i> From 2018 onwards, as part of its strategic ambition, DNB has implemented different programs regarding mastering data and innovation of supervision using technology. This has resulted in, among others, an innovation lab, a network of data desks within each business unit/division in order to make reliable and complete data available, a data science hub to make the next steps in data analytics, machine learning and data science with a network across DNB’s organization.</p> <p>The AFM has launched a project called ‘spot on’. It contains multiple work streams to improve data driven off-site supervision. This includes</p> |

| # | Recommendation | Action |
|---|-------------------------|--|
| | exchange of information | <p>exploring new techniques such as machine learning and developing new reporting standards and tools for supervision to use, several of which are highlighted below. Furthermore, the AFM and the ministry of Finance are currently exploring an additional legal basis for periodic data requests.</p> <p><i>Collective investment schemes:</i> Several actions have been taken by DNB and the AFM to ensure reliable and complete data is available on a timely basis. These actions are largely in line with the more detailed recommendations in the Technical Note:</p> <ul style="list-style-type: none"> - <i>(Timely) availability of all data for supervision and systemic risk monitoring:</i> DNB has started to monitor data quality using quarterly updated reports. This has resulted in a substantial improvement of both quality and consistency of reported data. Moreover, coverage of investment managers and funds has grown very significantly over the past year, as the authorization and registration under AIFMD has progressed. All investment managers have reported since the beginning of 2018. - <i>Enhanced international exchange of information:</i> Since 2018 the AFM sends AIFMD data to ESMA. In the past year, data quality on this data received increased attention from ESMA, the AFM and DNB. Cooperation between these authorities has contributed to a considerable increase in data coverage for investment funds. In consultation with ESMA, the AFM and DNB are still working on the remaining issues in synchronizing this data with registry data. Efforts in synchronizing registry data between ESMA, the AFM and DNB, among others, contributed to this improvement. Moreover, DNB have been actively working on improving the current reporting process in collaboration with the AFM as well. This has resulted in a substantial increase of both the quality and consistency of the reported data. Over 2018, reporting data for more than 80 percent of the authorized investment managers under AIFMD have been successfully reported to ESMA. <p>AFM: The AFM has set up a reporting requirement for custodians. The custodian report must be completed every 6 months by every custodian and covers a previous reference period. The AFM expects to gain more insight into the details of material irregularities detected by the custodians through the depositary's report. At the same time, the AFM expects to gain insight into the interaction between custodians and fund managers with regard to finding a suitable solution for detected irregularities. The AFM will use these insights in its supervision of custodians and fund managers.</p> <p>Furthermore, based on an analysis of margin calls during the March 2020 stress, the AFM has set up a monitoring framework on eurozone swap rates. The March 2020 stress episode showed that sudden increases in eurozone swap rates lead to large margin calls at Dutch pension funds, which subsequently had to find cash in an already stressed market to fulfil the margin call. The AFM now contacts large pension funds when our</p> |

| # | Recommendation | Action |
|-----|--|--|
| | | <p>monitoring shows relatively large changes in the swap rates. The monitoring of the swap rates is part of a more extensive liquidity monitoring that the AFM has set up. In this monitoring the AFM tracks the flows of investment funds and some market indicators on stress. If these indicators raise concerns the AFM will follow-up by contacting the relevant fund managers.</p> <p>Finally, the AFM has, together with DNB, argued for the introduction of a European reporting regime for UCITS, comparable to the AIFMD reporting. This will now be part of the upcoming changes to the AIFMD and UCITS.</p> |
| 22. | Pursue an assessment of supervisors' powers with respect to the use of liquidity management tools at CIS | <p>Partially implemented. With other authorities the AFM has carried out various pieces of work to assess the liquidity risk in funds, to gather information on the LMTs available to and used by CISs, and to check consistency between the tools CIS say they have available and their investor disclosures and regulatory reporting. The assessment of the AFM's powers with respect to the use of LMTs at CIS was performed in 2016, and in 2019 the AFM formalized the power to suspend an internal procedure.</p> <p>During the lifetime of the fund, the AFM recognizes that AIFMD and UCITS provide the AFM with the powers to suspend subscriptions and redemptions of a fund. This follows from Art. 46(2)j AIFMD and Art. 84(2)b UCITS, which have been implemented in National law in Art. 1.77a Wft.</p> |