

Kingdom of the Netherlands—Netherlands: Detailed Assessment of Standards and Codes

This Detailed Assessment of Standards and Codes on the **Kingdom of the Netherlands—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 in **September 2004**. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of the Kingdom of the Netherlands—Netherlands or the Executive Board of the IMF.

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FINANCIAL SECTOR ASSESSMENT PROGRAM

**THE KINGDOM OF THE NETHERLANDS—
NETHERLANDS**

DETAILED ASSESSMENTS OF STANDARDS AND
CODES

SEPTEMBER 2004

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I. BASEL CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION

A. General

1. The assessment of the Basel Core Principles for Effective Banking Supervision¹ was undertaken as part of the Financial Sector Assessment Program (FSAP) that the IMF has conducted at the request of the Dutch authorities. The assessment was conducted October 27 to November 7, 2003, onsite in the Netherlands by Jean Moorhouse (UK-FSA) and Thordur Olafsson (IMF-MFD).²

Information and methodology used for the assessment

2. The assessment is based on several sources. These include; (i) a self-assessment in August 2003, by the Dutch Central Bank (De Nederlandsche Bank-DNB); (ii) detailed interviews with staff from the DNB; (iii) review of legislation, regulations and other documentation on the supervisory framework and on the structure and development of the Dutch financial sector; (iv) meetings with other authorities and independent bodies, such as the Ministry of Finance, the Ministry of Justice; and the auditing profession; (v) meetings with the banking industry, the Netherlands Bankers' Association and individual institutions representing different categories, such as large and complex financial institutions, foreign bank's subsidiary, and cooperative banks, and (vi) numerous publications available from the DNB and background material from various industry sources.

3. The assessment was performed in accordance with the guidelines set out in the Core Principles Methodology.³ For instance, the guidelines require that the assessment be based on the legal and other documentary evidence in combination with the work of the supervisory authority as well as the implementation in the banking sector. Full compliance requires that all these three prerequisites are met. The guidelines allow that a country may fulfill the compliance criteria in a different manner from the ones suggested as long as it can prove that the overriding objectives of each Core Principle are reached. Conversely, countries may sometimes be required to fulfill more than the minimum standards, e.g., due to structural weaknesses in that country. The Core Principles guidelines also state that the assessment is made on the factual situation of the date when the assessment is terminated. However, changes, which are clearly underway, e.g., in laws or practices, which will alter compliance with the principles, will be mentioned in the assessment.

¹ Issued by the Basel Committee, 1997.

² Ms. Jean Moorhouse, of the United Kingdom Financial Services Authority, has ten years of experience as a supervisor. Mr. Thordur Olafsson, (formerly Head of Banking Supervision Department of the Central Bank of Iceland) has 25 years of experience as a supervisor.

³ Issued by the Basel Committee and the Core Principles Liaison Group, 1998.

4. In view of the highly developed nature of the Dutch banking sector, this assessment takes into account both the essential and the additional criteria that have been set out in the Core Principles Methodology.

5. The assessors have had full cooperation from the Dutch authorities and have received all information necessary for the assessment

Institutional and macroprudential setting – overview

6. Banking dominates the financial sector in the Netherlands. As at the end of 2002, the banks accounted for over 60 percent of total financial assets, equivalent to around four times GDP. Of the total, around 35 percent of the banks' assets are generated from non-domestic sources with around 45 percent of the banking systems' income being generated internationally. Banks' total income is equivalent to 5.5 percent of GDP with banking employees accounting for 2.3 percent of the active workforce.

7. Currently, there are 97 domestic banks registered in the Netherlands and 28 foreign branches (of which the majority has passported into the Netherlands from the rest of the EU under the Banking Coordination Directive). Of the total, three banks—ABN AMRO, ING, and Rabobank—account for 80 percent of total bank assets and rank in the 30 largest banks worldwide. They are considered to be Large Complex Financial Institutions (LCFIs): ABN AMRO has a strong international presence; ING Group includes a large involvement in the insurance sector as well as the banking sector, and Rabobank has a co-operative structure.

8. Economic activity in the Netherlands has stalled since 2001. Following strong economic growth between 1996–2000, real GDP fell by ¼ percent in 2002, is projected to increase by only ½ percent this year before picking up by a further 1½ percent in 2004. At the same time inflationary pressures remain subdued, with retail prices increasing by about 2 percent in an annual basis. These low levels of inflation reflect both a weak level of domestic demand and the appreciation of the Euro over the past year. Large swings in asset values have also been associated with the current business cycle. During the 1996–2000 boom, the Amsterdam stock market index nearly tripled in value, but since 2001 almost all of these gains have been reversed. Property prices have also shown a strong cyclical pattern. House prices rose sharply from the middle to late 1990s until early 2002 but have remained at a constant level since then, despite continuing low interest rates, including mortgage rates.

9. During the second half of 2002 a new cross-sector structure for financial supervision was introduced in the Netherlands to replace the existing supervisory regime which was predominantly sector-oriented. The driving force behind the reform was the continuing cross sector market integration. In the Netherlands, the LCFIs account for about 90 percent of banking, 80 percent of securities, and 70 percent of insurance (measured in market shares). Given the trend for financial institutions to operate across financial sectors, regulatory policy has increasingly had to take on a cross-sector perspective. Institutionally, a first step for this was taken in 1999, with the introduction of the Board of Financial Supervisors. This offered the three then existing sectoral supervisors (banking, insurance and capital markets) a

platform to discuss cross-sector issues. The recent reforms have changed the system more fundamentally into one of a cross sector nature.

10. The new financial supervisory structure consists of two pillars, organized along the two main objectives of supervision: financial stability and conduct of business. Macro prudential oversight of the stability of the financial system continues to be the responsibility of the DNB. Prudential supervision on all individual financial institutions (micro prudential) on the other hand has become the sole responsibility of the DNB and the insurance and pensions supervisor PVK (Pensioen- & Verzekeringkamer). While DNB focuses on banks, investment funds and securities firms, the PVK deals with insurance companies and pension funds. DNB and PVK cooperate closely and have integrated their cross-sector activities through cross board appointments at executive and non executive levels, as well as through joint teams and practices on operational level for prudential supervision of financial conglomerates. This co-operation will lead to a full merger of activities in the course of 2004. As a result, (micro) prudential supervision across all sectors will be closely associated with macro prudential supervision (systemic stability) which remains the responsibility of the DNB.

11. A further development has been the fact that the former sectoral supervisory authority for the securities sector (Securities Board) has evolved into the Authority for the Financial Markets (AFM). The AFM is responsible for the supervision of the conduct of business (including consumer information and advice) of all financial services providers in the market domain: securities market, banks, investment funds, insurance companies and securities firms.

12. To provide the new financial supervisory system with a solid legal basis all existing sectoral legislation will be replaced by new legislation to fit the functional supervisory model. This substantial project is expected to be completed by January 2005.

General preconditions for effective banking supervision

13. The rule of law prevails in the Netherlands. The legal framework for the banking sector is comprehensive and regularly updated. The judicial system is efficient. There are no indications of political or industry interference on the ongoing supervision of the credit institutions by the responsible authority, DNB.

14. The **auditing and accounting** rules applicable to banks generally comply with international standards. The Dutch accounting rules comply with the corresponding EU Directives. Further harmonization will be achieved in 2005 when it is expected that the whole EU-area will implement the IAS.

15. The **Collective Guarantee Scheme** provides for a measure of protection for creditors (depositors) of and investors with participating credit institution. Credit institutions with their head offices in the Netherlands are mandatory participants in the scheme. The scheme adheres to the European Directive on minimum requirements for deposit insurance, e.g., on the 20,000 Euro limit for depositor protection. Likewise investors are protected to a

maximum 20.000 Euro for losses suffered if the insolvent institution should be unable to return securities held on behalf of these investors. The DNB administers the scheme which is not funded but guaranteed by the participating institutions. In the event of insolvency of an institution the DNB would pay the creditor or investor and then apportion the total amount of compensation paid among the institutions taking part in the scheme on the basis of an apportionment formula. By paying compensation, the DNB is subrogated, up to the amount of compensation paid, to the rights of the relevant creditor(s) or investor(s) toward the credit institution concerned.

16. There is a legal framework for the **liquidation or restructuring** of credit institutions. However, in almost all cases, the resolution of problem banks is being sought within the banking system itself. A bank has not been declared bankrupt or liquidated in the Netherlands since 1983.

B. Principle-by-Principle Assessment

17. The assessment of each principle is made on a qualitative judgment basis using five categories: compliant, largely compliant, materially non-compliant, non-compliant, and not applicable.

18. A principle will be considered **compliant** whenever all essential criteria are generally met without any significant deficiencies. A principle will be considered **largely compliant** whenever only minor shortcomings are observed, which do not raise any concerns about the authority's ability and intent to achieve full compliance within a prescribed period of time. A principle will be considered materially non-compliant whenever, despite progress, the shortcomings are sufficient to raise doubts about the authority's ability to achieve compliance. A principle will be considered **non-compliant** whenever no substantive progress toward compliance has been achieved. Principles will be considered **not applicable** whenever the CP does not apply given the legal, structural or institutional features of a country.

19. For each principle there is a descriptive part, which sets out the pertinent laws, regulations, policies and practices. Based on this, and on its implementation, the assessment is concluded. There is also a comment section, specifying the character of any deficiency and providing guidance on how it might be remedied in order to improve compliance with the principle.

Table 1. Detailed Assessment of Compliance of the Basel Core Principles

<p>Principle 1.</p>	<p>Objectives, autonomy, powers, and resources An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to authorization of banking establishments and their ongoing supervision; powers to address compliance with laws as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.</p>
<p>Principle 1(1).</p>	<p>An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks.</p>
<p>Description</p>	<p>The duties and powers of the Nederlandsche Bank (DNB) as the prudential supervisor of credit institutions have been set down in the Bank Act 1998 and the Act on the Supervision of the Credit System 1992 (ASCS). Section 4(1) of the Bank Act states that DNB is given the task of exercising supervision of financial institutions in accordance with applicable legislation. Under Section 2 of the ASCS, DNB exercises supervision of credit institutions established in the Netherlands in the interest of their solvency and liquidity. Under section 3(2) of the Bank Act, moreover, DNB has the duty to contribute, within the framework of the European System of Central Banks, to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system.</p> <p>All credit institutions (banks) fall under the scope of the ASCS. The ASCS and the regulations stemming from it are published in the Credit System Supervision Manual ('the CSSM'). This sets out the standards which institutions are expected to meet to qualify for a license. Furthermore the manual sets out guidelines on the ongoing standards which registered credit institutions are expected to satisfy in the context of prudential supervision. The ASCS and its derivative regulations are updated and expanded as required by both domestic and international developments in the areas of supervision and the world of finance. This occurs both on the micro and the macro level-. Current projects include the replacement of the current financial supervision laws (including the ASCS) by a new law that reflects the reformed structure of financial sector supervision, and the implementation of the new Capital Accord.</p> <p>Under the ASCS, DNB has the power to withdraw an institution's authorization (Section 15) or to take other measures against a credit institution which fails to observe the legal standards or which runs into financial difficulties (Sections 28, 35 and 42). DNB also plays an essential role in the so-called emergency regulations (ASCS, Sections 70–80) which provide a quick and efficient procedure for winding down a credit institution.</p> <p>A number of credit institutions come into the scope not only of the ASCS but also fall under the Act on the Supervision of the Securities Trade (ASST). This is because they also undertake designated investment activities which require further regulation. Supervision under this Act .has been delegated by the Minister of Finance to the Authority for the Financial Markets (AFM).</p> <p>There is potential for overlap and lack of clarity in the responsibilities of the two organizations. In an attempt to avoid this, the DNB and the AFM attempt to co-ordinate their operational supervisory activities. This includes regular meetings between the two institutions. However there have been instances in the past where avoiding overlap in supervisory actions has not been achieved and the financial industry has expressed some concerns about the lack of clarity in the respective supervisory bodies' roles.</p> <p>In legal terms the co-ordination of the supervisory activities of DNB and AFM (as well as PVK) and the exchange of relevant information between the supervisors has been set down in a Covenant (included in the CSSM as part 3214) and elaborated further in a policy rule.</p>

	<p>The objectives of the DNB are not explicitly set out or published. However, they are implicitly embedded in the powers ascribed to the Central Bank</p> <p>Furthermore in its Annual Report, DNB accounts for the manner in which it has executed the tasks assigned to it by law, including the supervision of credit institutions. In addition, DNB's Quarterly Bulletins provide discussions of recent developments in banking supervision. The objectives of DNB's supervisory role are stated in the Business Plan on the basis of the general principles formulated in the annual Letter from the Governing Board. This plan is not published but it is discussed with DNB's Supervisory Board. In addition, the Supervisory Board members receive semiannual reports on issues including Supervision. One member of the Supervisory Board acts as special liaison between the Minister of Finance and DNB. He may ask the DNB Governing Board for any information about the manner in which DNB performs its tasks (Bank Act Sections 13(2) and 14). Furthermore, pursuant to Section 88 of the ASCS, DNB reports annually to the Minister of Finance on its activities in implementing the ASCS. The Minister of Finance may be asked by Parliament at any time to provide explanations on the exercise of banking supervision. In this manner, DNB's public accountability for the way in which it performs its supervisory tasks has been ensured. The mechanisms for DNB's accountability as a supervisor are currently being reviewed. This review is expected to lead to the publication of a separate annual budget and annual report regarding DNB's supervisory activities as of 2004.</p> <p>A brief analysis of the development and performance of the Dutch banking industry is presented each year in DNB's Annual Report. Statistics on the banking industry's development are published in the Annual Report and in DNB's Quarterly Bulletins. Studies on selected financial industry issues are published occasionally in the Quarterly Bulletin. Furthermore, DNB publishes research reports on developments in the financial industry and its environment.</p>
Assessment	Largely compliant
Comments	<p>Further clarity of responsibilities between the respective regulatory agencies both in theory and how they operate in practice would be beneficial. Furthermore it may be helpful for the respective bodies to set out more explicitly their objectives and how they complement one another as envisaged in the new financial supervision law. The new financial supervisory system will be provided with a solid legal basis when all existing sectoral legislation will be replaced by new legislation to fit the functional supervisory model. The new law is expected to be enacted in 2005. When fully implemented this CP will probably be complied with.</p>
Principle 1(2).	Each such agency should possess operational independence and adequate resources.
Description	<p>DNB is established as a public limited company whose shares are owned by the State. DNB is accountable to the Minister of Finance and through him, to Parliament. Under the Bank Act 1998 and the ASCS, the responsibility for supervising banks is assigned to DNB. The members of DNB's Governing Board are appointed by the Crown (i.e., the Council of Ministers) through a Royal Decree for renewable seven-year terms (section 12 of the Bank Act). Before each appointment, a joint meeting of DNB's Governing and Supervisory Boards draws up a list of three nominees, from among whom the new Board member is chosen by the Crown. In practice, the term of sitting Board Members is renewed unless and until they decide to resign.</p> <p>DNB has a long-standing practice of discussing drafts of new regulations with the industry before implementing them (in fact, this is required by the ASCS sections 20(2), 21(2) and 22(2)). Also, periodic meetings are held between DNB's Governing Board and the board of the Netherlands Bankers' Association where issues of mutual interest are discussed (e.g., financial industry trends, domestic and European legal and institutional developments). However, the industry is involved neither in the appointment of DNB Board members nor in the planning and execution of DNB's operational activities.</p> <p>The Supervision Directorate's staff is required to meet high standards of professional training and experience (which are set down in the chapter on functional characteristics in the Supervision Directorate's Organization Manual and in the chapter on promoting and maintaining staff's</p>

	<p>professionalism in the Directorate's Quality Manual. In 2002, the Supervision Directorate spent EUR 733,000 on external training courses, with Supervision staff spending, on average, 14 days per person in training (external and internal courses). The Directorate's staff is bound by stringent insider regulations (forbidding them to invest in securities issued by supervised institutions) and by professional secrecy requirements.</p> <p>As a central bank DNB has its own sources of funding. Although the ASCS includes a provision allowing DNB to recover the cost of supervision from the institutions (Section 86), this provision has to date not been invoked. However, following the reform of financial sector supervision in 2002, this is expected to change from 2004 onwards. Banks will be charged for the costs of licensing and ongoing supervision (insurance companies and securities firms are already being charged for the costs of supervision). DNB is independent in setting budgets for each of its activities. A limited power of review by the Minister of Finance of DNB's budget for supervisory activities will be introduced in the near future. The industry will also be consulted on this budget but will not have a decision-making power. The Supervision Directorate's budget allows it to carry out banking supervision with the intensity which DNB's Governing Board considers desirable. The quality and quantity of staff and equipment are adequate and the level of on-site work is not restricted by the travel budget. There is rarely a need for hiring outside experts to carry out operational supervisory activities, but outside experts are used occasionally for research projects and for internal projects (e.g., computer software development).</p> <p>Section 12 (3) of the Bank Act 1998 states that the President and the Executive Directors of DNB may be suspended or relieved from office only if they no longer fulfill the conditions required for the performance of their duties or if they have been found guilty of serious misconduct. This would be a very rare event which would certainly lead to Parliamentary debate. Since the Board members are appointed by the Crown through a Royal Decree, their removal or suspension also requires a Royal Decree. If the grounds for a dishonorable removal or suspension would not be specified by such a Decree, they would become public in any case through the Parliamentary debate.</p>
Assessment	Compliant
Comments	<p>It should be noted that, the legal framework for the operations of the DNB also gives powers of authorization and non-objection to shareholders to the Ministry of Finance. The original reason given for the inclusion of dual authority in the law was to permit the Ministry of Finance to intervene in the decision making process on grounds of preventing anti competitive activity. Such anti-competitive powers have now been devolved to the Ministry of Economic Affairs and therefore the requirement is somewhat redundant.</p> <p>However operationally the DNB is still reliant on the Ministry of Finance to give its technical 'non-objection' when a change of shareholder control is required. The DNB states that this is always done on their advice which has never been overruled. Furthermore, there are plans to streamline the process and give operational responsibility for such legal decisions to the DNB. This change would improve the transparency of the process. From January 1, 2004, final approval from the Minister of Finance will be delegated except if one of the major banks or insurers takes a participation in another. The need for Ministerial approval is retained in such cases because of the potentially large political and budgetary consequences of a crisis affecting such an entity.</p> <p>DNB staff appears to be of a very high quality. Their supervisory teams comprise a balanced mix of skills. Furthermore they appear to have an adequate level of resources both in aggregate and at the individual team level. However some resource constraints may be encountered if, as is likely, the large banks expand their more complex operation to the global markets. Furthermore the amalgamation of the DNB and PVK will lead to a reconsideration of the balance of resources for the combined entity. Unless resources rise, this will need to be managed carefully to ensure resources are allocation as effectively as possible.</p>
Principle 1(3).	A suitable legal framework for banking supervision is also necessary, including provisions relating to the authorization of banking establishments and their ongoing supervision.

Description	<p>The ASCS has assigned to DNB the authority to grant and withdraw authorization to pursue the business of a credit institution in the Netherlands (Sections 6 and 15). In exercising this authority, DNB has extensive discretionary powers.</p> <p>Sections 20, 21 and 22 of the ASCS authorize DNB to give credit institutions directives within the scope of prudential supervision (solvency, liquidity and administrative organization). Different directives may apply to different groups of credit institutions and DNB may waive compliance in individual cases. Although DNB has to consult the banking industry before imposing new rules, it does not need the industry's consent. However, a collegiate approach tends to be taken to most matters and therefore consensus is usually achieved on any consultations with the industry.</p> <p>Section 54 of the ASCS authorizes DNB to request credit institutions to provide any and all information it considers necessary for the performance of its supervisory task. Section 62(1) of the ASCS requires credit institutions to provide the information requested within a specified period. In addition, credit institutions are obliged (by Section 55 of the ASCS) to furnish financial information to DNB on a regular basis. The contents and the format of the information to be provided are determined by DNB.</p>
Assessment	Compliant
Comments	<p>Section 22 of the ASCS allows DNB to set prudential rules with respect to an institution's 'administrative organization'. This term is broadly interpreted by DNB to include governance issues, internal controls, risk management and integrity. Although this interpretation has been accepted by the industry, an amendment to the ASCS has been prepared. This will provide an explicit legal basis for the setting of prudential rules with respect to integrity. This amendment will come into force December 1, 2003.</p>
Principle 1(4). A suitable legal framework for banking supervision is also necessary, including powers to address compliance with laws as well as safety and soundness concerns.	
Description	<p>Under the ASCS, DNB is provided with an extensive set of instruments to take adequate action against an institution if it fails to comply in a satisfactory and timely manner with the ASCS and/or derivative regulations or if events take place there which compromise or may compromise the financial health of that institution. With most of these instruments, DNB possesses extensive discretionary powers. Under the provisions of the ASCS, DNB has practically unrestricted access to any information in the possession of an institution (or a third party) which it deems necessary for the performance of its supervisory duties.</p> <p>Violation of the norms in practically all provisions of the ASCS and its derivative regulations may lead to sanctions. Depending on the nature of the violation or on the nature and extent of non-compliant behavior, DNB may take punitive (withdrawal of consent or authorization, imposition of a fine) or corrective action (such as the requirement to observe a certain line of conduct by a set date). The formal set of corrective and/or punitive instruments available to DNB consists of:</p> <ul style="list-style-type: none"> ▪ giving notification on the course of action to be pursued as of a set date, the appointment of a silent receiver, or other measures pursuant to Section 28 of the ASCS; ▪ the imposition of a fine or a cease and desist order under penalty (ASCS Section 90, subsections (b) to (m)); ▪ withdrawal of the authorization pursuant to Section 15 of the ASCS; ▪ a report to the public prosecutor or to other authorities responsible for the enforcement of legal standards (e.g., the Economic Investigation Agency in the case of violation of the ASCS punishable under the Economic Offences Act or the Disclosures Office (i.e., the financial intelligence agency) if an 'unusual transaction' has been left unreported). <p>Under Section 28 of the ASCS, DNB has the power to impose far-reaching measures if it is of the opinion that a situation has emerged which compromises or may compromise the liquidity or solvency of a credit institution. DNB may exercise its power on the basis of its own qualitative assessment of a situation which it has identified. Compliance with many other standards set down by the ASCS is also (in whole or in part) subject to DNB's professional judgment. An institution has a right of appeal with</p>

	<p>the court against formal decisions and measures taken by DNB.</p> <p>Section 54 in conjunction with Section 62 of the ASCS empowers DNB to access any and all information which it deems necessary for the adequate performance of the duties imposed on it by the ASCS. The gathering of information (e.g., during an on-site examination) is not explicitly directed toward the purpose of ascertaining whether the institution is in compliance with other legislation.</p>
Assessment	Compliant
Comments	The ASCSs gives the DNB a strong and clear legal framework necessary to ensure compliance. However, the approach from both the DNB and the industry has tended to be one of mutual cooperation rather than firm disciplinary action.
Principle 1(5).	A suitable legal framework for banking supervision is also necessary, including legal protection for supervisors.
Description	<p>Neither the ASCS nor any other law includes provisions explicitly protecting DNB or its employees against legal actions brought by third parties to recover damages caused by, for instance, alleged neglect in the exercise of supervisory duties. Such provisions are unnecessary because the Dutch legal system provides sufficient protection against such claims. Only in the case of imputable and culpable actions or negligence (i.e., bad faith on the part of a DNB employee) may the supervisory authority be held liable for damages (see Volume 6, Chapter 3 of the Dutch Civil Code).</p> <p>Under Section 6:170 of the Civil Code, an employer is liable for the actions of his employees. By consequence, employees of DNB's Supervision Directorate enjoy adequate legal protection against liability suits brought by third parties in connection with their supervisory activities. DNB has sufficient financial resources to cover the costs of defending itself against legal actions against the way it has performed its supervisory tasks.</p>
Assessment	Compliant
Comments	The legal framework for banking supervision does not itself give protection to supervisors. However reliance can be made on the Civil code which ensures that the employer is liable for the actions of his employees provided that they are carried out in good faith. This has further been confirmed in court precedents.
Principle 1(6).	Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	<p>The ASCS embraces the principle that information supplied by supervised institutions is classified and may be used only (by DNB and its employees) in the performance of the duties imposed by the ASCS. The ASCS describes clearly and in considerable detail the conditions and circumstances under which departures from the secrecy requirement are allowed. DNB may be required in a criminal court case to supply confidential supervisory information.</p> <p>Section 64 of the ASCS states that data and information obtained from individual corporations and institutions may not be published and (in principle) are to remain secret. Sections 65 ff. list the conditions under which such data and information may be exchanged with other domestic or foreign authorities officially responsible for the supervision of financial markets and of institutions active in those markets. These conditions include the requirement that DNB be confident that the other supervisor will use the information exclusively for the purpose (i.e., supervision) for which it was furnished, and that the secrecy of the information continues to be safeguarded.</p> <p>In many cases, the exchange of supervisory information with other supervisors is arranged for by formal bilateral agreements. DNB has concluded such agreements with each of the other two domestic financial sector supervisors as well as with a large number of foreign supervisors. On the domestic level, there is the Covenant concluded by DNB, the Financial Markets Authority and the Pensions and Insurance Supervisory Authority, while internationally, there are the various Memoranda of Understanding and other agreements concluded with foreign supervisors.</p>
Assessment	Compliant
Comments	Information sharing procedures are in place and seem to work in practice.

<p>Principle 2.</p>	<p>Permissible activities The permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined, and the use of the word “bank” in names should be controlled as far as possible.</p>
<p>Description</p>	<p>The provisions of the ASCS are directed at corporations or institutions pursuing the business of a credit institution. Section 1(1) of the ASCS clearly defines the concept of a credit institution. The Act does not explicitly define the activities which a credit institution may pursue, since Dutch law embraces the concept of the ‘universal bank’, meaning that a bank is allowed in principle to pursue all banking activities. In line with this concept, Section 7 of the ASCS states that an authorized credit institution is allowed to carry out <i>at least</i> the activities listed in the annex to the Second Coordination Directive of the European Union, unless the authorization by DNB expressly states otherwise. Thus, through the licensing procedure, DNB controls the full scope of activities of a credit institution, no matter whether they are listed in the annex to the Directive or not. Activities that a bank may carry out but that are not listed in the annex include financial activities such as securities clearing and insurance (provided a license has been obtained under the relevant supervisory law) and non-financial activities (e.g., running a travel agency). Such activities will be covered by DNB’s consolidated supervision. The ASCS does not define the term ‘bank’ but it prohibits deposit taking unless an institution is authorized by DNB (Section 6(1) in conjunction with Section 1(1)).</p> <p>All authorized credit institutions are entered by DNB into a public Register (under Section 52 of the ASCS). If an individual institution has been restricted by DNB in the activities it is allowed to pursue under its authorization, the entry for that institution in the Register lists its permitted activities.</p> <p>Corporations and institutions are prohibited, with certain exceptions, by Section 83 of the ASCS from using the word ‘bank’ and its derived forms or translations as part of their name or in the pursuit of their business, unless they have been authorized under the ASCS. A similar legal prohibition also applies to receiving funds repayable on demand (deposits) from the public. As stated by Section 82(1) of the ASCS, the business of receiving funds repayable on demand or subject to notice being given is an activity which is permitted solely to authorized credit institutions. The sanction against violation of these prohibitions is the imposition of an administrative fine or a cease and desist order by DNB or, if necessary, prosecution under the Economic Offences Act.</p>
<p>Assessment</p>	<p>Compliant</p>
<p>Comments</p>	
<p>Principle 3.</p>	<p>Licensing criteria The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the banking organization’s ownership structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base; where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained.</p>
<p>Description</p>	<p>The ASCS lists a detailed set of objective and subjective criteria, which must be met before authorization to pursue the business of a credit institution in the Netherlands is given. The subjective criteria allow DNB extensive freedom in assessing to what extent these criteria has been met and to determine whether the requested authorization may be given. The same criteria used to assess an application for authorization, also apply to institutions already authorized. DNB has an effective set of instruments at its disposal to take corrective action if any of these criteria is no longer satisfied, including the power to withdraw its authorization.</p> <p>Under the ASCS, DNB is both the licensing authority and the supervisory authority for all banks. However its licensing powers are communicated via a recommendation to the Ministry of Finance. Section 9 of the ASCS states that DNB will grant the authorization to pursue the business of a credit institution in the Netherlands unless, in the opinion of DNB, any of the conditions apply which are listed in subsection 1 under (a) to (h) or if DNB sees any of the grounds for refusal listed in subsections (2) to (5) of this Section. Section 8 of the ASCS demands that an application for authorization includes the information described by subsection (2) of that Section. An application will not be considered until</p>

all information needed to assess the application has been received

After an institution has been granted authorization, it must continue to satisfy the admission criteria. Failure to satisfy any of these criteria may lead to the withdrawal by DNB of the authorization granted under Section 15 of the ASCS.

One of the criteria for granting authorization listed by Section 9(1) under (f) implies that shareholders in a credit institution may not exert any influence on the institution which in the opinion of DNB runs counter to sound banking policy. This might be the case, for instance, if the shareholders' own financial position were weak, thus preventing them from providing additional financial support to the institution if the need arose, or if the origin of shareholders' funds is not transparent. Another of the criteria (Section 9(3)) allows the refusal of authorization if the prospective credit institution forms part of a group whose formal or actual control structure is nontransparent to a degree that would prevent the adequate exercise of supervision. In addition, Section 24 of the ASCS requires that anyone who holds a qualifying holding in a credit institution, whether directly or indirectly, has received a 'declaration of no-objection' ('DonO'). DonOs are issued by the Minister of Finance or – in specific cases – by DNB on behalf of the Minister of Finance. Without a DonO, holding a qualifying holding is not allowed. The application process for a DonO involves an assessment of the financial soundness of the applicant with a view to his capability to lend (additional) financial support to the Dutch credit institution should the need arise.

A credit institution must hold a minimum amount of capital or 'own funds' (see Section 11 of the ASCS and the Decree issued by DNB pursuant to this Section which is included as section 3106 in the CSSM).

At the time authorization is granted to an institution and as long as the institution keeps its authorization, members of the management board and the supervisory board of a credit institution must meet requirements of fitness and propriety. The provisions relevant to this requirement are found in Section 9(1) under (b)–(e) of the ASCS, while Sections 14 and 15 of the ASCS provide for measures which DNB may take if these requirements are no longer met. The requirements with regard to expertise are detailed in the Regulation on Organization and Control (ROC) (a binding regulation issued by DNB on the basis of Section 22(1) of the ASCS – see CSSM section 4201) while integrity requirements are elaborated in the Policy Rule on Integrity Testing (CSSM section 3212). The assessment of prospective members of a management or supervisory board involves interviews and questionnaires, and the persons named as referees are asked to give their judgment.

As part of an application for authorization, a so-called program of operations (i.e., a business plan) must be presented, detailing the kind and size of activities planned with a projection of the resulting financial developments covering at least three fiscal years. The business plan should also provide insight into the formal and the actual control structure and the prospective administrative organization, including the financial administration and internal control. The relevant legal provisions in this context are Sections 8, 9 and 22 of the ASCS. The corporate governance requirements with respect to the organization and control of a bank's business processes are detailed by the ROC. The application process and especially the evaluation of the business plan includes an assessment of whether the new institution will be able to satisfy DNB's directives relating to solvency, liquidity, administrative organization and internal control, both in the short and in the longer term.

If the authorization applied for concerns a subsidiary or branch of a foreign bank, the application should include a written statement by the relevant foreign supervisor to the effect that it has approved the establishment of a subsidiary or branch in the Netherlands (ASCS, Section 8(2) under (j)).

An authorization once granted may be withdrawn by DNB if the information or documents submitted to obtain the authorization prove to be incorrect or incomplete to such an extent that the decision made in respect of the application for authorization would have been different (possibly negative) if, at the

	<p>time of that decision, the correct circumstances would have been known in full (see ASCS Section 15(1) under (j)). However this has never occurred in practice.</p> <p>Having been granted authorization, an institution is subjected to (continuous) supervision by DNB, which includes an assessment of whether the institution is able to realize its stated objectives and whether any restrictions attached to the authorization are being complied with.</p> <p>Supervision pursuant to the ASCS is exercised under the assumption that a bank's management board is collectively responsible for the implementation of and compliance with the required organizational and risk control measures (ROC, section 24), including compliance with the requirements of supervision legislation. In its explanatory note relevant to this requirement, DNB recommends that a credit institution should ensure, in constituting its management board, that the board as a whole has a good understanding of the risks run by the institution and of the manner in which these risks can be controlled. Regular supervision assesses the quality of an institution's management on an ongoing basis.</p>
Assessment	Largely compliant
Comments	<p>The DNB assesses the fitness and propriety of the members of the Supervisory and executives boards both at the time of licensing and on an ongoing basis during regular on-site supervision. However essential criterion seven stipulates that the licensing authority evaluates proposed directors and senior management as to expertise and integrity. There may be other people in Senior management positions who are in key strategic positions but not on the executive board. This is likely to be particularly relevant for larger institutions and banking groups. To become fully compliant with this principle it is recommended that the fitness and propriety assessment should be expanded to cover other key senior management functions.</p>
<p>Principle 4. Ownership Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.</p>	
Description	<p>Under the provisions of the ASCS relating to the shareholders of an authorized credit institution, DNB, in conjunction with the Ministry of Finance, has extensive powers to reject new shareholders and to take corrective action if an existing shareholder has ceased to satisfy the criteria enumerated by the ASCS. Under Section 24(1) of the ASCS, no-one is allowed to hold, acquire or increase a qualifying holding in a credit institution or to exercise any control attaching to a qualifying holding in a credit institution, save after having obtained a declaration of no-objection from the MOF on the advice and recommendation of the DNB. The concept of a qualifying holding is described by Section 1(1) under m of the ASCS as a direct or indirect holding of more than 5 per cent of the issued share capital of an enterprise or institution or the ability to exercise directly or indirectly more than 5 per cent of the voting rights in an enterprise or institution, or the ability to exercise directly or indirectly a comparable degree of control in an enterprise or institution.</p> <p>Although issuing declarations of no-objection is the Minister of Finance's responsibility, the decision-making procedure set down in Section 24 of the ASCS is such that it affords DNB a decisive vote. A declaration of no-objection is granted unless, in the opinion of DNB, holding, acquiring or increasing a qualifying holding by an applicant:</p> <ul style="list-style-type: none"> ▪ would or could lead to an influence on the credit institution concerned which would conflict with sound banking policy; ▪ would or could lead to the credit institution concerned forming or becoming part of a group within which the formal or actual control structure is lacking in transparency to such an extent as to constitute an impediment to the adequate exercise of supervision of the credit institution; and ▪ would or could lead to an undesirable development of the credit system. <p>Pursuant to Section 27 of the ASCS, a credit institution must inform DNB every year in July of the identity of every natural person or legal entity who or which holds a qualifying holding in that credit institution, to the extent that it knows the relevant data. Any changes in a qualifying holding causing the holding to exceed or fall below 5, 20, 33, or 50 percent or causing the credit institution to become</p>

	or cease to be a subsidiary must be reported by the institution as soon as it becomes aware of it. Information on shareholdings in a credit institution may also be obtained during on-site inspections or meetings with its management.
Assessment	Largely compliant
Comments	Though the actual power to accept or reject the transfer of ownership or controlling interest would appear to rest with the Ministry of Finance, the DNB has the decisive vote in practice and has never been overruled. However the essential criterion three stipulates that ‘the supervisor has the authority to reject any proposal for a change in significant ownership or controlling interest.’ As a result of this it is concluded that the DNB cannot be fully compliant with this principle. However, the Dutch authorities are considering ways of streamlining the authorization process which will involve transferring some, if not all of the decision making process to the DNB. If the transfer involves all aspects of the process, one would expect this CP to be complied with.
Principle 5.	Investment criteria Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.
Description	<p>Under the provisions in the ASCS relating to the acquirement of participating interests and investments by an authorized credit institution, DNB is given extensive powers to reject undesirable new participations and investments and to take corrective action if a credit institution has holdings or investments which have ceased to satisfy the criteria listed by the ASCS. Section 23 of the ASCS lists several acts by a credit institution which require prior declarations of no-objection issued by DNB, including:</p> <ul style="list-style-type: none"> ▪ holding, acquiring or increasing a qualifying holding in another enterprise or institution, if such a holding is 10 percent or more; ▪ taking over all, or a considerable part of, the assets and liabilities of another enterprise or institution; and ▪ merging with another enterprise or institution. <p>If any of such acts is performed without a prior declaration of no-objection, the act must be annulled within a period to be specified by or on behalf of the Minister of Finance, unless a declaration of no-objection is issued retroactively.</p> <p>The concept of a qualifying holding is described by Section 1(1) under m of the ASCS as a direct or indirect holding of more than 5 per cent of the issued share capital of an enterprise or institution or the ability to exercise directly or indirectly more than 5 per cent of the voting rights in an enterprise or institution, or the ability to exercise directly or indirectly a comparable degree of control in an enterprise or institution.</p> <p>Pursuant to Section 23(2) of the ASCS, a declaration of no-objection will be issued unless DNB is of the opinion that:</p> <ul style="list-style-type: none"> ▪ the intended act would or could conflict with the applicable provisions of the solvency directive or the large-exposure rule; ▪ the intended act would or could conflict with sound banking policy in any other way, or ▪ the act would or could lead to an undesirable development of the credit system. <p>These stipulations leave enough scope for a subjective assessment by DNB of the extent to which the bank has the organizational and financial capacity to handle the investment or acquisition properly. They also allow DNB to reject investments that would hinder effective supervision.</p> <p>DNB may impose conditions on a declaration of no-objection. Criteria for the assessment of applications for a declaration of no-objection relating to participating interests are detailed by section 3203 of the CSSM. A credit institution is required to inform DNB annually of participating interests held by it (CSSM, Statement/form 8036).</p>
Assessment	Compliant
Comments	The sections of the ASCS relating to participations by credit institutions were under revision at the

	<p>time of writing of this document. The aim is to simplify the rules, thus reducing the administrative burden for banks. Section 3203 of the CSSM will also be revised. From discussions and review of ASCS, it would appear that some of this role is still carried out by the Minister of Finance rather than the DNB. The revisions that are planned will improve the transparency of the system.</p>
<p>Principle 6.</p>	<p>Capital adequacy Banking supervisors must set minimum capital requirements for banks that reflect the risks the bank undertakes, and must define the components of capital, bearing in mind its ability to absorb losses. For internationally active banks, these requirements must not be less than those established in the Basel Capital Accord.</p>
<p>Description</p>	<p>Under Section 20 of the ASCS, DNB is given powers to impose regulations on the minimum amount of own funds which must be held by banks. A bank's minimum own funds must be proportional to the risks it is exposed to. The Solvency Directives (CSSM, chapter 40) provide definitions and calculation methods for the determination of a bank's 'actual own funds' and of its risks (credit and market risks including off-balance-sheet risks). The calculation of the solvency ratio is made on the basis of the consolidated business of a credit institution. As an EU Member State, the Netherlands has implemented the EU solvency directives. These directives incorporate the current Basel Capital Accord. The EU directives, and thus also DNB's solvency directives, apply to all banks, not only internationally active banks. In some cases where specific requirements from either Basel or the EU are lacking, DNB has framed its own policies within the framework given by the EU Directives and the Capital Accord. Examples of this relate to innovative capital instruments (CSSM, section 4003b1) and credit derivatives (CSSM, section 4011b1). Also, on top of the internationally agreed requirements, DNB has set separate capital requirements for country risk in certain circumstances (see Core Principle 11).</p> <p>DNB has sufficient powers at its disposal to take action when an institution's solvency is endangered. If, in DNB's opinion, the solvency (or liquidity) of a bank under its supervision is compromised, DNB may take any of several measures under Section 28 of the ASCS, including a direction on the course of action to be pursued by the bank or the appointment of a silent receiver. The actual measures taken will depend on the circumstances of the particular case.</p> <p>An extensive system of periodic reporting requirements keeps DNB informed of an institution's solvency. On the basis of section 55 of the ASCS banks are required to file various prudential reports (on a monthly or quarterly basis, depending on the type of information). Capital ratios and their components are reported on a monthly basis. The entire system of reporting requirements is included in chapters 7 and 8 of the CSSM.</p> <p>Included in the Regulation on Organization and Control (ROC) are guidelines for risk and solvency assessment and control. The ROC clearly requires every institution to have an adequate solvency control system in place. Whether internal processes to monitor and control solvency have actually been implemented is determined during on-site supervisory examinations (see Core Principle 16). DNB expects banks to maintain a higher capital ratio than the regulatory 8 percent minimum. In actual practice, DNB expects a minimum of 10 percent in large banks and for other banks a somewhat higher level, depending on their risk profile.</p> <p>For banking subsidiaries that are part of a banking group and that are fully and irrevocably guaranteed by the parent bank (in the manner set out in Article 403 of the Civil Code), the capital adequacy ratio is calculated and reported only on a consolidated basis. Banking subsidiaries that are not covered by this specific type of parental guarantee are required to calculate and report their individual capital ratio.</p> <p>Section 11 of the ASCS requires that a credit institution holds a minimum amount of own funds. The minimum amount is set by DNB and may be different for different categories of credit institutions. The minimum amounts required for the different types of credit institutions are specified in the Decision on Minimum Own Funds (CSSM, section 3106). For universal banks, for example, minimum own funds amount to five million Euro.</p>

Assessment	Largely compliant
Comments	<p>Both DNB and commercial banks in the Netherlands have begun to prepare for the implementation of the new Capital Accord at the earliest possible date (i.e., late 2006). Preparations at DNB include a complete overhaul of the CSSM (which will also reflect the new Financial Supervision Act due to come into effect in 2005) and of automated reporting systems, training of supervisory staff, and – where necessary – informing banks on how DNB will interpret the new Accord. During the implementation phase of the new Capital Accord, DNB will consider extending the prudential reporting requirements on a solo basis to parent banks. This would be a positive step forward and is supported by the assessment. In particular as additional criteria five calls for capital ratios to be calculated on both a consolidated and a solo basis for the banking entities within banking group. However, for subsidiary banks that are fully and irrevocably covered by a parental guarantee as set out in Article 403 of the Civil Code, the purpose of criteria five has been met The DNB will be fully compliant with this Principle after having introduced solo supervision for parent banks. However, before taking any action with respect to solo supervision, The Dutch authorities have decided to await decisions on the new capital requirements tables in Basel (Basel II) and in Brussels (Capital Adequacy Directive 3).</p>
Principle 7.	<p>Credit policies An essential part of any supervisory system is the independent evaluation of a bank’s policies, practices and procedures related to the granting of loans and making of investments and the ongoing management of the loan and investment portfolios.</p>
Description	<p>Pursuant to the Regulation on Organization and Control (ROC – see CSSM section 4201) each authorized bank in the Netherlands is required to have clearly formulated policies in place aimed at risk control and sound business practices (ROC subsection 1.2.2.). The particular issues of concern relating to <i>credit risk</i> are specified in section 2 of the ROC. According to this section, particularly subsection 2.1, a bank’s credit risk control policy must provide for, <i>inter alia</i>, authorization procedures, the setting of limits, the monitoring of limits, and procedures and measures for emergency situations (ROC section 34). A bank’s policy in this area must be translated into clear procedures and measures that are applicable to the day-to-day activities. The procedures and measures are to be integrated into the system and the day-to-day activities of all relevant personnel (ROC sections 10 and 36).</p> <p>On the basis of sections 11 and 38 of the ROC a bank shall have in place an information system that is adequate for the systematic measurement, monitoring and documentation of all credit risks. All (particulars to) credit risks must be reported in a timely manner in accordance with the existing reporting lines. A bank is also required to have in place a system for collecting, processing and providing internal and external information that enables an effective control of business and of associated risks by the management board and the (line) management (ROC section 17).</p> <p>Banks must systematically monitor compliance with the organizational and administrative procedures and measures for controlling credit risks (ROC section 37). As with all control mechanisms the credit risk control mechanism must be updated on a regular basis to take account of changing circumstances (ROC sections 5 and 6).</p> <p>Section 15 of the ROC requires banks to segregate duties in order to ensure that their activities are carried out in a controlled and sound manner. In this respect reference is also made to sections 27 and 32 of the ROC regarding the position of the management board and the supervisory board of each bank with respect to avoiding any (semblance of) conflict of interest.</p> <p>The formulation and implementation of, and compliance with, procedures and measures aimed at controlling a bank’s credit risks (including management-level monitoring of a bank’s total exposure to its borrowers) are periodically the subject of DNB’s on-site inspections. In this respect reference is</p>

	<p>made to the Risk Assessment Guidelines in the Risk Analysis Handbook and the work programs for on-site inspections of lending to private persons and businesses in the Handboek Werkprogramma's.⁴ Under Section 54 of the ASCS, DNB has unlimited access to all information which it considers necessary for the proper performance of its supervisory tasks (see also ROC section 3).</p> <p>In view of section 37 of the ROC, DNB recommends that the larger and more complex banks establish a credit risk committee supervising the control of such banks' credit risks.</p>
Assessment	Compliant
Comments	The guidelines set out are comprehensive and sufficiently detailed.
Principle 8.	Loan evaluation and loan loss provisioning Banking supervisors must be satisfied that banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan loss provisions and reserves.
Description	<p>Section 38 of the ROC stipulates that each bank must have in place an adequate information system for the systematic measurement, monitoring and documentation of all credits. The information collected and processed must at all times provide a picture of the overall credit exposure in respect of each borrower/counterparty or group of connected borrowers/counterparties, taking into account (the value of) any collateral placed at the banks' disposal. This section also requires that each regular credit risk report contain a statement on any (impending) troubled loans. Provisions for credit risks, including the assumptions which underlie them, must be clearly documented. Under section 36 of the ROC, banks are required to have in place procedures and systems for identifying and monitoring troubled loans. Within this context it is recommended to classify credits (on- and off-balance sheet) in risk categories, which may also be used to determine provisioning.</p> <p>Legal provisions prescribing, among other things, the valuation of balance sheet items in the annual accounts of corporations in general, are set down in Book 2, Title 9 of the Civil Code, and apply to banks as well. These provisions have been elaborated in greater detail in other documents including the Decree on Asset Valuation. Regulations with respect to the annual accounts and the annual report have been elaborated more fully in the Guidelines on Annual Reporting by the Council on Annual Reporting. Chapter 600 of these Guidelines contains banking-specific recommendations and firm ground rules for valuation, profit and loss calculation and presentation. DNB has ruled that banks must apply these guidelines in drafting periodic reports to DNB. One of the implications of this is that loans should be valued at their nominal sum minus any write-downs deemed necessary. Write-downs on individual claims will have to reflect as adequately as possible any perceived inherent risks. The assessment margin that exists in determining write-downs perceived as necessary should never be used in building up hidden reserves. Institutions should, within the limits of prudent behavior, develop policies and procedures regarding loan classification and provisioning which are well-suited to their conduct of business.</p> <p>The DNB view the evaluation of loans and loan-loss provisioning are important issues within the framework of ongoing banking supervision. In this respect reference is made to the Credit Risk Guideline in the Risk Analysis Manual (page 401). Reference is also made to the Work programs Manual, particularly to the part on Risks and control mechanisms regarding the 'Werkprogramma particuliere en zakelijke kredietverlening' (page 2003). The instructions included there lead to the conclusion that banks are expected to have in place adequate policies, practices and procedures with respect to the evaluation of asset quality (including off-balance-sheet exposures) and of the adequacy of loan loss provisioning and reserves.</p> <p>At least once a year, institutions must report the size of their provisions to the supervisor by means of Statement/form 8032 of the CSSM. Banks must make provisions as soon as it becomes clear that a loss</p>

⁴ This "Work Programs Manual" is available in Dutch only.

	<p>may be imminent. In addition to the standardized reports, the large internationally active Dutch banks provide DNB with quarterly reports on asset quality and loan loss provisioning directly based on their internal management information system. Dedicated supervisory teams analyze these reports as soon as they come in, in order to reach an opinion on the risk profiles of banks' credit portfolios. Biannually a comparative analysis of large banks' reports is made in order to identify trends in credit portfolios and risk profiles.</p> <p>DNB's Supervision Directorate makes periodical assessments of banks' organizational framework and policies for provisioning, including an assessment of the portfolio's quality and the size of provisions. Important elements in these periodic examinations of the lending portfolio's quality are internal loan classification and the way problem loans are handled. The size of provisions is also assessed by the external auditor, and that size figures importantly in the periodic contacts between the Supervision Directorate and the external auditor. If DNB concludes that provisions are too small, it may instruct an institution to increase its provisions.</p>
Assessment	Compliant
Comments	No formal or prescriptive loan loss requirements are set out by the Central Bank as the provisioning system is principle rather than rules based. This in is line with certain other EU regulators and seems to work well in practice. The benefit of such a system is that loan loss provisioning remains an active, ongoing risk mitigation tool of asset quality of the banking sector. As part of its supervision of credit quality, the DNB undertakes on site external examinations of the credit quality of the institutions and may if it so wishes overrules the provisioning levels recommended by the external auditor. In practice these differences in opinion of the level of provisioning tend to focus on the level of general provisioning rather than that on specific loans.
Principle 9.	<p>Large exposure limits</p> <p>Banking supervisors must be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.</p>
Description	<p>Under Section 20(3) (a5) of the ASCS, DNB is empowered to give specific regulations to banks regarding large exposures within the framework of the solvency directives. The so called Large-Exposure Rule may be found as section 4081 in the CSSM. This rule explicitly defines the notions of 'exposure' (CSSM section 4081-03.1) and 'group of connected clients' (CSSM section 4081-03.2). These definitions leave sufficient room for DNB for interpretation on a case-by-case basis. Elements of the large-exposure rule are exposure limits (in percentages of the actual own funds) and risk reporting requirements (CSSM section 4081-02.1). However large exposures as a percentage of capital as required by EU directives is only measured on a consolidated basis rather than on a solo basis.</p> <p>In order to comply with the reporting requirements regarding large exposures, banks must have management information systems in place which enable them to identify (and report) concentrations within their portfolios in a timely manner. The reporting system should also enable the management of banks and DNB to monitor compliance with the large-exposure regulations.</p> <p>The aspect of concentration and correlation of risks in a broader sense is addressed within the framework of each individual bank's (credit) risk analysis and the periodical on-site inspections by DNB. On the strength of section 35 of the ROC a bank is required to perform systematic analyses of credit risks, taking into account (sectoral and geographical) concentrations and correlation with other risks. Reference is made to pages 401/3 and 402/4 of the Risk Analysis Handbook. Reference is also made to the Work Schedules Manual in which concentration and correlation are mentioned as points of particular interest during an on-site inspection (see for instance page 2003/9 of this manual). Large exposures are reported each month to DNB on a consolidated basis.</p>
Assessment	Compliant
Comments	The DNB considers the large exposure limits to among the most important prudential measures and ensures that the EU directive on large exposure is fulfilled. .
Principle 10.	<p>Connected lending</p> <p>In order to prevent abuses arising from connected lending, banking supervisors must have in place</p>

	requirements that banks lend to related companies and individuals on an arm's-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.
Description	<p>The issue of banks' lending to connected parties has been addressed as a major point of attention within the framework of the ROC and the Risk Assessment Guidelines. Under section 35 of the ROC banks, in analyzing credit risks, are required to give consideration to contractual agreements with connected parties. Section 36 of the ROC requires banks to have procedures and measures in place regarding lending to connected parties. However no hard limits are set on connected lending to other parts of a consolidated group. Furthermore, given large exposures are only measured at the consolidated level the 25 percent limit on large exposures will not apply to any intra-group lending. In a number of places in the Risk Assessment Guidelines (Credit risk guideline 401/3, Legal & integrity risk guideline 409/3; Control assessment guidelines 500/3; and Organization guideline 502/1 and 502/4) concentration and correlation, and lending to affiliated parties, affiliated groups of borrowers and group relations are mentioned as aspects which need to be considered as part of the assessment processes.</p> <p>Apart from these requirements DNB has issued the 'Regulation on credit facilities to individual directors and their families'. This Regulation aims to prevent banks in the Netherlands from offering disproportionately advantageous lending facilities to their directors, second-level managers, supervisory board members, group directors and certain relatives. The Regulation limits the size of such loans and requires the usual collateral to be provided. In addition, an internal reporting and monitoring system must be put in place, involving the external auditor.</p>
Assessment	Compliant
Comments	It is recommended that connected lending limits also be applied to the solo entity.
Principle 11.	Country risk Banking supervisors must be satisfied that banks have adequate policies and procedures for identifying, monitoring and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.
Description	<p>The regulations on country risk comprise the country risk directives pursuant to Section 20 of the ASCS and requirements with regard to the banks' country risk policies as formulated in the ROC on the basis of Section 22 of the ASCS. The country risk directives are set out in the CSSM under 4091. According to these directives the country risk policy of DNB is based on the following principles:</p> <ol style="list-style-type: none"> country risk management is primarily the responsibility of the management of each bank; DNB formulates explicit capital and provisioning requirements for country risk in respect of major countries; and country risk policy addresses both situations marked by actual or imminent payment arrears (backward-looking) and situations marked by increasing probability of payment arrears (forward-looking). <p>More details regarding the country risk directive may be found in section 4091 of the CSSM. Section 11 of these directives requires banks to prepare timely reports on their country risk position, by means of two returns: a half-yearly return for prudential purposes and a quarterly return for the BIS. Reference is made to section 7023 of the CSSM.</p> <p>The ROC requires banks to have in place clearly formulated policies that are aimed at risk control and sound business practices covering, <i>inter alia</i>, country risks and transfer risks. These policies have to be translated into and implemented in the form of organizational and administrative procedures and measures that are integrated into all business processes. Sections 34 and 35 of the ROC require banks to have a thorough knowledge of their borrowers and counterparties, the markets in which they operate and the countries where they are established and to give consideration to concentration of credit risk with regard to these borrower-related aspects.</p> <p>Through on-site and off-site inspections DNB monitors compliance with the directives and reporting</p>

	<p>requirements in the fields of country and transfer risk, as well as the existence and proper functioning of banks' internal policies (including administrative measures and control procedures) in these areas. In this context reference is made to the Credit Risk Guidelines in the Risk Analysis Handbook where 'Transfer risk' is one of the evaluation topics under the risk item 'default probability' (page 401–2). Country risk and transfer risks are also explicitly mentioned as points of attention in the Work Programs Manual (see 'werkprogramma zakelijke kredietverlening' under 2003-3.1.1, 'Definition' and 'Exposure'). In addition the DNB has regular (approximately six monthly) meetings with the industry to discuss future developments and risks on a global basis.</p>
Assessment	Compliant
Comments	The DNB has a comprehensive system to take account of 'country risk'. Not only does it set out guidelines for loan loss provisioning but it also incorporates additional capital requirements.
Principle 12.	<p>Market risks Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor, and adequately control market risks; supervisors should have powers to impose specific limits and /or a specific capital charge on market risk exposures, if warranted.</p>
Description	<p>Pursuant to the Regulation on Organization and Control (ROC) each authorized bank in the Netherlands is required to have clearly formulated policies that are aimed at risk control and sound business practices (ROC subsection 1.2.2.). The particular issues of concern relating to market risks are specified in section 2 of the ROC. According to this section, particularly subsection 2.2, the market risk control policy of a bank must provide for, <i>inter alia</i>, authorization procedures, the setting and monitoring of limits and procedures and measures for emergency situations (ROC section 39).</p> <p>Market risk includes price risk (securities, commodities and derivatives), interest rate risk and foreign exchange risk, both within and outside the trading book. Based on the principle that a bank must avoid assuming excessive market risks, it is required to have a good understanding of and ongoing insight into the various market risks to which it is exposed. A bank's policy in this area must be translated into clear procedures and measures that are applicable to the day-to-day activities. These procedures and measures must be integrated into the system and the day-to-day activities of all relevant personnel (ROC sections 10 and 41).</p> <p>Banks are required to have in place a system for collecting, processing and providing internal and external information enabling them to exercise effective control of business and associated risks by the management board and the (line) management (ROC section 17). Specifically, on the basis of sections 11 and 43 of the ROC, a bank is required to have in place an information system that is adequate for the systematic measurement, monitoring and documentation of all market risks. All (particulars to) market risks (including any identified exceptions to limits) must be reported in a timely manner in accordance with the existing reporting lines. Like all control mechanisms the market risk control mechanism must be updated on a regular basis to take account of changing circumstances (ROC sections 5 and 6). On the basis of section 40 of the ROC a bank is obliged to perform systematic analyses of the various market risks. Such analyses are expected to include simulations of earnings and capital under various circumstances, concentration of risks in the trading book and correlations on a number of aspects.</p> <p>Banks must systematically monitor compliance with the organizational and administrative procedures and measures for controlling market risks (ROC section 42). The formulation and implementation of and compliance with procedures and measures aimed at controlling a bank's market risks (including the capabilities of a bank's management in respect of this complex area) are periodically included DNB's on-site inspections. In this context reference is made to the Risk Assessment Guidelines in the Risk Analysis Handbook (Market risk, Interest rate risk and Foreign exchange rate risk guidelines under 402–404) and the various work programs for on-site work in the chapter on Investment banking of the Work Programs Manual.</p> <p>The market risk exposures of a bank are dealt with within the framework of DNB's solvency directives. Reference is made to the CSSM, section 4001-01, under which banks are required to</p>

	<p>maintain at all times a minimum level of capital. This includes the sum of the capital requirements for, among other things, foreign exchange risk, gold price risk, commodities positions and market risk on financial instruments in the trading book. Non-compliance with the solvency directives can be a reason for DNB to impose corrective measures (additional capital charges and/or limitations to risky activities) pursuant to Section 28 of the ASCS.</p> <p>As an alternative to one of the standardized methods for calculating capital requirements for market risk on positions (on- and off-balance sheet) in equities, debt instruments, currencies, gold and commodities, banks may use their internal value-at-risk models (CSSM section 4041). Institutions wishing to do so must apply to DNB for permission. The decision on whether a bank may use its own model will be based on model specifications and back-testing, in conjunction with an assessment of the risk control organization and the adequacy of the internal risk management systems. Thus permission is conditional (for general conditions see CSSM section 4041-02; for qualitative standards see CSSM section 4041-03; for quantitative standards see CSSM section 4041-05). The assessment of the acceptability of a banks' model is normally conducted by DNB's capital markets specialists. These specialists are also regularly involved in the day-to-day supervision (on- and off-site) of the banks regarding their control of market risk. The general expertise and knowledge of DNB's bank inspectors on this specific area is kept at a sufficient level through frequent (in-house) courses.</p>
Assessment	Compliant
Comments	<p>The DNB uses a comprehensive range of tools to ensure that the banks are able to measure, monitor and control market risk. This includes the use of 'capital market specialists' to review the banks own internal risk models. Their policies in respect of the need to impose a capital charge on such activities appear to take account of the evolving nature of financial markets.</p>
Principle 13.	<p>Other risks Banking supervisors must be satisfied that banks have in place a comprehensive risk management process (including appropriate board and senior management oversight) to identify, measure, monitor, and control all other material risks and, where appropriate, to hold capital against these risks.</p>
Description	<p>Pursuant to the ROC each authorized bank in the Netherlands is responsible for organizing and controlling its business processes in such a way that its business is conducted in a (risk) controlled and sound manner (ROC section 1). The organizational arrangements and control mechanisms must be designed to identify measure, monitor and control the risks related to the size and nature of the businesses of each institution and have to be adjusted periodically in view of changing circumstances. Reference is made to 1.2.1 (Principal objectives), 1.2.2 (Risk control), 1.2.3 (Organizational measures), 1.2.4 (Information and communication) and 1.2.5 (Examination, evaluation and rectification) of the ROC. The management board of each bank is responsible for the systematical monitoring of the effectiveness of the organizational arrangements and control mechanisms (ROC section 25). In turn the supervisory board is required to assess in outline the organizational arrangements and the control mechanisms established by the institution under the direction of the management board (ROC section 29).</p> <p>Under sections 10 and 12 of the ROC banks are required to translate/implement their risk control policy into/in organizational and administrative procedures and measures which have to be communicated to all relevant personnel and to allocate clearly the duties, responsibilities and authority across all levels and divisions of a bank.</p> <p>Section 20 of the ROC requires banks to have in place external communication channels which allow information of importance to external parties to be made available to them in a timely manner.</p> <p>The ROC contains specific directives with regard to the organization and control of specific risk areas. These areas are Credit risk (subsection 2.1), Market Risk, including price risk, interest rate risk and foreign exchange risk (subsection 2.2), Liquidity risk (subsection 2.3), Operational risk (subsection 2.4), Information technology (subsection 2.5), Outsourcing (subsection 2.6), Integrity risk (subsection 2.7) and Rights and obligations of clients (subsection 2.8). These directives require banks to have in</p>

	<p>place clearly formulated policies for controlling the above risks. Such policies have to be clearly documented and communicated to the relevant personnel and should address the identification, measuring, monitoring and control of those risks.</p> <p>Apart from these ROC-based directives DNB has issued solvency and liquidity directives (based on sections 20 and 21 of the ASCS). The solvency directives require banks to hold capital against interest-rate risk (in the trading book) (CSSM section 4025). The liquidity directives (see the Memorandum on the revision of the liquidity test in CSSM section 6101) seek to ensure that banks are in a position to cope with any acute short-term liquidity deficit. The solvency and liquidity directives contain (quantitative) standards which have to be met by the supervised banks on an ongoing basis. In order to be able to verify that these standards are met, banks have to file monthly reports on their financial positions (see CSSM section 7000 for more details about the prudential returns regime). The reporting requirements enable DNB to obtain valuable information from banks which provide detailed insight into the various activities of each bank (including foreign currency liquidity transformation).</p>
Assessment	Compliant
Comments	<p>The DNB has comprehensive guidelines to ensure that banks are able to mitigate risks. Furthermore it receives timely prudential information and uses on site investigations to ensure compliance. The proposed new code of corporate governance will further strengthen the banks risk management processes.</p>
Principle 14.	<p>Internal control and audit</p> <p>Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding its assets; and appropriate independent internal or external audit and compliance functions to test adherence to these controls as well as applicable laws and regulations.</p>
Description	<p>The Civil Code of the Netherlands ('CC') contains a number of sections specifying in general terms the responsibilities of the management of companies. Individual managers are responsible to the legal entity for the adequate fulfillment of their duties (CC Section 2:7). Individual managers are held personally liable in case of unseemly behavior, if such behavior results in the bankruptcy of the company (CC Section 2:138).</p> <p>The ASCS makes requirements regarding the expertise of the persons who will determine the day-to-day policy of the credit institution, i.e., the members of the management board. (Note that in the Netherlands a two-tier board system is applied, consisting of a management board and a supervisory board.) The authorization procedure aims at members of the management board, which must consist of at least two persons. The test against the expertise criterion, performed prior to any appointment, will generally be conducted on the basis of education, professional experience and references. A similar test will also be performed on prospective new members of the management board. Members of the supervisory board which should consist of at least three persons) are in principle tested on their professional experience only.</p> <p>Under section 22 of the ASCS, DNB has the authority to issue to credit institutions recommendations or general directives for the conduct of their business in regard to the administrative organization, including the financial accounting system and internal control, as well as with a view to preventing conflicts of interest. In this context, DNB has issued the Regulation on Organization and Control (ROC; CSSM part 4201). The ROC focuses on risk control, organizational measures, information and communication and on evaluation and rectification. According to the general principles of the ROC, an institution is responsible for organizing and controlling its business processes in a controlled and sound manner. This is done by having in place an organizational arrangement and a control mechanism that at least satisfies the requirements laid down in the ROC. Organizational arrangement and control mechanisms are required to be documented in a systematic and accessible manner. Apart from the general principles, the structure of the ROC follows the different risk areas that may be distinguished within a bank's business. For each risk area the ROC contains minimum standards.</p>

	<p>A separate chapter of the ROC describes the role and duties of the management board and the supervisory board. Sections 24–28 mention explicitly the responsibilities of the management board for oversight of the organizational arrangement and the control mechanism. Sections 29–33 describe the role and duties of the supervisory board in relation to the management board, the organization and the audit function.</p> <p>With regard to organizational arrangements, Section 15 stipulates that a bank should allocate the duties, responsibilities and authority of persons and departments within the organization in such a way that its activities are carried out in a controlled and sound manner. These delegated duties have to be clearly defined. Segregation of duties is an essential element in order to ensure that the activities are carried out in a controlled and sound manner.</p> <p>The ROC stipulates that the credit institution should have in place a permanent internal audit function, reporting directly to the most senior management. Internal audit is defined in the ROC as “the function that is responsible for examining and evaluating the organizational arrangement and the control mechanism”. Under the two-tier system the internal audit function reports to the highest senior management, which is as a rule the management board of the bank. Under this system the Audit Committee is a committee of the supervisory board, consisting of members of that board. According to the ROC the Audit Committee meets regularly with internal and external audit. The ROC recommends that, depending on their size and complexity, credit institutions should have an Audit Committee. In practice the supervisory boards of larger banks have an Audit Committee.</p> <p>The quality of management and the quality of the control structure are key elements during on-site examinations. During the on-site examinations the organizational arrangement and control mechanisms are reviewed. The way the risks are controlled by management board and senior management is reviewed during this process. During on site examinations the internal audit function is included in the review. With regard to the functioning of the internal audit function, its independence, reporting lines, resources and the audit methodology are reviewed. Follow-up by management of the internal auditors’ report is also reviewed. The supervisor has unlimited access to the files of the internal audit function. Reports made by the internal audit function, both reports on results of the execution of the internal audit plan as well as reports on specific audits, is important information for the supervisor in the review of risk control in banking organizations.</p>
Assessment	Compliant
Comments	<p>The DNB has comprehensive policies in respect of the need for banks to have sound internal controls and acceptable corporate governance procedures. However, the requirement for non-executive group functions could be strengthened, as it appears only to be a recommendation for large banks. Additional criteria two calls for the supervisor to require the internal audit function to report to an Audit Committee. The DNB should consider strengthening this recommendation and applying it to all institutions.</p>
Principle 15.	<p>Money laundering</p> <p>Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict “know-your-customer” rules that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.</p>
Description	<p>Rules and regulations regarding money laundering issues can be issued on the same basis, which also applies, to the administrative organization and internal control, <i>i.e.</i>, under Section 22 of the ASCS. In fact, the Regulation on Organization and Control includes a separate chapter on integrity issues. This chapter called Integrity Risk, deals with various aspects and covers a wider range of issues than money laundering proper. In the introduction to this chapter it is explained that inadequate standards, rules and regulations drawn up by the institution itself, may make the institution concerned vulnerable to negative publicity and consequently pose a threat to earnings and capital.</p> <p>The chapter on integrity risk aims to promote the appreciation, implementation and maintenance of sound business practices at all levels of the organization. One of the means to this end is a policy plan</p>

(section 65), to be established by the management board, covering standards for dealing with clients and other external parties, but also for effecting private investment transactions and recruiting staff with the required expertise and integrity. Integrity standards and rules contribute to forming an institution's corporate culture. In this respect the management board has an exemplary function to fulfill by its own conduct. Also, a clear allocation of primary responsibility within the management board for the integrity aspects of the business is required.

The ASCS does not contain specific sections relating to money laundering. Money laundering goes beyond the banking system and therefore specific legislation was introduced which covers all areas of the financial system. Relevant rules and legislation should be incorporated into the policy plan.

Relevant rules in this respect are the requirements from the ROC as well as:

- Insider regulation directive (Credit System Supervision Manual section 3205).
- Regulation on credit facilities to individual directors or other senior officers (Credit System Supervision Manual 3206).
- Regulation on protected accounts (Credit System Supervision Manual section 3211).

Relevant legislation in this context is:

- The Disclosure of Unusual Transactions (Financial Services) Act.
- The Identification Financial Services Act 1993.

Moreover, DNB has distributed the document of the Basel Committee on Customer Due Diligence for review and implementation among Dutch banks. In consultation with the Netherlands' Bankers Association, it was decided not to issue specific regulations on the basis of this document, but to base customer due diligence policy on the ROC with due observance of the standards set out in the report by the Basel Committee. The report was complemented in 2003 in co-operation with the Netherlands' Bankers Association with an Explanatory memorandum regarding Customer Due Diligence for banks.

According to section 69 of the ROC, banks are required to have an independent compliance function in place. The compliance function monitors, first, compliance with internal standards, rules and codes of conduct and secondly, the realization of rectification as a result of detected deficiencies and control failures.

In January 2002 DNB, together with the other supervisors on the financial system in the Netherlands, the PVK and the AFM, issued the Recommendations to Dutch financial institutions with regard to incidents and integrity-sensitive functions (CSSM part 4201b1). These Recommendations are expected to have been turned into binding rules based on a new Section 22a of the ASCS by the end of 2003.

Integrity aspects, including the application of measures against money laundering, are assessed by means of on-site inspections, either in the context of regular inspections or during special inspections covering the whole range of integrity measures taken by a bank. Meetings with staff and management of the bank concerned complement on-site inspections. Also relevant for the assessment of integrity aspects are the reports made by internal auditors, external auditors and compliance officers.

Within the Supervision Directorate there is a separate Integrity Unit, which can perform in-depth investigations in its specialist field. A standardized working schedule ("Integrity tool") for "day-to-day" assessments is available to banking examiners on integrity and compliance, enabling them to detect risks and non-compliance with rules and regulations.

The regular instruments for banking supervision on the basis of the ASCS are sufficient for DNB to enforce the integrity aspects of the ROC. DNB is also responsible for monitoring compliance by credit institutions (as well as certain non-bank institutions) with the Disclosure of Unusual Transactions Act and the Identification Financial Services Act. Non-compliance with these Acts is a criminal offence and can be prosecuted. Banks and their staff members are protected against prosecution in case the reporting of unusual transactions has been done in good faith. Law prohibits Banks and their staff from informing their clients on reported transactions. If it becomes apparent that a bank has not met legal

	<p>reporting requirements, DNB has the right to correct the omission.</p> <p>Section 65 of the ASCS empowers DNB to exchange, under certain conditions, supervisory information with other supervisors in the Netherlands and abroad. Within the Netherlands information may be exchanged with the legal authorities on matters relating to criminal offences which may affect the financial system. If a foreign supervisor asks for information, which DNB has obtained from the Dutch legal authorities, section 65 of the ASCS requires prior approval by the Minister of Justice.</p> <p>As part of his annual audit, the external auditor will also form an opinion on whether the bank has an adequate organization in place to meet the (legal) requirements on money laundering. On the basis of the ROC he will judge the adequacy of the compliance function in this respect.</p>
Assessment	Largely compliant
Comments	<p>Essential criterion four requires that the supervisors determine that banks appoint a senior officer with ‘explicit responsibility for ensuring that the banks policies and procedures are at a minimum and in accordance with local statutory and regulatory anti money laundering requirements’ .To become fully compliant with this principle the DNB will need to make require banks to have a designated ‘money laundering reporting officer’ who has senior status within them organization. This could be a compliance officer.</p>
Principle 16.	<p>On-site and off-site supervision An effective banking supervisory system should consist of some form of both on-site and off-site supervision.</p>
Description	<p>DNB has the authority to obtain any information from banks, which it deems necessary for the fulfillment of its supervisory duties (ASCS Section 54). Under Section 55 DNB may ask to be sent periodic reports and under Section 56a, bank managers are obliged to supply all information requested by DNB. Moreover, the management of a bank is obliged to allow DNB to verify the information supplied and to assist DNB in doing so (Section 62). This section provides the legal basis for on-site inspections.</p> <p>Banks are obliged to inform DNB immediately of any full or partial non-compliance with the requirements for administrative organization and internal control (ASCS Section 56). However it is unclear how this operates in practice especially in relation to the measurability of ‘partial’ non-compliance.</p> <p>Off-site examinations are primarily performed on the basis of reports sent to DNB. Reports to DNB consist of standardized periodic returns of quantitative prudential data. When and if necessary, DNB will ask to be sent supplementary quantitative returns. The institution’s external auditor certifies the standardized returns once every year. The management letters sent by the external auditor are also made available to DNB. Together, these sources allow for the identification of trends relating to the development of individual banks and of points relating to the internal organization which merit attention. Also, the information thus assembled together with data culled from public documents, present the basis for analyses of developments in the banking system as a whole and comparative analysis between individual banks.</p> <p>The results of off-site examinations serve as input for risk analyses and for on-site inspections. DNB possesses a risk analysis system, supported by a software tool, which it uses to identify areas meriting attention during on-site inspections The risk analysis system is ‘ open ended’ in design. Therefore it would appear that once a bank is entered into the system its risk assessment remains current and is updated as new risks are identified and others are mitigated. This allows for detailed analysis of individual aspects of banks operations and ensures that the system remains up to date. There does not appear to be a cut off point when a risk assessment is finalized and communicated back to the bank in question.</p> <p>On-site inspections are not held according to a fixed schedule The frequency of visits to individual banks is determined by the extent to which a particular bank might cause systemic risk (i.e., by the size</p>

	<p>of that particular bank) and by the results of the risk analysis. However this is also determined by the availability of resources. Supporting on-site examining officers is a set of work programs allowing them to select systematically those items, which on the basis of the risk analysis should be considered relevant. Thus, the work programs present the ground plan on which a structured action plan for the on-site inspection of individual institutions may be built. The work programs are used for the selection of attention points to be discussed during periodic interviews with bank managers. The work programs deal with various business lines and with the main institution-wide functions (governance structure, risk management, asset and liability management, internal audit, integrity and compliance, ICT). Their purpose is to identify and assess inherent risks of the business activities and the risk control measures applied. However there did not appear to be any guidance on the order in which matters should be considered. The risk assessment process may benefit from a slightly more structured approach. Therefore it is recommended that strategic issues and those of corporate governance are considered before other more detailed aspects are included in the work plan. The work programs have been combined in a Work Programs Manual (<i>Handboek Werkprogramma's</i> – available in Dutch only). It is also recommended that at some point the risk assessment of an institution is ‘finalized’ and communicated back. This may include subsequent action that is required from an institution or alternatively may set out further examinations the DNB plans to undertake.</p> <p>The on-site inspections are directed primarily toward the design and operation of banks’ internal organization. They establish the extent to which institutions themselves have identified all relevant risks and taken measures to control them, in view of the requirements made by the ROC and other supervisory regulations and legislation. Limited examination of data (such as the quality of the lending portfolio) in support of the organizational examination’s conclusions is also performed. The thoroughness of such limited checks is left to the examining officer’s professional judgment. As a rule of thumb, the greater a business line’s inherent risks and the poorer the risk control measures, the more thorough the data oriented investigation will have to be. Examining officers have permanent access to (quantitative) databases on individual banks.</p> <p>Both off-site and on-site examinations as well as other supervisory processes are described in the Quality Manual (<i>Handboek Kwaliteit</i> – in Dutch only). The processes are periodically assessed for quality, compliance with procedures and consistency. This is done by means of internal audits within the Supervision Directorate based on procedures laid down in section 9.6 of the Quality Manual.</p> <p>Examination findings are discussed in all cases with the bank concerned and subsequently recorded in a letter. Such a letter usually details improvements to be made by a bank. The progress in implementing the improvements is then monitored by the supervisor, using a progress monitoring system. The timely performance of follow-up examinations is assessed by means of the internal audits mentioned above. In addition, examination findings are used to update a bank’s risk analysis. After each examination, internal evaluation is performed on the basis of a fixed set of criteria.</p> <p>On-site examinations also furnish information, which makes it possible to assess the performance of the external auditor. These findings are discussed during the annual meeting held between DNB and the external auditor of a bank; during the meeting the bank management can be present, which is usually the case.</p> <p>The information on individual institutions gathered by DNB in the course of its examinations must be kept strictly confidential (ASCS Section 64). Information may be exchanged with other supervisors, however, provided they are held to equivalent confidentiality requirements (ASCS Section 65). Finally, DNB may, under certain conditions, disclose information on a failed bank in the context of civil proceedings (ASCS Section 65a).</p>
Assessment	Compliant
Comments	The use of onsite and offsite tools seems balanced and appropriate. It covers all banks but is proportionate to the DNB’s measure of impact. However it would benefit from a slightly more structured approach. It is recommended that an initial assessment of high-level controls and group risks

	is made before more detailed aspects are considered, and that the overall assessment is communicated back to the bank.
Principle 17.	<p>Bank management contact Banking supervisors must have regular contact with bank management and a thorough understanding of the institution's operations.</p>
Description	<p>A thorough understanding of the operations of an institution is obtained through on-site inspections and off-site analyses. Regular contacts with bank management are an important complement to these activities, not only for a better understanding of a bank's operations, but also for current updates on all relevant developments, including plans for the future. These regular contacts with bank management therefore play an essential role in the banking supervision process in the Netherlands.</p> <p>The intensity and the type of contacts as well as the topics to be discussed vary per institution depending on its size, activities, risk areas et cetera. In larger organizations there will be not only be regular contacts at the level of the management board, but also at the level of heads of divisions. The Banking Supervision Quality Manual prescribes the quality standards with regard to the conduct of, the reporting on and the follow-up relating to meetings with banks' management.</p> <p>The following types of contacts between DNB and bank management can be distinguished:</p> <ul style="list-style-type: none"> • Meetings with management. The purpose of these meetings is to be informed on how the bank is operating as a whole and/or with regard to a specific activity. Subjects discussed may be general developments, both from an operational and from a policy point of view or the follow-up of prior agreements. Two types of meetings are held: <ul style="list-style-type: none"> ▪ Periodic meetings with the management board or a member of that board, the bank's controller and the head of the Internal Audit department. These meetings are held several times per year according to a schedule, which may vary from bank to bank. ▪ Periodic and/or unscheduled meetings with the heads of management units and/or functional activities. Frequency depends on, among other things, examination results, developments or specific events. • Policy meetings. The purpose of these formal meetings is the exchange of information and opinions between the management of a bank and the Nederlandsche Bank. Policy meetings are held on the premises of DNB. There are two types of policy meetings: <ul style="list-style-type: none"> ▪ General policy meetings. These meetings are held once every two to three years to discuss strategic plans, policy issues and developments regarding a bank. They are attended by members of the bank's management board and on the part of DNB by the executive director and/or one of his deputy directors of the Supervision Directorate as well as the bank examiner in charge. ▪ Specific policy meetings. These unscheduled meetings may be called at any time and serve to discuss specific developments or examination findings, on which the bank concerned is invited to express its opinion. DNB, from its side, will also formulate its opinion, discuss with the bank the follow-up actions and, if necessary, announce measures. In principle, participants are the same as those that attend the general policy meetings. • Annual meeting with the external auditor in the presence of bank management. When charging the external auditor with the annual audit, a credit institution is required to authorize the auditor to furnish DNB with any necessary information). Once a year, following the annual audit, a meeting is held between the external auditor and DNB to discuss the findings during the annual audit. The management of the credit institution is given the opportunity to attend this meeting, the purpose of which is to: <ul style="list-style-type: none"> ▪ discuss the findings of the external auditor as a contribution to the supervisory tasks of DNB; ▪ attune to each other the information gathered in the supervisory process and the information obtained by the external auditor; ▪ obtain additional information from the external auditor; ▪ judge the quality of the external auditor's work; ▪ discuss the management letter and the audit report.

	<p>In addition to the types of meetings mentioned above, talks are held with the management of the bank and of particular departments before, during and after on-site inspections in order to clarify matters and discuss findings. In principle, these meetings have an informal character. The findings and conclusions of an on-site examination are communicated initially by means of a formal, written invitation to comment on the draft report. Subsequently the final version of the report is sent with a formal accompanying letter.</p> <p>Regular contacts with the management of a bank and with senior and middle management of its relevant departments serve as an important supervisory tool. They are complemented by the contacts with the external auditor, which enables DNB to acquire a thorough understanding of the activities of the bank, its risk control and the quality of its management. This is an ongoing process.</p> <p>Under the ASCS, the management of a bank is obliged to inform DNB if requirements regarding solvency, liquidity and administrative organization/internal control are no longer met (section 56). For financial or corporate reorganizations prior approval is required (ASCS Section 23).</p>
Assessment	Compliant
Comments	Contact with bank management seems comprehensive with communication at all levels.
Principle 18.	<p>Off-site supervision Banking supervisors must have a means of collecting, reviewing and analyzing prudential reports and statistical returns from banks on a solo and consolidated basis.</p>
Description	<p>On the basis of the ASCS DNB has the authority to require the banks to file periodic returns (ASCS Section 55). Data have to be submitted on a consolidated basis (all assets and liabilities; monthly) and on a solo basis (i.e., domestic assets and liabilities; quarterly. The issues on which periodic returns must be filed include: balance sheet, profit and loss, solvency, liquidity, credit risk, market risk, large exposures, loan classification and provisioning. The forms as well as the explanatory notes to the forms are published in the Credit System Supervision Manual, which is distributed to the banks and which is also made available on the internet (www.dnb.nl). In the explanatory notes the forms are explained and definitions and calculation methods are described. Principles and norms regarding consolidation as well as valuation of assets and accounting techniques follow what is generally applicable in the Netherlands, as laid down in the Civil Code (Title 9, section 1 to 13). In addition to these general rules, specific articles for banks apply (Civil Code, Title 9, and section 14).</p> <p>In addition to the prudential returns, the Bank can request any information from the banks, which it deems necessary for performing the supervisory tasks (ASCS section 53). The five largest banks provide DNB periodically with data directly from their internal management information systems.</p> <p>If reporting requirements are not met in a timely manner or not at all, DNB may impose a penalty (ASCS Sections 90b, 90c).</p> <p>With their returns, banks must enclose a statement – signed by two persons of whom at least one is a director – to the effect that the return is in conformity with DNB’s requirements. In addition, the external auditor has to examine:</p> <ul style="list-style-type: none"> ▪ one of the twelve balance sheets for prudential supervision purposes and appurtenant returns on a consolidated basis. ▪ one of the four balance sheets for prudential supervision purposes and appurtenant returns on a solo basis (domestic activities). ▪ other prudential returns. <p>The examination by the external auditor results in an opinion. The examination covers the correct application of rules, regulations and directives as issued by DNB, the correct application of valuation principles in the annual accounts and whether the bank’s organization is adequate for correct and consistent interpretation of the Bank’s directives and instructions (CSSM section 3201).</p> <p>The prudential returns are sent in electronic form to DNB. The data entry programs made available to</p>

	<p>the banks contain a number of validity checks, thus limiting the chance of incorrect data. After reception of the data at DNB additional validity checks as well as plausibility checks are made, both automated as well as visual. After approval, the data is stored in a database, available for retrieval and further processing.</p> <p>The information stored in the database is used mainly for the monthly analysis of each bank. A standard set of ratios and key data is produced for each bank, which is the basis for further analysis. For each bank a report is prepared, highlighting the main developments. DNB has an analytical framework for the analysis, but the monitoring and performance takes into consideration judgmental aspects and the specific characteristics of each individual bank.</p> <p>The returns include information for prudential purposes and some specific returns for macroeconomic purposes. The prudential returns are also used for the aggregation of data of individual banks to data at the level of the banking system as a whole or for specific groups of banks.</p> <p>The outcome of the analysis for each bank is used for the planning of on-site supervision examinations. On the other hand the conclusions from on-site examinations can be used as input for a more detailed analysis of specific data of an individual bank.</p> <p>DNB has the authority to ask for information to be sent extends to enterprises affiliated with a bank, independent of their nature (ASCS Section 57).</p> <p>Financial conglomerates report to both DNB and PVK on group capital and intra-group loans (Protocol returns). Different categories of banks may be asked to supply different returns (ASCS Section 55(2)).</p>
Assessment	Compliant
Comments	Though some information is provided on a solo basis, the majority is computed on a consolidated basis only. It is recommended that the reporting requirements be reviewed with the introduction of the new capital accord.
<p>Principle 19. Validation of supervisory information Banking supervisors must have a means of independent validation of supervisory information either through on-site examinations or use of external auditors.</p>	
Description	<p>As already mentioned under CP16, the DNB has the authority to obtain from banks all information it deems necessary for the performance of its supervisory tasks. Information obtained in the form of prudential returns may be verified by means of on-site inspections. However, the primary source of verification is done by the external auditor as part of the annual examination of the returns (see CP 18). Notwithstanding on-site examinations do from time to time take place and are an important tool to judge the quality of the work of the external auditors.</p> <p>On-site inspections are done on the basis of an annual planning. The basis for this planning is the risk profile of each individual bank. In the planning visits to foreign establishments of banks, for which DNB is the home supervisor, are included. Policies and procedures, as well as a quality control system are in place to ensure that examinations are thorough and consistent (sections 1.2.1 and 2.2.1 of the Quality Manual).</p> <p>DNB has the authority to contract external experts for specific aspects of banks' operations (ASCS section 54), but DNB's own bank inspectors normally carry out on-site inspections. Only in rare cases will DNB contract external auditors for on-site examinations, but in those situations DNB will always define and coordinate the examination and be in charge of the quality control of the work.</p> <p>Banks must allow DNB to carry out on-site inspections and to co-operate as much as possible. Consequently DNB has full access in a bank, including the board, senior management and staff, when required.</p> <p>In addition to its own on- and off-site work, DNB also uses the work of a bank's external auditor.</p>

	<p>Pursuant to section 55(5) of the ASCS, the external auditor should certify once a year the monthly balance sheets for supervisory purposes. The auditor verifies:</p> <ul style="list-style-type: none"> ▪ whether DNB’s valuation principles and other directives and instructions have been applied and whether this was done in a constructive manner; ▪ whether the valuation principles are equal to those applied in the annual accounts to the extent that these valuation principles have not been provided for in the directives and instructions by DNB; and ▪ whether an adequate organization is in place for the correct and consistent interpretation of the directives and instructions by DNB. <p>After the audit of the annual accounts, the external auditor’s management letter is made available to DNB. The external auditor is required to inform DNB of serious adverse developments at a bank). A bank must ask its external auditor to examine and evaluate the adequacy of the organizational arrangement and the control mechanism, in conformity with all regulations based on Section 22 of the ASCS</p> <p>DNB may declare an external auditor to be unqualified to deliver the auditor’s reports in respect of a credit institution if, in DNB’s opinion, the auditor involved does not, or no longer, offer the necessary safeguards that he will properly perform the duty assigned to him.</p> <p>DNB conducts annual interviews with the external auditor of every individual bank in order, among other things, to ascertain whether the picture of a bank as presented by supervisory examinations matches the views of the external auditor. These interviews also serve to form an opinion on the quality of the auditor’s functioning. In addition, DNB consults with auditing firms on the overall state of affairs in and the supervision of the banking industry.</p>
Assessment	Compliant
Comments	The review of prudential returns seems extremely comprehensive and thorough. Furthermore, the DNB holds regular meeting with the external auditors on a bilateral basis to discuss issues of common interest relating to bank operations.
Principle 20.	<p>Consolidated supervision</p> <p>An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.</p>
Description	<p>DNB is required by the European Union’s 1992 Banking Consolidation Directive (now included in the Codification Directive of 2000) to undertake banking supervision on a consolidated basis. Section 20 (1) of the ASCS enables DNB to give banks directives, whether on a solo or (also) a consolidated basis, for the conduct of their business in the interest of their solvency. In practice, supervisory activities are predominantly performed on a consolidated basis, including monthly returns provided by the banks and capital adequacy calculations. Several measures ensure that DNB is given the necessary insight into the structure of supervised banking organizations. Information on the structure of a bank is included in the mandatory returns, but is also discussed in policy meetings with banks and included in on-site investigations.</p> <p>Another instrument in this context is the so-called structural regime for banks, which implies that declarations of no-objection are required before a bank may acquire a qualifying holding in the capital of another financial or non-financial institution and before a person or entity may acquire a qualifying holding in a bank. For participations of a credit institution in another enterprise this is the case if the holding is 10 percent or more of the share capital. For participations <i>in</i> banks this percentage is 5. Banks have to submit to DNB all the information on participating interests in other enterprises which DNB needs to make a prudential assessment. Declarations of no-objection are granted by DNB or by the Minister of Finance on DNB’s advice (ASCS sections 24–27).</p> <p>As a condition attached to declarations of no-objection DNB is empowered to require frequent financial and non-financial information from banking and non-banking subsidiaries of the parent so that the risks included in non-banking activities can also be assessed and reviewed. Regarding</p>

	<p>participating interests of banks in non-financial activities, the quantitative limitations of Section 51 of the EU Codification Directive apply: the maximum qualifying holding (participation) is 15 percent of a bank's own funds and the total of all qualifying holdings may not exceed 60 percent (CSSM part 3203).</p> <p>Sections 54–57 of the ASCS provide DNB with the legal authority to require a bank and any enterprise which falls within that bank's scope of consolidation to furnish any and all relevant prudential information. On this basis and also on the basis of the Regulation on Organization and Control DNB is able to require information of any individual business vehicle within the banking organization group on its financial condition and on the adequacy of risk management and control measures. If foreign affiliates or subsidiaries are involved, memoranda of understanding with foreign supervisors facilitate the exchange of information between the supervisors.</p> <p>On the basis of the structural policy DNB has the power to limit or circumscribe the activities the banking group may conduct or to prevent activities from being conducted within the group, which are not properly supervised. In special situations, when the solvency and/or the liquidity of a bank are endangered, DNB may apply special measures as stipulated by Section 28 of the ASCS.</p> <p>Corporate ownership of banking entities is allowed in the Netherlands. On the basis of the structural policy, shareholders of banks, including parent companies and their activities are reviewed and tested against criteria regarding fit and proper standards, integrity, safety and financial soundness. If a prospective or existing shareholder fails to meet these criteria DNB may refuse to grant, or withdraw, its declaration of no-objection, in which case the participating interest may not be acquired or may have to be sold. Remedial actions are available: on the basis of section 28 of the ASCS, DNB can take special measures, such as a notification given to a bank, to the effect that all or certain bodies of that bank may only exercise their powers after approval has been obtained from one or more persons appointed by DNB and with due observance of the instructions given by these persons.</p>
Assessment	Compliant
Comments	Though the DNB undertakes consolidated supervision it currently receives minimal information at the solo level. This may lead to intra-group risks being omitted.
Principle 21.	<p>Accounting standard</p> <p>Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business, and that the bank publishes on a regular basis financial statements that fairly reflect its condition.</p>
Description	<p>Pursuant to company law and the ASCS, the financial record-keeping systems of banks and the data these systems produce must be reliable. The timely submission of monthly prudential financial returns to DNB is enforced by Section 55 of the ASCS. Company law and the ASCS require that the annual accounts, including the management report, include a signed external auditor's report.</p> <p>A crucially important element in DNB's banking supervision is the quality of banks' administrative organization and internal control measures and of their practices regarding internal reporting, reporting to the supervisor and to society, particularly as regards the publication of the annual accounts and semiannual statements. Within this context emphasis is put on the responsibility of a bank's executive management. Supervisory returns have to be signed by two persons, of whom at least one is a board member. The supervisory prudential returns and the annual report are periodically analyzed and the procedures that are used for producing the reports are checked through on-site inspections by the supervisor.</p> <p>The scope and particulars of the external auditor's audit program, including areas such as lending, provisions, valuation et cetera, are based on the annual accounting requirements that are included in the Civil Code. On the basis of Section 22 of the ASCS, DNB has drawn up requirements relating to the administrative organization and internal control which also serve as a more detailed basis for the external auditor's auditing activities (see the Regulation on Organization and Control, CSSM part</p>

	<p>4201).</p> <p>The results of external auditors' activities may contain important information, which is taken into account in banking supervision. In view of this, communication lines between DNB and the banks' external auditors are kept open. Contacts may take place in the context of day-to-day supervision. Bilateral policy discussions are held annually between DNB and between each bank's external auditors, and between DNB and the large audit firms which certify the annual accounts of banks. In addition to gathering information on the banks, a function of these meetings is to allow DNB to form itself an opinion on the quality of the external auditors' work. Pursuant to Section 14a of the ASCS, DNB may decide that a particular external auditor is not qualified to deliver the auditor's reports, i.e., to perform the function of external auditor at a particular bank.</p> <p>The company law contained in the Civil Code provides for the framework of reporting guidelines, which are based on the European Directives (Fourth and Seventh Directive on Annual Accounts). Based on Company Law, the Credit System Supervision Manual (chapters 5 and 7) contains further instructions, options and interpretations for the banks' external annual accounts and supervisory reports, respectively. Taken together, these provide a consistent, realistic and prudent set of valuation rules, incorporating provisions where necessary. Current values are used for the valuation of the trading portfolio.</p> <p>Confidentiality is a main principle of banking supervision by DNB. Section 64 of the ASCS stipulates that data and information about individual enterprises must not be published and shall remain secret. DNB does stimulate banks to publicly disclose relevant information, but does not have the authority to require additional disclosures.</p> <p>As stipulated by the ASCS, all registered banks must submit to DNB their published annual accounts. The external auditor must inform DNB as soon as possible of any and all circumstances which have come to his knowledge in the pursuit of his activities which</p> <ul style="list-style-type: none"> ▪ are contrary to the banking license requirements; ▪ are contrary to the obligations imposed by the ASCS; ▪ threaten the continuity of the bank; or ▪ lead to the refusal of the auditor to deliver his report. <p>Moreover, the professional organization of chartered accountants (Nederlands Instituut voor Register Accountants, or NIVRA) has recommended that its members sign tripartite agreements. This would be between the individual institution, the external auditor and DNB under the terms of which the auditor must supply DNB with all information which may in reason be considered necessary for supervision. . Scope and standards of external audits are independently set by the NIVRA and are based on the International Standards on Auditing. The Regulation on Organization and Control contains directives on additional instructions that a bank should give to its external auditor to examine and evaluate the organizational arrangement and the control mechanism.</p>
Assessment	Compliant
Comments	In line with other EU countries the Netherlands will move to International Accounting Standards as from 1.1.2005. This will be required for all publicly quoted firms but will also apply to all banks. Furthermore the DNB plans to change its own reporting requirements to ensure they remain consistent.
Principle 22.	<p>Remedial measures</p> <p>Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking license or recommend its revocation.</p>
Description	As a basic principle of Dutch company law it falls to the supervisory board to supervise the executive management of a bank and to take any measures it perceives as necessary. DNB has its own responsibility and powers to take measures regarding a bank if this is called for by the circumstances.

	<p>In addition to oral and written communication with a bank’s management and other key persons within the banking organization there is a range of supervisory instruments. Generally applicable sanctions are fines and penalties. These can only be imposed on banks, however, and not on individual persons. This is because corporate governance regulations in the Netherlands are based on the principle that joint responsibility is borne by the persons involved in the day to day management and by the members of the Board of (non-executive) Directors. However in practice it would appear that moral suasion is used for most matters.</p> <p>If DNB perceives signs that the solvency or the liquidity of a bank is endangered, the ASCS 1992 provides for the necessary instruments. As a first step DNB may give such a bank a notification to act in a certain manner. The bank is obliged to comply with the notification within the stated time limit. The next step may be that one or more persons appointed by DNB take over the competencies of the bank’s management, based on instructions by DNB. The appointment of such (a) person(s) will not be published (silent receivership). Alternatively, the notification to act in a certain manner may be published by DNB. If considered necessary DNB may enter into consultation with the chairman of the representative banking organization (i.e., the Netherlands Bankers’ Association) to discuss the future of the bank in trouble. The arrangement of a merger or a takeover will usually be a major topic of such consultations. DNB would act as an honest broker but does not have the power to force a takeover by another institution.</p> <p>A final stage is the application of the so-called Emergency Regulation (Sections 70 to 80 of the ASCS). In fact this situation implies a suspension of payments by the bank involved. Only DNB can submit a petition to invoke this Regulation, upon which a Court of Justice makes a decision, which, is publicly announced. If the Emergency Regulation does not produce a situation in which the bank’s continuity is ensured, DNB may petition the Court to declare bankruptcy. Under Section 15 of the ASCS, DNB may withdraw the authorization of a bank, which fails to meet supervisory requirements. DNB also has the power to force a member of the management board or of the supervisory board to resign (by means of a notification based on article 28 of the ASCS). Section 14 of the ASCS also offers DNB the authority to issue notifications to a bank in particular circumstances. Other supervisory instruments which may be applied if a banking institution runs into difficulties are the following:</p> <ul style="list-style-type: none"> ▪ Forced restriction of a bank’s activities by the silent receiver appointed by DNB and withdrawal of, or refusal to grant, declarations of no-objection required with respect to subsidiaries and participations. ▪ A requirement to obtain declarations of no-objection regarding payments to shareholders (other than normal dividend payments), share repurchases and financial reorganizations. ▪ Replacement of, or restriction of the powers of, executive and supervisory directors, and controlling owners by the person(s) appointed by DNB.
Assessment	Largely Compliant
Comments	<p>Though the legal powers given to the DNB are wide ranging and would appear to cover almost (if not all) eventualities. From discussions however it would appear that the more formalized measures are rarely used in practice. Notwithstanding, there are established procedures on how to implement such measures if called for. However those measures used tend to be persuasive and confidential including the use of the ‘silent receiver’. This system appears to work effectively. Notwithstanding it may be worthwhile the DNB ensuring that the powers they use when appointing a ‘Silent Receiver’ are consistent with the relevant stock exchange disclosure requirements when the bank concerned is a publicly quoted company.</p> <p>Furthermore it can be questioned whether ‘penalties’ can be applied to management rather than just members of the Supervisory and Executive boards. Essential criterion four states that the supervisor should be able to apply penalties and sanctions not only to the bank, but when and if necessary, also to management.</p>
Principle 23.	<p>Globally consolidated supervision Banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all</p>

aspects of the business conducted by these banking organizations worldwide, primarily at their foreign branches, joint ventures and subsidiaries.	
Description	<p>A global consolidated approach is the basic principle of banking supervision in the Netherlands. All reporting requirements are on a consolidated basis. Consolidated supervision of internationally active banks is organized in a separate department of DNB's Supervision Directorate. Officials of this department carry out on-site inspections of foreign subsidiaries, joint ventures and branches, according to annual plans, which take into account the size and risk profile of foreign operations. In case of exceptional developments special inspections will be carried out.</p> <p>An important element in the supervision of foreign establishments is their governance by the Netherlands head office, whether or not through regional offices. DNB regularly monitors whether an institution's top level management is informed adequately about the state of affairs within the foreign establishments, and whether decision-making and governance have been implemented in the foreign network. In addition to making local inspections, DNB also studies reports on foreign establishments by internal and external auditors.</p> <p>Whereas DNB will always have an independent responsibility as regards the supervision of foreign establishments, it may use the results of examinations by the "host supervisor". DNB's assessment of the supervision exercised by the "host supervisor" is of importance in this respect. With respect to the supervision of non-EU establishments, DNB assesses the quality of the respective "host supervisor", particularly in cases where an MOU is (to be) concluded.</p> <p>Prior permission by DNB is required for the acquisition of foreign participating interests and for the establishment of foreign branches or subsidiaries. DNB has the power to force an institution to close down a particular foreign establishment or to restrict its activities.</p>
Assessment	Compliant
Comments	The DNB undertakes global consolidated supervision in an effective way. The teams dealing with the larger global groups appear to have the appropriate mix of resources to assess the risks. The consolidated prudential returns are received regularly. In addition the risk model used is sufficiently flexible to accommodate both group and single entity assessments. The DNB's supervisory staff visits the overseas parts of their groups on a regular basis in addition to placing a degree of reliance on overseas regulators.
Principle 24.	<p>Host country supervision</p> <p>A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.</p>
Description	<p>Pursuant to the ASCS, DNB is allowed to exchange information with foreign agencies charged by the public authorities with the supervision of financial markets and legal entities, which are active in these markets. Conditions apply regarding the purpose and use of the information and safeguards regarding the secrecy. Memoranda of Understanding (MOUs) on the supervision of foreign subsidiaries and branches have been established with all European Union member countries and a number of relevant third countries. New MOUs with other countries are in preparation. These MOUs cover all relevant supervisory activities including the exchange of qualitative and quantitative information with host supervisors.</p> <p>DNB has the power to prohibit the establishment by Dutch banks of foreign subsidiaries or joint ventures in a particular country if the flow of supervisory information from that country is likely to be insufficient under local legislation or other regulations. In such cases, DNB would refuse to grant a declaration of no objection. DNB also has the power to prohibit the establishment of foreign branches. As a home supervisor DNB is prepared in principle to furnish all relevant supervisory information requested by foreign supervisors, provided confidentiality and secrecy requirements are met. In addition to these official bilateral flows of information DNB exchanges information with foreign supervisors both formally and informally in the context of international supervisory committees, such as the Basel Committee, the ESCB's Banking Supervision Committee and the EU's Banking Advisory Committee and Groupe de Contact.</p>

	If adverse developments at a particular institution cause DNB to consider measures with respect to a foreign establishment, DNB will liaise with the host supervisor, irrespective of whether a MOU has been signed. If an MOU has been agreed, the MOU would provide for such contacts.
Assessment	Compliant
Comments	The DNB has an open and cooperative approach to sharing information with overseas supervisors. Furthermore it has a regular dialogue on international issues with the banks with overseas operations about such entities.
Principle 25.	Supervision over foreign banks' establishments Banking supervisors must require the local operations of foreign banks to be conducted to the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.
Description	<p>Pursuant to the ASCS local branches and subsidiaries of foreign banks are subject to the same legal and supervisory regime as are domestic banks. Under mutual recognition agreements, branches of EU licensed banks are exempted from capital adequacy supervision on a solo basis by DNB (home country control principle). DNB's liquidity requirements, however, have to be met by EU branches in the Netherlands. When a non-EU bank applies for a license to establish a subsidiary or branch in the Netherlands, DNB first considers whether supervision in the foreign bank's home country is adequate and whether it is performed on a consolidated basis. If, in the case of a non-EU country, DNB judges it cannot rely on the home supervisor, it will take full responsibility for the supervision of the subsidiary. Branching into the Netherlands by banks from countries where supervision is considered to be below standards is discouraged by DNB.</p> <p>Written approval by the home supervisor is required for the establishment of a foreign branch or subsidiary in the Netherlands. The ASCS provides DNB with the authority to share supervisory information with foreign supervisors. An important consideration during the licensing process is the question whether a continued exchange of information on supervisory issues will be possible between home and host supervisor under conditions of confidentiality. After prior consultations with DNB, home country supervisors have on-site access to establishments in the Netherlands. DNB discusses his findings of their on-site examinations with them. In case of adverse developments at a foreign establishment or if remedial action is required, DNB informs the home supervisor in a timely manner.</p>
Assessment	Compliant
Comments	<p>Banking supervision in the Netherlands is applied to the same standard for 'foreign' banks as it is to the domestic sector. In the main the DNB has a preference for subsidiaries to be established rather than branches of non-EEA banks and always ensure that the agreement of the home supervisor is obtained before authorization is granted.</p> <p>Communication between the DNB and home supervisors also seems to be well established and will where possible be supported by an MOU. Where this is not possible because legal equivalence cannot be established informal arrangements seem satisfactory.</p> <p>The DNB tries to deter banks from countries who do not have 'equivalent standards of supervision', preferring subsidiaries to be established instead. However there does not seem to be a formalized way of assessing equivalent standards of supervision The DNB may wish to consider strengthening its methodology for assessing overseas regulators. They may wish to consider these both in terms of the reliance that can be placed on overseas regulators in respect of overseas banks in the Netherlands and Dutch banks operating on a global basis.</p>

Table 2. Summary Compliance of the Basel Core Principles

Core Principle	C ^{1/}	LC ^{2/}	MNC ^{3/}	NC ^{4/}	NA ^{5/}
1. Objectives, Autonomy, Powers, and Resources	X				
1.1 Objectives		X			
1.2 Independence	X				
1.3 Legal framework	X				
1.4 Enforcement powers	X				
1.5 Legal protection	X				
1.6 Information sharing	X				
2. Permissible Activities	X				
3. Licensing Criteria		X			
4. Ownership		X			
5. Investment Criteria	X				
6. Capital Adequacy		X			
7. Credit Policies	X				
8. Loan Evaluation and Loan-Loss Provisioning	X				
9. Large Exposure Limits	X				
10. Connected Lending	X				
11. Country Risk	X				
12. Market Risks	X				
13. Other Risks	X				
14. Internal Control and Audit	X				
15. Money Laundering		X			
16. On-Site and Off-Site Supervision	X				
17. Bank Management Contact	X				
18. Off-Site Supervision	X				
19. Validation of Supervisory Information	X				
20. Consolidated Supervision	X				
21. Accounting Standards	X				
22. Remedial Measures		X			
23. Globally Consolidated Supervision	X				
24. Host Country Supervision	X				
25. Supervision Over Foreign Banks' Establishments	X				

^{1/} C: Compliant.

^{2/} LC: Largely compliant.

^{3/} MNC: Materially non-compliant.

^{4/} NC: Non-compliant.

^{5/} NA: Not applicable.

Recommended action plan to improve compliance with the Basel Core Principles for Effective Banking Supervision

Largely compliant, and measures underway to achieve compliance

20. **CP 1 (1) Objectives.** The mission was aware that the legislation supporting banking supervision was in the process of being revised. The revisions as explained to the team should be sufficient to enable the Dutch supervisory authorities to become compliant with this Principle.

21. **CP 6 Capital adequacy.** The mission noted the authorities' intention to review the prudential reporting requirements during the implementation of the new Basel Capital Accord and believe this would be a positive step forward to become compliant with this Principle.

Largely compliant, but no measures underway to achieve compliance

22. **CP 3 Licensing criteria.** The mission felt that the supervisory process in the Netherlands would benefit from expanding the fitness and propriety criteria and assessment process to cover the 'senior management' of the banks as stipulated in the Methodology. The team recommends that key functions are identified and that the personnel undertaking those roles be assessed under the criteria set out for this principle.

23. **CP 4 Ownership.** The mission noted that the transfer of ownership for banks rested with the Ministry of Finance rather than the DNB who was the supervising body. It stipulated that the powers be transferred to the DNB in the new proposed legislation.

24. **CP 15 Money laundering.** The mission recommended that the DNB require the banks to have a designated senior officer with explicit responsibility for ensuring that the banks policies and procedures are, at minimum in on accordance with local statutory and regulatory anti money laundering requirements.

25. **CP 22 Remedial action.** There would appear to be no technically legal penalties that can be imposed on the 'management' of a bank to help bring about timely and corrective action when it fails to meet prudential requirements or when there violations of regulations. It is recommended that this would be addressed in future legislation.

Table 3. Recommended Action Plan with Respect to the Basel Core Principles

Reference Principle	Recommended Action
CP 1(1) Objectives	New Banking law to set out clearly the responsibilities of the various supervisory authorities, to require that objectives are explicit and indicate how accountability will be measured.
CP 1(2) Independence	New banking law to improve the transparency of the system and improve the independence and transparency of the supervisory authorities.
CP 1(3) Legal Framework	Revisions to the ACSC to ensure that explicit legal powers exist to set prudential rules in respect of integrity.
CP 3 Licensing criteria (Fitness and propriety) CP 22 Remedial measures	A review of the adequacy of the fitness and propriety requirements to be undertaken to ensure they capture all personnel in key senior management positions. This should be extended to the powers needed to take remedial action.
CP 4 Ownership CP 5 Investment criteria	New banking law to ensure that there is transparency about who is the authorizing (licensing) body The law also needs to give the supervisory body exclusive powers to approve or reject the transfer of significant ownership.
CP 6 Capital adequacy. CP 10 Connected lending CP 18 Off- site supervision	Prudential reporting to be extended to capture institutions at the solo as well as the consolidated level. All prudential ratios (such as connected lending and lending to closely related counterparties) to be monitored at the solo level for entities within a banking group that are not fully guaranteed.
CP 14 Internal control and audit	The requirements for an audit committee to be both strengthened and wider to cover all but the smallest institutions
CP 15	The DNB to require banks to have a designated ‘money laundering reporting officer’ who has senior status within them organization.
CP 16 On-site and off-site supervision	DNB’s risk assessment process would benefit from a slightly more structured approach. It is recommended that an assessment of high level controls and group risks is undertaken as part of the risk process and that the overall assessment is communicated back to the bank.
CP 25 Supervision of foreign banks	DNB to consider formalizing its approach to peer assessment of overseas supervisors both in respect of those countries, which have foreign banks, established in the Netherlands and those countries where their domestic banks are operating.

C. Authorities' Responses to the Assessment

26. The Netherlands authorities agree with the main findings of the assessment, which they consider to be fair and comprehensive. They are satisfied with the overall judgment that banking supervision in the Netherlands complies to a very high degree with the Basel Core Principles. Many of the recommendations that have been made will be addressed in the bill on financial supervision that is due to come into effect in 2005. The authorities intend to address the recommended actions for which this is not the case in the following manner:

- *Extending prudential reporting to capture institutions at the solo as well as the consolidated level.* The authorities point out that introducing such a requirement for guaranteed subsidiaries would increase the burden of supervision without materially improving its quality. In the light of the decisions on the new capital requirements taken in Basel (Basel II) and in Brussels (Capital Adequacy Directive 3), the Dutch Authorities will review the solo prudential reporting regime.
- *Reviewing fitness and propriety requirements and the powers to take remedial actions to ensure they capture all personnel in key management positions.* The authorities point out that all supervisory board members and members of boards of directors are already tested for fitness and propriety. With respect to second tier management positions, the authorities will carefully investigate for which positions fitness and propriety testing and the potential use of remedial actions could be useful and what the criteria for identifying such positions should be. The benefits of any extension of fitness and propriety testing will be balanced against the additional administrative burden this would entail for the banks and a decision will then be taken accordingly.
- *Strengthening and widening the requirements for an audit committee to cover all but the smallest banks.* Although the rating on this principle is 'compliant', the authorities will review their current recommendation that only larger banks need to have an audit committee, taking into account the new Dutch code on corporate governance.
- *Requiring banks to have a designated money laundering reporting officer with senior status within the organization.* The authorities intend to introduce an explicit requirement to this effect, attributing this role to the person who is responsible for the compliance function.
- *Communicating the supervisor's overall risk assessment of a bank back to that bank.* The authorities will review the benefits and drawbacks of doing so and take a decision accordingly.
- *Considering formalizing the approach to peer assessment of foreign supervisors.* The authorities intend to investigate how other supervisors determine to what extent they can rely on their foreign counterparts in the supervision of foreign banks established in their own country and domestic banks established abroad. The outcome of this investigation will be the basis for a review of their own approach to peer assessment.

II. IAIS INSURANCE CORE PRINCIPLES

A. Introduction

General

27. This is an assessment of the observance of the core principles of the International Association of Insurance Supervisors (IAIS) in the Netherlands. Insurance is supervised in the Netherlands by two supervisors: the Pensions and Insurance Supervisory Authority (Pensioen- & Verzekeringkamer – PVK) and the Authority for the Financial Markets (Autoriteit Financiële Markten – AFM). The PVK is responsible for prudential supervision of insurance companies and pension funds. The AFM currently has a limited range of responsibility in the supervision of market conduct in these sectors and will acquire additional responsibilities in 2004. Although this assessment relates to the jurisdiction as a whole, for the most part it focuses on the responsibilities and powers of the PVK. This assessment was done in the context of the IMF and World Bank Financial Sector Assessment Program (FSAP). It includes recommendations for strengthening the supervision of insurance in the Netherlands.

28. This assessment was conducted during a mission to the Netherlands from October 27–November 7, 2003 and is based on the circumstances in place and the practices used at that time. The Netherlands is undergoing significant changes in its supervisory structure and practices and, while some of these changes are mentioned below, prospective changes have not been considered in the assessment.

29. This assessment was conducted by Michael Hafeman, a consultant formerly with the Office of the Superintendent of Financial Institutions Canada. Kazunari Ohashi, of the International Capital Markets Department of the IMF, assisted in the preparation of the overview of the institutional and macroprudential setting.

Information and methodology used for assessment

30. This assessment has been based on the Insurance core principles (ICP) of the IAIS dated October 2003. Given the highly developed nature of the Netherlands insurance market and the large exposure to international financial activities, this assessment comments on both the essential and advanced criteria underpinning each core principle. However, in accordance with Annex 2 of the ICP, only essential criteria have been taken into account in assessing the overall level of observance of a core principle.

31. Major sources of information used for the assessment included the PVK's answers to the questionnaire submitted by the IMF prior to the mission, a comprehensive self assessment carried out by the PVK in collaboration with the AFM, information available from the PVK web site, and additional background information provided by the PVK. In addition, meetings were held with representatives of a wide range of organizations: the PVK; the AFM; the DNB; the Ministries of Finance, Social Affairs and Employment, and Justice; the Actuarial Society; the Netherlands Institute of Registered Accountants; the Association of Company

Pension Funds; the Association of Industry-wide Pension Funds; and senior executives from the insurance, pension and banking sectors. All concerned gave willingly of their time and were cooperative, and this added significantly to the effectiveness of the assessment team.

Institutional and macroprudential setting—overview

32. The insurance sector is an important part of the financial system in the Netherlands. The total assets of the insurance companies amount to 67 percent of GDP in 2001 (60 percent life insurers and 7 percent non-life insurers). Market penetration is high, with gross domestic premium income accounting for 9.8 percent of GDP in 2001 (5.8 percent life and 4.0 percent non-life). Insurers employ approximately 47,500 people.

33. In 2001, there were 95 licensed life insurance companies and 247 licensed non-life insurance companies. Some very small funeral insurance-in-kind and mutual non-life insurers are partially or wholly exempted from the supervision; of these, 170 companies are registered with the supervisor.

34. The life insurance sector is concentrated, with the largest and the largest five companies, respectively, accounting for 25 percent and 55 percent of the sector's total insurance liabilities. The next five largest companies account for 20 percent. Large life insurance groups are significantly internationalized. The largest three groups of companies generate 80 percent of their income. In terms of asset mix, the life insurance sector invests 23 percent of its assets in equities, 70 percent in fixed-income products, and 8 percent in real estate. All large life insurers are part of the financial conglomerates, the structures of which can sometimes be complex. In general, however, they usually have a banking arm and an insurance arm under a holding company. In terms of risk management, they tend to have a centralized risk management unit directly responsible to the board. In addition, they are increasingly organized by product line, both in terms of strategies and internal controls. Domestically, the cross-selling of retail products has become very common. Typically, mortgage-linked products have grown rapidly, reflecting the strong housing market and the tax-deductibility of mortgage interest. These organizational and market developments have led to the change in supervisory regime, especially the consolidation of the Dutch National Bank (DNB) and the PVK.

35. In contrast to life insurers, non-life insurers are small and the market is much less concentrated. The ten largest companies account for 40 percent of the premiums. Their asset mix is 30 percent equities, 65 percent fixed income instruments and the balance in other investments. Many of the larger non-life insurers are part of financial conglomerates. One of their main products is property insurance. In the Netherlands, health and disability insurance are written by non-life insurers.

36. Insurers have had to cope with a difficult environment in the last few years. Production has been declining and share prices have fallen significantly. Many companies exhausted their equity revaluation reserves and, therefore, had to recognize some of the drop in asset values in their income. Low interest rates have reduced the level of income from new fixed income investments. Reinsurance costs have increased dramatically, in response to the

terrorist attacks on September 11, 2001. This environment has put a strain on insurers' solvency margins. However, the industry and government have developed an arrangement to limit future insurance losses arising from acts of terrorism in the Netherlands.

37. The primary supervisor for the insurance sector is the PVK, which supervises insurers on a "solo plus" basis, in accordance with agreed insurance supervision practices in the European Union. This contrasts with the consolidated supervision approach under which banks are supervised by the DNB, with whom the PVK is in the process of merging. A protocol has been in place since 1990 to permit the PVK and the DNB to cooperate in the supervision of conglomerates, and cooperation is underway in other aspects of their operations, as well.

B. Principle-by-Principle Assessment

38. Insurance supervision in the Netherlands is in the midst of change. In recent years, the PVK has adopted a more proactive approach, as evidenced by initiatives such as the implementation of a risk-based supervisory methodology (MARS) in 2003 and the proposal for a more forward-looking approach to solvency assessment (FTK), which is currently under discussion. The level of resources employed by the PVK has also increased significantly. This change in approach has clearly been noticed by the industry and, for the most part, appears to have its support (in principle, although not always on the specifics). Further changes are ahead, as the merger of the PVK and the DNB will soon create an integrated prudential supervisor for the financial sector, with the AFM handling market conduct supervision. The restructuring process presents an opportunity to clarify and formalize the objectives and responsibilities of the supervisory authorities.

39. Most of the principles have been assessed as being observed or largely observed. Furthermore, the authorities in the Netherlands are actively pursuing a number of legislative and supervisory initiatives that hold the potential to materially improve the level of observance in the coming months or years. In some cases, this will flow from the coming into effect of legislation and guidance that has already been decided. In other cases, work is underway but has not yet been completed.

40. A few principles were assessed as partly observed. Both supervisory guidance and professional standards, e.g., for the actuarial profession, are in some cases either absent or fairly high level in nature. Accordingly, the level of observance for these principles can be improved through the issuance of more complete and explicit guidance to industry regarding supervisory expectations, e.g., in the areas of governance, risk management and internal controls. Greater transparency by the supervisor is recommended in several areas, e.g., regarding its internal policies and procedures, risk assessments of institutions and stages of intervention.

41. The ability for the supervisor and others to assess the financial condition of insurers could be improved by narrowing of the range of acceptable actuarial and accounting practices and increasing the level of disclosure and frequency of reporting. The PVK is relying upon developments internationally to address some of these issues, e.g., the evolution

of International Financial Reporting Standards, and is actively involved in international standard setting initiatives. Its own FTK project, when completed, should also be a significant step forward. However, further steps might also be taken in the shorter term to improve the level of observance with the principles, including requiring quarterly reporting on supervisory returns, publishing more information from the supervisory returns, and establishing and communicating a solvency control level.

42. Only principle 24 – Intermediaries – has been assessed as not observed. In this case, legislation is currently being drafted which could provide a stronger and more comprehensive basis for the supervision of insurance intermediaries.

43. The level of observance for each principle reflects the assessments of the essential criteria established by the IAIS. A principle is considered **‘observed’** whenever all the essential criteria are considered to be observed or when all the essential criteria are observed except for a number that are considered not applicable. For a criterion to be considered **‘observed’**, it is usually necessary that the authority has the legal authority to perform its tasks and that it exercises this authority to a satisfactory standard and ensures that requirements are implemented. The existence of a power in the law is insufficient for full observance to be recorded against a criterion except where the criterion is specifically limited in this respect. In the event that the supervisor has a history of using a practice for which it has no explicit legal authority, the assessment may be considered as **‘observed’** if the practice is substantiated as common and undisputed.

44. A principle is considered to be **‘not applicable’** when the essential criteria are considered to be ‘not applicable’. A criterion would be considered ‘not applicable’ whenever the criterion does not apply given the structural, legal and institutional features of a jurisdiction.

45. For a principle to be considered **‘largely observed’**, it is necessary that only minor shortcomings exist which do not raise any concerns about the authority’s ability to achieve full observance with the principle. A principle will be considered **‘partly observed’** whenever, despite progress, the shortcomings are sufficient to raise doubts about the authority’s ability to achieve observance. A principle will be considered **‘not observed’** whenever no substantive progress toward observance has been achieved.

46. While it is generally expected that full observance of a principle is achieved through the observance of the essential criteria, there can be instances, where observance with a principle has been achieved through different means. Conversely, due to specific conditions in a jurisdiction, meeting the essential criteria may not be sufficient to achieve observance of the objective of a principle. In these cases, additional measures are needed in order for observance of the particular principle to be considered effective. In the judgment of the assessor, such a case exists in the Netherlands with respect to principle 15 on enforcement or sanctions.

Table 4. Detailed Assessment of Observance of the IAIS Insurance Core Principles

Principle 1.	<p>Conditions for effective insurance supervision Insurance supervision relies upon</p> <ul style="list-style-type: none"> • a policy, institutional and legal framework for financial sector supervision • a well developed and effective financial market infrastructure • efficient financial markets.
Description	<p>In recent years, a discussion was held in the Netherlands on the objectives and optimal structure of financial supervision, leading to a supervisory structure that separates market conduct supervision from micro- and macro-stability. The objectives and the resulting institutional framework have been well publicized, and are expected to be explicitly covered in new financial legislation that is being prepared.</p> <p>The Netherlands is a constitutional monarchy with a legal and court system which is in line with the western democracies. It has a well developed judicial system, which includes courts that specialize in dealing with civil commercial matters and courts of appeal. The legal system is based on civil law and domestic and EU legislation. Parliament is the domestic law making body; however, as a general principle, EU law overrides domestic law under the Treaty of Rome. EU directives agreed by the Council of Ministers and the European Parliament must usually be implemented into national law by member states. Alternative dispute resolution mechanisms established by life and non-life insurers are also available to address complaints using an ombudsman-type approach.</p> <p>Accounting and auditing standards are in line with international standards. They are partly enshrined in law, and partly established by the relevant professional body (Koninklijk NIVRA). Auditing standards, which have legal status, also address the independence of auditors from their clients. While the actuarial professional body – the Actuarial Society (Actuariel Genootschap), of which most Dutch actuaries are members – has not published formal standards of practice, actuarial practices appear to be in line with those prevalent in other jurisdictions with highly developed insurance and pension sectors. The major accounting and actuarial firms are part of leading global companies, thus further ensuring that practice is in line with international standards. Professional qualification standards and discipline processes have been established. There are approximately 13,000 registered accountants and 1,250 members of the Actuarial Society (750 actuaries and 500 affiliates).</p> <p>Extensive socio-economic data is available from the Central Bureau of Statistics, the Social and Cultural Planning Bureau, the central bank (DNB), the financial industry and others. Internationally, Eurostat, IMF, OECD and others make information readily available. Considerable information is now available via the internet.</p> <p>Laws and regulations are updated in response to EC Directives and to respond to industry conditions and international developments.</p> <p>Financial markets in the Netherlands are well developed and insurers and pension funds are also active participants in international financial markets.</p>
Assessment	Observed.
Comments	
Principle 2.	<p>Supervisory objectives The principal objectives of insurance supervision are clearly defined.</p>
Description	<p>While the objectives of insurance supervision are not clearly defined in the present legislation, they have been well publicized and are reflected in the mission statement of the PVK. Current legislation charges the PVK with supervising insurers and pension funds in accordance with the relevant legislation and providing information to assist the government</p>

	<p>in assessing the feasibility of proposed statutory rules or general policies.</p> <p>The PVK issues an annual report, which sets out its most significant concerns, priorities, actions and results.</p>
Assessment	Largely observed.
Comments	<p>It is recommended that the principal objectives of insurance supervision be explicitly defined in new financial legislation that is being prepared.</p> <p>While the broad separation of responsibilities between the PVK (prudential supervision) and the AFM (market conduct supervision) has been defined, further clarification of the responsibility of each for various tasks is recommended.</p>
Principle 3.	<p>Supervisory authority</p> <ul style="list-style-type: none"> – The supervisory authority: <ul style="list-style-type: none"> • has adequate powers, legal protection and financial resources to exercise its functions and powers • is operationally independent and accountable in the exercise of its functions and powers • hires, trains and maintains sufficient staff with high professional standards • treats confidential information appropriately.
Description	<p>The supervision of insurers is based on the implementation of EC Insurance Directives and has been incorporated into two acts in the Netherlands:</p> <ul style="list-style-type: none"> • the Insurance Business Supervision Act 1993 (Wet toezicht verzekeringsbedrijf 1993 – WTV) for non-life and life insurance companies; and • the Funeral Insurance Business in Kind Supervision Act (Wet toezicht natuura-uitvaartverzekeringsbedrijf – WTN) for insurers of funeral insurance-in-kind. <p>Reinsurers with offices in the Netherlands or insurers with offices outside the Netherlands, which conduct reinsurance business in the Netherlands through a branch office, are not subject to supervision under the WTV. The reinsurers are required to submit their annual reports to the PVK.</p> <p>Legislation gives the PVK the power to issue and enforce rules. The PVK has issued both rules and policy guidelines on a range of subjects, including the maximum technical rate of interest, prudential returns, derivatives and actuarial principles for life insurance.</p> <p>The PVK has sufficient powers for the effective discharge of its supervisory responsibilities under the legislation. (However, see ICP 17 assessment regarding the constraints on conducting group-wide supervision under current legislation.) Enforcement instruments include administrative orders, the appointment of a silent administrator, and fines and conditional penalties.</p> <p>The governance structure of the PVK is defined in its Articles of Association. Legislation (WTV Art. 3) requires that conditions exist at the PVK that will enable it to make decisions independently in the exercise of its responsibilities. The composition, appointment and dismissal of executive and supervisory board members are addressed in WTV Art. 6 and the Articles of Association. Dismissals must be publicized, although the reasons for dismissal need not be disclosed.</p> <p>The WTV clearly establishes the enforcement powers available to the PVK. Circumstances where court orders will be required are identified, as are appeal procedures.</p> <p>The PVK was founded in 1923 as an independent executive governmental body and,</p>

in 1992, was privatized as a foundation under civil law. While the Minister of Finance and the Minister of Social Affairs and Employment are responsible for ensuring the PVK is fulfilling its responsibilities effectively, with respect to insurers and pension funds, respectively, they have no role with respect to the supervision of particular insurers or pension funds, except for the role of the Minister of Finance in the issuance of declarations of no objection in relation to financial conglomerates (see the assessment of principle 8 for more information).

The PVK consults regularly with both industry participants and the government on a variety of policy issues. Such consultation does not appear to interfere with the performance of its supervisory responsibilities.

The budget of the PVK is established annually and requires the approval of the Minister of Finance and the Minister of Social Affairs and Employment. As of the 2004 budget, the insurance and pension sectors are represented on an advisory panel, as costs are financed by levies and fines on insurers and pension funds. However, beginning in 2004, 11 percent of the budget – representing the costs of enforcement – will be financed by the government. Once the budget has been approved, the PVK has flexibility to reallocate resources within the overall total. If the PVK determines during the year that it will need additional funds, it must obtain supplementary approval; the excess is assessed in the following year.

The PVK has been applying a new risk-based supervision system (MARS) since March 2003. It consulted with industry during the development of MARS and made presentations about the system to both groups and individual insurers. After gaining more experience with MARS and modifying it, as necessary, the PVK intends to publish the manual on its website.

External policies are published. The PVK is currently engaged in a project to review and codify its policy rules and procedures, following which additional information will be published. Material changes to legislation and policies are normally subject to prior consultations with market participants; an example is the proposed Financial Assessment Framework (FTK). The PVK makes its policy objectives public in a variety of ways, such as industry consultations, its annual report, speeches, press interviews, and its audited annual financial report to the relevant ministries, which also reports on policy objectives and the extent to which they have been achieved.

Confidentiality requirements limit the information that can be provided about problem insurers, although more extensive disclosure is possible following a bankruptcy.

The PVK can take immediate action to achieve its objectives, such as issuing an administrative order or appointing a silent administrator.

Budget increases in recent years have allowed the PVK to strengthen the organization quite substantially. Staff has almost doubled, to a current complement of 230. Nevertheless, further staff increases may be appropriate in order to effectively implement MARS (see ICP 13 assessment). The PVK has its own Collective Labor Agreement (CLA), based on the CLA for government personnel and the CLA for insurance companies. Although compensation is generally competitive, the PVK has sometimes encountered difficulty in hiring specialist staff, such as actuaries and capital markets experts. The merger with the DNB is expected to enhance the ability to attract and retain staff. Outside experts are hired, as necessary, e.g., silent administrators and consultants on the development of MARS.

The staff of the PVK appears to be capable and well respected by those they supervise. They are subject to a code of conduct, including provisions dealing with investments in

	<p>supervised insurers and pension fund sponsors. The PVK has its own compliance officer. Confidentiality provisions are set out in legislation and apply to both staff and external specialists hired by the PVK. Case law supports the confidentiality provisions, except in cases covered by criminal law or where an insurer has been declared bankrupt or is being compulsorily wound up.</p> <p>The PVK is fully liable for any damages in the event a court overrules a PVK decision. To mitigate this risk, however, the PVK has directors' and officers' liability insurance and government indemnification for any liability in excess of the insurance. The PVK arranges liability insurance protection for the silent administrators it appoints. When resolving contentious matters with an insurer, the PVK may also seek the insurer's advance written agreement not to appeal the PVK's decision.</p> <p>The AFM's supervisory powers in the field of financial services are delegated on the basis of the laws which regulate financial supervision. The most important ones, on the basis of which supervision is already taking place, are the Act on the Supervision of the Securities Trade 1995, the Act on the Supervision of Collective Investment Schemes (WTB), the Disclosure of Major Holdings in Listed Companies Act 1996 and the Consumer Credit (Protection) Act.</p> <p>On July 1, 2003 the AFM began operations in a new structure consistent with its new tasks and responsibilities under the strategy set in 2002. The powers and operations of the AFM were assessed in detail during the FSAP process in connection with the assessment of observance of the IOSCO principles.</p>
Assessment	Observed.
Comments	<p>The financing of the PVK will be subject to more governmental involvement, beginning in 2004, with a portion of its costs becoming directly financed by government appropriation. The budget will also be subject to review by the Minister of Finance and the Minister of Social Affairs and Employment. This creates the risk that the PVK's ability to fulfill its supervisory mandate could be compromised through the restriction of its financial resources in response to political pressures.</p>
Principle 4.	<p>Supervisory process</p> <ul style="list-style-type: none"> – The supervisory authority conducts its functions in a transparent and accountable manner.
Description	<p>The PVK operates according to a manual that defines the main working procedures and processes, in order to promote consistency of treatment. There is also a detailed manual supporting the new risk-based supervision system (MARS). The PVK consulted with industry during the development of MARS and has made presentations about the system to both groups and individual insurers. After gaining more experience with MARS and modifying it, as necessary, PVK intends to publish the manual on its website.</p> <p>The PVK has defined various stages of intervention, ranging from normal supervision to wind up, for its internal use. The definitions of the stages and the criteria used to assign insurers to the various stages are not published. While statistics regarding the number of insurers in the higher stages, e.g., under the control of a silent administrator, are published, complete statistics are not. An insurer is not explicitly informed of the stage to which it is classified.</p> <p>The PVK has established delegation guidelines to facilitate decision making. These have been revised recently, to reflect the new organization structure. The organization structure is straightforward, with short management lines that should support prompt decision making.</p> <p>External policies are published. The PVK is currently engaged in a project to review and codify its policy rules and procedures, following which additional information will be</p>

	<p>published. Some market participants have reportedly expressed a desire that the PVK provide more information regarding its interpretations of legislation. Material changes to policies are normally subject to prior consultations with market participants. While the consultation process and timeframe vary from one initiative to the next, the PVK informs participants of these matters at the outset. The PVK normally meets at least once annually with each relevant industry group.</p> <p>Appeals of the PVK decisions can be subject to judicial review in accordance with the General Administrative Law, which defines the appeal process. Certain matters (as defined in the WTV) will be heard in chambers and the results not made public. Decisions of the PVK will remain in force during the appeal process; although the appellant can seek a preliminary injunction against enforcement of the PVK’s decision, this has never happened in practice.</p> <p>The PVK publishes an annual report, which includes information on its objectives, policies and performance, as well as financial information about the industry and major developments in the markets. It also provides this report, and significant additional information, on its website.</p>
Assessment	Largely observed.
Comments	<p>Initiatives underway to publish more information about policies and procedures are commendable. It is recommended that they continue and be expanded to provide more information on stages of intervention (definitions, statistics and informing individual insurers), interpretations, and risk assessment criteria.</p> <p>While the PVK actively consults with industry in the development of policies, it is recommended that the usual consultation process be documented, published and observed to the extent possible.</p>
Principle 5.	<p>Supervisory cooperation and information sharing The supervisory authority cooperates and shares information with other relevant supervisors subject to confidentiality requirements.</p>
Description	<p>Generally, within the EU/EEA, protocols between the supervisory authorities exist, underpinned by EC Directives, which allow for a timely and adequate flow of information between the supervisors. These arrangements work in practice.</p> <p>The PVK is able to conclude an agreement to exchange information with another supervisor. However, such agreements are not a prerequisite to exchanging information. When information is being exchanged, legislation requires that certain conditions have to be fulfilled, including that the other supervisor must treat the information confidentially.</p> <p>In the case where the PVK is the home member state supervisor, the host member state supervisor is taken into its confidence, to the extent necessary for the proper execution of the home member state supervision. This system, however, is only applicable in the EU/EEA.</p> <p>While legislation does not require systematic feed back from the PVK to the original provider of the information, the protocols clearly indicate the intention to have a free flow of information in both directions.</p> <p>Legislation provides the PVK with the power to obtain information for the benefit of other supervisors in the framework of insurance groups.</p> <p>The PVK has no comparable arrangements with supervisors in non-EU/EEA countries and cooperation with them on supervisory issues (as opposed to standard setting initiatives) is minimal.</p>

Assessment	Partly observed.
Comments	Considering the broad international scope of several insurance and financial groups of which insurers licensed in the Netherlands are members, steps should be taken by the PVK to exchange information with relevant supervisors outside of the EU/EEA.
Principle 6.	Licensing <ul style="list-style-type: none"> – An insurer must be licensed before it can operate within a jurisdiction. The requirements for licensing are clear, objective and public.
Description	<p>Subject to certain exceptions, the insurance legislation (WTV and WTN) prohibits the conduct of insurance business in the Netherlands without a license. To obtain admission to the insurance business, the insurer has to apply for a license from the PVK. Exceptions include:</p> <ul style="list-style-type: none"> • Reinsurers with offices in the Netherlands or insurers with offices outside the Netherlands, which conduct reinsurance business in the Netherlands through a branch office, are not subject to supervision under the WTV. The reinsurers are required to submit their annual reports to the PVK; • EU insurers that wish to provide services to the Netherlands or open a branch in the Netherlands are supervised by the home member state supervisor and do not need a license from the PVK, although the PVK must be notified by that supervisor of the insurer’s intentions; and • Non-Netherlands funeral insurance-in-kind insurers must notify PVK before providing services and need a license to open a branch. <p>There are also some small insurers, meeting certain criteria, which are permitted to operate without a license and with reduced supervision, or no supervision. They are:</p> <ul style="list-style-type: none"> • Very small funeral insurance-in-kind insurers, with fewer than 3,000 members, which do not register with the PVK and are not under its supervision; • Very small “exempted non-life mutual insurers”, which must register with the PVK and obtain declarations of no objection from it; they file limited supervisory returns and are not subject to solvency requirements; and • Somewhat larger non-life mutual insurers, which must register with the PVK and obtain declarations of no objection from it; they file full supervisory returns and are subject to solvency requirements. <p>Insurers must have the legal form of a public limited company or a mutual insurance society. Non-life business and life business cannot be conducted by the same legal entity. No activities of any other kind may be conducted within the legal entity of the insurers, although ancillary activities may be conducted through a separate legal entity.</p> <p>Licenses are issued per class of insurance. Insurance activities may only be conducted in classes for which a license has been obtained.</p> <p>Licensing criteria are set out in the laws and various policy regulations. The PVK also provides new applicants with a standard package outlining its information requirements. When dealing with an application for a license, the PVK assesses the following:</p> <ul style="list-style-type: none"> • The suitability of significant owners, directors, senior managers, auditor and actuary (the insurer is obligated to enter into agreements with the PVK and the auditor, and the PVK and the actuary, to ensure the flow of information to the PVK); • Capital available compared to the minimum required; • The organization structure and the quality of risk management and controls; • The business plan for the next three years, including forecasts of earnings, liquidity and solvency (non-EU insurers must meet the solvency margin requirements for their entire business);

	<ul style="list-style-type: none"> • Audited annual accounts; and • Any other information the PVK deems necessary. <p>The PVK does not ordinarily request input from the applicant’s home supervisory authority.</p> <p>If the insurer will be part of a group of companies, the PVK also assesses the risks arising from the group relationship. The suitability of the board members of the group, who influence the policy of the insurer directly or indirectly, are also assessed. The PVK can and does require that the group structure be transparent.</p> <p>With respect to the assessment of the reliability and trustworthiness (fit and proper test), the PVK cooperates closely with the National Public Prosecution Service and, in the case of financial conglomerates, with the DNB and the AFM. The legislation stipulates that at least two people who determine day-to-day policy and three supervisory directors must be appointed.</p> <p>All elements in the licensing procedure form part of the ongoing supervision under the MARS framework. The intensity of supervision will depend on the MARS risk analysis, and may be higher for new insurers.</p>
Assessment	Partly observed.
Comments	<p>Since the ICP apply to the supervision of both insurers and reinsurers, the Netherlands should take steps to require that reinsurers, other than those supervised elsewhere in the EU/EEA, be licensed by the PVK.</p> <p>It is recommended that the PVK contact the home supervisor of any non-EU/EEA insurer applying for a license, as a regular part of the assessment process.</p> <p>The operation of very small insurers, such as some funeral insurance-in-kind organizations, without the need for registration or licensing certainly creates minimal financial risk, in the context of the Netherlands overall financial sector. Nevertheless, such organizations enter into long term financial commitments with individuals, and larger insurers offering the same arrangements are subject to prudential supervision to protect their policyholders. The failure of an unlicensed entity, could not only result in loss to its policyholders, but may also tarnish the reputation of the PVK, should the public hold the belief that supervision was in place. Accordingly, it is recommended that legislation be enacted requiring that all insurers operating in the Netherlands, regardless of their size and nature, be registered with or licensed by the PVK. It is further recommended that the PVK publish lists of registered and licensed insurers on its website, along with an explanation of the significant differences in the nature of supervision applicable to each category.</p>
Principle 7.	<p>Suitability of persons</p> <p>The significant owners, board members, senior management, auditors and actuaries of an insurer are fit and proper to fulfill their roles. This requires that they possess the appropriate integrity, competency, experience and qualifications.</p>
Description	<p>As indicated under principle 6, legislation identifies those who must meet fit and proper requirements. Significant owners (those holding a qualified participation of ten percent or more) need a declaration of no objection, which can be revoked should they cease to meet suitability criteria.</p> <p>Legislation permits the PVK to object to the appointment, or continuation, of an auditor or actuary, in which case the insurer must appoint an auditor or actuary satisfactory to the PVK. Auditors are legally required to be members of the Netherlands Institute of Registered Accountants (NIVRA). Actuaries need not be members of the Actuarial Society and the PVK has no specific criteria for assessing the qualifications of actuaries.</p>

	<p>In making its assessments of suitability, the PVK cooperates closely with the National Public Prosecution Service and, in the case of financial conglomerates, with the DNB and the AFM.</p> <p>The PVK maintains a listing of external courses that may be useful to individuals, such as prospective board members, who have inadequate knowledge to fulfill their roles. It can require that individuals successfully complete such courses prior to being issued a declaration of no objection.</p> <p>Legislation does not explicitly forbid individuals from simultaneously holding two positions which could result in a material conflict. However, it does enable the PVK to intervene if it believes that an auditor or actuary would be incapable of adequately performing his or her responsibilities. The rules of the auditing profession, which have legal status, also prescribe the independence of auditors from their clients. The PVK has requested the Actuarial Society to submit a proposal for steps that could be taken to increase the independence of actuaries, e.g., addressing situations where an insurer's actuary and auditor are members of the same firm.</p> <p>While there is presently no explicit requirement that an insurer notify the PVK if circumstances relevant to the fitness and propriety of its key functionaries arise, in practice this occurs. PVK intends to issue a regulation, effective December 1, 2003, to require such notification.</p>
Assessment	Observed.
Comments	It is recommended that the PVK establish specific criteria to assess the fitness and propriety of auditors and actuaries, including qualifications, professional proficiency, appropriate practical experience, updated knowledge on developments within their profession and membership in professional bodies. It is recommended that, in establishing such criteria, the PVK rely upon NIVRA and the Actuarial Society, to the extent their membership requirements address such criteria.
Principle 8.	<p>Changes in control and portfolio transfers</p> <p>The supervisory authority approves or rejects proposals to acquire significant ownership or any other interest in an insurer that results in that person, directly or indirectly, alone or with an associate, exercising control over the insurer.</p> <p>The supervisory authority approves the portfolio transfer or merger of insurance business.</p>
Description	<p>Legislation requires every natural or legal person to obtain a declaration of no objection in order to retain, acquire or increase a qualified participation in an insurance company with its registered office in the Netherlands. A qualified participation is defined as a direct or indirect interest or direct or indirect control of at least ten percent of the issued share capital of an insurance company, and reporting of such holdings is required annually.</p> <p>Applications for a declaration of no objection must be submitted to the PVK. A declaration of no objection will be issued by the PVK with respect to an insurer which is not a member of a financial conglomerate. In the case of financial conglomerates, such declarations of no objection are issued by the Minister of Finance based upon the recommendations of the PVK and the DNB. The system of declarations of no objection is currently being streamlined for the whole of the financial sector.</p> <p>Stockholders with a qualified participation in the company have to fulfill the propriety requirements. In forming its opinion, the PVK focuses on undesirable situations which could arise as a result of acquiring the participating interest in the insurer. These include, for instance, a conflict with the interests of the policyholders, an unclear control structure, and developments which may be undesirable for the insurance industry. The PVK has not established specific requirements for financial and non-financial resources.</p>

	<p>If an insurer wishes to transfer all or part of its portfolio, the prior permission of the PVK is required. The request for the transfer must be made in writing to the PVK and provide insight into the financial position of both the insurer making the transfer and the insurer which will receive it. Legislation explicitly states that the PVK will not grant permission if the insurer which receives the transfer does not satisfy the solvency requirements.</p> <p>In assessing the application, the PVK considers both the interests of the policyholders of the insurer making the transfer and the interests of the policyholders of the insurer which will receive the transfer. The ability to satisfy the solvency requirements not just at the moment of the transfer but also in the future, and possible changes in the risk profile as a result of combining portfolios, are also considered. This evaluation may result, for instance, in a requirement that changes be made to the reinsurance program of the insurer which receives the transfer.</p> <p>If the PVK does not have any objections to the proposed transfer, this decision must be publicized in order to inform policyholders. The policyholders of a non-life insurer may give written notice of cancellation of the insurance within three months, in which case advance premium payments must be refunded. Policyholders of a life insurer may file an administrative appeal within a specified term. If policyholders accounting for 25 per cent or more of the insured amount object, the transfer may not proceed. If this is not the case, after the term for filing and administrative appeal has lapsed, the insurer will publish the PVK's approval in the Netherlands Government Gazette.</p>
Assessment	Observed.
Comments	
Principle 9.	<p>Corporate governance The corporate governance framework recognizes and protects rights of all interested parties. The supervisory authority requires compliance with all applicable corporate governance standards.</p>
Description	<p>General requirements concerning corporate governance are established by the Civil Code. The PVK has the power, under the WTV and WTN, to set rules and to issue guidelines on administrative organization and internal controls. Recently, the PVK has issued draft principles on internal control applicable to insurance companies. At least two (natural) persons must be appointed by an insurer to make day-to-day decisions.</p> <p>Insurers based in the Netherlands operate with both a management board (senior executives) and a supervisory board (largely external to the insurer, although not necessarily independent, e.g., in the case of an insurer that is part of a group). The manner in which these boards operate is assessed by the PVK under its MARS framework. The extent to which they would be expected to adhere to formal governance processes, such as the documentation of policies and responsibilities, is influenced by the legal form of the company, its size and the nature of its business. However, even a small insurer with a simple risk profile would be expected to meet minimum standards.</p> <p>Boards may establish committees, and generally do so in the larger insurers and groups. While the PVK has no fixed standards in place, it is able to take action to deal with remuneration policies that provide an undue incentive to imprudent behavior. The PVK has identified a primary contact point at each insurer with respect to compliance issues, although this individual need not be formally identified by the board or be required to report to the board periodically. While the actuary is expected to report periodically to the board, there is no legislative provision guaranteeing direct access.</p>
Assessment	Largely observed.
Comments	Corporate governance is currently a topic of considerable study and debate in the Netherlands. Recommendations to strengthen governance generally are being considered and, when implemented, will also be of benefit to the insurance sector.

	<p>It is recommended that the PVK provide more explicit guidance on the governance practices it expects of insurers, and require that they document significant policies, procedures and responsibilities. It is also recommended that legislation provide for direct access to the board by the actuary.</p>
Principle 10.	<p>Internal control The supervisory authority requires insurers to have in place internal controls that are adequate for the nature and scale of the business. The oversight and reporting systems allow the board and management to monitor and control the operations.</p>
Description	<p>The PVK has the power, under the WTV and WTN, to set rules and to issue guidelines on administrative organization and internal controls. Recently, the PVK has issued draft principles on internal control applicable to insurance companies. It is also working with the DNB on these issues, in order to harmonize internal control requirements for the financial sector.</p> <p>In practice, much attention is being paid to the quality of the administrative organization and internal controls under the MARS framework, and specifically the quality of the internal audit function. As a matter of routine, the PVK receives listings of all internal audit reports and reviews and discusses relevant reports, as well as internal audit plans, with insurers. The PVK has the power to obtain any information from an insurer that it considers necessary for fulfilling its supervisory role. The PVK also receives the management letter of the external auditor.</p> <p>The board is responsible for all activities of the company, including market conduct and outsourcing, although reports to the board regarding the effectiveness of controls tend to be less formal in the smaller companies. Draft rules on outsourcing have been issued by the PVK and the final rules will be incorporated in the overall guidance on internal controls.</p> <p>Legislation requires that the financial statements submitted by an insurer to the PVK contain a declaration by the actuary. The Actuarial Society has developed guidelines with which actuarial reports must comply. Legislation also requires that the actuary provide information which the PVK may consider necessary for fulfilling its supervisory role. A covenant between the Association of Insurers, the Actuarial Society and the PVK was signed in 2002, which describes the nature of the actuary's role and what must be reported to the insurer and the PVK. This covenant is implemented through agreements among each insurer, its actuary and the PVK. Such agreements permit the actuary to provide information to the PVK without the insurer being informed or present (as stipulated in legislation), if necessary for serious reasons.</p>
Assessment	<p>Largely observed.</p>
Comments	<p>It is recommended that work currently underway by the PVK to more completely codify its requirements and expectations regarding internal controls be completed with high priority.</p> <p>Legislation requires that the insurer be permitted to be present when information is presented to the PVK by either the external auditor or the actuary. However, as noted above, agreements executed by insurers, actuaries and the PVK allow for confidential communication between the actuary and the PVK in some circumstances. Senior members of both the audit and actuarial professions have expressed confidence that the presence of the insurer would not inhibit them from communicating concerns to the PVK.</p> <p>Nevertheless, it is recommended that new legislation provide for the possibility of the PVK obtaining information from either of the actuary or the external auditor on a confidential basis, and with provide strong legal protection against their potential liability from taking such action. (Legal protection is currently provided to auditors when they inform the PVK of concerns, but it could be strengthened. No legal protection is provided to actuaries in such situations.) This would provide a stronger legal basis for their independence and help</p>

	to ensure the early reporting of significant concerns that an insurer may not be prepared to deal with adequately.
Principle 11.	Market analysis Making use of all available sources, the supervisory authority monitors and analyses all factors that may have an impact on insurers and insurance markets. It draws the conclusions and takes action as appropriate.
Description	<p>The PVK regularly assesses the general market circumstances, including product demand and financial market developments that may affect the investments of insurers. The PVK has regular discussions with the industry association, where market developments are a standard agenda item. Market developments are also discussed with individual insurers, as part of ongoing supervision, and are assessed as a component of the MARS model.</p> <p>The PVK does not have a process for regular, in-depth statistical analysis of the market. The merger with the DNB is expected to provide more resources to facilitate such analyses.</p> <p>The PVK considers global market circumstances, as a reflection of the structure of the Dutch insurance market. It relies on international sources, which provide a great deal of information, rather than conducting original research.</p> <p>The PVK publishes financial statistics annually, on an aggregate level, on each of the life insurance, non-life insurance and pension funds industries. In addition to that it publishes a pension monitor in which in qualitative overview of pension schemes is provided. The Association of Insurers and the Centre for Insurance Statistics also provide a wealth of information. Much of this information is accessible via the internet.</p> <p>In addition to gathering information through the general supervisory returns, the PVK has undertaken special studies to identify and assess vulnerabilities with potentially substantial impact, e.g., the Y2K computer issue, the introduction of the euro, the sensitivity to a decline in interest rates, and the aftermath of the terrorist attacks of September 11, 2001. As part of the introduction of the Financial Assessment Framework (FTK), further sensitivity studies are presently being carried out.</p>
Assessment	Partly observed.
Comments	It is recommended that the PVK assign an individual or department the ongoing responsibility of gathering quantitative and qualitative market information from both internal and external sources, analyzing this information, and communicating the results of the analyses to others within the PVK. This will both facilitate the identification of system-wide risks and assist supervisory staff in assessing the risks to which a particular insurer may be subject.
Principle 12.	Reporting to supervisors and off-site monitoring The supervisory authority receives necessary information to conduct effective off-site monitoring and to evaluate the condition of each insurer as well as the insurance market.
Description	<p>The legislation contains numerous provisions requiring the provision of both quantitative and qualitative information to the PVK. Extensive audited supervisory returns must be submitted annually by insurers, prior to May 1. Fines may be imposed by the PVK upon insurers that do not submit the required information on time. Portions of these supervisory returns are public and are available for public inspection at the offices of the PVK. The annual report, the management letter and, if applicable, the actuarial report must be submitted with the returns. A more limited package of information must be submitted to the PVK on a quarterly basis, but only by those insurers in respect of which there are prudential concerns.</p> <p>Information is provided on both a solo and consolidated basis, with guidance provided regarding the permissible scope of consolidation. Accounting principles are based on the Civil Code, which also establishes requirements for the reporting of off-balance sheet</p>

	<p>activities.</p> <p>The insurer's board of directors is required to declare that it responsible for the information in the supervisory returns.</p> <p>The PVK revises its reporting requirements from time to time. Additional reporting requirements were introduced with the implementation of the EC Directive on Insurance Groups, and further changes are anticipated in connection with the implementation of International Financial Reporting Standards (IFRS) and the FTK.</p> <p>Although there is no legal requirement that insurers report promptly material changes that affect the evaluation of their financial condition, the PVK believes this practice is being observed. This is reinforced by the reporting requirements applicable to external auditors and actuaries.</p>
Assessment	Observed.
Comments	<p>It is recommended that the PVK consider requiring all insurers (with the possible exception of small insurers with strong solvency positions) to file basic supervisory returns quarterly. This will facilitate a more dynamic off-site monitoring process and responds to the inherent volatility in the financial markets.</p> <p>In order to assist policyholders and other stakeholders in making their own evaluation of the financial situations of any licensed insurer, it is recommended that the PVK publish on its website key financial information contained in those portions of the supervisory returns that are already open to public inspection at its office. (Note that limited information is currently available on the PVK website for some insurers.)</p>
Principle 13.	<p>On-site inspection</p> <p>The supervisory authority carries out on-site inspections to examine the business of an insurer and its compliance with legislation and supervisory requirements.</p>
Description	<p>Legislation provides the PVK the power to conduct on-site inspections and to gather the information it deems necessary to perform its duties. The information in returns submitted to the PVK must be verified by the external auditor, with whom a communication agreement is in place (the insurer is also a party to this agreement).</p> <p>The PVK has implemented a risk-based supervisory methodology, MARS, in 2003. MARS is consistent with international supervisory best practices. As part of this methodology, a quick off-site assessment is done annually of the risks and controls at each insurer. This information is compiled and used in the planning process to identify the areas which should receive the highest priority in the on-site inspections. While full scale inspections are possible, the PVK normally conducts more limited inspections of specific areas of concern. The PVK intends to conduct an on-site inspection of each insurer at least once under the new methodology.</p> <p>The PVK discusses its findings with an insurer and, where necessary, requires that a plan of action be developed and agreed upon. The PVK follows up to ensure that the plan has been acted upon. While the PVK discusses specific risks and concerns with insurers, and provides its views on whether an insurer is above or below average with respect to each category, no overall rating of the level of net risk is communicated.</p> <p>The PVK can require an insurer to provide information regarding outsourced activities and has the power to call individuals to testify at a hearing.</p> <p>As noted under principle 6, some small mutual non-life insurers are subject to a less strict supervisory regime.</p>
Assessment	Observed.
Comments	For supervisory resource planning purposes, the PVK has classified insurers into three

	<p>groups: 41 large; 84 medium; and 251 small companies. These insurers are supervised by a total of approximately 60 staff. This level of staff may well be inadequate to fully support the off-site and on-site supervision of insurers under the MARS methodology, particularly during its initial years. This observation is based on the resource planning estimates provided by the PVK, the assessor's experience with the implementation of a similar methodology at another supervisory authority, and comments from industry representatives regarding the level of supervisory resources being applied to their own institutions.</p> <p>It is recommended that the PVK reassess the staff resources that will be required to successfully implement the MARS supervision methodology and seek additional resources, as necessary.</p>
<p>Principle 14.</p>	<p>Preventive and Corrective Measures The supervisory authority takes preventive and corrective measures that are timely, suitable and necessary to achieve the objectives of insurance supervision.</p>
<p>Description</p>	<p>Legislation provides the PVK with a wide range of preventive and corrective measures that it can and does exercise to achieve its supervisory objectives. They include:</p> <ul style="list-style-type: none"> • Moral suasion; • Requiring a solvency restoration plan; currently, this is legally possible only if an insurer is below the required solvency margin, but when the legislation implementing Solvency I is effective in December 2003, such a plan can be required if the solvency margin is currently satisfied but policyholders nevertheless appear to be at risk; • Issuing an administrative order; • Imposing fines or penalties; • Restricting the activities of the company; • Withholding approval of new activities; • Withdrawing the license; • Imposing conservatorship; and • Forcing the transfer of the portfolio (under the early intervention arrangement for life insurers). <p>The appointment of a silent administrator is a measure occasionally used by the PVK in situations where it has serious concerns. In such a case, an external expert – typically a retired senior executive – is appointed for a period of 6–24 months. While management remains in place, all significant decisions are subject to the prior approval of the administrator.</p> <p>All legal decisions of the PVK, including sanctions, must be communicated to insurers in writing. However, the PVK commands sufficient respect in the industry that many issues can be resolved without resorting to formal sanctions.</p> <p>If a solvency restoration plan is requested by the PVK, the insurer must submit such a plan within eight weeks. If a plan is not submitted, approved or implemented, the freedom to dispose of assets can be restricted. If an insurer does not comply with an administrative order, the PVK can appoint a silent administrator.</p> <p>The risk of non-compliance with regulatory requirements is identified separately in the MARS framework. Should such risk be of concern, the PVK can require that internal controls be strengthened by the insurer.</p>
<p>Assessment</p>	<p>Observed.</p>
<p>Comments</p>	

Principle 15.	Enforcement or sanctions The supervisory authority enforces corrective action and, where needed, imposes sanctions based on clear and objective criteria that are publicly disclosed.
Description	<p>The PVK may issue an administrative order when it is of the opinion that policyholders' rights are being threatened. The PVK can also use conditional penalties and fines, appoint a silent administrator, or withdraw an insurer's license.</p> <p>The PVK has the authority to prevent an insurer from issuing new policies.</p> <p>The obligatory transfer of a portfolio may be effected in one of the following ways:</p> <ul style="list-style-type: none">• The PVK may issue an administrative order to both life and non-life companies. For non-life companies, however, the final decision making power to enter into such a portfolio transfer remains with the company;• The "Noodregeling" (emergency arrangement) may be used, in which case the final decision is taken by the courts; or• Through the early intervention arrangement for life insurers. In this case, the portfolio will be transferred to a special purpose vehicle company set up by the insurance industry. <p>The PVK may request a solvency restoration plan. Currently, this is legally possible only if an insurer is below the required solvency margin, but when the legislation implementing Solvency I is effective in December 2003, such a plan can be required if the solvency margin is currently satisfied but policyholders nevertheless appear to be at risk. If such a plan is requested, the insurer must submit one within eight weeks. If a plan is not submitted, approved or implemented, the freedom to dispose of assets can be restricted or the license can be withdrawn. Legal powers to restrict the ownership or activities of subsidiaries are being reviewed in the light of the implementation of the financial conglomerates Directive.</p> <p>The PVK follows up to determine whether an insurer is complying with remedial measures.</p> <p>The legislation enables the PVK to provide sanctions, including fines, against insurance companies. While sanctions can be applied against insurance companies and their directors, there is no basis in insurance law for sanctions against individuals who are uncooperative. However, the PVK can summon witnesses to provide testimony and, if they fail to appear, the PVK can request that a warrant be issued and the public prosecutor will intervene to execute the warrant.</p> <p>Individuals can be barred from acting in responsible capacities in the future, under the fit and proper provisions of the legislation.</p> <p>While appeals of sanctions are possible, and may cause some delays, corrective actions can generally continue to be taken by the PVK.</p> <p>The basis for insurance legislation and supervision is the individual licensed insurer. Supplementary supervision of insurers that are part of a group, including a review of the solvency position more broadly, provides some protection against financial difficulties in other parts of the group.</p> <p>The PVK takes action to enforce the sanctions it has imposed, involving the courts, if necessary.</p> <p>Internal procedures are designed to promote consistency in treatment. For example, all major actions require a board decision. The current project to codify policy rules and procedures will also help to ensure consistency.</p>

	The PVK takes action against insurers operating without the required license.
Assessment	Observed.
Comments	Although legislation does not provide the PVK with the power to impose fines against individuals (essential criteria g), the totality of the sanctions available seems adequate to enable the PVK to effectively enforce corrective action.
Principle 16.	Winding-up and exit from the market The legal and regulatory framework defines a range of options for the orderly exit of insurers from the marketplace. It defines insolvency and establishes the criteria and procedure for dealing with insolvency. In the event of winding-up proceedings, the legal framework gives priority to the protection of policyholders.
Description	<p>Legislation provides the criteria that must be met in order for the PVK to withdraw an insurer's license, following which the relevant portion of its business must be wound up. The procedures for winding up an insurer are clearly set forth in legislation.</p> <p>Instead of the normal bankruptcy rules, the "Noodregeling" (emergency arrangement) applies to insurers. The effect of an emergency arrangement is that the various bodies of the insurance company lose their powers entirely or to a large extent. In addition, the insurance portfolio, which includes almost all the activities of the company, may be transferred in its entirety to a different company. If necessary, the entitlements of the policyholders may be reduced. If and for as long as the shareholders' capital is positive, the company's liabilities may be settled against its capital under the emergency measure.</p> <p>Only the PVK may apply to the court for an emergency arrangement. The application must be submitted to the court in the town or city in which the insurer has its registered office. When the court rules on the PVK's application, it will appoint one or more receivers. The receivers are authorized by the court to transfer all or a part of the rights and obligations of the insurer, arising from insurance agreements entered into by the insurer, and to settle the portfolio fully or partially.</p> <p>The emergency arrangement ends when the term ends for which the court has granted authority. The emergency arrangement and the authority granted to the receivers lapse by law when the insurer is declared bankrupt.</p> <p>Legislation establishes the priorities of rights of various parties to the assets of the insurer. A high legal priority is given to the rights of policyholders.</p>
Assessment	Observed.
Comments	
Principle 17.	Group-wide supervision The supervisory authority supervises its insurers on a solo and a group-wide basis.
Description	<p>Legislation clearly defines when an insurer would be considered to be part of a group and describes the supplementary ("solo plus") supervision to which a group is subject. This includes the requirement that adjusted solvency calculations be prepared in order to eliminate double gearing and the ability to review intra-group transactions involving the insurer.</p> <p>Generally, within the EU/EEA, protocols between the supervisory authorities exist, underpinned by EC Directives, which allow for a swift and good flow of information between the supervisors in the supervision of groups. While legislation enables the PVK to cooperate with non-EU/EEA supervisors, the PVK has no such arrangements in place. Steps are being taken to achieve such cooperation pursuant to the EC Financial Conglomerates Directive.</p> <p>Since the early 1990s, a protocol has been in place between the PVK and the DNB to facilitate the supervision of financial conglomerates in the Netherlands. The applicable</p>

	<p>supervisory rules are linked to the declaration of no objection that is required for any qualified participation in a bank or insurer. The rules will shortly be put into legislation, in order to implement the EC Financial Conglomerates Directive.</p> <p>The PVK can require that an insurer provide it with relevant information regarding the group of which it is a member.</p> <p>The PVK can and does require insurers to have transparent group structures.</p>
Assessment	Partly observed.
Comments	<p>Implementation of the EC Financial Conglomerates Directive will strengthen the ability of the PVK to supervise the activities of groups of which licensed insurers are members.</p> <p>Legislation does not require that groups provide information to the PVK regarding significant activities and transactions outside the Netherlands, unless such activities or transaction involve an insurer licensed in the Netherlands, although the groups often do so voluntarily. However, the risks to which such groups may be exposed, along with their generally global approach to capital management, may create risks to the local insurers within the group. Accordingly, it is recommended that the PVK seek additional information on the operations of groups through contacts with the relevant supervisors outside of the EU/EEA.</p>
Principle 18.	<p>Risk assessment and management</p> <p>The supervisory authority requires insurers to recognize the range of risks that they face and to assess and manage them effectively.</p>
Description	<p>The MARS supervision methodology specifically considers the policies and controls that an insurer has in place to assess and manage its risks. These controls are selectively checked through on-site inspections. The PVK considers the complexity, size and nature of an insurer's business when assessing the appropriateness of an insurer's risk management practices.</p> <p>Insurers are expected to review the market environment in which they operate and to take appropriate actions in response to the risks it poses. Discussion of an insurer's strategy is a standard agenda item in the PVK's supervisory process.</p> <p>Larger insurers and groups in the Netherlands often have risk management functions and committees, both at the group and operating levels.</p>
Assessment	Observed.
Comments	The PVK is in the process of issuing more detailed regulations on risk control, governance and internal organization, which should result in the enhancement of risk assessment and management by insurers.
Principle 19.	<p>Insurance activity</p> <p>Since insurance is a risk taking activity, the supervisory authority requires insurers to evaluate and manage the risks that they underwrite, in particular through reinsurance, and to have the tools to establish an adequate level of premiums.</p>
Description	<p>The PVK does not currently require insurers to have in place strategic underwriting, pricing and reinsurance policies.</p> <p>The MARS supervision methodology specifically considers the policies and controls that an insurer has in place to assess and manage its risks. These controls, including underwriting and reinsurance policies, are selectively checked through the ongoing supervisory process. Life insurers are required to submit a profitability test for new products and may be required to provide their premium assumptions. Information can also be requested on the basis for establishing non-life premiums, although this is not done frequently.</p> <p>The PVK reviews reinsurance plans during the licensing process and assesses reinsurance</p>

	arrangements as part of its supervisory process. Although insurers are not required to submit reinsurance contracts for approval, the PVK is sometimes informed in advance of a draft reinsurance arrangement and may object to the proposed terms and conditions. The PVK can also object to the valuation of amounts recoverable under a reinsurance arrangement.
Assessment	Largely observed.
Comments	The PVK is in the process of issuing more detailed regulations on risk control, governance and internal organization, which should result in the enhancement of risk assessment and management by insurers. It is recommended that these regulations include the requirement that insurers develop strategic underwriting, pricing and reinsurance policies, which should be subject to approval and regular review by their boards.
Principle 20.	Liabilities The supervisory authority requires insurers to comply with standards for establishing adequate technical provisions and other liabilities, and making allowance for reinsurance recoverables. The supervisory authority has both the authority and the ability to assess the adequacy of the technical provisions and to require that these provisions be increased, if necessary.
Description	<p>Legislation requires insurers to establish adequate technical provisions, and regulations provide more detailed requirements in that regard. The PVK has also issued policy regulations on actuarial principles for life insurers and funeral insurance-in-kind insurers, which include guidance on the technical rate of interest to be used and the other issues. A working group of the Actuarial Society has developed unofficial guidance for non-life insurance actuaries. However, the Actuarial Society has not established standards of practice for the valuation of technical provisions. Therefore, a considerable range of actuarial valuation methods and assumptions is currently being used in the Netherlands, e.g., both net premium and gross premium valuations of life insurance are acceptable.</p> <p>Legislation requires that the financial statements submitted by an insurer to the PVK contain a declaration by the actuary. Although the Actuarial Society has developed guidelines with which actuarial reports must comply, not all actuaries are members of the Actuarial Society. The PVK uses the information contained in the actuarial declarations, actuarial reports and supervisory returns to assess the sufficiency of technical provisions. The range of actuarial practices in use presents challenges in making such assessments. Legislation also requires that the actuary provide information which the PVK may consider necessary for fulfilling its supervisory role.</p> <p>The PVK has the power to require that technical provisions be increased, if necessary.</p> <p>Regulations establish the intervention powers of the PVK with respect to the valuation of amounts recoverable under reinsurance. Accounting principles are based on the Civil Code. The PVK can object to the nature and valuation of any asset covering the technical provisions, including amounts recoverable under reinsurance. Insurers are required to provide financial information both gross and net of reinsurance in the supervisory returns.</p> <p>Insurers are not required to undertake regular stress tests, although a sufficiency test is required on the adequacy of technical provisions for life insurance.</p>
Assessment	Partly observed.
Comments	Since August 2001, the PVK has been engaged in designing a new Financial Assessment Framework (FTK). The purpose of FTK is to ensure that the supervision of the financial health of insurers and pension funds is tailored, to the extent possible, to their specific situations and risk profiles. Stress tests are an important element of the proposed framework. A draft consultation paper was issued in 2003 and the PVK will seek to finalize the FTK in 2004, for implementation in 2006.

	<p>The PVK will also attempt to link the valuation basis under the FTK to International Financial Reporting Standards (IFRS), in the interests of transparency and comparability. Should the development of IFRS for insurance contracts be further delayed, it is recommended that the PVK take steps to reduce the range of actuarial and accounting practices in the Netherlands and to ensure that complex actuarial issues, such as the valuation of embedded options, are being dealt with adequately.</p>
Principle 21.	<p>Investments The supervisory authority requires insurers to comply with standards on investment activities. These standards include requirements on investment policy, asset mix, valuation, diversification, asset-liability matching, and risk management.</p>
Description	<p>In accordance with the EC Insurance Directives, the categories of assets that an insurance company may hold to cover its technical provisions are defined by legislation and regulations. Legislation also imposes requirements on the diversification and spread of investments. Specific rules apply to assets covering technical provisions where the investment risk is not borne by the insurer. Legislation gives the PVK the power to object to the nature of assets intended to cover the technical provisions.</p> <p>Accounting standards, which are set out in the Civil Code, provide insurers with flexibility in the methods used to value assets, e.g., smoothing may be used on the values of equities, and several methods are in use currently. Insurance legislation gives the PVK the power to object to the valuation of assets covering the technical provisions and the solvency margin.</p> <p>The PVK has the authority to require an insurer to have in place an overall strategic investment policy. The details of such policies vary considerably, reflecting the size and complexity of the insurer's business.</p> <p>Risk management systems are assessed under the MARS supervision methodology. Market, credit, matching and operational risk are each major risk categories in MARS. The risk management systems and controls are selectively checked by the PVK through the ongoing supervisory process. PVK guidance on the use of derivatives provides specific direction on the need to separate the front and back office activities.</p> <p>In accordance with fit and proper criteria, the PVK would expect an insurer to have appropriately qualified staff involved in its investment activities.</p> <p>The PVK requires the external auditor to provide information regarding the internal controls and administrative organization of an insurer. Such controls, including internal audit, are also assessed by the PVK under MARS.</p> <p>General requirements exist regarding asset/liability management, but the PVK has not issued specific guidance on this topic. The PVK generally receives the results of ALM studies, stress tests or embedded value studies undertaken by an insurer. The Financial Assessment Framework currently under development will encourage ALM.</p> <p>The PVK does not have a general requirement that insurers have in place contingency plans to mitigate the effects of deteriorating conditions. However, such plans are required in situations where the PVK notices a deterioration of relevant conditions.</p> <p>Insurers are not required to undertake regular stress tests.</p>
Assessment	Largely observed.
Comments	The PVK is in the process of issuing more detailed regulations on risk control, governance and internal organization, which should result in the enhancement of risk assessment and management by insurers. It is recommended that these regulations provide further guidance regarding the main elements to be addressed by an insurer's investment policy and the

	<p>PVK's expectations regarding investment risk management systems, controls and contingency plans.</p> <p>The implementation of IFRS should considerably improve the transparency and comparability of investment valuation methods.</p> <p>Also, see comments under principle 20 regarding the development of a Financial Assessment Framework, which will include stress testing.</p>
Principle 22.	<p>Derivatives and similar commitments</p> <p>The supervisory authority requires insurers to comply with standards on the use of derivatives and similar commitments. These standards address restrictions in their use and disclosure requirements, as well as internal controls and monitoring of the related positions.</p>
Description	<p>In accordance with EC Insurance Directives, derivatives may be used for risk mitigation or efficient portfolio management. In 1995, the PVK issued a Circular on the use of derivatives, the scope of which extends beyond the assets covering technical provisions. While it does not impose specific limits on the use of derivatives, it requires that their use comply with the principles and controls applicable to investments in general, and be integrated in the overall investment strategy and risk controls. In particular, the Circular requires that:</p> <ul style="list-style-type: none"> • A comprehensive policy on the use of derivatives be adopted by the board; • Risk management systems be in place; • Internal controls be in place, including the separation of front and back office activities; • Guidelines be adopted, and capabilities exist, to administer the derivatives, including the valuation and reporting functions. <p>Disclosure requirements for derivatives and similar commitments are covered by the general accounting rules in the Civil Code. The PVK has not issued any more specific guidance. Derivatives and similar commitments are reported to the PVK by insurers in the supervisory returns.</p> <p>The use of derivatives and similar commitments is supervised by the PVK in a consistent manner with its supervision of investments generally.</p>
Assessment	Observed.
Comments	The Circular on the use of derivatives covers the key issues related to the use and control of derivatives, although at a high level. It is recommended that the PVK periodically review its guidance to ensure that it reflects evolving best practices for assessing and managing the risks of derivatives and similar commitments, and provide more explicit guidance in such areas as the vetting of models and the independent verification of prices.
Principle 23.	<p>Capital adequacy and solvency</p> <p>The supervisory authority requires insurers to comply with the prescribed solvency regime. This regime includes capital adequacy requirements and requires suitable forms of capital that enable the insurer to absorb significant unforeseen losses.</p>
Description	<p>The solvency regime is described in legislation and regulations, and is based on the EU solvency approach and margins. While it includes the key components expected of a solvency regime, the PVK itself has concerns about the internal consistency of this approach.</p> <p>The PVK reviews assesses reinsurance arrangements as part of its supervisory process and can also object to the valuation of amounts recoverable under a reinsurance arrangement, e.g., if the valuation does not appropriately reflect the effectiveness of the risk transfer.</p> <p>Suitable forms of capital are defined in regulations.</p>

	<p>The calculation of the required solvency margin is to a certain extent based on the size (premium income for non-life and technical provisions for life and funeral insurance-in-kind), complexity and business risk (class differentiation). However, this system is not particularly sensitive to the risk profile of the business, which is one of the reasons that the PVK has developed its proposed Financial Assessment Framework (FTK).</p> <p>The current system prescribes a level of technical provisions plus solvency margin which empirically has been able to absorb a range of unforeseen losses. The PVK has not established a solvency control level above the required solvency margin, but it does closely monitor the development of the solvency level, even if it is well above the required solvency margin. The PVK can require a solvency restoration plan but, currently, this is legally possible only if an insurer is below the required solvency margin. However, when the legislation implementing Solvency I is effective in December 2003, such a plan can be required if the solvency margin is currently satisfied but policyholders nevertheless appear to be at risk.</p> <p>Legislation and regulation clearly define when an insurer would be considered to be part of a group and require that adjusted solvency calculations be prepared in order to eliminate double gearing.</p> <p>The solvency of an insurer that is based in another EU/EEA country and operates in the Netherlands through a branch is supervised by the home country supervisor. Legislation requires that an insurer that is based outside the EU/EEA and operates in the Netherlands through a branch satisfy the minimum solvency margin for its entire portfolio.</p> <p>The PVK is proactive in assessing the structure of its solvency regime against others and working with other supervisors, both in the EU and at the IAIS, in an effort to develop better and more consistent approaches to capital adequacy and solvency. For example, while the current solvency regime does not provide for periodic, forward-looking analysis, such analysis is a key component of the proposed FTK.</p>
Assessment	Largely observed.
Comments	<p>Since August 2001, the PVK has been engaged in designing a new Financial Assessment Framework (FTK). The purpose of FTK is to ensure that the supervision of the financial health of insurers and pension funds is tailored, to the extent possible, to their specific situations and risk profiles. Stress tests are an important element of the proposed framework. A draft consultation paper was issued in 2003 and the PVK will seek to finalize the FTK in 2004, for implementation in 2006. The result should be a more dynamic, risk-sensitive approach to capital adequacy and solvency that is consistent with international best practices. It is recommended that the design of the FTK be finalized and implemented in accordance with the PVK's current timetable.</p> <p>Under the current solvency margin approach, some EU insurance supervisors, e.g., the FSA in the United Kingdom, have provided guidance to insurers that a higher level of capital adequacy is expected of them. Another point of reference is the risk-based capital systems in use in jurisdictions such as the United States, Canada and Australia, which typically produce much higher minimum requirements than the EU solvency margin for a comparable portfolio of insurance.</p> <p>Accordingly, the implementation of Solvency I on December 1, 2003 presents an opportunity for the PVK to provide additional guidance to insurers within the existing solvency margin regime. It is recommended that the PVK consider establishing and communicating a solvency control level in excess of the minimum solvency margin, particularly if it appears the implementation of the FTK may be delayed.</p>

<p>Principle 24.</p>	<p>Intermediaries The supervisory authority sets requirements, directly or through the supervision of insurers, for the conduct of intermediaries.</p>
<p>Description</p>	<p>The supervision of insurance intermediaries governed by the Insurance Intermediation Business Act (Wet assuratiebemiddelingsbedrijf – WABB), which is administered by the Social Economic Council (SER). In 2004, the WABB will be replaced by the Financial Service Provision Act (Wet financiële dienstverlening – WFD), which will also implement the EC Directive on Insurance Intermediation. With the enactment of the WFD, the Authority for the Financial Markets (Autoriteit Financiële Markten – AFM) will become the competent supervisory authority for the supervision of insurance intermediaries. The SER maintains a registry of insurance intermediaries. Intermediaries must meet defined standards in order to be registered, but they are not supervised by the SER subsequent to their registration.</p> <p>The Netherlands has a system of “relieved payment”, where a payment by a policyholder to an intermediary is considered to be a payment to the insurer. Further safeguards on such payments are incorporated in the WFD.</p> <p>Intermediaries are not currently required to give customers information on their status, e.g., whether they are associated with a particular insurance company or independent. Such a requirement is incorporated in the WFD.</p> <p>The SER has insufficient power to take action against those engaged in insurance intermediation without being registered and is not active in seeking to enforce the registration requirement. The AFM will have more power to address such situations under the WFD.</p>
<p>Assessment</p>	<p>Not observed.</p>
<p>Comments</p>	<p>The present regime provides inadequate supervisory control over the conduct of insurance intermediaries. However, the regime which will be put in place in 2004 is expected to provide an adequate framework to achieve observance with this principle. It is recommended that legislation be enacted which will provide a stronger and more comprehensive basis for the supervision of insurance intermediaries.</p>
<p>Principle 25.</p>	<p>Consumer protection The supervisory authority sets minimum requirements for insurers and intermediaries in dealing with consumers in its jurisdiction, including foreign insurers selling products on a cross-border basis. The requirements include provision of timely, complete and relevant information to consumers both before a contract is entered into through to the point at which all obligations under a contract have been satisfied.</p>
<p>Description</p>	<p>The provision of information to insurance consumers is addressed by the Regulation on the Supply of Information to Insured Parties 1998 (Regeling informatieverstrekking aan verzekeringnemers 1998 – RIAV), based on section 51 of the WTV. The Decree on the Key Features Document sets additional rules regarding complex products. The AFM is the competent supervisory authority for the administration of these requirements.</p> <p>The rules address the content and timing of the provision of information on the product, such as its risks, benefits, obligations and charges. There is no requirement that potential conflicts of interest be disclosed.</p> <p>Current rules address the duty to deal with consumers with due skill, care and diligence, but not as fully as they will be dealt with in the WFD. The current regime does not require that policies be in place on how to treat consumers fairly, or that information be sought in order to assess insurance needs.</p> <p>Claim and complaint handling processes are, in part, dealt with through self-regulation by</p>

	<p>GIDI.</p> <p>Rules on the handling of customer information and the protection of privacy are contained in the Person Registration Act (wet persoonsregistratie – WPR).</p> <p>No information is provided to the public about whether and how local legislation applies to the cross-border offering of insurance. Warning notices are not issued by the supervisor in order to avoid transactions with unsupervised entities.</p> <p>A special public interest website is being considered to promote consumers’ understanding of insurance contracts.</p>
Assessment	Partly observed.
Comments	The regime which will be put in place in 2004 is expected to provide an adequate framework to achieve observance with this principle. It is recommended that legislation or regulations be enacted which will require that consumers be provided information about potential conflicts of interest, that policies be in place on how to treat consumers fairly, and that information be sought in order to assess insurance needs.
Principle 26.	<p>Information, disclosure & transparency toward the market</p> <p>The supervisory authority requires insurers to disclose relevant information on a timely basis in order to give stakeholders a clear view of their business activities and financial position and to facilitate the understanding of the risks to which they are exposed.</p>
Description	<p>The legislation contains numerous provisions requiring the provision of both quantitative and qualitative information to the PVK. Extensive audited supervisory returns must be submitted annually by insurers, prior to May 1. Portions of these supervisory returns are public and are available for public inspection at the offices of the PVK.</p> <p>The Civil Code requires insurers, with the exception of small mutual companies, to deposit annual accounts and an annual report with the Chamber of Commerce; they are publicly available. Legislation also requires insurers to produce audited financial statements annually and to make them publicly available. The larger companies or groups publish more elaborate annual reports and provide information on their websites.</p> <p>Information on the financial position and performance is disclosed, as is a description of the basis upon which it has been prepared. Descriptions of risk exposures, risk management practices, management and corporate governance are often quite limited. Quantitative information on risk exposures is sometimes provided.</p>
Assessment	Largely observed.
Comments	The implementation of IFRS should considerably improve the extent and comparability of information disclosed by insurers, as disclosure is a key component of phase I of the IASB’s insurance contracts project. It is recommended that guidance be developed to improve the disclosure of risk exposures (both qualitatively and quantitatively), risk management practices, and management and corporate governance issues.
Principle 27.	<p>Fraud</p> <p>The supervisory authority requires that insurers and intermediaries take the necessary measures to prevent, detect and remedy insurance fraud.</p>
Description	<p>Current legislation authorizes the PVK to set rules concerning the administrative organization and internal controls of insurers and gives the PVK adequate powers of enforcement.</p> <p>Insurer fraud, i.e., fraud by insurers, is addressed by legislation. Fraud more generally is covered by civil and criminal law. The exercise of insurance activities without authorization is prohibited by legislation and constitutes a punishable economic offence.</p> <p>Fraud such as swindling or racketeering is a general criminal offence. Specific articles in</p>

	<p>criminal law apply to fraud committed in the course of the conclusion of the contract and to some types of claims fraud, e.g., in fire insurance.</p> <p>New legislation, expected to take effect on December 1, 2003, specifically authorizes the PVK to set requirements to protect the integrity of an insurer's organization. At that date, the PVK will also issue regulations requiring that insurers have adequate management information regarding fraud on or within the company. Serious cases of fraud will have to be reported to the PVK, which could give rise to a report to law enforcement agencies.</p> <p>Insurers use a database ("Fish-system") to exchange information with respect to persons committing fraud, even though this has not been explicitly promoted by the PVK. The PVK is authorized to co-operate with other supervisory authorities, including those in other jurisdictions, with respect to fraud and has done so in the past.</p>
Assessment	Observed.
Comments	
Principle 28.	Anti-money laundering, combating the financing of terrorism (AML/CFT) The supervisory authority requires insurers and intermediaries to take effective measures to deter, detect and report money laundering and the financing of terrorism.
Description	<p>Legislation and the activities of the PVK meet the criteria under the FATF Recommendations applicable to the insurance sector.</p> <p>The PVK is a designated supervisor with respect to life insurance companies and has adequate powers of supervision and enforcement. New legislation, expected to take effect on December 1, 2003, will provide adequate powers of sanction.</p> <p>The PVK has the authority to cooperate with other supervisors and enforcement authorities for AML/CFT purposes.</p> <p>The PVK employs experts who have been hired and trained to conduct fraud-related supervision, including AML/CFT. Specific attention is given to the distribution and use of NCCT lists (issued by the FATF) and terrorist lists (issued, for instance, by the UN).</p> <p>The new legislation will require insurers to: have adequate procedures for performing customer due diligence, including taking enhanced measures with respect to higher risk customers; monitor (by life insurers) for unusual transactions; and develop internal programs, procedures and controls. AML legislation requires the maintenance of full business and transaction records for at least five years and the reporting of suspicious transactions. Legislation does not deal specifically with the need for foreign branches and subsidiaries to observe AML/CFT measures consistent with the requirements in the Netherlands.</p>
Assessment	Largely observed.
Comments	Legislation which is expected to take effect on December 1, 2003 should provide the basis for observance of this principle. It is recommended that additional guidance be provided to emphasize the need for foreign branches and subsidiaries of Dutch insurers to observe AML/CFT measures consistent with the requirements in the Netherlands.

Table 5. Summary Observance of IAIS Insurance Core Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	12	CP 1, 3, 7, 8, 12, 13, 14, 15, 16, 18, 22, 27
Largely observed	9	CP 2, 4, 9, 10, 19, 21, 23, 26, 28
Partly observed	6	CP 5, 6, 11, 17, 20, 25
Not observed	1	CP 24
Not applicable	0	

C. Recommended Action Plan to Improve Observance of the IAIS Insurance Core Principles

47. The recommendations of actions which will improve observance of IAIS Insurance Core Principles are incorporated in the comments provided within the detailed assessment above and have been summarized in the following table.

Table 6. Recommended Action Plan to Improve Observance of IAIS Insurance Core Principles

Reference Principle	Recommended Action
Conditions for effective insurance supervision i.e., CP 1	
Supervisory objectives i.e., CP 2	<p>It is recommended that the principal objectives of insurance supervision be explicitly defined in new financial legislation that is being prepared.</p> <p>While the broad separation of responsibilities between the PVK (prudential supervision) and the AFM (market conduct supervision) has been defined, further clarification of the responsibility of each for various tasks is recommended.</p>
Supervisory authority i.e., CP 3	
Supervisory process i.e., CP 4	<p>It is recommended initiatives to publish more information about policies and procedures continue and be expanded to provide more information on stages of intervention (definitions, statistics and informing individual insurers), interpretations, and risk assessment criteria.</p> <p>While the PVK actively consults with industry in the development of policies, it is recommended that the usual consultation process be documented, published and observed to the extent possible.</p>
Supervisory cooperation and information sharing i.e., CP 5	<p>Considering the broad international scope of several insurance and financial groups of which insurers licensed in the Netherlands are members, steps should be taken by the PVK to exchange information with relevant supervisors outside of the EU/EEA.</p>
Licensing i.e., CP 6	<p>Since the ICP apply to the supervision of both insurers and reinsurers, the Netherlands should take steps to require that reinsurers, other than those supervised elsewhere in the EU/EEA, be licensed by the PVK.</p> <p>It is recommended that the PVK contact the home supervisor of any non-EU/EEA insurer applying for a license, as a regular part of the assessment process.</p> <p>It is recommended that legislation be enacted requiring that all insurers operating in the Netherlands, regardless of their size and nature, be registered with or licensed by the PVK. It is further recommended that the PVK publish lists of registered and licensed insurers on its website, along with an explanation of the significant differences in the nature of supervision applicable to each category.</p>

Reference Principle	Recommended Action
Suitability of persons i.e., CP 7	It is recommended that the PVK establish specific criteria to assess the fitness and propriety of auditors and actuaries, including qualifications, professional proficiency, appropriate practical experience, updated knowledge on developments within their profession and membership in professional bodies. It is recommended that, in establishing such criteria, the PVK rely upon NIVRA and the Actuarial Society, to the extent their membership requirements address such criteria.
Changes in control and portfolio transfers i.e., CP 8	
Corporate governance i.e., CP 9	It is recommended that the PVK provide more explicit guidance on the governance practices it expects of insurers, and require that they document significant policies, procedures and responsibilities. It is also recommended that legislation provide for direct access to the board by the actuary.
Internal control i.e., CP 10	It is recommended that work currently underway by the PVK to more completely codify its requirements and expectations regarding internal controls be completed with high priority. It is recommended that new legislation provide for the possibility of the PVK obtaining information from either of the actuary or the external auditor on a confidential basis, and provide strong legal protection against their potential liability from taking such action.
Market analysis i.e., CP 11	It is recommended that the PVK assign an individual or department the ongoing responsibility of gathering quantitative and qualitative market information from both internal and external sources, analyzing this information, and communicating the results of the analyses to others within the PVK.
Reporting to supervisors and off-site monitoring i.e., CP 12	It is recommended that the PVK consider requiring all insurers (with the possible exception of small insurers with strong solvency positions) to file basic supervisory returns quarterly. It is also recommended that the PVK publish on its website key financial information contained in those portions of the supervisory returns that are already open to public inspection at its office. (Note that limited information is currently available on the PVK website for some insurers.)
On-site inspection i.e., CP 13	It is recommended that the PVK reassess the staff resources that will be required to successfully implement the MARS supervision methodology and seek additional resources, as necessary.
Preventive and corrective measures i.e., CP 14	
Enforcement or sanctions i.e., CP 15	

Reference Principle	Recommended Action
Winding-up and exit from the market i.e., CP 16	
Group-wide supervision i.e., CP 17	It is recommended that the PVK seek additional information on the operations of groups through contacts with the relevant supervisors outside of the EU/EEA.
Risk assessment and management i.e., CP 18	
Insurance activity i.e., CP 19	The PVK is in the process of issuing more detailed regulations on risk control, governance and internal organization, which should result in the enhancement of risk assessment and management by insurers. It is recommended that these regulations include the requirement that insurers develop strategic underwriting, pricing and reinsurance policies, which should be subject to approval and regular review by their boards.
Liabilities i.e., CP 20	The PVK will attempt to link the valuation basis under the FTK to International Financial Reporting Standards (IFRS), in the interests of transparency and comparability. Should the development of IFRS for insurance contracts be further delayed, it is recommended that the PVK take steps to reduce the range of actuarial and accounting practices in the Netherlands and to ensure that complex actuarial issues, such as the valuation of embedded options, are being dealt with adequately.
Investments i.e., CP 21	The PVK is in the process of issuing more detailed regulations on risk control, governance and internal organization, which should result in the enhancement of risk assessment and management by insurers. It is recommended that these regulations provide further guidance regarding the main elements to be addressed by an insurer's investment policy and the PVK's expectations regarding investment risk management systems, controls and contingency plans.
Derivatives and similar commitments i.e., CP 22	It is recommended that the PVK periodically review its guidance to ensure that it reflects evolving best practices for assessing and managing the risks of derivatives and similar commitments, and provide more explicit guidance in such areas as the vetting of models and the independent verification of prices.
Capital adequacy and solvency i.e., CP 23	It is recommended that the design of the FTK be finalized and implemented in accordance with the PVK's current timetable. It is recommended that the PVK consider establishing and communicating a solvency control level in excess of the minimum solvency margin, particularly if it appears the implementation of the FTK may be delayed.
Intermediaries i.e., CP 24	It is recommended that legislation be enacted which will provide a stronger and more comprehensive basis for the supervision of insurance intermediaries.

Reference Principle	Recommended Action
Consumer protection i.e., CP 25	It is recommended that legislation or regulations be enacted which will require that consumers be provided information about potential conflicts of interest, that policies be in place on how to treat consumers fairly, and that information be sought in order to assess insurance needs.
Information, disclosure & transparency toward the market i.e., CP 26	It is recommended that guidance be developed to improve the disclosure of risk exposures (both qualitatively and quantitatively), risk management practices, and management and corporate governance issues.
Fraud i.e., CP 27	
Anti-money laundering i.e., CP 28	Legislation which is expected to take effect on December 1, 2003 should provide the basis for observance of this principle. It is recommended that additional guidance be provided to emphasize the need for foreign branches and subsidiaries of Dutch insurers to observe AML/CFT measures consistent with the requirements in the Netherlands.

D. Authorities' Response to the Assessment

48. The Netherlands authorities agree with the main findings of the assessment, which they consider to be fair and comprehensive. The authorities concur with the overall judgment that insurance supervision in the Netherlands is 'largely compliant' with the revised Insurance core principles of the IAIS, dated October 2003.

49. The authorities welcome the IMF observation that many of the suggestions for improvement that have been identified are already being addressed. Some of the points raised are being included in the bill on financial supervision that is due to come into effect in 2005 (ICP 2), in other legislation (ICP 24 and 25),⁵ or are being addressed on EU level (ICP 6,⁶ 20). On other points, the authorities are already taking action on the recommendations regarding more transparency of the policy making process and an elaboration of the policy rules in a number of areas, market analysis and solvency assessment (ICP 4, 7, 9, 10,

⁵ In the beginning of 2005, the Financial Service Provision Act (Wet financiële dienstverlening – WFD) will be implemented. As is stated in the assessment, this bill, which is based on the EC Directive 2002/92/EG on insurance intermediation, is expected to provide an adequate framework to achieve observance with the principles 24 and 25. With the enactment of the WFD, the Authority for the Financial Markets (Autoriteit Financiële Markten – AFM) will become the competent supervisory authority for the supervision of market conduct of insurance intermediaries.

⁶ Progress is being made with the Directive regarding the supervision of reinsurers. The authorities appreciate the importance of adequate supervision of reinsurers, but prefer this to be taken forward on the EU-level rather than on a national level.

11, 19, 20, and 23). The authorities welcome the IMF observations as an encouragement and support for the steps that have recently been taken.

50. In addition to these general comments, the authorities wish to make the following observations:

- Regarding ICP 5 (Supervisory cooperation and information sharing), ICP 6 (Licensing) and ICP 17 (Group-wide supervision), the authorities recognize the need for close international cooperation and information sharing, and support this in international policy work. The authorities also intend to intensify contacts with non-EU supervisory authorities (e.g., on cross-Atlantic groups).
- Regarding ICP 6 (Licensing), the recommendation to supervise all insurance companies, whatever their size or range of business activities, will be evaluated, taking into account the benefits but also the (direct and indirect) costs of various forms of notification or supervision. The suggestion of the IMF to publish lists of registered and licensed insurers, together with an explanation of the applicable supervisory regime will be taken forward. Lists of licensed insurers are already being published.
- Regarding ICP 12 (Reporting to supervisors and off-site monitoring), the IMF recommends requiring all insurers to file basic supervisory returns quarterly. The authorities will reconsider the optimal mix and frequency of standard and company specific provision of information in conjunction with the introduction of the new Financial Assessment Framework. The benefits of any additional standard filing requirement will need to be balanced against the (direct and indirect) costs this would entail for the insurers.
- Regarding ICP 13 (On-site inspection), the authorities will evaluate the introduction of the MARS system in the near future. In this evaluation, the observation by the IMF on the staff resources will be taken fully into account.
- Regarding ICP 26 (Information, disclosure & transparency toward the market), the authorities will consider this in conjunction with the implementation of the IFRS and the introduction of the Financial Assessment Framework.

III. IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

A. Overview

51. This assessment⁷ was conducted in the Netherlands between October 26 and November 6, 2003. It was conducted as part of the IMF Financial Stability Assessment Program (FSAP). Assessments of other elements of regulation and other matters were conducted in the Netherlands at the same time. The assessment in respect of the IOSCO principles was based on information provided in advance by the Netherlands authorities and on meetings conducted in Amsterdam and The Hague.

52. The information provided included the Acts, Decrees, Further Regulations and policy documents governing securities business and CISs. The Netherlands submitted IOSCO self-assessment questionnaires and various background papers, including a description of the Authority for the Financial Markets (AFM) and the pensions arrangements. Other material provided to other members of the FSAP team was also briefly reviewed.

53. Officials from the Netherlands regulators and Ministry of Finance provided briefing in the form of a series of presentations. In addition, a series of interviews were held with officials from the AFM, the Central bank (DNB) and Euronext—the main exchange in the Netherlands. The FSAP team also visited industry representatives and specific institutions, including banks, securities firms, trade associations representing intermediaries and banks and the accountants' and auditors' associations.

54. All officials provided full co-operation and extensive support. Individual institutions and associations were helpful and open in their discussion of the issues raised.

Market infrastructure

55. Regulatory powers are granted through Acts of the Netherlands Parliament. These are supplemented by Decrees (which have legislative effect but are not subject to Parliamentary scrutiny). Regulatory powers are given to the Minister, who in turn delegates them, through a delegation Decree, to regulatory bodies. The Netherlands regulatory system consists of two main regulatory bodies—the Central bank (responsible for prudential regulation) and the Authority for the Financial Markets (responsible for conduct of business regulation). This split of responsibilities is discussed more fully in the Principle by Principle assessment (for Principle One).

56. The main securities market in the Netherlands is Euronext. Previously known as the Amsterdam Exchange, the market trades cash and derivatives instruments. It has been acquired by Euronext and now forms part of the multinational market by that name. As with other members of the group, clearing and settlement is conducted through the Euroclear group.

⁷ Assessor was Mr. Richard Pratt (formerly with Financial Services Commission, Jersey).

Euronext Amsterdam is a Dutch company that is a subsidiary of the Euronext Group. It is responsible for the supervision of the market in Amsterdam and, to that end, has a two tier rule book, with one tier being rules applicable to the Dutch entity and the other tier being rules applicable to all members of the group. Euronext Amsterdam is an SRO with responsibility for supervising the market and is the Listing Authority. The Listing Authority function is to pass to the AFM shortly under new legislation.

57. Euronext is a long established and mature market, with 237 domestic members and 117 foreign members. Over 1,000 shares or warrants are listed on the exchange and a similar number of bonds. The market operates on a screen-based order-driven basis with liquidity providers undertaking to provide a market for the less liquid stocks (up to agreed limits in terms of volume and spread). Market Capitalization for Euronext Amsterdam was some €340 billion, approximately 90 percent of GDP. The annual turnover is shown in the following table (in millions of securities).

	Stocks	Bonds	Warrants	Futures	Options
1999	24.027	602.393	0,04	3,2	46,5
2000	38.347	538.747	0,037	2,9	55,5
2001	45.281	571.049	0,026	3,5	63,1
2002	31.130	269.770	0,013	4,4	73,4
2003 (jan-jun)	22.148	146.532	0,058	3,3	45,3

58. Although there are 237 licensed securities firms, the market is dominated by four major private sector institutions, that provide a wide range of services. They include the largest banks, the main intermediaries and the principle suppliers of Collective Investment Schemes (although not each of these large four is equally dominant in each sector). There are a number of smaller intermediaries and a very large number of small independent mortgage, insurance and other advisers.

59. The Netherlands was a founder member of the European Union. Its legal, tax and accounting infrastructure are what would be expected from such a mature democracy . It follows the European Union Directives and hence operates a market without hindrance to entry and exit according to those requirements.

B. Principle-by-Principle Assessment

60. This assessment was prepared using the October 2003 version of the Assessment Methodology, including its scale of observance—Fully Implemented, Broadly Implemented, Partly Implemented, Not Implemented, and Not Applicable. The Benchmarks in the Assessment Methodology were used as a guide.

61. The methodology gives a number of criteria for assessing compliance with each principle. The methodology also sets out precisely the rating that will flow from the response to each criterion. For many criteria, a failure to respond in the affirmative to the criterion, will lead to a “not implemented” rating. Moreover, in many cases, it is only necessary for a single criterion to be answered negatively to lead to a “not implemented” rating for the principle as a

whole. A weakness in one area of the assessment of a principle can therefore lead to a “not implemented” rating for the principle as a whole, even where many of the criteria are satisfied.

62. The result is that this methodology will lead to a larger number of “not implemented” and other lower ratings than might be the case for the methodologies for other standards and perhaps a larger number of the lowest rating for principles than might be expected from a more intuitive overview of a principle taken as a whole.

Principles relating to the regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	<p><i>Introduction – the twin pillars approach</i></p> <p>Financial supervision in the Netherlands is in a state of transition. Traditionally, the regulatory structure has been based on a sectoral split between banking, insurance, pensions and securities. However, since September 2002 it has been based upon two pillars: prudential supervision (combined with financial systemic stability) and conduct of business.</p> <p>Under the current and proposed system, Nederlandsche Bank (DNB) is responsible for systemic stability and payment systems and for prudential supervision of banks, investment funds and securities firms (prudential supervision being the supervision of capital adequacy requirements). The Pensioen- en Verzekeringskamer (PVK) is responsible for prudential supervision of insurance companies and pension funds. DNB and PVK have integrated their cross-sector activities through cross-board appointments at executive and non-executive levels, as well as through joint teams and practices for prudential supervision of financial conglomerates.</p> <p>The Authority for Financial Markets (AFM) is responsible for securities markets as well as the conduct of business (including consumer information and advice) of all financial services providers in the market domain (banks, investment funds, insurance companies, securities firms). In the “Decree of Delegation Wet Toezicht Effectenverkeer 1995 (Decree of Delegation)” and Decree of Delegation Wtb the Dutch Minister of Finance delegates the supervision of the prudential securities rules to De Nederlandsche Bank (DNB) and the supervision of the securities rules of conduct to the Authority for the Financial Markets (AFM). The licenses for brokerage or dealing activities are granted by the AFM in consultation with the DNB concerning the financial requirements as well as the business management. The two regulatory bodies exchange information as far as is necessary for the supervision of the financial requirements. Accounting and auditing standards are at present supervised by the Nederlands Instituut voor de Register Accountants (NIVRA) but will be supervised by the AFM in the near future.</p> <p>All key areas of the IOSCO principles are covered by the two main regulators – i.e., collective investment schemes, issuers, market intermediaries and secondary markets. In each case, the DNB covers prudential regulation and the AFM covers conduct of business. Each authority exercises enforcement powers.</p> <p>The Dutch financial market is highly concentrated, with four large banks dominating most areas. This means that in practice the DNB is licensing the main participants in the securities markets.</p> <p>The main platform for trading securities and derivatives is Euronext. The supervision of trading and listing rules is currently undertaken by Euronext Amsterdam . The AFM supervises the supervision of Euronext Amsterdam. However, in due course, AFM will take over directly the responsibility for listing rules.</p> <p><i>Definition of responsibilities</i></p>

<p>The twin pillars structure is not yet reflected in primary legislation, which is written on a sectoral basis.</p> <p>The main legislation covering the securities industry is the 1995 Act on the supervision of the securities trade. All supervisory powers are given to the Minister of Finance. He then has the power to delegate all or some of them by Royal Decree to the supervisors. The change to the new regime has been achieved temporarily by issuing a new delegation Decree to the prudential and conduct of business supervisors. New legislation is being drafted to reflect the twin pillar basis of regulation and this is expected to be implemented by 2005. Both the use of the Decree at present and the structure of the new legislation are designed to ensure that there are no gaps or inequities in regulation.</p> <p>Some powers given to the Minister of Finance (mainly the power to grant exemptions from the law) are not delegated but are retained for the Minister. For example, the power to grant exemptions from various requirements is retained by the Minister of Finance on the basis that changes to the scope of legislation should be a matter for a Minister accountable to Parliament. The Ministry have stated that, where such exemptions exist, it is intended that they should apply to areas of business that, although technically caught by the terms of the legislation are not such that should in practice be subject to regulation – because their real substance or economic effect does not justify it.</p> <p>The precise details of the split between conduct of business and prudential supervision have not yet been fully determined.</p> <p>There is some concern amongst market participants about the split between prudential supervision and conduct of business in practice. There is a belief that there is a danger of substantial overlap between the activities of the two regulators. For example, industry representatives have observed that both regulators examine the “know your customer” and other anti money laundering requirements. Both regulators take an active interest in management organization and internal controls as well as the integrity of the management. Both have an active interest in IT and other infrastructure systems. Industry representatives have suggested that the two regulatory authorities have not yet developed sufficient trust in the work of the other in these areas where the chosen regulatory model inevitably results in some potential duplication.</p> <p>At the same time, both regulatory bodies are very conscious of the need to avoid overlap. Indeed, a covenant between them is precisely intended to prevent the possibility of overlap. However, in practice both regulators have carried out inspections of IT systems. Both have a responsibility for the institutions’ knowledge of the customer (albeit from different angles). Most important, there is clearly a strong perception in the industry that overlap is a problem.</p> <p>Such frictions are not surprising in the context of a regime in transition, where the practice is anticipating the changes in legislation.</p> <p>The main SRO is Euronext. Here, too, the regime is in transition. Euronext is aware that it will no longer be a Listing Authority and has indicated that it is experiencing a loss of morale amongst staff given the uncertainty about when the transfer will take place. Euronext is aware that it will retain this responsibility until at least January 2005 and perhaps longer. It is also noticing that AFM is taking an increasingly direct interest in its listing role in anticipation of its assumption of the responsibility for listing when the new law comes into effect. At the same time, Euronext is experiencing a higher degree of supervision from AFM than that which it has experienced hitherto.</p> <p><i>Co-operation between the regulatory bodies</i></p> <p>Several covenants and frequent meetings between the regulatory authorities are intended to ensure that any division of responsibility among regulatory authorities avoids overlaps, gaps or inequities</p>
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	<p>in regulation. The Decree of Delegation obliges consultation between DNB and AFM during the licensing process concerning the prudential requirements.</p> <p>Information is shared between the AFM and DNB on the bases of the Act, which allows the passage of any information that is reasonably necessary for the fulfillment of the responsibilities of the supervisors.</p> <p>According to article 33 of the Act 1995 is information sharing not possible if:</p> <ol style="list-style-type: none"> (1) the purpose for which the data or information will be used has not been sufficiently defined; (2) the intended use of the data or information does not come within the scope of supervision of the financial markets or of natural and legal persons operating in the said markets; (3) the provision of the data is contrary to Dutch law of public order; (4) the confidentiality of the data or information is not sufficiently guaranteed; (5) the provision of the data or information reasonably conflicts, or might reasonably conflict with, the interest that the Act 1995 aims to protect; or (6) there are insufficient safeguards to ensure that the data or information will not be used for a purpose other than the one for which they were provided. <p>However, the regulators are confident that this list of restrictions does not restrict information flows in practice.</p> <p><i>The transparency of regulatory requirements</i></p> <p>The Act sets out the broad powers of the regulator. They are amplified in Decrees (secondary legislation) and by further regulations and policy documents issued by the AFM. Further Regulations are an explicit statement of what is meant by the Act and Decree, so that a breach of the Regulations can be deemed to be a breach of the Act or Decree. Policy Documents are guidance as to what is meant by the Act or Decree, but a breach of a policy document would not itself necessarily be conclusive proof of a breach of the law. An Act would take at least 18 months and more probably over two years from conception to implementation. A Decree would normally take a year. Further Regulations can be introduced or amended more quickly and Policy Documents even more so.</p> <p>In practice, the Decrees cover most areas of regulation at a reasonable level of detail. Further Regulations and policy documents are drafted with a very high degree of precision indeed. They include highly specific requirements for such matters as client records and disclosure requirements and the contents of the “Key Features” Document for complex products.</p>
Assessment	Fully Implemented.
Comments	<p>The Twin pillars approach to financial regulation is a very reasonable basis on which to divide regulatory responsibilities. The Netherlands authorities have researched the practical experiences of other regulators and have clearly thought carefully and thoroughly the approach that they regard as appropriate to their market. Their published material and presentations demonstrate a comprehensive assessment of the factors involved in reaching this decision. There is no reason why it should not be made to work effectively.</p> <p>It is too early to say whether or not it is working effectively. The split of responsibilities has been introduced in advance of the underlying legislation and the precise details of the split have not yet been fully determined in all areas.</p> <p>For the most part, the responsibilities, powers and authority of the regulator are clearly defined and transparently set out in law. There is some concern amongst market participants about the split between prudential supervision and conduct of business in practice. There is a belief that there is an overlap between the activities of the two regulators in practice. The regulators point out that there have been few examples of such overlaps demonstrated in practice.</p>

There is clearly a need to enhance the confidence of market participants in the division of responsibilities. To help achieve this, the AFM and DNB are recommended to:

- **conclude as rapidly as possible their discussions of the final remaining areas where the split of responsibilities is not yet clear;**
- **respond to industry concerns about overlap and state publicly how they propose to deal with those concerns;**
- **publish a comprehensive assessment of the practical division of responsibilities and conduct presentations to the industry to enhance awareness of and confidence in the approach.**

The main SRO is Euronext. Here, too, the regime is in transition. Euronext is aware that it will no longer be a listing authority and has indicated that it is experiencing a loss of morale amongst staff given the uncertainty about when the transfer will take place. Euronext is aware that it will retain this responsibility until at least January 2005 and perhaps longer. It is also noticing that AFM is taking an increasingly direct interest in its listing role in anticipation of its assumption of the responsibility for listing when the new law comes into effect.

The authorities are recommended to finalize the outstanding issues concerning the transfer of responsibility (particularly whether or not Euronext will continue to have a responsibility for determining who may trade securities on the market, even after it is no longer responsible for monitoring compliance with Prospectus requirements) and develop an explicit plan and timetable to provide for the takeover of responsibilities so that both AFM/DNB and Euronext understand fully their respective role throughout the process of transition of listing responsibilities.

Transparency also demands that criteria for decisions are clear. The Ministry of Finance have explained the basis on which they make their decisions on regulatory exemptions and the regulatory processes in respect of securities business are for the most part clear and transparent. Nevertheless, the criteria for exemptions by the Minister are not published and transparency would be enhanced if they were.

The authorities are recommended to consider publishing criteria for determining whether or not the Minister of Finance would grant exemptions from regulatory requirements under the law where the power is reserved to the Minister.

(Recommendations in respect of exchanges are given below in the response to the relevant Principles).

The approach adopted in terms of drafting the Act, Decree and Further Regulations results in a very high degree of specificity in the rules and the inclusion in legislation of detailed requirements. This can reduce the flexibility in adjusting detailed requirements to follow market movements and innovations.

The AFM and DNB both make clear that they are prepared to waive regulatory requirements when a securities business believes it cannot comply and can meet the requirements in other ways. The more detailed and prescriptive the regulations, the more likely it is that such requests may be made thus increasing the danger that regulations may not be perceived to be applied consistently across the board and transparency will be undermined. It is also increasingly likely that a focus on specific rules rather than a higher level principle will mean that rules will become less effective as market innovation is directed to avoiding the specific rules while still creating the mischief they were designed to avoid.

Moreover, the presence of such a comprehensive set of highly detailed requirements can detract

	<p>from the ability of an institution to set risk-based priorities. One industry participant described the system as “rule-based, not risk-based”.</p> <p>The authorities are recommended to review the balance between the level of detail in the Act, Decrees and Further Regulation in the light of experience and industry comments. In the case of Further Regulations and Policy Documents, the authorities are invited to consider whether the present level of detail is necessary.</p> <p>The retention of the power to recognize exchanges by the Minister of Finance may be a historical legacy and the new law may well transfer that responsibility to the AFM. This would be a natural development. However, it seems apparent that there will be some responsibilities retained by the Minister under the new law. It is important that there should be consistency between the decisions taken by the Minister and the regulatory bodies to be achieved through a transparent consultation process.</p> <p>The authorities are recommended to consider introducing into the new law an explicit requirement that the Minister consult the regulatory bodies before exercising his retained powers, where those powers relate to financial service regulation.</p>
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	<p><i>Independence</i></p> <p>The Minister of Finance has delegated most regulatory powers created by the 1995 Act to the AFM and DNB. Under Dutch Law, it is understood that delegation means a transfer of powers and responsibilities by which the person who delegates its powers no longer possesses these powers and responsibilities after the transfer. Delegation of powers is therefore an expression of independence in the exercise of those powers.</p> <p>The Minister of Finance can place conditions on the delegation. The Minister can only withdraw or amend the delegation through the use of secondary legislation. The Minister is limited in giving instructions to the AFM or DNB and can only do so in specific cases set out by law. These cases are where intervention is necessary to enforce European Union Directives or where the Minister requires the information in order to investigate the adequacy or effectiveness of the operation of the delegated powers by the supervisory authority. The Ministry of Finance and the supervisory authorities both insist that the Minister has not and could not intervene in specific regulatory decisions. Indeed, there is no gateway to provide information to the Minister to enable him to intervene in specific cases.</p> <p>Independence in regulatory action is also reflected in the appointments procedure. The Minister of Finance is responsible for appointing, suspending and dismissing the directors of the DNB and AFM. There are statutory limits, set out in the Articles of Association of the AFM that provide that appointments can only be terminated in the case of serious shortcomings or unfitness. Appointments are for a renewable period of four years. It is noteworthy that these restrictions do not appear in the legislation.</p> <p>There is no immunity from actions taken in good faith by the regulatory body (although individual staff are protected). This poses a particular danger for the AFM. The use of the contribution self-assessment approach to regulation means that there will be a number of matters brought to their attention. Inevitably, by regulating on a risk basis, they may give some breaches of regulation lower priority than others. If such a judgment, taken in good faith, were to allow a continuation of a practice that ultimately led to substantial losses, the AFM could find itself subject to litigation. While arrangements are in place in view of the possible financial consequences of litigation cases (insurance and a guarantee from the Ministry of Finance), these do not amount to immunity and the need to call on the guarantee from the Ministry of Finance could itself undermine the independence</p>

of the AFM.

Regulatory Policy

It is apparent that the Minister considers it his right to include the regulators within his published target that requires a reduction of 25 percent in the burden of regulatory requirements within three years.

As noted in the response to principle 1, the supervisory authorities can publish detailed regulations to amplify the more general powers set out in the Act and Decree. According to the way they are structured, much regulatory policy is contained in the Decree, which is the responsibility of the Minister. Moreover, even in the case of Further Regulations (which are currently at a very specific and technical level and do not legally require the formal consent of the Minister), the AFM insist that it is inconceivable in practice that such rules would be published without the consent of the Ministry of Finance. Equally, the Minister's reserved powers (such as the power to exempt certain categories of person from certain requirements of the Act) do not require the consent of the supervisor, although the AFM insist that it is inconceivable in practice that the Minister would exercise these powers without consulting AFM. Because this process is informal, there are no formal procedures providing transparency to the process of consultation with the Government and it is not apparent to the industry whether the AFM, DNB or Ministry of Finance is in practice responsible for regulatory policy.

The new legislation will also be based on the principle of an enabling Act, supported by a Decree giving details and Further Regulations setting out the details. The current discussions on the legislation suggest that the balance between the different layers might change, with more substantive requirements being placed in legislation and only very detailed technical matters being the subject of further regulations issued by the supervisory authority. The outcome of this debate is not yet clear—but clearly the degree of independence, in regulatory policy, for the supervisor to set its own rules will be substantially affected by that debate.

Budgetary independence

The regulatory authority is funded by a levy on the industry (for the AFM) and by the taxpayer (for the DNB). The funding for the DNB is being transferred on a phased basis to become a levy on the regulated community. The Government will fund 20 percent of the budget in order to support enforcement as a public good. The proceeds of sanctions accrue to the supervisor.

The budget for the supervisors has to be discussed by a market panel representing the industry (but not the consumer) and must then be approved by the Minister. If the market panel disagrees, they make a report to the Minister. The view of industry representatives is that the proposed budget for AFM was accompanied by much less explanatory detail and explanation than was the equivalent from the DNB. Neither regulator can build up reserve funds and their ability to operate is therefore entirely dependent on this annual budget approval process.

Accountability

The supervisors are accountable to the Minister. The AFM and DNB shall each present a report to the Minister of Finance annually setting out the way in which the delegated responsibilities have been fulfilled and the delegated powers have been exercised during the preceding calendar year. The Minister of Finance shall ensure that this report is made public (article 40 sub 5 of the Act). There is no accountability to Parliament. If the Parliament wished to investigate, it would carry out such an investigation via the Minister, who would use his own investigatory powers and report to the Parliament.

Every administrative decision needs to be based on a sound motivation in writing (article 3:46

	<p>General Administrative Law Act) and according to the principles as set out in the General Administrative Law Act e.g., subsidiarity and proportionality. The Court of Rotterdam is competent to hear appeals against decisions pursuant to the Act 1995(article 44 of the Act 1995). Furthermore since the AFM and DNB are administrative bodies, they also have to comply with the provisions of the General Administrative Law Act. These provisions are applicable to all actions of the AFM and DNB. The Court of Rotterdam will review in full a decision to impose an administrative fine (according to the principles as laid down in article 6 European Convention on Human Rights). In other matters, e.g., decisions on reliability and expertise, the Court will undertake a limited judicial review.</p>
Assessment	Broadly Implemented
Comments	<p>In practice, the regulatory bodies do exercise a high degree of independence in exercising their powers to undertake regulatory actions on a day to day basis. There is no evidence of undue influence in regulatory decisions.</p> <p>Nevertheless the current arrangements could compromise the ability of the regulators to set regulatory policy and could potentially compromise the independence of the supervisory authorities in day to day matters. In particular:</p> <ul style="list-style-type: none"> • The absence of legal immunity for actions in good faith by the regulatory authority, means that it does not have adequate protection for the bona fide discharge of their functions and powers. • The practice of the regulator in consulting the Ministry of Finance in order to gain the approval of the Minister for rules it publishes is not established by law, nor could it be assessed as transparent. • There is no review of the process of consultation. <p>These departures from IOSCO requirements demand a “partly implemented” rating.</p> <p>There are other areas where there are factors that could also result in a compromise in independence:</p> <ul style="list-style-type: none"> • The requirement for formal approval of the budget on an annual basis by the Minister could be used to constrain the supervisor – especially as the budget for the supervisor is determined on a year to year basis with no right to build up reserves and generate a stable base of funding. This clearly has not inhibited the ability of the AFM to gain adequate funding thus far. It is therefore reasonable to assess the present arrangement as providing a stable and continuous source of funding. However, the arrangement could compromise the independence of the regulator. • The proposed practice of referring the budget to a market panel for comments before being submitted to the Minister is a useful addition to transparency. It would be inappropriate to extend this to provide for an industry veto over the budget, as the regulatory should not be subject to commercial constraints in that way. On the other hand, transparency might also be enhanced still further if investor representatives were given the opportunity to comment as well – since they could well pay the cost of inadequate regulation. • The ability of the Minister to subject the supervisor to general administrative rules applying to the government as a whole (such as a 25 percent reduction in administrative costs) could undermine independence, if the AFM or DNB did not consider that such a reduction was compatible with good regulation. <p>It will be important to ensure that the new legislation addresses these potential compromises to independence.</p> <p>The authorities are recommended to reinforce the independence of the regulator by:</p> <ul style="list-style-type: none"> • Reviewing the balance between matters placed in Acts, Decrees and Regulations as

	<p>recommended for Principle 1;</p> <ul style="list-style-type: none"> • Providing for budget approval over a longer period – such as 3, or preferably 5 years; • Providing for the regulatory bodies to build up reserves to meet contingencies; • Making the process of consultation between the Ministry of Finance and the regulatory bodies on the preparation of legislation and Further Regulations open and transparent so that the proposals of the regulator and the comments of the Ministry of Finance are public; • Introducing legal immunity for actions taken by the regulators in good faith; • Requiring any general direction made by the Minister to the regulatory bodies to be made in public, so that it is transparent; • Giving investors representatives the opportunity to comment on the regulatory authority budget along with the industry market panel.
Principle 3.	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
Description	<p><i>Regulatory Powers</i></p> <p>The regulators have powers to license, supervise, inspect and investigate institutions and to enforce the regulations. Both the DNB and the AFM have powers to license or refuse to license applicants for entry into the securities markets. In practice, this means that the DNB licenses some securities firms. Given the concentration of the securities markets, the main securities players – that are, in fact, banks – are licensed by the DNB. The banks are more familiar with the DNB than the AFM.</p> <p>Applicants for licenses include those who wish to carry out broking or investment management activities (but not investment advice that does not involve broking, dealing or managing).</p> <p>Exchanges can only operate if recognized. The power of recognition is reserved to the Minister of Finance (although this will be transferred to the AFM in the new law).</p> <p>Both the AFM and DNB may obtain, or cause to be obtained, any information that is reasonably necessary for the due fulfillment of the responsibilities and exercise of the powers they have pursuant to the 1995 Act, including the power to ascertain whether the statutory provisions are being observed. This power gives the right to inspect, supervise and investigate.</p> <p>The AFM and DNB have power to set Further Regulations to provide detail to the provisions in the Act and Decree. In some cases, these powers have been challenged before the court (with one case pending) but thus far, the right to make regulations has been upheld.</p> <p>The AFM and DNB have enforcement powers. They may withdraw a license and they may withdraw a dispensation (article 19 Act 1995). The Minister of Finance may withdraw the recognized status of a securities exchange or a dispensation (article 26 Act 1995). If the AFM or DNB ascertains that an institution for whose account securities have been issued or a securities institution does not comply with the rules laid down in the Act, they shall draw this to the attention of the said institution. If necessary, the AFM or DNB shall include or shall forward subsequently, instructions to follow a specified course of action, particularly with regard to matters to be stipulated, in the interest of the proper operation of the securities markets or the position of investor in these markets. If the AFM or DNB do not receive a satisfactory response from the institution or if the instructions have not been followed sufficiently, they may, if they consider it necessary with a view to ensuring the proper operation of the securities markets or the position of investors in these markets, give the institution a written notice (article 28 Act 1995).</p> <p>Also in the interests of the proper operation of the securities market or the position of investor in these markets, the AFM (but not DNB) may make a public announcement. This announcement may cover their refusal to grant a license or the nature of other breaches of the rules (article 32 Act 1995). The AFM or DNB may also impose a ‘penalty-order’ (a due order imposing a time-</p>

	<p>accruing penalty) in case of breaches of rules laid down by or pursuant to sections of the Act. The AFM or DNB may impose an administrative fine in case of breaches of rules laid down by or pursuant to sections of the Act. They may make public the fact that such a penalty order has been imposed.</p> <p>The regulator has no power to enforce the restitution of investors whose interests have been harmed by inadequate adherence to conduct of business regulations. Investors can pursue their own claims in the courts. The regulators do not have powers to freeze or seize assets, for example where there are investor claims possible.</p> <p><i>The capacity of the Regulator</i></p> <p>The regulatory authorities have grown substantially over the past few years. The AFM, for example has grown from 30 staff in 1997 to a complement of about 300 now. The budget for 2004, currently the subject of consultation, suggests a further growth of 60 percent in expenditure. New staff recruits have come from the industry as well as university leavers. In some cases, such as collective investment schemes, the staff have been transferred along with responsibility for a sector from DNB.</p> <p>The very substantial rate of growth in AFM has posed a substantial challenge in terms of the recruitment, training and absorption of new staff. Industry representatives believe that the quality of supervision has suffered as a result, with many new staff not being familiar with the industry they are regulating. Industry representatives have also noted that the AFM is shortly to be responsible for regulating 15,000 insurance agents and for reviewing all prospectuses – both for listed and non listed companies. This, too will put further strain on the regulator’s capacity.</p>
Assessment	Fully Implemented
Comments	<p>The regulators have adequate powers of licensing, supervision and enforcement at present. The enforcement powers are strong and are regularly used by the AFM. If the powers of the AFM and DNB to issue detailed regulations were to be limited by reserving more matters to the province of legislation, then this could inhibit their power properly to supervise the market and properly to make rules that could be implemented quickly enough in a rapidly changing and innovative market. The comments made under Principle 1 on this point are relevant here.</p> <p>Under the new law, there will be a lead regulator for each institution. That regulator will have the primary licensing power. There is a danger that the second regulator will lose authority over institutions under such an arrangement (especially in the case of one of the four major conglomerates that dominate the Dutch financial services market). This matter is discussed in more detail in the Principle on market intermediaries.</p> <p>The regulator should be in a position to ensure that adequate restitution takes place – particularly where investors are not in a position to pursue the cases for themselves in the civil court (for example because of complexity or expense).</p> <p>The authorities are recommended to consider that the AFM be given the right to go to the court to seek restitution or have direct powers themselves to order restitution. Such powers would then have to be subject to proper procedures for hearing the views of parties involved and of appeal.</p> <p>The remarks about the adequacy of funding that are made in respect of principle two also apply here. Nevertheless, at present, the AFM has been able to attract sufficient staff to be able to increase the complement of the AFM from 30 in 1997 to over 300 now.</p>
Principle 4.	The regulator should adopt clear and consistent regulatory processes.
Description	<i>Transparency in Regulatory Requirements</i>

	<p>All rules and regulations need to be made known to the public (article 3:42 General Administrative Law Act).</p> <p>The general criteria for granting, denying or revoking a license are public.</p> <p>The AFM and DNB do consult the public and industry before implementing new rules or policies even though there is no statutory requirement to do so. The consultation process includes publishing the proposed rules on the internet for commentary. DNB operates along the same lines. Smaller industry participants have complained that consultation favors the views of the largest participants in the market and that there is frequently little consultation in practice on major rule changes. Larger groups indicate more confidence in consultation by DNB than AFM.</p> <p><i>Transparency in Regulatory Decisions</i></p> <p>Every decision that affects the rights or interests of other persons needs to be based on a sound motivation (article 3:46 General Administrative Law Act) and according to the principles as set out in the General Administrative Law Act, e.g., subsidiarity and proportionality. This motivation shall be presented by the announcement of decision to the party concerned (article 3:47 General Administrative Law Act). The decision will not come into force until it has been announced to the party concerned (article 3:40 General Administrative Law Act). The Court in Rotterdam shall be competent to hear appeals against decisions pursuant to the Act 1995(article 44 Act 1995).</p> <p>Every party negatively affected by the licensing process is entitled to a hearing with respect to the decision of the AFM or DNB to deny or revoke a license based on article 4:7 General Administrative Law Act. The right to be heard is applicable in all cases where the AFM or DNB have the intention to form a negative decision.</p> <p>Industry Education</p> <p>The AFM puts interpretation of important issues on the website and in papers and an electronic news paper. A special magazine called “De Inzicht”(The Insight) is sent to the supervised entities. The AFM may publish the decision to impose an administrative fine or penalty to an entity. DNB publishes its policies in “DNB Magazine”. Both DNB and AFM are obliged publicly to disclose changes and reasons for changes in rules or policies (title 3:4 General Administrative Law Act).</p> <p>There is special information on the website for investors and other market participants. There is also an electronic news paper, interpretation of important issues and papers on several subjects.</p>
Assessment	Fully Implemented
Comments	<p>The regulator can and does adopt clear processes. These apply to the regulator’s own activities such as licensing, inspection and enforcement. The regulator consults on the development of its policies, it publishes those policies and issues statements about the effects of its policies. It has procedures in place to ensure that the targets of enforcement action understand what is required of them and what action is contemplated by the regulator.</p> <p>The comments made in respect of the transparency of the consultation process with the Ministry of Finance and the potential inconsistencies created by the high degree of specificity in regulation (and consequent risk of widespread derogations) apply here.</p> <p>The authorities are recommended to consider the anxieties of the smaller market participants about the consultation process and to discuss with representatives how to address these concerns.</p>
Principle 5.	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.

	<p><i>Conflicts of Interest and Confidentiality Requirements</i></p> <p>Staff have to follow internal rules concerning:</p> <ul style="list-style-type: none"> • insider trading: all trading done by staff should be notified to the compliance officer and there is a closed list of securities in which it is not allowed to trade at that time; • confidentiality: all staff members have to sign a confidentiality declaration; • gifts: all gifts above 25 Euro from supervised entities should be notified to the compliance officer; • the use of e-mail and internet. <p>Furthermore there is a legal requirement within the 1995 Act that requires that any person who performs any duty by virtue of the application of the Act or of resolutions passed pursuant to the Act shall be prohibited, with regard to data or information that has been supplied pursuant to the Act, that has been received from a foreign supervisor, or that has been obtained as a result of examining commercial data or documents, to use such data or information further or otherwise than as required for the purpose of performing their duties or implementing the 1995 Act (article 1, 1995 Act).</p> <p>The AFM and DNB are administrative bodies, therefore they and their staff have to comply with the provisions of the General Administrative Law Act. These provisions ensure procedural fairness.</p> <p>Criminal, civil, administrative or actions under employment law can be taken for failing to adhere to these standards. These are administered by the public prosecutor and the criminal, civil and administrative court.</p> <p><i>Professional standards</i></p> <p>The AFM has been focusing on recruiting staff and has attracted good quality staff. Many are newly in post. The AFM has a strong record in staff development and education and is now developing its system. Competences are being developed for all staff and these will be used as the basis of appraisal. The AFM is also prepared to assist its staff in developing professional qualifications. New staff with experience are expected to have professional qualifications already.</p> <p>The commitment of the AFM to the training and development of its staff and to the achievement of high professional standards is exemplified by its training budget which amounts to over €3000 for each staff member, not including their management development programme. This commitment is necessary given the rapid growth in the size of AFM and the number of new staff recruited in recent years.</p>
Assessment	Fully Implemented
Comments	The rapid growth of the AFM poses a challenge to the regulator in training new staff and assimilating them into the culture of the organization. It is important to continue to demonstrate the commitment to training and development.

Principles of self-regulation	
Principle 6.	The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.
Description	<p>The only self regulatory organization in the Netherlands is Euronext Amsterdam B.V. This exchange is part of an international group, also known as Euronext, that trades both cash and derivatives instruments in the Netherlands, France, Belgium, Portugal and (derivatives only) in the UK. It serves both retail and institutional investors. These investors are both domestic and non-domestic. Euronext Amsterdam B.V. can be considered the dominant national exchange in the Netherlands. It is increasingly being integrated with the operation of exchanges in the other four countries in which the group operates.</p> <p>The Minister of Finance has granted recognized status to Euronext Amsterdam B.V. (hereafter described as Euronext) in order to operate as a securities exchange.</p> <p>Euronext is subject to oversight. The power to grant recognized status rests with the Minister of Finance and has not been delegated to the AFM. The AFM, in practice would advise the Minister in any new recognition decision (the recognition of Euronext predated the establishment of AFM). The Minister of Finance has, however, delegated to the AFM the power to oversee the operation of Euronext in order to ensure that it continues to meet the criteria for recognition.</p> <p>The detailed description of these powers is set out below in the response to principle 7.</p>
Assessment	Fully Implemented
Comments	Principles 6 and 7 are to be assessed jointly.
Principle 7.	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	<p><i>The Approval of the SRO</i></p> <p>As noted above, the Minister of Finance has the power to recognize or withdraw recognition from Euronext.</p> <p>The Minister of Finance grants recognized status to a securities exchange if the operator of the securities exchange shows that it is established in the Netherlands and that the operation of the securities exchange, the rules that are to be applied by the securities exchange, their application in practice, and the monitoring of compliance with the said rules, meet the standards necessary for ensuring the “proper operation of the securities markets” or protecting the position of investors in the said markets. Euronext is currently charged directly under Article 27 of the 1995 Act with the responsibility for ensuring that its rules are in accordance with the relevant Directives of the European Union with regard to securities trading, including Prospectuses, listings and market abuse.</p> <p>Before granting recognized status, the Minister of Finance shall verify, as a minimum, the expertise of the persons who determine the day-to-day policy of the operator, the integrity of the persons who determine or help to determine the policy of the operator, the financial guarantees, the settlement system and the application of the current rules of the securities exchange to the institutions that will be admitted to the securities exchange and the subsidiaries thereof. Restrictions may be imposed on, and conditions attached to, the granting of recognized status in the interests of the proper operation of the securities markets or the position of investors in the said markets (article 22 1995 Act). These provisions ensure that an SRO would have the capacity to carry out its purposes.</p> <p>The Minister of Finance may withdraw recognized status from Euronext in the event that insufficient guarantees are provided for the operation of the securities exchange in question, in</p>

<p>the interest of the proper operation of the securities markets or the position of investors in the said markets, or in the event that Euronext does not comply with the rules or regulations, restriction or instructions, laid down or issued by or pursuant to the Act, or does not do so in a satisfactory manner (article 26 Act 1995).</p> <p><i>The Oversight of the SRO</i></p> <p>The AFM is responsible for the oversight of Euronext to ensure its continuing adherence to the conditions that permitted recognition. It visits Euronext regularly to ensure that this is so.</p> <p>Euronext has a rule book that is in two parts. The first part covers rules that apply across the Euronext market in five countries. The second part covers rules that apply only in the Netherlands.</p> <p>Euronext must notify the AFM in advance of any change in its rules or on the compliance procedures in respect of the said rules (article 23 1995 Act). Euronext shall ensure that the rules applicable to the securities exchange may be applied to the listed institutions and the securities institutions that have been admitted to Euronext. The AFM may, in the interests of proper operation of the securities markets or the position of investors in the said markets:</p> <ul style="list-style-type: none">• issue instructions to Euronext in relation to the rules that are to be applied to Euronext, their application, or the monitoring of the compliance with the said rules;• issue a reprimand to Euronext regarding the policy to be followed by Euronext in relation to a securities institution that, according to the judgment of AFM is not complying with the rules (article 24 Act 1995). <p>Euronext regards this arrangement as meaning that the AFM must approve the rules. AFM do not take this view. Instead, they argue that it gives them the power to object to, or comment on rules if they choose so to do or to make no comment, if that is their choice. The absence of comment does not, in the view of the AFM amount to approval – were it to do so, it would, in the view of the AFM, detract from the responsibility of Euronext as the operator of the exchange. In practice, the distinction is less apparent, since no rule changes take place without AFM consent. AFM has commented, or chosen not to comment. It has also issued instructions on certain matters concerning the rules in the past.</p> <p>The AFM’s power to issue instructions with regard to the rules would allow it to insist on new rules, where it considered the existing rules inadequate – for example with respect to the resolution of potential conflicts of interest at Euronext. AFM does not have powers with respect to the level of fees charged by Euronext – a matter that is currently the subject of some debate as the competition from other exchanges increases.</p> <p>If Euronext wishes to change rules in the international part of its rulebook, the request is put to a working group of the five regulators who reach an agreed view. A Memorandum of Understanding sets out the processes by which this is achieved.</p> <p>AFM or DNB may obtain information that is reasonably necessary for the due fulfillment of the powers they have pursuant to the Act and therefore may enquire into any relevant matter. Under the General Administrative Law Act (Section 5:20), failure to comply would be a criminal offence.</p> <p>AFM is developing its audit strategy with respect to Euronext. It is intended that Euronext would complete an annual questionnaire setting out its contribution to the objectives of regulation and submit that to AFM. This would then be discussed periodically and would form the basis of a risk-based oversight of Euronext. In practice, the AFM have yet to develop the questionnaire.</p>

	<p>However, it does meet regularly with Euronext to discuss the operation of the market. This is discussed further in the description of the rules relating to the secondary market.</p> <p>The AFM may issue instructions to Euronext where they believe that the Exchange is not following or ensuring compliance with its rules. However, if they are dissatisfied with the activities of Euronext on a matter not directly covered by its rules (such as the adequacy of its IT infrastructure), their powers would not apply. In such a case, in the event that Euronext did not accept the advice of AFM voluntarily, the AFM would have no powers to insist on its advice being followed.</p> <p>AFM has no direct powers to take over Euronext's responsibilities itself where Euronext would be incapable of acting, either because of inadequate powers or where a conflict of interest existed. It would be in a position to take its own action against a securities firm that was operating on the market and it could instruct Euronext as to what action it should take in respect of its own rules. In the event of allegations of market manipulation or market abuse or insider trading, it could mount its own investigation and refer the matter to the public prosecutor.</p> <p>The internal rules of Euronext provide for matters concerning the protection of confidential information, procedural fairness.</p> <p><i>Clarity in the roles of the regulator and SRO</i></p> <p>The status of Euronext within the Netherlands financial markets has been changing in recent years and is currently continuing to change. It is no longer a mutual organization and so its oversight of the activities of the participant of the market is based on contract rather than membership.</p> <p>This means, for example, that it has recently disbanded its disciplinary board. Action it takes to enforce its rules would henceforth be subject only to appeal in the court.</p> <p>Euronext is also scheduled to cease to be the competent authority for listing when the new Act is implemented (currently scheduled for January 2005 but perhaps likely to slip by up to a year). At that point, AFM will take over responsibility for listing. In the meantime, AFM is taking an increasingly active role in individual listing decisions and, while leaving the final decision to Euronext, raises issues and invites Euronext to conduct further enquiries in particular matters in individual cases.</p> <p><i>The Dutch Securities Institute</i></p> <p>The Dutch Securities Institute has been invited by members of the industry to register individuals who work in the industry and to assess their record and qualifications. In practice, this is an industry wide registration system. However, this is not a responsibility that has been given by the regulator or government and it is not subject to oversight. The DSI is therefore not assessed here as an SRO.</p>
Assessment	Fully Implemented
Comments	<p>Both Euronext and AFM insist that the reference in Article 22 of the Act to "the proper operation of the securities markets" does mean in practice that there should be fair and consistent treatment of all participants in the market; that there should be no discriminatory treatment between members; that there is adequate disclosure of market information to the market participants and that the rules provide for price formation that properly reflects the balance of supply and demand for particular instruments.</p> <p>There is, however, no explicit provision for this other than the reference outlined above and the explicit requirement to meet the terms of the European Directives. The Act requires the SRO to</p>

	<p>act in the interests of investors (Article 24).</p> <p>The authorities are recommended to develop and publish in a greater degree of detail the criteria the Minister would adopt for a recognition decision and therefore the standards against which Euronext is assessed.</p> <p>The authorities have indicated that the retention of the power to recognize exchanges by the Minister of Finance is something of a historical legacy and should be changed. This is important as there is presently a split between the power to recognize and the effective oversight power. The authorities have also indicated that it is intended that the power to recognize exchanges should be delegated to the regulator but that the power to recognize SROs will be retained by the Minister. Since the only SRO at present is, in fact, the exchange, this distinction may create difficulties. The oversight of the SRO will, in practice be carried out by the regulator (and this must be so if consistency with IOSCO principles is to be maintained) and it would be helpful if the recognition and oversight responsibilities were with the same body – i.e., the regulator.</p> <p>The authorities are recommended to give the power to recognize SROs to the regulator with oversight.</p> <p>The difference of view between Euronext and the AFM about the latter’s powers to approve the rules does not amount to a significant matter in practice. Nevertheless it is a question that should be resolved.</p> <p>The AFM and Euronext are recommended to reach a common and explicit understanding as to the role of AFM in approving or commenting on rule changes.</p>
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Principles for the Enforcement of Securities Regulation	
Principle 8.	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	<p><i>Powers to collect information</i></p> <p>The AFM or DNB may obtain any information that is reasonably necessary for the due fulfillment of their responsibilities and the exercise of the powers they have pursuant to the 1995 Act and in order to ascertain whether the statutory provisions are being observed. This power is given under Article 29 of the Act – but constrains the powers to a specified list of institutions, rather than from any person whom the regulators may reasonably have access to the information. Access to and requests for information can be both on a routine basis and on an exceptional basis and can be done without notice or judicial action. The AFM or DNB may also demand to examine information and documents under 5:17 of the General Administrative Law Act.</p> <p>A securities institution shall provide DNB with a copy of annual accounts audited by an accountant within six months of the close of each financial year (Article 22 Decree). There is an obligation on auditors to tell the AFM or DNB about any breaches they may find but no requirement that they undertake any active due diligence beyond their normal role in order to confirm compliance.</p> <p>Not complying with relevant regulations to obtain data, information, documents, statements and records is a criminal offence (Article 5:20 General Administrative Law Act). Furthermore the AFM or DNB can also demand the entity or person to hand over the requested information. Failure to do so could result in a written notification that the failure was in contravention of their obligations and be accompanied by a notice instructing the institution to comply within a certain timeframe. Failure to comply could then attract administrative sanctions including a fine. There is, however, no explicit provision that information provided to the regulator should be accurate.</p> <p>As described under principle 7, the AFM has supervisory powers over Euronext. There is a further trading system in the Netherlands that trades government bonds. This is registered as a securities</p>

	<p>broker and therefore regulated as such. Foreign trading systems, mostly UK based, are operating in the Netherlands on the basis of the ISD European Passport. The AFM has the power to obtain information from exchanges as well as brokers (Section 29 of the Act) and in the case of foreign operators of exchanges could deploy the provisions of the relevant MoU (normally the CESR MoU).</p> <p><i>Record keeping requirements</i></p> <p>The Further Regulations set out detailed record keeping requirements (Annex 4 to the Further Regulations). Articles 27 and 28 of these Regulations require that a client’s identity is established and that sufficient information is obtained with respect to their financial experience, the financial position and their investment objectives. The records must include details of an order from acceptance to settlement. The Regulations spell out in very considerable detail what records are required by a securities firm.</p> <p>Anti Money Laundering Measures are included in the separate legislation. The Netherlands Government is committed to the implementation of the FATF Forty recommendations. The DNB is responsible for overseeing compliance. The precise details of the “know-your-customer” details required are being considered, but the intention is to match the Basel and FATF standards.</p> <p>The AFM or DNB could gain access to the identity of a customer of a regulated entity where this was necessary for the proper fulfillment of their responsibilities – for example where this was necessary to verify adherence to anti money laundering controls.</p> <p><i>Information from SROs</i></p> <p>As noted above, the regulation of the securities market is the responsibility of Euronext. The AFM supervises this regulation and can obtain or cause to be obtained any information that is necessary for the fulfillment of its duties. It can cause changes to Euronext’s processes, where these are implemented through its rules (but not otherwise). Euronext is subject to confidentiality requirements.</p>
Assessment	Fully implemented
Comments	<p>The DNB and AFM have generally adequate enforcement powers. However, there are some gaps that need to be filled. The regulator can only get information from the specified list of institutions. This does not include ordinary natural persons who may have been engaged in insider dealing for example. Moreover, if the AFM believed that an entity was engaged in business as a securities institution, it could not enforce its information gathering powers to obtain information unless it demonstrated that it was a securities institution before it gained the right to gain the information to prove just that. It is impossible to ensure that all conceivable entities are included in a specified list and so the right to obtain information should be more open ended. In practice, the AFM are able to obtain information from financial institutions about natural persons, when necessary and so the absence of a specific right to obtain information from natural persons has not proved a handicap. Moreover, the law enforcement agencies could obtain such information from natural persons if necessary. Nevertheless, it remains important to fill this gap.</p> <p>The authorities are recommended to expand the list of institutions from which information can be obtained to include anyone that the AFM or DNB reasonably believed had the information required.</p> <p>The Act does not explicitly say that the information supplied to the AFM or DNB in response to the exercise of powers in the Act should be accurate.</p> <p>The authorities are recommended to consider whether the present arrangements adequately ensure the accuracy of information passed to the regulatory authorities and to ensure that</p>

	there is an explicit requirement that no regulated entity should supply false information to the AFM or DNB.
Principle 9.	The regulator should have comprehensive enforcement powers.
Description	<p><i>Details of enforcement powers</i></p> <p>The relevant authorities with enforcement powers are the AFM, DNB and the Openbaar Ministerie (Public Prosecutor). Euronext also has certain enforcement powers.</p> <p>The AFM or DNB may obtain information that is reasonably necessary for the due fulfillment of the responsibilities and exercise of the powers they have pursuant to the Act 1995 and in order to ascertain whether the statutory provisions are being observed.</p> <p>The power of the AFM or DNB to collect information necessary for the fulfillment of their powers would include data, information, documents and records. It is not explicit that “information” can include a statement. In the context of an investigation, the DNB or AFM are only able to ask a regulated entity to make a voluntary statement. It is argued that this could only be done if the information was not available from written material.</p> <p><i>Sanctions</i></p> <p>The AFM may withdraw a dispensation granted and a license (article 19 Act 1995). The Minister of Finance may withdraw a recognized status or a dispensation of a securities exchange (article 26 Act 1995).</p> <p>If the AFM or DNB ascertains that an institution for whose account securities have been issued or a securities institution does not comply with the rules laid down in the act, they shall draw this to the attention of the said institution.</p> <p>If necessary, the AFM or DNB shall include or shall forward subsequently, instructions to follow a specified course of action, particularly with regard to matters to be stipulated, in the interest of the proper operation of the securities markets or the position of investor in these markets. If the AFM or DNB do not receive a satisfactory response from the institution or the instructions have not been followed sufficiently, they may, if they consider it necessary with a view to ensuring the proper operation of the securities markets or the position of investors in these markets give the institution a written notice (article 28 1995 Act). Also in the interests of the proper operation of the securities market or the position of investor in these markets, the AFM or DNB may make a public announcement stating:</p> <ul style="list-style-type: none"> • their refusal to grant a license; • that a person who is offering securities upon issue does not have a dispensation; • that the securities institution does not have a license; • that a person to whom an exemption applies is not adhering to the conditions attaching the exemption; • that the operator of a securities exchange has not been granted recognized status or dispensation; • that the operator of a securities exchange to which an exemption applies, is not adhering to the condition attaching to the exemption (article 32 1995 Act). <p>The AFM or DNB may also impose a ‘penalty-order’ (a due order imposing a time-accruing penalty for non-compliance of a rule) in case of breaches of rules laid down by or pursuant to sections of the Act. The AFM or DNB may impose an administrative fine in case of breaches of rules laid down by or pursuant to sections of the Act.</p> <p>The AFM and DNB can appoint a silent receiver to oversee the operation of the management.</p>

	<p>However, the silent receiver can only oversee existing management and can only operate where there is an effective management in place. Without such management, the silent receiver cannot be effective. Moreover, where the failure in controls that might prompt such an appointment applies in the securities operations of a credit institution, the current construction of the law has the result that the AFM cannot make the appointment because they do not have such a power in respect of a credit institution and the DNB cannot make the appointment because it has no power to do so in respect of securities activities.</p> <p>For certain breaches, such as insider dealing, the AFM or DNB may refer a matter to the public prosecutor for criminal prosecution.</p> <p>In 2003, the AFM mounted 67 investigations into specific incidents (in addition to 255 regular inspections (taking intermediaries and CISs together). As a result of their findings, administrative fines were imposed on 10 occasions and 1 penalty order was imposed.</p> <p>Euronext (on its own initiative, or under instructions from AFM) may order a suspension in trading or impose administrative fines on market participants.</p> <p>Private persons may not take action under the securities laws but they may do so under the civil law.</p> <p><i>Powers to share information domestically for enforcement purposes</i></p> <p>Both the AFM as DNB may supply data or information that has been obtained in the performance of the duties with which they are charged pursuant to the 1995 Act to Dutch or foreign government agencies or the Dutch or foreign agencies designated by their respective governments that are charged with the supervision of financial markets or of natural or legal person operating in the said markets (article 33 1995 Act).</p> <p>The AFM and DNB may also provide data or information obtained in the performance of the duties with which they are charged pursuant to the 1995 Act to a supervisory judge in so far as that person is charged with the supervision of the trustee in bankruptcy who is involved in the management and liquidation of the estate of a securities institution (article 33b 1995 Act). The AFM and DNB shall co-operate, in so far as this is necessary for the supervision of securities institutions forming part of a group, with the authorities that, pursuant to the 1992 Act on the Supervision of the Credit System, the 1993 Act on the Supervision of the Insurance Industry or the Act on the Supervision of Insurance Industry (Benefits in Kind for Funerals) and the Act on the Supervision of Investment Institutions, are charged with the supervision of credit institutions, insurers or investment institutions that belong to the same group (article 34 1995 Act). The AFM of DNB shall also co-operate with the relevant supervisory authorities or other European Member States in exercising supervision (article 35 1995 Act).</p>
Assessment	Fully Implemented
Comments	<p>The comments given in principle 8 concerning the list of persons from whom information can be obtained is equally relevant here, since this principle is directly concerned with enforcement powers in respect of all persons whether regulated or not.</p> <p>The IOSCO standards require that a regulator be able to require a person to make a statement. While this is possible in the Netherlands context, it would be helpful to ensure that this was explicit. Indeed, if it were the case that statements could only be taken if the information could not otherwise be obtained, this would interfere with the ability of the regulator to mount an investigation.</p> <p>The authorities are recommended to consider ensuring that the legislation is explicit that the regulators are permitted to require a person to make a statement, as a normal part of their information gathering powers.</p>

	<p>The power to make a public statement is a powerful sanction and can be a useful public education tool. AFM and DNB can currently only use this sanction if they are making a statement about another sanction having been imposed.</p> <p>The authorities are recommended to consider expanding the range of sanctions to include public statements even where there is no other sanction.</p> <p>The comprehensive set of powers is in line with practice internationally but the exercise of such powers has taken some market participants by surprise. Industry representatives had a range of views but they included the following:</p> <ul style="list-style-type: none"> • The regulator should not be empowered to impose penalties but should leave such matters to the public prosecutor; • A financial institution should be able to decide that an investigation by the regulator was unnecessary; • The AFM as conduct of business regulator should not be able to undertake on site visits. <p>While such views are not unknown in other jurisdictions, the reaction to the exercise by the AFM of what are internationally accepted and expected powers is striking in the Netherlands context. In fact, AFM’s exercise of its powers is in line with required international standards. Moreover, the AFM has built in safeguards, including the right of the subject of proposed action to be heard and the introduction of a separate penalty officer to review a case on an independent basis.</p> <p>The AFM and DNB are recommended to mount a public awareness campaign demonstrating the international standards that require effective enforcement powers by a regulator of securities institutions. That campaign should emphasize the safeguards built in to the AFM processes that protect the subject of enforcement action.</p> <p>It is inevitable that, with the changing in responsibilities that have occurred, there may be some gaps occurring in the exercise of powers.</p> <p>The authorities are invited to review the exercise of powers by the two regulators to satisfy themselves that all the appropriate powers are available to both regulators and to draft the new law so that there are no gaps.</p> <p>The silent receiver is a useful regulatory tool. In practice the silent receiver does sometimes act as the management of a firm. However, when it does this, it is not transparent. The authorities have the power to issue an instruction to an institution to appoint new management that meets the criteria in the legislation. However, this still leaves the initiative with the institution itself. It may be that there could come a time when the AFM or DNB would wish to be able to go to the court and appoint new management of their own choosing, on the basis that they no longer had the confidence that an institution had the integrity to choose appropriate management itself.</p> <p>The authorities are recommended to consider providing for an explicit provision that would allow the regulators to apply to the court to appoint a manager of a regulated person in substitution for the existing management, where this is justified in order to further the regulatory objectives of the regulator.</p>
Principle 10.	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
Description	<p><i>Detecting Breaches</i></p> <p>The AFM has developed a strategy for using its inspection powers. This is described as the Contribution model which is a very detailed questionnaire (over 80 pages in length) to regulated securities firms inviting them to make a self assessment of their contribution to its regulatory</p>

	<p>objectives. The firm is invited to complete multiple choice questions with added comments if it wishes and then to rate its compliance on a four point scale – with 4 being above minimum requirements, 3 being compliant, and the lower scores representing increasing degrees of non compliance. There is no self assessment of the relative significance of any breaches, although the regulated entity could comment on this if it wished.</p> <p>This assessment is then checked by the AFM against their knowledge of the institution and other information available to it. It is then discussed with the regulated institution and used to establish the risks faced by it. Other information obtained by the regulator, including complaints would also be used to build up the risk profile. The inspection programme is then based on a risk assessment. The AFM also insists on routine financial and other reports. In practice, it is the intention to visit the main securities firms every year and the smaller players every three years. However, the new regime was introduced only in September 2001 and there has not yet been time for a full cycle. Some market participants have experienced AFM visits but others have not yet done so. The AFM is using an on-line based system for these reports and intends to make it easier for institutions simply to repeat their previous assessments.</p> <p>The DNB adopts a similar approach except that it does not seek a self assessment. The DNB discuss their respective findings and co-ordinate their inspections. In some instances this involves joint inspections in others separate.</p> <p>Euronext has a market monitoring mechanism that is designed to identify suspicions of insider trading and market manipulation. Where these are identified, either Euronext investigates itself, or it passes them to the AFM. For most significant cases, the AFM will pass them to the public prosecutor. The AFM has the powers to audit the execution and trading of all transactions on Euronext. Data on the suspicious transaction identified by Euronext is described in the principles relating to secondary markets.</p> <p>Article 39 of the Act requires notification by securities firms of breaches or potential breaches of the Act, Decree or Further Regulations. Article 39 does not apply to credit institutions, who are obliged to make a report to the DNB. For example, the DNB requires firms to notify it if their financial resource requirements fall below 110 percent of the required minimum.</p> <p>The regulator responds to investor complaints. For example the AFM has conducted an investigation into the misselling of certain investment linked products to retail investors which were sold without adequate explanation of the risks.</p> <p>The AFM and DNB are perceived by the market participants as having markedly different approaches to enforcement. In respect of prudential matters, the DNB will discuss breaches directly with the firm and seek a resolution without the use of its sanctions powers. The DNB has not, for example, used its powers to fine securities firms since the establishment of the split between prudential and conduct of supervision. The AFM also seeks resolution by formal and informal discussion with regulated persons. However, it has used its powers to impose fines on 10 occasions in 2003, imposing other penalties once. It also makes public statements and is perceived as being much more ready to do so than the DNB. The perception is that this reflects, in part, their different roles, in that conduct of business issues are, by their very nature, more public, whereas financial resource requirements, in particular, are more appropriately dealt with without publicity.</p> <p><i>Compliance System</i></p> <p>The regulator does monitor the compliance procedures of a securities firm, including the training of employees.</p>
Assessment	Fully implemented

Comments	<p>The Contribution model is potentially an effective way of fulfilling the responsibilities of the regulator. However, it has been in place for a relatively short time and has not been tested through a complete cycle. The model is very long and detailed and some market participants have argued that it does not identify the main risks facing a regulated entity. However, it is too early to say whether or not this is a serious weakness.</p> <p>AFM and DNB do carry out regular and effective compliance measures that meet the requirements of this principle.</p> <p>The recommendations at Principle 9 in respect of a public awareness campaign about the international standards in this area would be equally relevant here.</p> <p>The Contribution model does not invite the regulated entity to assess the significance of any weaknesses in compliance and such a requirement could be a useful addition to the model.</p> <p>The AFM is recommended to consider whether it would be helpful to invite the regulated entity explicitly to make an assessment on the significance of any compliance weaknesses they identify in the model.</p>
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Principles for Cooperation in Regulation	
Principle 11.	The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.
Description	<p><i>Sharing information with other domestic regulators</i></p> <p>So far as other domestic regulatory authorities are concerned, the AFM and DNB and Euronext may supply data or information that has been obtained in the performance of duties with which they are charged pursuant to the 1995 Act to Dutch government agencies or to Dutch agencies designated by the government that are charged with the supervision of financial markets or of natural or legal persons operating in the said markets (article 33 1995 Act). This information can be obtained without reference to any other authority.</p> <p>Information may be shared unless:</p> <ul style="list-style-type: none"> • The purpose for which the data or information will be used has not been sufficiently defined; • The intended use of data or information does not come within the scope of supervision of the financial markets or of natural and legal persons operating in the said markets; • The provisions of the data or information is contrary to Dutch law or public order; • The confidentiality of the data or information is not sufficiently guaranteed; • The provision of the data or information reasonably conflicts, or might reasonably conflict with, the interests that the 1995 Act aims to protect; or • There are insufficient safeguards to ensure that the data or information will not be used for a purpose other than the one for which they were provided. (Article 33 1995 Act). <p>These powers apply to investigation and enforcement, authorization and licensing decisions, surveillance, market conditions and events, client identification, regulated entities. They apply to listed companies where the information is relevant to the responsibility of the AFM or DNB.</p> <p>The AFM and DNB could not obtain this information on behalf of another domestic authority unless they were exercising their powers in respect of their own responsibilities under the Act (Article 29 1995 Act).</p> <p><i>Sharing information with foreign regulators</i></p> <p>So far as foreign regulators are concerned, the AFM and DNB may supply data or information that</p>

	<p>has been obtained in the performance of duties with which they are charged pursuant to the 1995 Act to foreign government agencies or to foreign agencies designated by their respective governments that are charged with the supervision of financial markets or of natural or legal persons operating in the said markets (article 33 1995 Act). This information is not subject to dual illegality rules nor is the information exchange subject to the approval of another authority. Information can be disclosed unsolicited as well as in response to requests.</p> <p>The Netherlands authorities received 44 requests for assistance in 2003. They were able to accept in all but 3 cases – and those three cases were declined because the requesting authority was not an agency designated as one to which a positive response could be made.</p> <p>The constraints on sharing information with foreign regulators match those for domestic regulators as set out above.</p>
Assessment	Fully Implemented
Comments	The co-operation powers of the AFM and DNB meet the criteria for the Principle.
Principle 12.	Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.
Description	<p><i>Powers to enter into agreements</i></p> <p>The AFM and DNB have the power in practice to enter into information sharing agreements between each other and have in fact done so. Formal covenants exist, for example on information sharing for licensing purposes.</p> <p>Equally, the AFM and DNB have the power in practice to enter into information sharing agreements with foreign regulators and have in practice done so. It has in place the following formal written agreements:</p> <ul style="list-style-type: none"> • Agreement between the Netherlands and the U.S. on mutual administrative assistance in the exchange of information in securities matters; • Agreement between the Netherlands and the U.S. on mutual administrative assistance in the exchange of information in futures matters; • Agreement between the Netherlands, Great Britain and Northern Ireland on mutual assistance and the exchange of information in securities, futures and options matters; • Convention on insider trading between the member States of the Council of Europe; • MoU between AFM and Chinese regulator on the exchange of information; • MoU between AFM and Czech Securities Commission on the exchange of information; • MoU between AFM and Hungarian Financial Supervisory Authority on the exchange of information; • MoU between AFM and Polish regulator on the exchange of information; • CESR Multilateral MoU on the exchange of information and Surveillance of Securities Activities; and • MoU between DNB and the Jersey Financial Services Authority on the applications for authorization of DNB for Jersey based and supervised institutions.
Description	<p>These agreements cover such matters as the detection and deterrence of cross border misconduct and the discharge of licensing and surveillance responsibilities. They include provisions to safeguard confidential information.</p> <p><i>The practical effect of these measures</i></p> <p>In 2003, the Netherlands received 44 requests for assistance from overseas regulators</p> <p>The Netherlands is not currently able to sign the IOSCO multilateral MoU because it cannot use its investigatory powers on behalf of a foreign regulator without a domestic interest. The Ministry of Finance is working on a legislative amendment to allow it to do this, thus demonstrating that it does</p>

	in practice actively seek to enter into information sharing agreements.
Assessment	Fully Implemented
Comments	The question of the domestic interest is discussed under Principle 13. In respect of Principle 12, the AFM and DNB have the powers that meet the criteria.
Principle 13.	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	<p><i>Ability to exchange information with foreign regulators</i></p> <p>To implement conventions on the exchange of data or information or to implement binding decisions by international organizations relating to the supervision of the financial markets or of natural and legal persons operating in such markets, the AFM or DNB may, for the benefit of an agency that is operating in a state that is, in addition to the Netherlands, a party to a convention or is bound by the same binding decision of an international organization, and that is charged in that state with the implementation of statutory regulations concerning the supervision of the securities trade, request information from, or institute, or cause to be instituted, an investigation concerning any person who falls under their supervision pursuant to the 1995 Act or any person in respect of whom there is reason to believe that he possesses data or information that may be relevant to the implementation of the statutory regulations as referred to above (article 36 1995 Act).</p> <p>The AFM or DNB may permit an official from a foreign agency to participate in an investigation (article 37 1995 Act)</p> <p>If an enterprise or institution is established in another Member State, the AFM or DNB may, for the purposes of supervision:</p> <ul style="list-style-type: none"> (a) request the supervisory authority of the other Member State to verify in the said state the accuracy of the information supplied to the AFM or DNB; or (b) after obtaining the necessary permission from the supervisory authority of the other Member State, verify, or cause to be verified in the said State, the accuracy of the information supplied to the AFM or DNB (article 38 1995 Act). <p>Gathering information for foreign supervisors is possible for the benefit of an agency that is operating in a state that is, in addition to the Netherlands, a party to a convention or is bound by the same binding decision of an international organization and that is charged in that state with the implementation of statutory regulations concerning the supervision the securities trade. This means that no information can be gathered if there is no supervisory interest. The Ministry of Finance is working on a proposal of law in order to solve this discrepancy.</p> <p><i>Matters on which information can be exchanged</i></p> <p>Where information can be obtained, i.e., where there is a domestic interest and subject to the conditions outlined in the response to Principle 11, the AFM and DNB can exchange information relating to securities and derivatives transactions, including all funds and assets transferred into and out of bank and brokerage accounts related to those transactions. Information could, where relevant, include client identification, details of the accountholder and authorized mandate holder where different; details of the transaction under investigation such as amount time price and parties involved; and details of the beneficial ownership of non natural persons where this information is held in the Netherlands.</p> <p>Subject to the same qualification, assistance could be provided with respect to the investigation into offences such as insider dealing, and other forms of market abuse and misselling or handling of client funds, issuing requirements for securities or derivatives; licensing and other compliance requirements of market intermediaries and collective investment schemes and investigations into compliance with provisions relating to exchanges.</p>

	Information can include documents. The AFM and DNB can provide information in respect of the regulatory processes in the Netherlands. They can also provide information and assistance to foreign regulators who wish to apply for orders of the court.
Assessment	Partly Implemented
Comments	The absence of an ability to exercise investigative powers on behalf of a foreign regulator forces a “not implemented” rating for this Principle. This indeed an important matter and the IOSCO rating reflects that. Nevertheless, in all respects except this, the AFM and DNB are compliant. Moreover, they are able to provide this assistance with a foreign regulator within the EU or with whom they have signed a binding obligation. They are working on a legislative proposal to remedy this weakness and this is expected to be in place in 2005. Once achieved the rating should be “fully implemented” The authorities are recommended to introduce legislation as soon as possible to allow the AFM and DNB to exercise their investigative powers on behalf of a foreign regulator even where there is no domestic interest.

Principles for Issuers

Principle 14.	There should be full, accurate and timely disclosure of financial results and other information that is material to investors’ decisions.
Description	<p><i>Full Disclosure</i></p> <p>The Dutch Securities Regulation is based on two aims:</p> <ul style="list-style-type: none"> • protection of investors; and • ensuring that markets are fair, efficient and transparent. <p>The investors are protected by the obligation for the issuer to draw up and distribute a prospectus. In the prospectus full and fair information needs to be given. Furthermore companies have to disclose financial information at regular interval. They have to disclose:</p> <ul style="list-style-type: none"> • audited annual report; • (non-audited) semi-annual report; and • every relevant new fact concerning the conduct of its business which has not already been made public and which may have a significant influence on the price of the securities issued by the institution. <p>All offers to the public have to be accompanied by a prospectus, unless they fall within one or more of the exemptions. Exemptions cover such matters as shares distributed for free, shares issued to professionals; shares issued to foreigners; and euro securities such as Eurobonds. Shares with a par value of more than €40,000 are also exempt. The prospectus rules do not apply when the offer is made to a restricted circle of investors. The term “restricted circle” has no definition and could include a very large number of people, for example where the offer is made to employees of a company that has an employee share ownership scheme.</p> <p>The above provisions are set out in Section 6 of the 1995 Act and, for listed companies in the rules of Euronext.</p> <p>Shareholder rights – and the provisions relating to voting decisions are set out in the company’s articles of association. They are also be covered by the Civil Code.</p>

The figures below show how many prospectuses are issued each year on the regulated market and off the regulated market and how many are the subject of exemptions. They demonstrate that a large majority of issues that are not on a regulated market benefit from an exemption. The most common reason for this is that the issue took place outside the Netherlands.

Non -regulated market

	1998	1999	2000	2001	2002
Number of issues	254	491	518	579	859
Number of prospectuses issued	51	94	177	456	198
Number of exemptions	203	397	341	123	661

Regulated markets (Euronext Amsterdam)

	2001	2002	2003 (until 31/8)
Programs	33	22	23
Pricing supplements	145	60	81
prospectus	185	82	103

General and Specific Disclosure

Article 3 of the 1995 Act relates to the issue of prospectuses. This requires the disclosure of all information necessary to make a proper judgment on the offer. Article 5 covers ongoing disclosure obligations. This requires the issuer to disclose any fact relating to the issuing institution that may have a material influence on the price of its securities. For securities that are to be admitted to listing, the rules of Euronext require that it be satisfied as to the contents of the prospectus before the listing is approved. A prospectus shall contain at least the following information:

- Information concerning the persons responsible for the prospectus;
- Information concerning the accountants who have made statements on data contained in the prospectus and the nature of these statements;
- General information on the issuing institution;
- Information on the capital of the issuing institution;
- Information on the activities of the issuing institution;
- Information on individual enterprises in which the issuing institution owns part of the equity capital which could have a significant influence on the assessment of the assets and liabilities, financial position and results of the issuing institution;
- Information on the capital, financial position and results of the issuing institution;
- Information on the board of directors, the management and the supervision of the issuing institution;
- Information on recent developments in and the prospects of the issuing institution;
- Additional information on share certificates, option certificates, warrants, entries in share registers, profit and founders' certificates, joint ownership rights and similar documents of value or rights;
- Additional information on debt certificates, entries in debt registers and similar documents of value or rights;
- Additional information on share certificates and similar documents of value;
- Additional information on options, futures and similar rights; and
- Additional information on futures.

There are no specific provisions relating to advertisements for offerings other than the prospectus requirements, although announcements of an intention to issue a prospectus must be lodged with

the AFM. In the case of an IPO there are a few rules/restrictions concerning the content of information that an issuer discloses outside the prospectus:

- Public statements about the IPO made before or at the time of the IPO by employees of the issuer or members of the syndicate must be consistent with the contents of the (provisional) prospectus.
- No publicity activities of any sort may be conducted with regard to the IPO following the publication of the advertisement announcing the general availability of the (provisional) prospectus (quiet period).
- Any publicity statement must make clear that the investor should base his/her investment decision exclusively on the (provisional) prospectus and should give as clear an indication as possible of when, where and how the investor can obtain a copy of the prospectus;
- No publicity material may contain information which is in conflict with the contents of the (provisional) prospectus, nor may it contain incorrect information concerning the subscription procedure or allocation procedure to be used.
- Every publicity statement must include the following warning:
'All investment is subject to risk. The value of the securities offered may go down as well as up. Past performance is no guarantee of future returns. Potential investors are advised to seek expert financial advice before making any investment decision.'

A prospectus shall give a true and fair view of the state of affairs of the Issuer as at the balance sheet date of the last financial year for which annual accounts have been published. The Prospectus shall also contain information on significant events which have occurred after the said balance sheet date.

The Act and Decree require that relevant facts that may affect the price of securities should be made public as soon as possible. All listed companies have continuing information disclosure obligations. These obligations are set out in the Issuing and listing rules of Euronext Amsterdam. This obligation is set out in section 28 (shares), 34 (bonds) and 39 (depository receipts) of the Listing and Issuing Rules.

Accountability for Disclosure

Information has to be given about who is responsible for the content of the prospectus. This is usually the issuer. If someone else is responsible for certain parts (like the auditor or the lead manager), this must be mentioned.

The law is not specific on who, exactly, is responsible for the contents of a prospectus. It is possible for the Directors of a company to argue that certain elements are outside their responsibility because they could not have known about them.

The regulator is able to examine all non listed prospectuses (but does not at present in practice do so routinely). For prospectuses that are to be listed, Euronext does examine prospectuses prior to an offer and will not allow a prospectus to be issued unless they are content.

Derogations

Euronext Amsterdam may grant an exemption from the obligation to include in the prospectus particular information required to be so included pursuant to the rules if it considers that disclosure of such information would be contrary to public interest or seriously detrimental to the issuer, provided that in the latter case such omission can not mislead the public. Where there are derogations and certain individuals had superior information, the insider trading rules would apply.

	<p><i>Cross border</i></p> <p>The Netherlands has arrangements that comply with the IOSCO disclosure standards for Cross Border Offerings and Initial Listings by foreign issuers.</p>
Assessment	Fully Implemented
Comments	<p>A “restricted circle” of people to whom an offer may be made, without the need for a Prospectus, could amount to a very large number of people. This could create anomalies. It is not normally considered acceptable that a large number of people should be sold stock without a Prospectus. Such an interpretation is possible under the current law. The new EU Prospectus Directive will impose a maximum number of offerees and the Netherlands are considering their position in the light of that Directive.</p> <p>The authorities are recommended to review this provision with a view to limiting the extent to which this provision could be used to make an offer without a Prospectus to a large number of people.</p>
Principle 15.	Holders of securities in a company should be treated in a fair and equitable manner.
Description	<p><i>Rights of shareholders</i></p> <p>Dutch Company Law provides for the rights of shareholders. Their right to elect Directors varies as to whether the company is subject to the structure regime, the common regime or the mitigated regime. In each case, there are provisions designed to balance the rights of shareholders to elect directors with the need for supervisory directors to be independent.</p> <p>Under Dutch company law, shareholders generally have the right to approve major changes in the corporate structure, including:</p> <ul style="list-style-type: none"> • amendments to the articles of incorporation; • declaration of dividends; • the appointment of the independent auditor; • approval of the annual accounts; • statutory mergers; • statutory divisions; • dissolution (winding up) of the company; and • conversion of the company into another legal structure. <p>However, the articles of incorporation may transfer some of these decision-making powers to the supervisory board. Legislation is being proposed that would entail a significant expansion of these shareholders’ rights</p> <p>Although Dutch company law provides shareholders with considerable powers, in practice these powers are frequently curtailed by companies’ articles of incorporation. As such, about 30 percent of listed companies in the Netherlands issue shares separating the economic benefits of shareholding from voting power. For example, one common practice is for a company to issue ordinary shares, but remit these shares to a “trust office” which then issues depository receipts entitling the holders to the economic benefits, but not to the voting rights normally associated with share ownership. The board of trustees of the trust office, often comprised persons closely tied to management, will exercise the voting rights. In such case, shareholders’ only recourse against the company is to petition a court to mount an inquiry into potential mismanagement. This issue is being addressed by proposed legislation, which provides that a holder of a depository receipt of a listed company should receive a proxy entitling him or her to vote.</p> <p>Company Law provides for the registration of ownership of shares and their transfer. It covers the receipt of dividends and other distributions as and when declared. Bearer shares are also permitted. There are no provisions that require the owner of bearer shares to register their ownership with the</p>

	<p>Company Registry.</p> <p>Shareholder rights in the context of a takeover or change of control are protected by the provisions that requires that in case of a public offer, the offer shall be addressed to all holders of title to the securities in issue to which the offer relates and the same offer shall be made to all holders of title to the same type of security. Furthermore, the best price rule applies, meaning that the offeror shall in each case pay for all securities tendered pursuant to the offer of any type to which the offer relates, the consideration that corresponds to the highest consideration paid by it in connection with transactions made preceding the offer from the time when a public announcement about the preparation for or the making of a public offer is made, with the exclusion of transactions taking place in the course of regular trading on a securities exchange.</p> <p>A change in corporate control is a relevant new fact concerning the conduct of the company's business, which may have a significant influence on the price of the securities, issued by the institution; disclosure is therefore required by Euronext regulation. In case there is an offering of securities upon issue as a consequence of a change in corporate control, a prospectus is also required.</p> <p>If a public offer is being prepared or has been announced, the offeror and the target company shall, as soon as a circumstance arises that makes a public announcement necessary in order to ensure that the securities issued by them are priced on a fair basis, make such an announcement without delay, each doing so in so far as it concerns them. The following circumstances shall be deemed to be such circumstance:</p> <ul style="list-style-type: none">• if discussions held to prepare a public offer have reached such a stage that there are justified reasons to expect that agreement can be reached;• the sending by the offeror of an invitation to the target company to enter into discussions regarding a takeover;• pricing or other developments that may indicate that the fact that discussions are being held about a public offer or that there is a unilateral intention to make a public offer is known to third parties who can make use of this knowledge;• in the case of a firm offer, the definitive setting of the price or exchange ratio;• in the case of a partial offer, the definitive setting of the number or percentage of the securities, which the offeror is intending to acquire under the offer, or the price or exchange ratio;• in the case of a tender offer, the definitive setting of the number or percentage of the securities, which the offeror is intending to acquire under the offer, or the price;• the decision by the offeror not to make a public offer concerning the preparation for which a public announcement has been made previously;• the issuing of securities to or the granting of the right to take up securities to be issued by the target company to the offeror or to a third party by a target company with regard to which a public announcement about the preparation of a public offer for its securities has been made previously; and• a public announcement by a third party that shows that this person is preparing or making a public offer for the same securities. <p>Shareholders have the right to hold the company to account by requiring an investigation into the affairs of the corporation, the right to convene a shareholders meeting, the provision that in the absence of a shareholders meeting valid resolutions can only be adopted unanimously and the right to obtain information from the management board and the supervisory board. The possibility of transfer of the shares can be limited. Good faith requirements apply.</p> <p><i>Control</i></p> <p>The offeror has to make his public offer by means of an offer document, providing information on –</p>
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	<p>among other issues – the offer, offeror, and target.</p> <p>In case of a friendly offer a minimum of twenty days notice is required and in case of a hostile offer thirty days. In general however, a takeover process takes about two to three months.</p> <p>The Disclosure of Major Holdings in Listed Companies Act 1996 distinguishes between three kinds of notifications:</p> <ol style="list-style-type: none"> 1. Any person who, at the time at which the shares in the capital of a public limited company incorporated under Dutch law are admitted to the official listing of a stock exchange situated and operating in a member state of the European Union, has at his disposal 5 percent or more of the shares in the capital of that company or 5 percent or more of the votes that can be exercised on the issued capital of that company, must give notification of this within 4 weeks of admission to the official listing at the same time to the company and to the AFM. The words “at his disposal” include two or more persons acting in concert. 2. Any person who acquires or disposes of shares in the capital of a company or of votes that can be cast on the issued capital of a company, which he knows or should know causes the percentage of the shares or votes to fall within a different bandwidth to the percentages at his disposal immediately prior to this, must report this situation to the company and to the AFM forthwith. 3. Directors and supervisors should notify, under the 1996 Act, any change in the number of shares and votes (or rights to acquire shares / votes) they hold in the NV that is under their direction casu quo supervision. They should notify to both the company and to the AFM, forthwith. <p>In addition in case of a public offering of securities, the issuer must state the position of its main shareholders in the offering prospectus</p> <p>The bandwidths mentioned under 2. above are as follows: for companies as described in 15–2.5: 0 to 5, 5 to 10, 10 to 25, 25 to 50, 50 to 66 2/3 and 66 2/3 percent or more, with the understanding that the following bandwidths are applicable to a company as referred to in article 76 a of Book 2 of the Civil Code (Investment Companies with Variable Capital): 0 to 25, 25 to 50, 50 to 66 2/3 and 66 2/3 percent or more.</p> <p>The government proposes to amend the 1996 Act. The new bandwidths for companies as described in 15–2.5 will be: 0 to 5, 5 to 10, 10 to 15, 15 to 20 and 20-25. Once the interest is above 25 percent, one will have to report every change. The special bandwidths for Investment Companies with Variable Capital will not be relevant anymore, because these companies will no longer be covered by the new Disclosure Act.</p> <p>Failure to comply with these notification requirements is a criminal offence. Other sanctions can also be applied, including the suspension of voting rights. Other shareholders can take civil action.</p> <p>On foreign issuers, see the response to Principle 14.</p>
Assessment	Fully Implemented
Comments	There are no further comments.
Principle 16.	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	<p><i>Requirements for published accounts</i></p> <p>All companies should publish financial statements. The level of detail of the information contained therein is dependent on the size of the company. Medium sized and large companies are also obliged to have these financial statements audited by an external, independent public auditor, who has to certify the accounts. The size limits of companies are based on net revenues, total assets and</p>

	<p>number of personnel (two out of three).</p> <p>In the prospectus there have to be audited financial statements for the period of the last three years.</p> <p>The Conceptual framework (“Het Stramien”) prefaces the Guidelines for Financial Reporting (“Richtlijnen voor de Jaarverslaggeving”). This conceptual framework is identical to the Conceptual Framework of the IASB. Under current arrangements, these guidelines are not legally binding.</p> <p>Financial statements for listed companies must include balance sheet, statement of the results of operations, cash flow statement (not necessary for non listed companies) and a statement of change in ownership equity where this is material to the price of securities. The Civil Code (section 9) requires the accounts to be clear and consistent and comparable from one period to another.</p> <p><i>Accounting standards</i></p> <p>Dutch accounting standards for limited liability companies are based on the Civil Code, which is in accordance with the EU Directives. More detailed guidance is given by the Council for Annual Financial Reporting (“Raad voor de Jaarverslaggeving”). This is a private body, which therefore does not hold powers of law. The Council is a platform in which all parties concerned with accounting (users, auditors and ‘creators’) are working together to develop accountancy standards. These standards are first published in draft, and are finalized after a consultation process. The standards are published through a commercial publisher. As this is a private body, in which all relevant parties are involved, there’s no additional accountability of this platform.</p> <p>Note that the major part of the rules for Dutch GAAP is not legally binding. Strictly speaking, companies can ignore the guidelines of the council. However, few companies choose to do so, and the general view in the Netherlands is, that any such deviation from the guidelines should be thoroughly substantiated. It is open to a shareholder with a complaint to take the matter to the special company court. Furthermore, the council is working to include as many IAS/IFRS in Dutch GAAP as possible. Accounting standards will become the responsibility of the AFM under the new law. The requirement for accounting standards applies equally whether or not the accounts are audited or (as in the case of some semi annual accounts) they are not.</p> <p>The Dutch profession applies a slightly modified version of the International Standards on Auditing of the IFAC. Adherence to these standards is not mandatory but it is common practice and if called to do so in court an auditor must be able to support any deviations from these standards. The main difference between the ISA and the Dutch standards is the fact that in the Netherlands it is forbidden for an auditor to accept any limitations in the scope or the approach of the audit by the audit-client. In such a case the auditor must end the engagement.</p> <p>The Code of Conduct (Gedrag en Beroepsregels) requires auditors to be independent of the company they audit. For Public Interest Entities the Dutch organizations of auditors (NIVRA and NovAA)⁸ have adopted the recent guidelines of the European Community on independence fully.</p> <p>Articles 7, 8, and 9 of the Decree make clear that the periodic reports should contain information that is sufficient to make an informed judgment. The information must be clear and consistent.</p> <p>Euronext rules would require good standards. The Act requires that provides that periodic information must adhere to good accounting standards. The AFM has the powers to enforce this. It</p>
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⁸ NIVRA and NovAA are Self regulating organisations, which also function as representatives of the profession.

	could use administrative sanctions but has never done so. AFM is reviewing its enforcement practice and propose to take a more proactive stance when the new law is in place.
Assessment	Broadly Implemented
Comments	At present, there is no formal oversight of the body responsible for the independent organization that is responsible for auditing standards (NIVRA and NovAA), although this will be remedied under the new law. This is an important matter of which the authorities are aware and about which they are taking appropriate action.

Principles for Collective Investment Schemes

Principle 17.	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	<p>There are some 461 CISs in the Netherlands. The top ten providers are responsible for just under 200 of these. There are a total of 83 regulated institutions responsible for CISs, of which 60 are responsible for 6 or fewer funds.</p> <p><i>Entry Criteria</i></p> <p>Only authorized CISs are allowed to solicit or obtain moneys or other goods, beyond a restricted circle, in exchange for units. Whether or not a circle is restricted is assessed using various criteria (but could include a large number of people). The CIS must show that it meets a number of requirements. These requirements relate to expertise and trustworthiness, financial resources, management and the supply of information to potential investors. CIS's that solely attract funds from institutional investors are exempted from the authorization requirement.</p> <p>The Act requires that a CIS and the allied depositary or custodian meet certain requirements as laid down in the Act itself and in the decree. These requirements include the honesty and integrity of the managers of the fund, and financial capacity. As is the case elsewhere in the regulatory system, the DNB is responsible for the prudential issues and the AFM for conduct of business.</p> <p>Section 15 of the Decree covers competence and internal management as follows: The administrative organization of the collective investment scheme and, for a unit trust (insofar as the assets deposited for safekeeping are concerned) of the depositary shall incorporate such safeguards that the assets and liabilities of the collective investment scheme and the changes therein are accounted for truly and fairly. The explanatory notes state on this point that this Section obliges both the CIS and the depositary to maintain a sound administrative organization.</p> <p>These provisions relate to the CIS itself – which can take different legal forms. Where the controllers of a CIS invite a third party to conduct the investment management function, that person would be regarded as a director of the CIS and be subject to authorization criteria in the same way as the other directors. For other functions, such as the administration or marketing of the fund, there is no requirement for those conducting such functions to be regulated, although in each case, the Directors of the CIS itself would retain responsibility for the proper operation of the fund including its compliance with the law and regulations.</p> <p>The system of approval does take into account the need for cross border co-operation where a CIS is issued in the Netherlands by a foreign issuer. Where that issuer is in the EU, the passport provisions of the UCITS Directive apply. Where the issuer is in a third country, or in a member state where the CIS is non UCITS, the AFM may enter into co-operation agreements to permit the offering of such CISs and to provide for exchange of information as necessary.</p> <p>Unlicensed operation of a CIS is a criminal offence, see Section 39 of the Act. Furthermore, a cease and desist order under penalty and/or an administrative fine may be imposed by the Authority, see Section 33b and 33c of the Act. Such sanctions have rarely been applied in practice.</p>

	<p>In addition the AFM or DNB may:</p> <ul style="list-style-type: none">• issue a direction, that the CIS must observe (Section 21 of the Act);• appoint a silent receiver (Section 27 of the Act);• withdraw the authorization (Section 15 of the Act);• impose a cease and desist order under penalty (Section 33); and• impose an administrative fine (Section 33). <p>In some cases a breach is also a criminal offence (Section 39); the authority can then report the breach to the public prosecutor.</p> <p>Sanctions have been deployed against non registered illegal CISs. These have included fines, silent receiver and cease and desist order. These are applied in a handful of cases. The cases arise as a result of complaints, competitors' tip offs and applications for authorization that demonstrated that the offer had already been made</p> <p>For registered schemes there have also been a handful of cases where a silent receiver has been appointed. Directions have been issued to remove directors where an operator had infringed the rules.</p> <p><i>Supervision and ongoing monitoring</i></p> <p>There is ongoing monitoring of the conduct of CIS operators in the Netherlands by the AFM and DNB. This continues throughout the life of the CIS and includes continuing compliance with licensing requirements.</p> <p>There are several monitoring methods in use such as regular inspections by the Authority (NAV inspections), yearly meetings with the directors of the CIS, yearly inspections with the depository if there is a unit trust. Also, discussions are held with the external auditor, and the external auditor is required to report irregularities. Furthermore, unit trusts must have a depository that has certain compliance responsibilities. There is only in a few instances reliance on internal auditors.</p> <p>The AFM and DNB may request information from or investigate or order an investigation on its behalf in order to ascertain whether the requirements, rules, restrictions or stipulations given in or under the Act can be or are observed. The person or entity which is the object of investigation must give all possible assistance. (Section 19 of the Act).</p> <p>The Decree (Article 17) provides for periodic reports from the CIS to the AFM and DNB setting out such matters as the balance sheet and net worth of the CIS. The AFM and DNB will review the annual and semi-annual report These have demonstrated a lack of transparency of costs for example.</p> <p>The AFM conducts between 100 and 150 on site visits a year. In the past two years, they have not met their targets (which were for higher figures). From 2003 onward, the visits will be planned on a risk-weighted basis in the light of the contribution model.</p> <p>Changes in the management, and in the persons who may (in)directly appoint or dismiss the management, must be reported to the AFM and DNB. This applies for the CIS as well as the depository. See sections 11 and 13 of the Decree. Section 14 provides for an obligation to notify changes in the terms and conditions.</p> <p>There are no special requirements in respect of the record keeping requirements. However, the CISs are subject to the Civil Code, which does have such provisions. Moreover, the keeping of books and records must be of sufficient quality in order for the CIS to be able to comply with Section 15 of the</p>
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	<p>Decree, including the comments about keeping books and records in the Explanatory Notes on Section (section 15), and with the circular letter ‘Policy rules relating to the administrative organization of collective investment schemes’ of 12 December 1996.</p> <p><i>Conflicts of Interest</i></p> <p>In respect of conflicts of interest, in December 2001 the supervisor published a circular which sets out recommendations and policy rules in relation to the provision of information about costs and close links.</p> <p>This circular provides guidelines for the inclusion of information about costs and close links in both the prospectus and the accounts. It is important that any foreseeable entanglement of interests arising out of close links should be indicated the prospectus. The terms and conditions under which such transactions will be effected should be stated.</p> <p>The guidelines for the prospectus and the accounts are recommendations. The general recommendations relate to all possible types of transactions with related parties and may be regarded as a main rule. This means that all dealings with related parties must be effected on market terms (or terms that are more favorable to the investors). Such dealings include execution of investment transactions, safe-keeping of securities, investment of liquid assets, lending and borrowing of securities, loans and mortgages, buying and selling of investment instruments on a regulated market, market making, execution of transactions that generate acquisition commission and the outsourcing of activities.</p> <p>Beyond these points, there are no specific regulations with respect to conflicts of interest. The AFM reviews during inspections whether market terms exist and if there are any conflict of interests. In the notes to the annual accounts it will suffice to include the applicable transaction types and state that they were carried out on market terms. The management of the CIS should have available sufficient documentary evidence to demonstrate that if transactions are carried out with related parties, inquiries have been made to ensure that the terms governing such transactions are in line with market terms. This could for example include inviting quotations for comparable transactions from external parties. The external auditor will be able to use this documentary evidence to check these terms if they are in line with market terms. Finally it should be noted that CIS operators are required always to act in the best interest of the investors. If a conflict of interest results in a situation that breaches this best interest norm, then it is possible that the Authority will question the fitness and integrity of the managers, resulting in their dismissal.</p> <p>The CIS may outsource functions according to a circular letter issued by the AFM. This prevents the outsourcing of all essential functions, requires proper monitoring of such functions and requires the CIS to have the capacity to withdraw the delegation where necessary. The delegate must sign a written agreement accepting the obligation to comply with the regulatory requirements. The CIS itself retains the responsibility of the entire operations and conduct. Outsourcing must be disclosed. Any conflict between the delegate and investors would be dealt with by the provision that the CIS retains responsibility for regulatory compliance including the appropriate resolution of conflicts of interests.</p>
Assessment	Fully implemented
Comments	<p>In respect of the typical model of CISs in the Netherlands, in which a CIS would encompass all the operator functions, the approach to authorization is appropriate. However, the AFM and DNB do not themselves have regulatory authority over those entities that perform all the functions of a CIS. There is no direct regulation of the administrator of a CIS for example.</p> <p>In practice, if the functions of a CIS were delegated to a professional administrator, the administrator would not need to be regulated. Normal regulatory sanctions may be more effective in respect of a professional administrator that would wish to continue in business and therefore would</p>

	<p>need to continue to enjoy the confidence of the regulator, than the directors of a CIS. While many of those bodies that carry out administrative functions may well be regulated anyway, because of their other financial services activities, it is not satisfactory to rely on this. It is not clear that a regulator may take action with respect to actions or inactions by a regulated body, when the action are taken in the context of an activity (administration of a CIS) which does not itself give rise to a requirement to be regulated. Moreover, there would be uneven treatment as between CIS administrators who happened to be regulated and those that were not.</p> <p>The fact that a CIS remains responsible for those functions it outsources means that the strict requirements of the criteria are met. Nevertheless, the authorities should consider whether to extend the registration requirement to all those who carry out functions associated with a CIS.</p> <p>The authorities are recommended to consider extending the regulatory requirements to cover all those providing functions for CISs.</p> <p>It is very important that there should be adequate measures to prevent conflicts of interest. The AFM has issued circular letters and policy guidelines in other forms. These can be and are enforced through reliance on general principles – such as the requirement in the Act that the CIS must operate in the best interest of the investor. Because this method has worked hitherto in the Netherlands market, the arrangement has been scored as fully compliant. Nevertheless, it is not ideal. It is likely that there will be an increasing tendency to challenge enforcement action based on such general principles. It is important that AFM have effective rules and enforcement measures. Relying on the fact that the failure to deal with conflicts could lead to a breach of a high level principle may often be sufficient. But in certain conditions and in respect of certain market intermediaries, it may not always be enough. The authorities have indicated that they will be introducing more specific measures on conflicts of interests and record keeping by means of the Further Regulations that they will be able to implement under the new law and the revised Decree on Investment schemes. This is to be commended.</p> <p>It is striking that the degree of specific rule making in respect of CISs is far less than in the case of the securities business (reflecting the provisions of the Act). In a very real sense, it is an example of the opposite extreme, with too little specificity rather than too much.</p> <p>The Actualization and Harmonization of Securities Law and securities specific supervision on code of conduct is introducing powers for the AFM on conflicts of interests. Specific rules on record keeping are to be implemented through the Further Regulations on the Act on Investment Schemes. This is to be welcomed.</p> <p>The authorities are recommended to ensure that the new legislation provides for powers to make specific rules on conflicts of interest and record-keeping that are adequately enforceable.</p>
Principle 18.	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
Description	<p><i>Legal Form / Investors Rights</i></p> <p>The CIS may be a unit trust, a limited liability company or a limited partnership. Disclosure requirements and the rights of investors as to pricing mechanism, sale and redemption rights, and changes in the terms of the CIS are set out in the Annex to the Decree on CISs. The AFM would enforce the disclosure requirements on the legal form by examining the prospectus. The Annex to the Decree demands prior notification of changes to terms and conditions with a requirement that investors be able to sell their investments if they choose. Where the rights of investors are diminished, they will be able to sell their investments if they choose within three months.</p> <p>Changes to terms and conditions must be notified to the AFM and not implemented without its</p>

	<p>approval (Article 14 of the Decree).</p> <p><i>Separation and safekeeping of assets</i></p> <p>The applicant for an authorization for a unit trust should show that:</p> <ul style="list-style-type: none"> • assets will be deposited for safekeeping with an independent depository, and • assets will be segregated from assets and liabilities of depository itself and other persons or entities; Section 5 (2) under b and c, Act. <p>To safeguard investors assets, the applicant for authorization should show that</p> <ul style="list-style-type: none"> • the depository shall act solely in the interest of the unit holders; • control over documents of value in safekeeping should be held solely by CIS and depository together; • surrendering of documents of value by the depository must only occur against the receipt of declaration from CIS that surrendering is required for the performance of the regular management function; and • there is liability for depository for losses resulting from culpable non or defective performance. Decree, Annex A, 3.1 to 3.4. <p>The depository must be an independent legal entity: no personal or financial ties or mutually held directorships must exist between the boards of the depository and CIS. (Explanatory Memorandum (Memorie van Toelichting). Non-compliance should be reported to the Authority, as it may affect the authorization or may lead to supervisory measures.</p> <p>There are no special requirements for the keeping of books and records in relation to transactions involving CIS assets and all transactions in CIS shares or units or interests. However, the keeping of books ad records must be of sufficient quality in order for the CIS to be able to comply with Section 15 of the Decree, including the comments about keeping books and records in the Explanatory Notes on Section (section 15), and with the circular letter ‘Policy rules relating to the administrative organization of collective investment schemes’ of 12 December 1996.</p> <p>Specific requirements that provide for the maintenance of books and records are to be included in the revised Decree on Investments Schemes that will be introduced in 2004 and this is to be welcomed. Requirements on the maintenance of books and records in relation to all transactions in CIS shares or units or interest are not planned as of yet.</p> <p>There are no specific (internal or external) requirements in respect of the auditing of the assets of a CIS. CIS however are obliged to comply with section 1.5 of Annex A of the Decree. Section 1.5 requires that the rules of the CIS must contain the method of the valuation of the assets. Each CIS has to publish a certified annual account (Sections 19 and further of the Decree). If applicable the auditor will declare that these financial statements (including the assets) represent a true and fair view.</p> <p>The regulations do not require the assets of a CIS to be held by an independent third party, when the CIS self is in the form of a limited liability company. The AFM takes the view that the requirement that a fund company be totally separate and conduct no other activity meets the requirement for alternative safeguards. Since the Netherlands CISs do not appear to have suffered unduly as a result of this arrangement, hitherto, it is difficult to argue that the arrangements do not provide adequate alternative safeguards.</p> <p>Again, there are no specific rules on an orderly wind up of CISs but the AFM could use its normal enforcement powers to achieve this effect.</p>
Assessment	Fully Implemented

Comments	<p>The authorities are recommended to introduce specific requirements that provide for the maintenance of books and records in relation to transactions involving CIS assets and all transactions in CIS shares or units or interest.</p> <p>The Netherlands is unusual in refraining from requiring a CIS to entrust its assets to an independent third party when the fund is a limited liability company. The arrangement has proved satisfactory so far but the authorities may wish to consider whether or not it would be consistent with their regime and an additional safeguard to introduce such an arrangement for a limited liability company, as they have done for a unit trust. While a limited liability company (with no other functions) satisfactorily provides for segregation of assets, it does not ensure that there is a third party – a custodian – with responsibility for assets, that would oversee the actions of the CIS and ensure, for example, that asset disposals were in line with the terms and conditions of the CIS. Such a requirement would be difficult to implement in the highly concentrated market in The Netherlands but would nevertheless be worthy of consideration. If the authorities were not to wish to make this change, they might consider what alternative safeguards there might be to ensure that disposals of assets were in line with the terms and conditions of a CIS.</p>
Principle 19.	<p>Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor’s interest in the scheme.</p>
Description	<p><i>Information Requirements</i></p> <p>The prospectus shall contain all information necessary to enable an informed judgment to be made on the value of the CIS product and the price to be paid for investments. Furthermore, annual and semi annual accounts shall be published. Monthly statements with key information, such as total value of investments of CIS and a survey of composition of investments should be available (Sections 6 and 19 to 23 Decree). Each CIS shall have a key features document (KFD).</p> <p>While the requirement for a prospectus obliges the CIS to include all relevant information to allow an investor to make a judgment, the ongoing requirement to publish annual and semi annual accounts contain no general requirement to disclose all material matters relating to the value of the investments in the CIS. There is, however, an overriding requirement in the Act to the effect that the AFM must be satisfied as to the information to be furnished to investors.</p> <p>The Decree and annexes include specific requirements to provide information about</p> <ul style="list-style-type: none"> • the date of the issue of the offering document; • information concerning the legal constitution of the CIS; • the rights of investors in the CIS; • information on the operator and its principals; • methodology on asset valuation; • procedures for purchase, redemption, and pricing of units; • relevant financial information concerning the CIS; • information on the custodian; • the investment policy of the CIS, indicating the markets and instruments in which investments are made; • information on the risks involved in achieving the investment objectives; • the appointment of any external administrators or investment managers or advisers who have a significant and independent role in relation to the CIS; and • fees and charges in relation to the CIS. <p>If the AFM is not satisfied with the information in the prospectus, it may withhold authorization and thereby prevent the offer.</p>

	<p>Advertising documents are subject to disclosure standards laid down in the ‘Directive for advertising by collective investment schemes’. This directive sets conditions so as to enable the public to gain an insight into the investment opportunities offered and into the objectives pursued by the CIS as well as into its investments and the associated risks.</p> <p>The Directive mentions, among other things, the following requirements concerning advertisements.</p> <ul style="list-style-type: none"> • it shall be clear to the public that a CIS is concerned; • the advertisement shall include the name of the CIS; • the advertisement shall be substantively truthful and shall not be misleading; • the insight that may be gained from an advertisement should not differ in any material respect from that which may be gained from the compulsory information; • advertisements stating expectations about the future or referring to past performance shall include the following sentences: <i>‘The value of your investments may fluctuate. Past performance provides no guarantee for the future.’</i> • the Advertisement shall state the places where the prospectus can be obtained by the public; • the presentation of actual returns shall comply with requirements concerning, among other things, definition, consistency, reference period and benchmark; and • Simulations and forecasts have to be certified by an expert. <p>Section 18 of the Decree requires that a CIS should update the essential information in the prospectus as soon as it is reasonable to do so.</p> <ul style="list-style-type: none"> • Requirements for periodic reports are set out in the Civil Code and in the Decree Accounting standards are also subject to the Civil Code.
Assessment	Fully implemented
Comments	There are no further comments on this principle.
Principle 20.	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	<p><i>Asset Valuation</i></p> <p>Requirements in respect of the valuation of CIS assets are set out in the Dutch Civil Code (Book 2) and in the rules on external reports as set by the Dutch council on external reporting. Such requirements are not tailored to CISs.</p> <p>The timing of the valuation of assets depends on the nature of the assets (the most liquid financial instruments being valued most frequently and illiquid non financial assets such as real estate being valued much less frequently). There are no regulations to this effect but the frequency must be set out in the prospectus.</p> <p>The accounting standards would be required by the Civil Code but not by any regulation specific to CISs.</p> <p>The prospectus should state that the pricing should be at fair value. There are no regulatory requirements to this effect. Equally, there are no requirements that the valuations are fair and reliable other than the general requirement that the CIS be run by fit and proper management. It is necessary to have independent auditors of CIS assets.</p> <p><i>Pricing and Redemption Issues</i></p> <p>The NAV of those CISs that are freely repurchased must be recalculated daily. Other CISs may be</p>

	<p>calculated much less frequently depending on the nature of the CIS. The frequency must be disclosed in the prospectus.</p> <p>Requirements as regards pricing and redemptions are required to be disclosed in the prospectus.</p> <p>There are no specific rules set by the regulatory authority for pricing controls to identify and rectify errors, omissions or misplacement of assets. As regulatory authority AFM expects and sees to it that CIS operators have internal guidelines and procedures for identifying and rectifying errors and omissions. This expectation has been made public.</p> <p>The scheme documentation would set down conditions for the suspension of redemption rights. There is no regulatory oversight of this matter. There are no requirements that the regulator be informed and no right to intervene.</p>
Assessment	Fully implemented
Comments	As with the other CIS principles, the rating has been given on the basis that the arrangements appear to work satisfactorily. Moreover, a regime based on full disclosure with limited specific requirements and prohibitions may have been satisfactory in the concentrated market in the Netherlands. Nevertheless, the absence of a major public scandal is not sufficient reason for supposing that the regime will always work well and it would be worth reviewing the specificity of the rules in the context of the new laws as recommended above.

Principles for Market Intermediaries	
Principle 21.	Regulation should provide for minimum entry standards for market intermediaries.
Description	<p><i>Authorization</i></p> <p>Persons not possessing a license are prohibited from offering or performing services as a securities broker or portfolio manager in or from the Netherlands (section 7, Act). This provision does not cover firms that may be holding out as offering investment services, when they are not in fact doing so and may be engaged in some form of fraud. There are other sanctions that can be applied to other kinds of fraud.</p> <p>The Dutch Central Bank (“DNB”) and the Netherlands Authority for the Financial Markets (“AFM”) grant licenses to market intermediaries. DNB has the authority to grant licenses to credit institutions. Securities Institutions are granted a license by AFM.</p> <p>Institutions applying for a license must prove that they meet the requirements as laid down in the Act. The Act states, in general:</p> <ul style="list-style-type: none"> • that managing directors should be fit and proper; • that a firm should meet certain capital and other financial requirements; • which information should be distributed to the public; and • measures that should be taken in order to ensure proper compliance with the Act (in the field of, for example, internal control systems and procedures for order flows). <p>The following rule applies:</p> <p><i>“Section 7, sub 4, Act on the supervision of the securities trade 1995 (“1995 Act”)</i> <i>-4. Our Minister shall, upon request, grant a license as referred to in subsection (1) if the applicant satisfies rules to be laid down by or pursuant to an order in council in respect of:</i></p> <ul style="list-style-type: none"> <i>(a) fitness and properness;</i> <i>(b) financial guarantees, on a consolidated basis or otherwise;</i> <i>(c) management and establishment of the head office;</i> <i>(d) information to be supplied to the public; and</i> <i>(e) assurances about proper supervision of compliance with the rules laid down by or pursuant to this Act.”</i>

The requirements laid down in section 7 are worked out in more detail in the Decree, Further Regulations and policy rules. The licensing procedure is subject to the General Administration Law Act in which procedural rules regarding decisions of bodies such as AFM are laid down.

The requirement for fitness and properness applies directly only to those who represent the intermediary or determine day-to-day policy. There is no requirement on the AFM / DNB to assess the fitness and properness of all those who materially influence the applicant. It is the responsibility of the intermediary itself to ensure the appropriateness of other staff under Annex 4.24 of the Further Regulation. The AFM/DNB are not in a position directly to prevent the employment of persons who materially influence the intermediary, unless they meet the definition of someone who represents the intermediary or determines its day to day policy. While Annex 4.24 of the Further Regulations includes a general statement that the regulated business should keep records about the suitability of its staff, there are no specific requirements as to the qualifications that should be held by key personnel. Credit institutions are subject to an equivalent provision under Article 12 of the Further Regulations on prudential supervision.

DNB can grant a license for the securities activities of a credit institution. Given the nature of the Dutch financial system, which is dominated by four large financial institutions which are credit institutions but which are highly active in the securities market, this means that the DNB is, in effect, the licensing authority for the largest players in the securities business. Indeed, many securities firms hold banking licenses as well, even though they do not conduct much banking activity. For them, too, DNB is the licensing authority, even though their primary activity may be securities business.

Authority of the Regulator

The DNB and AFM may refuse to license an intermediary or withdraw a license once issued if in their judgment the licensing criteria are not met. This decision can be appealed to the court.

Both regulators can give and withdraw approval for the employment of key personnel.

Ongoing Requirements

A securities institution shall notify the supervisory authority before every planned alteration to:

- the number and identity of the directors of the institution (section 10 Decree 1995);
- the structure of the institution (referred to in section 15(1) Decree 1995);
- the measures referred to in section 16(1) Decree 1995 (segregation of assets)
- the accounting system and related internal controls, recording system and other systems (referred to in section 17(1) Decree 1995);
- the name and address of the head office of the securities institution and, if it is not established in the Netherlands, the address of the branch office, together with, where applicable, the place in which it is established; and
- the composition and the formal and actual control structure of the group to which the securities institution belongs.

The notification of the institution must be accompanied by explanatory documents and, if requested by the licensing authority, other information and documents that the authority reasonably deems necessary for the assessment of the notification. An alteration as referred to in the above may not be implemented if the regulatory authority rejects the proposal to that effect within six weeks of receiving the notification referred to in subsection (1), or, if the regulatory authority has requested further information or documents following receipt of the said information. If there is an alteration to the antecedents of the directors (referred to in section 20(a) Decree 1995), or to the programme of activities (referred to in section 20(s) Decree 1995), the securities institution must give the

	<p>regulatory authority written notification thereof immediately.</p> <p>A licensed entity that is not a credit institution must notify the AFM of any breaches of the regulations (Article 39 of the Further Regulations) unless it is a credit institution. A credit institution should inform the DNB who have undertaken to inform the AFM in respect of securities business.</p> <p>Article 24 of the Further Regulations requires a licensed entity to notify the regulator if it is proposing any changes in its accounting system or internal controls.</p> <p>However, while these specific matters must be notified, there is no general requirement to notify the AFM / DNB in respect of any material change in circumstances that might affect the licensing decision. Moreover, there is no explicit requirement to notify the Dutch regulators of investigations or disciplinary action taken by foreign regulators, nor of potential litigation against the securities firm.</p> <p>The Dutch regulators would be obliged to rely on MoUs they happened to have with some other regulators.</p> <p>The AFM/DNB do publish a register of all licensed intermediaries. The register includes information on the scope of permitted activities but not of any condition on a license nor of the identity of senior management.</p> <p><i>Investment Advisers</i></p> <p>Investment firms that deal on behalf of customers or who have custody of client assets are required to be licensed and are subject to the appropriate financial resource requirements. They are subject to the detailed record keeping requirements laid down in the Further Regulations. They are not required to disclose their educational qualifications, experience, or disciplinary history. Nevertheless like other intermediaries, they are required by Article 33 of the Further Regulations to disclose potential conflicts of interest between themselves and their clients. They are subject to rules governing misleading statements which encompass, although not explicitly, the need to avoid giving false guarantees. They are required to safeguard client assets and avoid conflicts of interest.</p>
Assessment	Broadly Implemented
	<p>The rating arises because there is no requirement to make public the names of the senior management of a regulated entity.</p> <p>The authorities are recommended to amend the requirements so that the names of the senior management of a regulated entity are available to the public.</p> <p>The regime currently provides for a single license, so that an institution that obtains a license can carry out any financial services. However, the competence, financial requirements, risk management requirements and other licensing requirements for securities business are not the same as those required for a bank. Moreover, under the current regime, an entity could carry out securities business on the basis of a license obtained for banking. It is arguable that this fact alone contravenes the basic requirement in the IOSCO principles that it should be necessary to be licensed to operate a securities business. Nevertheless, on the basis that a license is required and that the covenant requires AFM/DNB consultation, the requirement is deemed to be met.</p> <p>Although the AFM is now not a securities regulator but a conduct of business regulator, the fact remains that conduct of business issues tend to predominate in the regulation of securities businesses. At present, there are many securities business that are licensed by the DNB because they are carried out by institutions that also conduct banking activities, whereas the supervisory issues on securities activities will be matters for the AFM. While the covenant between the regulators provides for the DNB to seek advice from the AFM, the advice from AFM is not binding on the</p>

	<p>DNB when making a licensing decision about the suitability of a business to carry on securities business. It is not appropriate that the body with the main supervisory responsibility for such businesses should not be in a position to give, withhold or withdraw a license from such businesses, depending on its judgment.</p> <p>There are a number of alternative models for remedying this. The normal practice is to provide that any business must apply for a license for each of its proposed activities. The DNB and AFM would decide between them which activities tended to raise more conduct of business issues and which raised more prudential issues and divide responsibility for licensing activities accordingly. This could mean that a single entity might be successful in applying for a license for one type of activity but unsuccessful in another. There is no inconsistency in this.</p>
Comments	<p>Such an approach would be a departure for the Netherlands where there has been single licenses for some time. An alternative would be to offer a single license but place a condition on it limiting the entity to certain areas of business. To expand the scope of activities or avoid such a condition, the entity would have to apply to the appropriate regulator. The covenant between AFM and DNB could be amended so that the primary licensing authority would be bound to take action to limit the activity of an entity where the other regulator advised it that this was necessary.</p> <p>The AFM and DNB are recommended to ensure that licensing decisions are only taken, for each area of activity, with the explicit consent of that regulator with primary responsibility in practice for supervising that area of activity. Equally permission to continue to pursue each area of activity should be withdrawn if the regulator with primary responsibility for its supervision advises that this is necessary.</p> <p>The list of matters that should be notified to the regulators is wide but not comprehensive. It does not include a number of matters that might well in practice be of relevance to a licensing decision. In practice, the list of matters that is subject to notification has proved to be sufficient, according to AFM. An institution that failed to notify such a breach would probably cast doubt on whether it was fit and proper to do business. However, the absence of a broad based requirement to notify the licensing authority of any matter that might affect the licensing decision is an important weakness. Moreover, even though a credit institution is required to notify DNB of regulatory breaches, and they will, in turn, notify AFM, it does not seem appropriate that a credit institution should not tell the AFM direct of any breaches of the conduct of business regulation.</p> <p>The authorities are recommended to introduce a broadly based notification requirement – namely that any matter that would be material to a licensing decision should be notified to the relevant authority, be it DNB or AFM – and also adding to the list of specific matters, litigation against the company, significant investigations or disciplinary action by any regulator against the entity or its key personnel in other jurisdictions (which might affect the judgment of their fitness to conduct business in the Netherlands), changes in indemnity insurance, where relevant and any decision by a foreign regulatory authority to refuse a license. They should also withdraw the exemption for credit institutions of the exemption from the requirement to notify the AFM of breaches in conduct of business regulations.</p> <p>The definition of those who are subject to checks by the regulator as part of the licensing process is different from and may be narrower than that required for international standards.</p> <p>The authorities are recommended to consider widening the definition of personnel subject to checks by the AFM and DNB to include any person who is in a position to control or materially influence the applicant for a license.</p>
Principle 22.	<p>There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.</p>
Description	<p><i>Capital Requirements</i> Securities firms are subject to ongoing capital requirements. They are designed to ensure the</p>

	<p>solvency of the intermediary and are based on the EU Investment Services Directive. The following minimum requirements are applicable on an ongoing basis:</p> <ul style="list-style-type: none"> • A minimum level of equity capital; and • A minimum level of actual own funds (these must be a minimum of the sum of the capital adequacy requirements to cover position risk with regard to the trading book; settlement, delivery and counter party risk with regard to the trading book, large exposures with regard to the trading book, foreign exchange risk regarding the entire business, other risks). <p>Without prejudice to the level of actual own funds, an institution must have actual own funds of at least 25 percent of the fixed costs of the institution during the preceding financial year. The calculation of own funds requirements includes both on balance sheet items and off balance sheet transactions.</p> <p>The authorities have stated that the intermediary is not required explicitly to have capital requirements related to legal or reputational risks. However, the DNB has the discretion to issue an instruction to increase capital where it considered that the existing level of capital was insufficient to meet current risks. Thus, for example, this power could be used where a regulated entity faced additional legal risk from claims by investors. The capital requirements could also be increased, using the same mechanism in the light of changes in market conditions as well as in the light of changes in the activities of the intermediary.</p> <p>The capital requirements are designed to ensure continued solvency. They are in line with the requirements of the EU Directive and therefore would, in practice be sufficient to allow the intermediary to absorb some losses. In addition, there is an investor compensation scheme.</p> <p><i>Record keeping and reporting</i></p> <p>Reports must be submitted monthly (quarterly for portfolio managers) to the DNB but there is no requirement on the intermediary to maintain records such that capital levels can be readily determined at any time (although such a requirement is implicit in the requirement that an intermediary must be in a position to report to the DNB if the level of own funds falls below 120 percent of the required level).</p> <p>The standardized periodic report is designed to reveal any significant deterioration in any aspect of capital requirements.</p> <p>The financial position of the regulated entity is subject to independent audit.</p> <p>If the DNB considers that a regulated firm has insufficient capital, action is taken at first through telephone contact. If that is not sufficient, it would be followed by a formal letter. If this is not followed formal actions are put in place such as instructions, fines and ultimately withdrawal of license (the latter in co-operation with AFM). On an average month a handful of letters is sent to regulated firms.</p>
Assessment	Fully implemented
Comments	The DNB applies capital standards to securities firms that are in line with the EU Directive. The criteria for this principle are met.
Principle 23.	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	<p><i>Management and Supervision</i></p> <p>A licensed market intermediary is required to have, according to the judgment of DNB or AFM,:</p> <ul style="list-style-type: none"> • Adequate accounting system and internal controls

- A good accounting system and effective related internal controls and a reliable recording system for the services it has performed, together with systems for the effective monitoring and control of the risks relating to its operations as a whole and systems for determining its financial position accurately at any time. The said system, controls, recording system and other systems must enable AFM to ascertain whether the rules governing the management of the activities of the securities institution and capital adequacy are being complied with – (Section 17 Decree 1995).

The directors of a securities institution are responsible for the set-up, existence and operation of the accounting system and related internal controls and, to this end, the institution will need to organize, describe and regularly update the accounting system and related internal controls. A proper accounting system and related internal controls requires that the management board of the securities institution is informed about the performance of the securities institution, that there is adequate supervision by and on behalf of the management of the efficient operation of the accounting systems and related internal controls and that there is an effective response to signals from the securities institution and/or third parties.

Article 24 of the Further Regulations stipulate that the accounting system and related internal controls shall be systemically described, regularly evaluated and, if necessary, updated. Each significant change in the accounting system and related internal control should be reported to the AFM beforehand. There is, however, no explicit requirement that this evaluation should be conducted by an independent person, nor that any weaknesses should be reported to the AFM or DNB. However, auditors are required to report material breaches in regulatory requirements to the regulator and a material breakdown in controls is certain to be regarded as such.

Consumer Protection

Intermediaries are required by Annex 4 of the Further Regulations to have an adequate procedure for handling complaints. (Annex 4.14 of the Further Regulations).

Strict segregation of assets must be implemented. A securities institution must make such arrangements in respect of the securities and monies of clients that, according to the judgment of the AFM, the rights of clients are sufficiently protected and to prevent securities and, except in the case of credit institutions, monies being used by the securities institution for its own account.(article 12 FR 2002).

Client assets must be held on accounts under the name of this client. A client must authorize an institution before it may handle any assets.(article 13 and 14 FR 2002). These measures are designed to ensure that client firms are not misused by the intermediary and are protected in the event of insolvency. An intermediary is not permitted to pool client assets into a single client account, even if it could thereby obtain better returns for its customers.

An investment institution must take note, in the interests of its clients, of their financial position, experience and investment objectives, in so far as these may reasonably be deemed to be relevant to the performance of its services (section 24 Decree 1995. This is the so-called “know-your-customer rule”).

Before signing an agreement with a client, a client must have identified himself. Copies of identification-papers must be kept in the files of the securities institution (article 4.12 sub d Annex 4 FR 2002).

A client agreement must be concluded with each client. This agreement forms the sole basis for the services that the securities institution performs for the client in the conduct of its business. The contents of this agreement are set out in the Further Regulations Article 33.

	<p>A securities institution must provide its clients with the information and documents necessary for an assessment of the services offered by it and the securities to which the said services relate.</p> <p>1. At least once every three months an institution must provide each client with a statement that provides true, fair and complete information about the composition of the portfolio managed for that client. This statement must include at least the following information:</p> <ul style="list-style-type: none"> • details of the market value and the composition of the portfolio, including a breakdown by the type of financial instrument and by individual financial instruments; • an analysis of the changes in the asset components and a calculation of the realized and unrealized losses/gains at the time; • the method of valuation used; and • the various management and other costs charged or to be charged to the client (article 25 FR 2002) <p><i>Internal controls</i></p> <p>An intermediary should have procedures in place to ensure monitoring of compliance with certain but not all legal and regulatory requirements under Article 40 of the Further Regulations. There is no explicit requirement to have a person or group of persons with this responsibility. A securities firm can be subject to the control of two independent people, even if it is handling client assets.</p> <p>Client records must be kept according to Annex 4 of the Further Regulations. The AFM/DNB have the right to obtain such information as they need for the fulfillment of the supervisory duties.</p> <p>Section 24 Decree 1995 requires that a securities institution shall, during the performance of its activities, comply with rules to be laid down by the supervisory authority that serve to ensure that the securities institution:</p> <ul style="list-style-type: none"> • acts in the interests of its clients and the proper operation of the securities markets; • takes note, in the interests of its clients, of their financial position, experience and investment objectives, in so far as these may reasonably be deemed to be relevant to the performance of its services; • provides its clients with the information and documents necessary for an assessment of the services offered by it and the securities to which the said services relate; • endeavors to avoid conflicts of interest and, if these are unavoidable, ensures that its clients are treated fairly; • does not use the powers that it has been granted for the services to be performed by it for purposes other than those for which the powers were granted; and • has a good internal organization and effective control mechanisms in order to ensure compliance with the rules referred to in the opening lines and to promote the continuity of its operations. <p>The general requirement under Section 17 of the Decree to have sufficient internal controls relating to the risks of the operation as a whole would encompass the need to have:</p> <ul style="list-style-type: none"> • measures to preserve the integrity of the firms dealing practices; • safeguards against the unauthorized use of its own or its clients assets; • appropriate segregation of key duties and functions; • proper accounting records; and • compliance with regulatory requirements.
Assessment	Fully Implemented
Comments	The requirements to have high standards of integrity (including with respect to dealing practices) and to comply with legal and regulatory requirements is implicit in a range of requirements set out in the regulations. However, it would be helpful to make such standards explicit.

	The authorities are recommended to introduce a legal requirement to the effect that the legal and regulatory obligations should be met and that, the intermediary should act with honesty and integrity and observe high standards.
Principle 24.	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	<p><i>Contingency Plan</i></p> <p>There is no contingency plan established by the regulators for dealing with the failure of a market intermediary. Measures would be decided on an ad hoc basis in co-operation with other regulators. The DNB has the power to limit or prevent actions by the intermediary through written notice. A silent receiver may be appointed, according to Section 28 of the Act.</p> <p>The AFM does have an incident procedure that would be brought into play in the event of the failure of an institution. However, the procedure does not include the DNB, who would be brought into the plan as necessary, according to the terms of the covenant between AFM and DNB. The regulators are drawing up such a plan and this is to be commended. In addition, there is an investor compensation scheme.</p> <p>As noted above in the response to principle 22, the intermediary is required to give warning to DNB if own funds fall below 120 percent of the required level.</p> <p><i>Regulatory Action</i></p> <p>The DNB can:</p> <ul style="list-style-type: none"> • Restrict actions under the intermediary (section 28 of the Act). • Require the intermediary to take specific action (Section 28 Act). • Put in a silent receiver (Section 28 Act). <p>An investor compensation scheme exists and would operate where an intermediary could not meet its liabilities in respect of investors' claims. This investor compensation scheme ("BCR") operates where an intermediary cannot meet its liabilities in respect of investor claims. Not all kinds of investor claims are compensated by the BCR, but claims due to failure of the segregation of assets are compensated.</p> <p>There is no provision for requiring public disclosure of the firm's trading status to the market. Foreign supervisors would be informed by either AFM or DNB as soon as possible.</p>
Assessment	Not implemented
Comments	<p>The rating follows from the fact that there is not any clear plan for dealing with a firm's failure. While the AFM has an incident procedure, it is not designed to deal with a failure as such and it does not include the role of the DNB, which would be critical in the event of a failure of an intermediary.</p> <p>The DNB and AFM are recommended to establish a clear plan for dealing with the eventuality of a firm's failure, that includes both their roles.</p> <p>The authorities should also introduce into such a plan, procedures for the appropriate disclosure to the market.</p>

Principles for the Secondary Market

Principle 25.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	<i>Exchanges or Trading Systems Subject to Regulation</i>

	<p>Article 22 of the Act gives the Minister of Finance the power to recognize exchanges. It is prohibited to operate an exchange without recognition unless enjoying an exemption (which would be offered only to foreign exchanges operating under a passport according to the ISD) or a dispensation, which would apply to non EEA exchanges and exchanges trading products not covered by the ISD – such as commodity derivatives.</p> <p>Recognized status shall be granted provided that the operator of the securities exchange shows that it is established in the Netherlands and that the operation of the securities exchange, the rules that are to be applied by the said securities exchange, their application, and the monitoring of compliance with the said rules, meet the standards necessary for ensuring the proper operation of the securities markets or protecting the position of investors in the said markets.</p> <p>The following aspects will be verified (as a minimum):</p> <ul style="list-style-type: none">• the expertise of the persons who determine the day-to-day policy of the operator;• the integrity of the persons who determine or help to determine the policy of the operator;• the financial guarantees;• the settlement system; and• the application of the current rules of the securities exchange, to Issuers and to securities institutions that will be admitted to the said securities exchange and to subsidiaries thereof. <p>To the recognition, restrictions may be imposed and conditions attached in the interests of the proper operation of the securities markets or the position of investors in the said markets (the Act, article 22). The AFM also applies the standards laid down by FESCO (now CESR) on the requirements for regulated markets.</p> <p>These criteria are very high level and would give little guidance as to what was actually required for an exchange established in the Netherlands market. This has not been an issue hitherto as Euronext (and its predecessor exchange) predated the Act. Requirements placed on the Exchange as a condition of recognition are included in the letter granting recognition. However, there are no clear criteria or principles against which the performance of Euronext can be judged other than at a very high level of generality. Nevertheless, AFM does in practice examine such matters as the arrangements for managing the risk of non performance of contracts.</p> <p><i>Supervision</i></p> <p>The AFM has the responsibility to satisfy itself that a recognized exchange adequately monitors and enforces its rules.</p> <p>The operator of a securities exchange recognized pursuant to section 22 must notify the AFM in advance of any change in the rules referred to in section 22(2) or in the compliance procedures in respect of the said rules. The AFM does not formally approve new rules or amended rules. The AFM will assess any change in the rules by evaluating whether these new rules will contribute to the regulatory goals of the Act (although these are at such a broad level of generality, they do not appear to provide guidance as to how to evaluate the proposed rule changes). Article 24 of the Act gives the Minister of Finance the power (delegated to the AFM) to issue instructions with regard to the rules applied to the Exchanges. The same applies to proposed changes in exchange regulation. However, this arrangement does not give the AFM any formal powers with respect to weaknesses in the governance of the Exchange that does not relate to rules.</p> <p>In the exchange supervision process AFM looks at all processes that are relevant for the adequate operation of the securities markets and the position of the investors in these markets. Internal guidelines are laid down in the supervisory goals of the AFM:</p> <ol style="list-style-type: none">1. To promote access to the market. The AFM promotes access to the financial markets for
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market players (both consumers and offerors from the Netherlands and abroad). Access requirements apply to all market players. The AFM ensures that access to the market is not unnecessarily hampered as a result of these requirements.

2. To promote the efficient, fair and orderly operation of the market. No single party may feel disadvantaged compared to other parties. The AFM therefore ensures that there are recognizable standards on the financial markets. These standards, together with their enforcement, contribute to a level playing field for all parties.
3. To guarantee confidence in the market. The AFM encourages market players (both individually and jointly) to take responsibility for the proper operation of the market. The responsibility which market players have is an ongoing one. The AFM only intervenes where and when necessary. To ensure that the number of incidents remains limited and to ensure that transactions in the market are fair and honest, the AFM sets and maintains standards.

The current rules do not explicitly require that the regulator assesses such matters as the dispute resolution and appeals procedures, technical systems, record keeping etc and mechanisms to identify disorderly trading conditions. However, the AFM has the power to examine these matters and the power to take action where weaknesses arise in a way that relates to the rules.

The Exchange is a monopoly and some market participants have noted that fees are at a high level. This is a matter of some importance as there is some competition for the trading of the more liquid Dutch stocks. This is not a matter within the competence of the regulator but could be examined by the Dutch competition authority.

Securities and Market Participants

There is no requirement for the regulator to be informed of the types of securities to be traded on an Exchange, although in practice regular monitoring meetings could encompass such matters. As noted in response to principle 7 above, Euronext believes that the AFM has the power to approve rule changes, whereas AFM considers that it has the right to comment if it chooses.

It is for Euronext itself to take product design and trading conditions into account when considering admitting a product for trading.

The AFM has the power to satisfy itself through oversight that the Exchange has rules designed to ensure fair access to the market.

Fairness of Order Execution Procedures

Euronext trading rules have procedures for ensuring that order routing procedures are clearly disclosed, with clear rules for order precedence. AFM not Euronext is responsible for monitoring possible abuse of customer orders.

Order execution rules are disclosed to AFM, which has the oversight responsibility for ensuring adequate enforcement. The AFM will also examine trade matching and execution algorithm. Execution rules are published to the market.

Operational Information

AFM has the responsibility for ensuring that market rules operate so as to ensure equal access to market rules and operating procedures, transparency, record keeping, disclosure and confidentiality.

The current market arrangements are transparent in the form of an open order book and reasonable rules on pre and post trade transparency. The records are sufficient to allow investigations into

	market misconduct and there are safeguards in the system designed to ensure appropriate disclosure and confidentiality. The rules on pre and post trade transparency are discussed under principle 27.
Assessment	Fully Implemented
Comments	<p>The absence of clear recognition criteria means that there are no clear performance criteria for Euronext. Moreover, the current arrangements have the effect that AFM's powers to issue instructions to Euronext only apply in respect of their rules.</p> <p>The authorities are recommended to increase the transparency of the recognition and supervision process, making it more comprehensive by establishing clear recognition criteria and deploying those criteria as ongoing performance standards. The AFM should then be empowered to issue instructions to Euronext whenever they judged it necessary to meet the published performance standards.</p>
Principle 26.	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	<p><i>Oversight Mechanism</i></p> <p>The AFM has developed a Supervisory Strategy for Euronext in order to structure its supervision of Euronext. The Supervisory Strategy is based upon the principle that the exchange itself is responsible for making the maximum contribution, now and in the future, to the achievement of the supervisory objectives of the AFM. The Supervisory Strategy is therefore based upon a Contribution Model. The Contribution Model is a self assessment by the exchange in which it will indicate, in its opinion, what contribution it makes to the achievement of the objectives of the AFM. A model will be provided to the exchange for this purpose and will ask a number of questions:</p> <ul style="list-style-type: none"> • Specific questions based upon the activities that are characteristic of an exchange (and the processes they cover), namely <ol style="list-style-type: none"> a) access; b) operations;and c) supervision by the exchange of access and operations. • General questions at organization-wide level about aspects that are important for a number of activities (and the processes they cover). <p>The Contribution Model is the tool that will be used to determine to what extent Euronext contributes to the objectives of the AFM. It has not yet been finally developed.</p> <p>Furthermore at this moment the ongoing regulatory supervision of Euronext is also based upon a monthly report which consists of the following items:</p> <ul style="list-style-type: none"> • amendments in the articles of association; • decisions of the Management; • new listings; • Euronext Announcements; • trading- and listing measures; • disruptions; • violations of the rules; • disciplinary sanctions, decisions of the disciplinary tribunal; • complaints; • verdicts of the complaints committee; • proceedings of Compliance department; and • minutes of advisory committees. <p>This report is evaluated monthly by the AFM and discussed with Euronext. In the future the Supervisory Strategy and the Contribution Model will replace this monthly report.</p>

	<p>The AFM has access to all Market information and in addition receives reports of off-regulated trades, except where that is reported to a foreign regulator.</p> <p>The approval of the Exchange rules is discussed in the responses to principles 7 and 25.</p> <p>If the AFM is not satisfied that Euronext is adequately operating the market according to the rules, it can issue instruction relating to the rules (but not, as noted above, otherwise). It can, in extremis, advise the Minister of Finance to withdraw recognition. Sections 24 and 26 of the Act. Other sanctions include the power to issue a penalty order and reprimand as noted above.</p> <p>The supervisory arrangements of Euronext currently result in clearing members not being formally subject to regulation (although they are subject to Euronext oversight, to some degree, as participants of the Exchange). New legislation is intended to bring clearing members into regulation.</p> <p>In practice, the supervision of the exchange is becoming increasingly complicated as the operations of Euronext become more integrated cross-border. Euronext indicates its increasing frustration with the reality of national regulation of an international exchange. It considers that this puts it at a disadvantage compared with its main European competitors in London and Frankfurt. AFM has signed a Memorandum of Understanding with other regulators of Euronext and this covers such matters as rule changes which apply to harmonized matters.</p> <p>Market supervision matters are discussed at working parties of the five regulators with responsibilities for the exchange who meet once a month, both on their own and with the exchange. Their recommendations are passed to a Steering Group, which is itself overseen by a Committee of Chairmen of the five regulators.</p> <p>Even within the context of the MoU, it can take some time to approve rule changes and this is regarded by Euronext as a competitive disadvantage.</p> <p>Euronext and AFM both consider that the MoU should provide for faster resolution of issues and that it should cover a wider range of matters. In particular, Euronext wishes the supervision to be undertaken jointly, so that detailed reports do not have to be compiled on a national basis. They would also prefer to see the Contribution model, if applied at all, applied by all regulators. They would wish regulators to reach a common view on fundamental principles of market structure, such as the approach to concentration of orders on markets, the acceptability of certain kinds of derivative products and the reporting of block trades – although they acknowledge that such matters should become easier as the scope and application of the EU ISD expands.</p> <p>As noted above in the response to the principles relating to issuers, Euronext is giving up its responsibility for listing. However, while it will no longer be responsible for reviewing Prospectuses, it may still wish to retain responsibility for determining which companies may be traded on the exchange.</p>
Assessment	Fully Implemented
Comments	<p>The contribution model is a key regulatory tool. It should be finalized as rapidly as possible.</p> <p>AFM is recommended to finalize the Contribution model for Euronext as soon as possible and ensure that it is prepared in a way that is consistent with Euronext’s position as a pan-European exchange.</p> <p>The AFM is recommended to seek to expand the MoU amongst the five regulators so as to encompass all harmonized matters (to the extent that it is not already).</p>
Principle 27.	Regulation should promote transparency of trading.
Description	<i>Pre and post trade reporting</i>

	<p>Pre-trade publication is achieved through the posting of bids and offers on the electronic order book. For less liquid stocks, the issuer can invite a securities firm to enter into a contract with the exchange to guarantee liquidity by posting bids and offers within specified spread and volume for a specified time.</p> <p>Post trade transparency is achieved by immediate publication of volume, price, and time of execution of all order book trades. Agency block trades are published immediately. Publication of principal block trades can be delayed.</p> <p><i>Derogations</i></p> <p>Where a trade is outside certain price and volume limits (i.e., outside a specified percentage of the last order book price), it becomes an off-regulated market trade and can be reported to the AFM or Euronext, although the trades are not published. The AFM takes no action with respect to such trades and the market does not have information. Approximately 15 percent of trades by value (1 percent by volume) are not published to the market.</p>
Assessment	Fully Implemented
Comments	<p>The requirements for pre and post trade publication are in line with legislative (including EU ISD) requirements. Nevertheless, a substantial proportion of trades by value are not reported to the market under the off regulated trade rules. This does detract from transparency. The authorities are reviewing this rule and will take account of the requirements of the forthcoming revised ISD.</p> <p>The AFM and Euronext are recommended to review the rule relating to block trades with a view to enhancing the transparency of the market.</p>
Principle 28.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	<p><i>Market abuse offences</i></p> <p>Article 334 of the Penal Code (“Wetboek van Strafrecht”) and article 32 of the Further Regulation to the Act prohibit market manipulation.</p> <p>Article 46 of the Act 1995 regarding Insider Trading states that it is prohibited, whilst in the possession of inside information, to enter in a security transaction, in securities that are listed at a recognized exchange, in or from The Netherlands. Inside information is specific information regarding a listed company, or trading activity, that is non public and which, if made public, would be likely to affect the price of the security.</p> <p>Article 32 of the Further Regulations to the Act states that a securities institution shall refrain from carrying out misleading acts. A securities institution shall refrain from misrepresentation regarding financial transactions in financial instruments by others, by:</p> <ul style="list-style-type: none"> • supplying misleading information regarding: <ul style="list-style-type: none"> · the price or value of the securities concerned; · expectations about changes in the value of securities; · the issuing institution in respect of the securities; and · the liabilities that may result for the client as a result of entering into transactions in those financial instruments; • carrying out one or more transactions in the financial instruments concerned. <p>There is some discussion as to whether market manipulation should be established as an offence in the Act, rather than in Further Regulations. It is expected that the new Act will encompass market manipulation and spell out in more detail the kinds of activities that are not permitted.</p> <p>Euronext monitors all transactions performed on its exchange by using “Stockwatch” and reports its findings to the AFM. AFM also obtains its own information about suspicious dealing from</p>

	<p>intelligence and its own market monitoring function. AFM will investigate and can impose a fine or report an offence to the Public Prosecutions Department.</p> <p>The monitoring process is highly active. The number of reports investigations and referrals to the public prosecutor are set out below.</p> <table border="1" data-bbox="430 422 1458 615"> <thead> <tr> <th>Suspicious Reports</th> <th>2000</th> <th>2001</th> <th>2002</th> </tr> </thead> <tbody> <tr> <td>Euronext reports</td> <td>28</td> <td>25</td> <td>52</td> </tr> <tr> <td>AFM reports</td> <td>29</td> <td>38</td> <td>21</td> </tr> <tr> <td>Public complaints</td> <td>Na</td> <td>25</td> <td>16</td> </tr> <tr> <td>Investigations</td> <td>45</td> <td>39</td> <td>26</td> </tr> <tr> <td>To Public prosecutor</td> <td>10</td> <td>12</td> <td>12</td> </tr> </tbody> </table> <p>Requirements for information sharing and assistance are covered under the CESR Memorandum of Understanding (which is signed by all member states of CESR), the agreements with the SEC and CFTC (US-States), the Memoranda of Understanding with the Polish Securities and Exchange Commission and the Chinese Securities Regulation Commission and in the Exchange of Letters with the Swiss Federal Banking Commission.</p>	Suspicious Reports	2000	2001	2002	Euronext reports	28	25	52	AFM reports	29	38	21	Public complaints	Na	25	16	Investigations	45	39	26	To Public prosecutor	10	12	12
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Comments	There are no further comments.																								
Principle 29.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.																								
Description	<p><i>Monitoring of Large Positions</i></p> <p>The AFM and/or DNB do not monitor or supervise ‘large exposures’. However, under the Capital Adequacy Directive (CAD) DNB supervises the financial positions of Investment Firms and Banks. This supervision also includes insight in “large exposures” – including limits on own positions - since these positions are relevant for the capital adequacy of the firm. (See: Questionnaire on Principles for Market Intermediaries, Principle 22). Banks and Investment Firms must submit financial reports to DNB. Clearnet, is a clearing house under supervision of the AFM and DNB as well as of its home supervisor, the Commission Bancaire. Clearnet does monitor large exposures of its Clearing Members. However, the monitoring of large positions is not covered in the MoU on clearing and settlement.</p> <p>There are no arrangements for trigger levels or other mechanisms to identify large exposures.</p> <p>AFM and/or DNB have no direct access to information on the size and beneficial ownership of positions held by direct customers of market intermediaries (although Clearing Members are under the supervision of DNB). Under the Act on Disclosure of Major Shareholdings (WMZ) information on large positions in listed companies must be disclosed by the listed companies.</p> <p>Clearnet has insight into positions of its Clearing Members and can require clearing members to report the clients’ open positions daily. Euronext monitors the positions in derivatives of its members. DNB has access to information about the size of clients’ positions. (In practice the focus of DNB prudential supervision is not clearing activities)</p> <p><u>Clearnet</u> can (<i>CRB</i> article 1.5.3.6) refuse to register additional transaction if position limits are exceeded, and can also impose additional margin. Clearnet also has (<i>CRB</i> 1.5.3.7) a general right to require that positions are reduced. Clearnet’s decisions can have effect on either the Clearing Member, the Trading Member or the client. Clearnet can impose additional margin if it deems it necessary for any reason on an individual basis if they choose.</p> <p>Clearnet can impose the following if a market member refuses to provide information on large positions:</p>																								

	<ul style="list-style-type: none"> • limitations on future trading; • require liquidation of positions; • increase margin requirements; • revoke trading privileges; and • increase capital of carrying firm. <p>Euronext can suspend clearing members from trading.</p> <p>Clearnet shares its information about large positions with AFM and DNB at monthly meetings. Euronext Amsterdam shares its information with the Clearing members.</p> <p>Clearnet has a sufficient default procedure which is made available to its Clearing Members. A more detailed default procedure is also made available to the regulators.</p> <p>If a Clearing member defaults, all its collaterals, margins and/or payments to the default fund belong to Clearnet. Clearnet can exercise these rights without waiting for bankruptcy proceedings. Under Dutch law there is a segregation between clients funds and the Investment Firm so there is sufficient investors protection in case of bankruptcy.</p>
Assessment	Fully Implemented
Comments	This rating is based on the assumption that for the purposes of this principle, Clearnet is to be regarded as a market authority. This is because it is Clearnet that has the information required by the criteria and the powers to take action. This interpretation is justified on the basis that the Euronext rule book requires compliance with Clearnet rules.
Principle 30.	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	There is no separate assessment of clearing and settlement. This is covered under the IOSCO/CPSS assessment
Assessment	
Comments	

C. Recommended Plan of Actions to Improve Implementation of the IOSCO Objectives and Principles of Securities Regulation

Reference Principle	Recommended Action
Principles Relating to the Regulator (P 1-5)	<p>There is clearly a need to enhance the confidence of market participants in the division of responsibilities. To help achieve this, the AFM and DNB are recommended to:</p> <ul style="list-style-type: none"> • Conclude as rapidly as possible their discussions of the final remaining areas where the split of responsibilities is not yet clear; • Respond to industry concerns about overlap and state publicly how they propose to deal with those concerns; and • Publish a comprehensive assessment of the practical division of responsibilities and conduct presentations to the industry to enhance awareness of and confidence in the approach. <p>The authorities are recommended to finalize the outstanding issues concerning the transfer of responsibility (particularly whether or not Euronext will continue to have a responsibility for determining who may trade securities on the market, even after it is no longer responsible for monitoring compliance with Prospectus requirements) and develop</p>

	<p>an explicit plan and timetable to provide for the takeover of responsibilities so that both AFM/DNB and Euronext understand fully their respective role throughout the process of transition of listing responsibilities.</p> <p>The authorities are recommended to consider publishing criteria for determining whether or not the Minister of Finance would grant exemptions from regulatory requirements under the law where the power is reserved to the Minister.</p> <p>The authorities are recommended to review the balance between the level of detail in the Act, Decrees and Further Regulation in the light of experience and industry comments. In the case of Further Regulations and Policy Documents, the authorities are invited to consider whether the present level of detail is necessary.</p> <p>The authorities are recommended to consider introducing into the new law an explicit requirement that the Minister consult the regulatory bodies before exercising his retained powers, where those powers relate to financial service regulation.</p> <p>The authorities are recommended to reinforce the independence of the regulator by:</p> <ul style="list-style-type: none"> • Reviewing the balance between matters placed in Acts, Decrees and Regulations as recommended for Principle 1; • Providing for budget approval over a longer period – such as 3, or preferably 5 years; • Providing for the regulatory bodies to build up reserves to meet contingencies; • Making the process of consultation between the Ministry of Finance and the regulatory bodies on the preparation of legislation and Further Regulations open and transparent so that the proposals of the regulator and the comments of the Ministry of Finance are public; • Introducing legal immunity for actions taken by the regulators in good faith; • Requiring any general direction made by the Minister to the regulatory bodies to be made in public, so that it is transparent; and • Giving investors representatives the opportunity to comment on the regulatory authority budget along with the industry market panel. <p>The authorities are recommended to consider that the AFM be given the right to go to the court to seek restitution or have direct powers themselves to order restitution. Such powers would then have to be subject to proper procedures for hearing the views of parties involved and of appeal.</p> <p>The authorities are recommended to consider the anxieties of the smaller market participants about the consultation process and to discuss with representatives how to address these concerns.</p>
<p>Principles of Self-Regulation (P 6–7)</p>	<p>The authorities are recommended to develop and publish in a greater degree of detail the criteria the Minister would adopt for a recognition decision and therefore the standards against which Euronext is assessed.</p> <p>The authorities are recommended to give the power to recognize SROs to the regulator with oversight.</p> <p>The AFM and Euronext are recommended to reach a common and explicit understanding as to the role of AFM in approving or commenting on rule changes</p>

<p>Principles for the Enforcement of Securities Regulation (P 8–10)</p>	<p>The authorities are recommended to expand the list of institutions from which information can be obtained to include anyone that the AFM or DNB reasonably believed had the information required.</p> <p>The authorities are recommended to consider whether the present arrangements adequately ensure the accuracy of information passed to the regulatory authorities and to ensure that there is an explicit requirement that no regulated entity should supply false information to the AFM or DNB.</p> <p>The authorities are recommended to consider ensuring that the legislation is explicit that the regulators are permitted to require a person to make a statement, as a normal part of their information gathering powers.</p> <p>The authorities are recommended to consider expanding the range of sanctions to include public statements even where there is no other sanction.</p> <p>The AFM and DNB are recommended to mount a public awareness campaign demonstrating the international standards that require effective enforcement powers by a regulator of securities institutions. That campaign should emphasize the safeguards built in to the AFM processes that protect the subject of enforcement action.</p> <p>The authorities are invited to review the exercise of powers by the two regulators to satisfy themselves that all the appropriate powers are available to both regulators and to draft the new law so that there are no gaps.</p> <p>The authorities are recommended to consider providing for an explicit provision that would allow the regulators to apply to the court to appoint a manager of a regulated person in substitution for the existing management, where this is justified in order to further the regulatory objectives of the regulator.</p> <p>The AFM is recommended to consider whether it would be helpful to invite the regulated entity explicitly to make an assessment on the significance of any compliance weaknesses they identify in the model.</p>
<p>Principles for Cooperation in Regulation (P 11–13)</p>	<p>The authorities are recommended to introduce legislation as soon as possible to allow the AFM and DNB to exercise their investigative powers on behalf of a foreign regulator even where there is no domestic interest.</p>
<p>Principles for Issuers (P 14–16)</p>	<p>The authorities are recommended to review this provision with a view to limiting the extent to which this provision could be used to make an offer without a Prospectus to a large number of people.</p>
<p>Principles for Collective Investment Schemes (P 17–20)</p>	<p>The authorities are recommended to consider extending the regulatory requirements to cover all those providing functions for CISs.</p> <p>The authorities are recommended to ensure that the new legislation provides for powers to make specific rules on conflicts of interest and record-keeping that are adequately enforceable.</p> <p>The authorities are recommended to introduce specific requirements that provide for the maintenance of books and records in relation to transactions involving CIS assets and all transactions in CIS shares or units or interest.</p>

<p>Principles for Market Intermediaries (P 21–24)</p>	<p>The authorities are recommended to amend the requirements so that the names of the senior management of a regulated entity are available to the public.</p> <p>The AFM and DNB are recommended to ensure that licensing decisions are only taken, for each area of activity, with the explicit consent of that regulator with primary responsibility in practice for supervising that area of activity. Equally permission to continue to pursue each area of activity should be withdrawn if the regulator with primary responsibility for its supervision advises that this is necessary.</p> <p>The authorities are recommended to introduce a broadly based notification requirement – namely that any matter that would be material to a licensing decision should be notified – to the relevant authority, be it DNB or AFM - and also adding to the list of specific matters, litigation against the company, significant investigations or disciplinary action by any regulator against the entity or its key personnel in other jurisdictions (which might affect the judgment of their fitness to conduct business in the Netherlands), changes in indemnity insurance, where relevant and any decision by a foreign regulatory authority to refuse a license. They should also withdraw the exemption for credit institutions of the exemption from the requirement to notify the AFM of breaches in conduct of business regulations.</p> <p>The authorities are recommended to consider widening the definition of personnel subject to checks by the AFM and DNB to include any person who is in a position to control or materially influence the applicant for a license.</p> <p>The authorities are recommended to introduce a legal requirement to the effect that the legal and regulatory obligations should be met and that the intermediary should act with honesty and integrity and observe high standards.</p> <p>The DNB and AFM are recommended to establish a clear plan for dealing with the eventuality of a firm’s failure , that includes both their roles.</p> <p>The authorities should also introduce into such a plan, procedures for the appropriate disclosure to the market.</p>
<p>Principles for the Secondary Market (P 25–30)</p>	<p>The authorities are recommended to increase the transparency of the recognition and supervision process and making it more comprehensive by establishing clear recognition criteria and deploying those criteria as ongoing performance standards. The AFM should then be empowered to issue instructions to Euronext whenever they judged it necessary to meet he published performance standards.</p> <p>AFM is recommended to finalize the Contribution model for Euronext as soon as possible and ensure that it is prepared in a way that is consistent with Euronext’s position as a pan European exchange.</p> <p>The AFM is recommended to seek to expand the MoU amongst the five regulators so as to encompass all harmonized matters (to the extent that it is not already).</p> <p>The AFM and Euronext are recommended to review the rule relating to block trades with a view to enhancing the transparency of the market.</p>

D. The Authorities' Responses

63. The Netherlands authorities are pleased with the positive assessment of the Netherlands' observance of the IOSCO-principles and is in broad agreement with the conclusions of the IMF. As the Dutch supervisory structure has been undergoing some major changes recently, the opinions and recommendations of the IMF are helpful in further developments. With regard to the specific conclusions and developments, the authorities note the following:

Principles 1–5

64. IMF expresses some concern that AFM is not fully independent of the Ministry of Finance as a result of the annual approval of the budget by the Ministry and a lack of immunity from civil action against actions taken in good faith.

65. Concerning the budget, the authorities point out that the primary responsibility for the approval of the annual budget formally lies with the Supervisory Boards of the supervisory authorities. Furthermore, approval by the Ministry is based on the considerations of the Supervisory Board, the advice of the market panel, and on a limited check on whether the basic requirements for approval are fulfilled (e.g., procedural requirements; overall development in costs). Approval can be denied if the proposed budget would *predominantly* be contrary to public interest. The annual approval should also be seen within the framework of a multi-year agreement on the stabilization of the inflation-adjusted costs of existing supervisory tasks. In addition, it has been decided that AFM is able to build up reserves. With regard to legal immunity, AFM can indeed be sued if a court finds a decision wrong or disproportionate (this applies only to the AFM as a whole, not to individual staff who cannot be sued). However, through professional liability insurance and a financial guarantee of the Ministry, AFM is at no point liable when acting in good faith. In conclusion, the authorities note that the chance that AFM would not be able to operate or set its policy independently is, in practice, very slim.

66. The authorities agree with the conclusion that where the Further Regulations on the Act on the Securities Trade are quite detailed, the existing regulations regarding investment funds are not. The authorities are in the process of setting up Further Regulations on the Act on Investment Funds which meet the recommendations of IMF. In general, the authorities are moving toward a policy of less detailed regulations.

67. AFM and DNB are presently evaluating the co-operation of DNB and AFM which will lead to a review of the Covenant between DNB and AFM. The goal of this is more clarity of supervisory responsibilities for the industry.

Principles 6–7

68. The authorities have taken note of IMF's observation that recognition of exchanges should lie with the supervisor rather than with the Ministry of Finance. This issue will be discussed within the context of the Bill on financial supervision.

Principles 8–10

69. With respect to differences in powers and enforcement styles, the authorities point out that the financial sector as a whole not only has to get used to AFM's style of supervision, but also to the overall concept of conduct-of-business supervision. Through publications and meetings with market participants, AFM will try to enhance their understanding of conduct of business supervision by AFM.

Principles 17–20

70. The authorities recognize that there is no independent check on the CIS – for example ensuring that asset disposals are in line with the terms of the CIS. As a result of a broad investigation of investment funds, in the next 6 months AFM and the industry will discuss ways of modernizing the CIS-branch. One of the subjects will be the extent of independent supervision on the depository.

Principles 21–24

71. Licensing decisions which permit an entity to conduct securities business, although not subject to the *explicit consent* of the AFM are, in fact, subject to an advice of AFM to DNB which is binding. This has been agreed on the basis of the Covenant between DNB and AFM. The authorities feel this would meet IMF's recommendation.

72. The AFM fully agrees with the need for the development of a clear plan for dealing with the failure of an intermediary which includes actions to be taken by all regulatory authorities. AFM has already started with the development of such a plan.

Principles 25–29

73. The recommendations with respect to the supervision of Euronext have the attention of the authorities. The supervisory powers of AFM with regard to exchanges will be evaluated in the context of the bill on financial supervision.

IV. CPSS/IOSCO RECOMMENDATIONS FOR SECURITIES SETTLEMENT SYSTEMS (RSSS)

A. Introduction

General

74. As part of the Financial Sector Assessment Program, a mission from the International Monetary Fund visited the Netherlands in October/November 2003. One of the mission's objectives was to conduct an assessment⁹ on the observance of the Recommendations for Securities Settlements Systems prepared by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization for Securities Commissions (IOSCO).

Scope of the assessment

75. The securities covered by the assessment are government bonds, corporate bonds, stocks and derivatives traded on the markets organized by Euronext Amsterdam N.V. and its subsidiaries. These securities are all cleared through Clearnet and settled through Euroclear Netherlands or Euroclear NIEC. The scope is extended for OTC transactions which are also settled by Euroclear Netherlands or Euroclear NIEC.

Institutional and market structure

76. Euronext Amsterdam N.V. is the exchange for securities (Euronext Amsterdam Stock Market) and derivatives (Euronext Amsterdam Derivative Market) in the Netherlands. Euronext Amsterdam N.V. is a wholly-owned subsidiary of Euronext N.V. Euronext N.V. is also the holding company for Euronext Brussels N.V./S.A., Euronext Paris S.A., Euronext Lisbon S.A. and Euronext UK plc. Euronext UK plc is the parent company of LIFFE, a derivatives market. Both Euronext N.V. and Euronext Amsterdam N.V. were granted official recognition as Dutch securities exchange organizations.

77. Euronext is the result of the merger of the national securities exchanges in the Netherlands, Belgium and France in 2000. In February 2001, the respective national clearing houses merged into Clearnet. The Euronext group expanded further when LIFFE and the Portuguese securities exchange joined in January and February 2002.

78. Euronext Amsterdam has 182 members in its cash trading of which 27 are clearing members. The high degree of concentration that otherwise is present in the Dutch financial market, does not exist on Euronext. The total turnover for the Euronext Amsterdam cash market in 2002 was 522 billion Euro, about 1/3 of the total turnover on the Euronext markets. In addition to being traded on Euronext, blue-chip Dutch securities are traded on other exchanges such as, Deutsche Börse, London Stock Exchange and New York Stock

⁹ Assessor was Mr. Jan Schüllerqvist, Sveriges Riksbank (Bank of Sweden)

Exchange. The total turnover in 2002 on the Euronext Amsterdam derivatives market was 78 million contracts, generating an option premium turnover of € 31 billion, counting for about 21 percent of the total volume of contracts and 40 percent of the option premium turnover on Euronext.liffe (adjusted for contract size).

79. Clearnet, formally Banque Centrale de Compensation, a French licensed bank with a branch in Amsterdam, acts as the central counterparty (CCP) for transactions executed in Euronext Amsterdam. Recently Clearnet took over the CCP function for the commodities market in Amsterdam from Euronext Amsterdam Commodity Clearing N.V. (EACC, previously known as NLKKAS), which was a full subsidiary of Clearnet. In the near future, Clearnet itself will take over EACC's rights and obligations in regard to the Dutch commodities clearing. Clearnet also acts as clearer for OTC bond and repo transaction, however not in the Dutch market. Clearnet has currently 27 clearing members in the Euronext Amsterdam cash market, of which 18 are General Clearing members. There are 26 members in the Euronext Amsterdam derivatives market.

80. Euronext N.V. holds through its national subsidiaries a total of 80 percent of the equity capital of Clearnet. Euroclear Bank S.A./N.V. in Belgium holds the other 20 percent of Clearnet's equity capital. Currently there is a discussion with London Clearing House about a potential merger. If that merger will go through, the holding of the Euronext Group will be reduced to less than 50 percent of capital and less than 25 percent of votes.

81. Euroclear Netherlands (ENL), formally Nederlands Central Instituut voor Giraal Effectenverkeer B.V. ("Necigef"), is the Dutch CSD for book-entry transferred securities and is a wholly owned subsidiary of Euroclear Bank S.A./N.V. in Belgium. ENL takes into its custody equity, warrants, commercial and government bonds and commercial and government money market paper. These securities can be both bearer and registered securities that are issued in the Netherlands or abroad, and are either listed on the official markets of Euronext Amsterdam N.V. or frequently traded on the OTC market. ENL has in custody securities with a total value of € 675 billion, of which € 369 billion is in shares and € 263 billion in bonds. ENL has 70 participants. The top 4 participants, i.e., the four large Dutch banks, counts for half of ENL's revenues.

82. Euroclear NIEC (NIEC), formally Nederlands Interprofessioneel Effecten Centrum NIEC B.V., is a securities settlement system offering custody and settlement services related to securities, other than those admitted to the securities book-entry transfer system. NIEC takes into its custody equity and corporate bonds. These securities can be bearer securities, registered book-entry securities or registered physical securities. NIEC undertakes both domestic and cross-border transfers of such securities. As such, NIEC is complementary to ENL. As of May 2002, NIEC is a wholly owned subsidiary of Euroclear Bank S.A./N.V. in Belgium. NIEC has in custody bonds with a total value of € 4.7 billion and shares with a total value of € 1 billion. NIEC has 37 participants.

83. The Dutch securities settlement market is dominated by five banks – ABN AMRO, ING, Rabobank, Fortis and KAS Bank.

Description of regulatory structure and practices

84. De Nederlandsche Bank (DNB), the Dutch Central Bank, has oversight tasks for payment and settlement systems based on the Bank Act 1998 (*Bank wet*). DNB is also the prudential supervisor for credit institutions (banks etc.) according to the Act on Supervision of Credit Institutions 1992 (*Wet toezicht kredietwesen - Wtk*). Following a Decree in August 2002, DNB is also given the task of prudential supervision for securities institutions, for which the Act on Supervision of Securities Trade 1995 (Securities Trade Act) (*Wet toezicht effectenverkeer - Wte*) is applicable.

85. The Netherlands Authority for Financial Markets (*Stichting Autoriteit Financiële Markten – AFM*, previously *Stichting Toezicht Effectenverkeer- STE*) is given the supervisory role laid out in the Securities Giro Act 1977 (*Wet giraal effectenverkeer – Wge*) (article 2 sections 1 and 4). The AFM is also following the August 2002 Decree, given the task of supervisor of market conduct, including both credit institutions (banks, etc.) and securities institutions.

86. The AFM, DNB and the Pensions and Insurance Supervisory Authority of the Netherlands (*Pensioen- & Verzekeringskamer – PVK*) signed a covenant in 2002, setting out the way they will cooperate in supervision. The AFM and DNB had earlier, in 2001, also signed a covenant on the coordination of supervision.

87. The Ministry of Finance (MoF), the AFM and DNB considered it desirable for oversight to be exercised on securities settlement systems. Hence, in 1997, the AFM and DNB developed the Supervisory Framework AEX Clearing and Depository (*Toezichtskader ACD*), which in 2000 was replaced by the Supervisory Framework Clearing and Settlement Euronext (*Toezichtskader CSE*). In section 22, subsection 3 of the Securities Trade Act, the Minister of Finance has the authority to impose restrictions and conditions on the granting of the recognized status of a securities exchange. Euronext has been officially recognized, i.e., licensed by the Minister of Finance on September 22, 2000. Hence, in the license agreement, there is a condition that Euronext N.V. and Euronext Amsterdam N.V. have to ensure that the clearing and settlement systems used on Dutch securities exchanges adhere to the rules laid down in the Supervisory Framework CSE. The principles of co-operation between both authorities have been laid down in a Co-operation agreement (*Convenant van samenwerking*).

88. Having the status of a French credit institution, Clearnet is licensed by the Comité des Établissements de Crédit et des Entreprises d'Investissement and being supervised by the Commission Bancaire in France. Having the status of a French clearing organization and a French securities settlement system, it is also being supervised by the Conseil des Marchés Financiers and the Banque de France. Pursuant to the exchange recognition granted to Euronext N.V. and Euronext Amsterdam N.V. on September 22, 2000, Clearnet is being overseen by DNB in its role as overseer to avoid systemic risk arising from the clearing system, and by the AFM in its role as market conduct supervisor to ensure an organized clearing process and the protection of investors' rights. The Amsterdam Branch of Clearnet

as a credit institution is subject to the host country control of DNB in its role as bank supervisor.

89. In order to facilitate close co-operation amongst the national banking supervisors, securities regulators and overseers in the three countries where Clearnet is active, Banque de France, Commission Bancaire/Comité des Etablissements de Crédit et des Entreprises d'Investissement, Conseil des Marchés Financiers, Nationale Bank van België/Banque Nationale de Belgique, Commissie voor het Bank - en Financiënwezen/Commission Bancaire et Financière, DNB and the AFM signed a Memorandum of Understanding (MoU Clearing) in order to ensure the efficient supervision and oversight of Clearnet's activities. The Portuguese authorities, Banco de Portugal and Comissão do Mercado de Valores Mobiliários, signed an Addendum of the Memorandum of Understanding in September 2003. In the context of this MoU, a Coordination Committee Clearing (CCC) has been established, in which is discussed especially rule changes and other structural changes of the clearing process.

90. ENL is established according to Dutch law. All securities transactions settled by ENL are subject to Dutch law and take place in compliance with the Securities Trade Act and the Securities Giro Act. In its capacity as central securities depository, Euroclear Netherlands is subject to supervision of the AFM on behalf of the Minister of Finance by means of the Securities Giro Act. In its capacity as securities settlement system for transactions effected on Euronext Amsterdam, ENL is subject to the oversight by DNB and the AFM, in accordance with the Supervisory Framework CSE, pursuant to the exchange recognition granted to Euronext N.V. and Euronext Amsterdam N.V.

91. The transfer of shares in Necigef to Euroclear Bank S.A./N.V. in February and April 2002 had created the need for a close co-operation also in the field of settlement supervision, regulation and oversight. Therefore, Banque de France, Commission Bancaire, Conseil des Marchés Financiers, Nationale Bank van België/Banque Nationale de Belgique, Commissie voor het Bank- en Financiënwezen/Commission Bancaire et Financière, DNB and the AFM signed another Memorandum of Understanding (MoU Settlement) in July 2002 in order to ensure the efficient supervision and oversight of Euroclear Bank's activities. Also in this area the cooperation is focused on structural changes.

92. Like ENL, NIEC is subject to the shared supervision of DNB and the AFM, pursuant to the exchange recognition granted to Euronext N.V. and Euronext Amsterdam N.V.

Information and methodology used for assessment

93. The assessment has substantially benefited from a comprehensive self-assessment jointly prepared by DNB and the AFM for the FSAP mission as well other background material prepared by DNB and the AFM. In addition, information has been gathered from:

- Various Dutch laws and regulations such as the Bank Act 1998, the Securities Giro Act 1977, Act on the Supervision of the Securities Trade 1995, Decree on the Supervision of the Securities Trade 1995 (*Besluit toezicht effectenverkeer*) (Securities

Trade Decree), Further Regulations on the Supervision of the Securities Trade 1999 (*Nadere Regeling toezicht effectenverkeer*) (Further Regulations) (in 2002 divided into Further Regulations on Prudential Supervision of the Securities Trade 2002 and Further Regulations on the Market Conduct Supervision of the Securities Trade 2002);

- Oversight/supervisory agreements and framework such as Supervisory Framework Clearing and Settlement Euronext (CSE), Covenant between the Securities Board of the Netherlands (STE) and DNB on the coordination of supervision, Cooperation Covenant between the STE and DNB in respect of the supervision of Necigef, Memorandum of Understanding on the coordinated regulation, supervision and oversight of the Euronext Group (between the relevant authorities in Belgium, France and the Netherlands), and Memorandum of Understanding on the cooperation concerning the supervision/oversight of the settlement activities of Euroclear Bank relevant for transactions concluded on the Euronext markets (between the relevant authorities in Belgium, France and the Netherlands);
- Rules, guidelines and other information from the relevant systems such as Necigef Rules for Book-entry Deposits, Necigef Admission rules, Euroclear Netherlands (Necigef) Guidelines, NIEC Rules, Disclosure Framework Euroclear Netherlands, Clearnet Clearing Rule Book, Financial Structure and Risk Management Clearnet and Euronext Rule Book.

94. Information was also gathered from presentations from various authorities in the Netherlands, meetings with the Payments Systems Policy Department of DNB, with relevant departments of the AFM, with the MoF, with Euronext, Clearnet and Euroclear Netherlands as well as with banks and securities firms and their industry associations.

95. The assessment follows the methodology set out in the *Assessment methodology for "Recommendations for Securities Settlement Systems"* developed by the Committee on Payment and Settlement Systems and The Technical Committee of the International Organization for Securities Commissions (November 1992).

96. A list of used abbreviations is added as the Appendix.

97. The authorities in the Netherlands have been very supportive of the mission, in providing material, arranging meetings and answering questions.

B. Assessment of Observance

Executive summary of the recommendation by recommendation assessment

98. The principal conclusions of the assessment regarding the major topics covered by the recommendation can be summarized in the following way:

Legal risk (Recommendation 1)

99. All laws and regulations with relevance for securities clearing and settlement are publicly available. The most important are the Bankruptcy Act and the Securities Giro Act. Given that securities clearing is done under French law French legislation is also relevant. The rules of Clearnet, ENL and NIEC are publicly available and generally clear. The laws, regulations and rules support enforcing of transactions, protection of customer assets, immobilization and dematerialization, netting, securities lending and delivery versus payment. There are adequate rules for addressing the event of a participant default, including the effective use of collateral, and these rules can legally be enforced.

Pre-settlement risk (Recommendations 2 to 5)

100. Securities transactions are electronically confirmed between direct market participants on the trading day. Settlement takes place within a three day cycle. For exchange-traded securities timely settlement guaranteed through the use of a central counterparty, Clearnet. Clearnet has adequate risk controls that include initial margin and daily settlement of variation margin. The clearing members contribute to a clearing fund. Margin and clearing fund are sufficient to cover for a default by the clearing member with the largest exposure. In addition there additional financial resources available. Securities lending is available in the market and has the necessary legal foundation.

Settlement risk (Recommendations 6 to 10)

101. Securities are mainly kept in book-entry form, even that only a minor part is dematerialized. The beneficial owners ha a co-ownership in securities held in book-entry form. There is no registration of securities transfers outside the CSD.

102. OTC-transactions are settled gross, with the delivering party's securities being reserved while cash settlement takes place, i.e., DVP model 1. Settlement of exchange-traded securities will settle net, i.e., DVP model 3. However, only about 70 percent of the transactions are settled DVP, partly due to settlement over FOP cross-border links. Hence Recommendation 7 is not fully observed.

103. Settlement of OTC-transaction takes place every thirty minutes (the cash leg) during day-time and once during the evening. Hence final settlement can be achieved intraday for OTC-traded securities. Exchange-traded securities that are cleared through Clearnet are settled net once a day.

The CSD does not provide credit in any form. There is net settlement within the CCP, but the risk controls are sufficient. 95 percent of all cash settlement takes place in central bank money. The remainder, settlement in foreign currency is settled in KAS Bank, a supervised bank.

Operational risk (Recommendation 11)

104. Both ENL/NIEC and Clearnet has adequate security and contingency planning for their systems. The ENL/NIEC systems are operated by Euroclear Bank, Brussels under a Service Level Agreement. Euroclear Bank has an alternative production site available with mirrored information. ENL/NIEC has an alternative business site available in Amsterdam. Clearing21 used by Clearnet is operated out of Paris by an affiliate to the Euronext Group. Also for this operation is available an alternative production site.

105. Both institutions regularly tests their contingency plans. The settlement at ENL was delayed in June 2003, due to a mistake made by the serviced provider. Appropriate measures to prevent for a similar incident have been taken.

Custody risk (Recommendations 12 and 13)

106. Book-entry securities held in custody in accordance of the Securities Giro Act are protected by the law. For other securities the supervisory laws has extensive regulation for separation of assets and requires that customer securities are kept with a separate specialized custodian.

Other issues (Recommendations 14 to 19)

107. In some cases all types of entities are not treated equal in the access rules of ENL. Credit institutions (banks etc.) from outside the EEA (the European Union, Iceland, Liechtenstein and Norway) are not allowed participation. Participation is also not possible for investment firms (securities firms), whether Dutch or foreign. There are also some examples where the access rules are not completely clear. Hence Recommendation 14 is not fully observed.

108. Both ENL and Clearnet are regarded as effective by the users. They both monitor and benchmark its cost level. The CSD uses SWIFT communication standards. Generally ENL and Clearnet are transparent with regard to risks, rules and procedures. However, in some minor details the information is not clear or correct. Both ENL and Clearnet have close cooperation with its users through Market Advisory Committees and other user forums. Both institutions have also close cooperation with DNB and the AFM, through which the public interest is channeled.

109. DNB and the AFM oversee ENL, NIEC and Clearnet in an efficient way. DNB and the AFM have developed an supervisory framework for clearing and settlement. The prudential supervisor for Clearnet is however the relevant French authority. DNB has as one of its tasks to promote the smooth functioning of the payment system, with an implicit legal

basis for oversight of securities clearing and settlement systems (Bank Act section 4.2). The AFM is formally the supervisor of ENL being a book-entry system. However, since there is no direct formal legal foundation for supervision of securities clearing and settlement, but an explicit legal basis for the market conduct supervision by the AFM and oversight by DNB, an indirect approach have been used for being able to supervise and oversee these activities. This was achieved by making oversight and supervision of clearing and settlement a condition for granting Euronext license as an exchange. Hence, recommendation 18 is not fully observed.

110. The CSD has a number of links, but none of these links support settlement with delivery versus payment. The links as such does not impose risks to the users.

111. The following actions are discussed or ongoing in the Netherlands:

- The **Euroclear Group** is conducting a project for implementing the Single Settlement Engine for the Group. The completed implementation, planned between 2005 and 2008, would allow for the introduction of a number of cross-border DVP-links, enabling Euroclear Netherlands to be one of the first CSDs to provide cross-border DVP-links in central bank money. That would result in a reduction of non-DVP settlement. The degree of reduction will determine if a higher assessment category for Recommendation 7 will be achieved.
- **ENL** is in the process of proposing a change in their Admission Regulation to the AFM and DNB allowing investment firms participation. Since there are other unfair admission rules, only this change to the Admission Regulation is however not enough to achieve a higher assessment category for Recommendation 14.
- The **MoF** is in the process of drafting a Financial Supervision Act, with a plan to implement the Act in second half of 2005. The implementation should make it possible to observe Recommendation 18.

112. The following actions are proposed in order to achieve full compliance with the recommendations:

- The **AMF** and **DNB** should, in co-operation with other national central banks and relevant authorities, promote the ongoing work by the ENL to establish cross-border DVP-links, and also by other means support the use of DVP settlement for cross-border and OTC-transactions. As stated earlier, the degree of reduction of settlement FOP will determine if a higher assessment category for Recommendation 7 will be achieved.
- The **MoF** should fulfill its plans for a Financial Supervision Act, which should make it possible to observe Recommendation 18.
- The **AFM** and **DNB** should approve a proposal from ENL to allow investment firms as participants. However in order to observe Recommendation 14, the **AFM** and

DNB should also suggest to ENL, and when applicable NIEC, to further review their Admission Regulations in order to remove unfair treatment of non-EEA credit institutions, and make the Regulations more clear and open.

Table 7. Summary Observance of the CPSS/IOSCO Recommendations for Securities Settlement Systems

Assessment category	Recommendations
Observed	Recommendations 1 to 6, 8 to 13, 15 to 17 and 19
Broadly observed	Recommendation 18
Partly observed	Recommendations 7 and 14
Non-observed	..
Not applicable	..

C. Detailed Assessment of the Observance of the CPSS/IOSCO Recommendations for Securities Settlement Systems

Recommendation 1.	Securities settlement systems should have a well-founded, clear, and transparent legal basis in the relevant jurisdiction.
Description	<p><u>Accessibility of laws and rules</u></p> <p><u>Clearnet</u>'s rules and procedures and contractual arrangements for its participants are clearly stated, coherent and available to the system participants.</p> <p>Each participant of <u>ENL</u> receives a copy of the relevant rules and procedures, as laid down in the Securities Giro Act, and copies of ENL's Articles of Association, the Necigef admission regulation and the Rules for book-entry deposits, when joining the system. Participants are kept informed of any amendments. In addition, the laws, regulations, rules and procedures, and contractual provisions are public and readily accessible through the web-sites of the Netherlands authorities and/or of Euroclear Bank S.A./N.V.</p> <p>Each participant of <u>NIEC</u> also receives a copy of the relevant rules and procedures, as laid down in NIEC's Articles of Association, and the NIEC admission regulation, at time of first joining. Participants are kept informed of any amendments. In addition, the NIEC rules are public and readily accessible through the web-site of Euroclear Bank S.A./N.V.</p> <p><u>Assurance of legal basis</u></p> <p><u>Enforceability of transactions</u></p> <p>The Dutch general laws governing property rights and insolvency apply to securities transactions, but the certainty of transactions is further enhanced by the layered 'principal-to-principal' structure for the clearing and settlement of exchange-traded transactions, in which executed trades are being novated between clearing members and <u>Clearnet</u>. Specific financial and operational requirements are imposed on the clearing members by Clearnet, whereas Clearnet itself is being supervised and overseen by the signing parties of the MoU Clearing. The clearing system of Clearnet is designated by the French authorities as a system under the European Settlement Finality Directive (98/26/EC - SFD) and it operates in real time.</p> <p>The securities settlement systems of <u>ENL</u> and <u>NIEC</u> are also designated to the European Commission by the Dutch Minister of Finance as systems under the Settlement Finality Directive. In this context, transfer orders from participants are legally enforceable under all Member States' jurisdictions and binding on third parties.</p> <p><u>Protection of customers assets</u></p> <p>According to the Securities Giro Act, a customer who deposits a security, for which the Act is applicable, with a participant (Admitted Institution, AI) of the depository, <u>ENL</u>, will be a co-owner of the so called collective deposit (<i>verzameldepot</i>) from the moment of acceptance by the AI. The AIs can deposit these securities with ENL. ENL holds these securities in custody and they form part of the book-entry account (<i>girodepot</i>). The security interests are registered by ENL in the name of the AI, not in the name of the customers of the AI (the AIs have securities in custody in the name of the owner/final beneficiary, i.e., a 'two-tier system'). Securities held by the AI itself are kept in the same book-entry account. As laid down in the Securities Giro Act, as a consequence of giving securities into custody with ENL, the investors who were already co-owners of the collective deposit, shall become co-owners of the holdings in the book-entry account together with those who are already co-owners at that time. Segregation of account holdings between the AI and the customers is required at the</p>

	<p>AI level under the Further Regulation (article 16), which can be achieved by holding securities under the Securities Giro Act.. Thus, protection of customers' securities is achieved by segregating the customers' securities from the holdings of the custodian banks and the CSD.</p> <p>Pursuant to the Further Regulation, the AIs of <u>NIEC</u> also have to make arrangements to sufficiently protect the rights of the customers in respect of their securities. For that reason, AIs of NIEC have to use separate custodian subsidiaries, in which customer assets are held and which are engaged in low-risk activities only. The securities held in custody of Euroclear NIEC are not included in the scope of the Securities Giro Act.</p> <p>Arrangements for the immobilization and dematerialization of securities The enactment of the Securities Giro Act made immobilization and dematerialization of securities legally recognized. As a result Euroclear Netherlands was created and immobilization and dematerialization was enabled.</p> <p><u>Netting</u></p> <p>In the case of trading on Euronext, <u>Clearnet</u> acts as the CCP and provides for the netting of transactions. Transactions entered in the trading system by the trading members are split and novated in real time in the clearing system into two transactions – one for each side of the trade – between a clearing member and the CCP. Novation occurs on the basis of a mandatory clearing agreement between trading members and clearing members. Clearing members are obliged to enter into agreements with the CCP on similar terms as the transactions executed by their client, the trading member. Clearnet as the CCP is legally liable vis-à-vis its clearing members for the net amount of the clearing obligations toward its members. The legal basis for the netting of rights and obligations is the Clearing Rule Book (article 1.3.5.6). Since Clearnet is a French institution, French law is applicable for the cleared transactions. Netting is recognized according to French legislation through the French implementation of the SFD (<i>Code Monétaire et Financier</i>, article L.431-7). The Dutch Authorities has received a legal opinion confirming this.</p> <p>Netting arrangements are not applicable for the relationships among the AIs of ENL and NIEC.</p> <p><u>Securities lending</u></p> <p>The securities lending and borrowing market is supported by Dutch law and by the international standard agreements for securities lending, applied to Dutch law. Repo transactions used to conflict with a provision in Dutch law regarding the transfer of securities (the so-called <i>fiducia-verbod</i>) and equivalent transactions used to be buy-and-sell-back transactions, until an exception to the law was created in 1998 with a view to facilitating euro monetary operations.</p> <p><u>Finality of settlement</u></p> <p>The timing of final transfer of cash and securities transfers follows from Volume 6 of the Dutch Civil Code (article 114), according to which payment is generally deemed to have been made at such time the creditor's account is credited. Analogous to this securities transfers are final when the receiving AI's book-entry account is credited.</p> <p>The Dutch implementation of the SFD has introduced an exception to the generally applied principle in Dutch bankruptcy legislation that a court decision on insolvency proceedings will have effect retroactively from 00:00 the same day ("zero-hour rule"). Hence according to the Act on Supervision of Credit Institutions (section 71) and the Bankruptcy Law (section 212 b), a court decision can not be invoked in relation to a transfer order and netting in a designated system if the transfer order was issued prior to the court decision, or if the transfer order was entered into the system after the court decision, under the condition the system operator had no knowledge of the court decision. <u>ENL</u> and <u>NIEC</u> are designated as systems where these rules apply. The effect of insolvency proceedings relating to the custodian is covered in Rec. 12.</p>
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Clearnet is designated by the French authorities as a system where the SFD applies. The French implementation of the SFD protects the same rights as the Dutch implementation (*Code Monétaire et Financier*, articles L.330-1 and L.330-2).

In the ENL Guidelines (section 5.2.5) the time when a transaction can be revoked is stated as the time when a balance is reserved. For a DVP transaction this is immediately prior to request for settlement of the cash leg. For other transaction it is when the delivery order has reached the settlement date.

Delivery versus payment (DVP)

According to the ENL Guidelines (section 5.2.4) securities to be delivered against payment (OTC-transactions), will be reserved on the account of the delivering AI prior to confirmation from DNB (KAS Bank N.V. for non-euro settlement) of settlement of the cash leg of the transaction. Hence neither the delivering AI nor the receiving AI will control both securities and cash. The system used for settlement of the cash settlement of euro, TOP operated by DNB, is also a system designated in accordance with the SFD, hence similar finality rules apply. The DVP provision ensures that the actual timing of finality of the securities transfer is after the cash transfer becomes final.

NIEC offers participants DVP in a similar way.

The type of provisional transfer that is used ahead of the net settlement of exchange-traded securities cleared through Clearnet, protects the delivering AI/client in case of a default of Clearnet.

Courts upholding the legal basis

In the Dutch jurisdiction there has not been a case when a court has failed to uphold the legal basis for clearing and settlement.

Effect of insolvency of participant

As stated above in relation to Finality of Settlement, Clearnet, ENL and NIEC are all systems that are designated as systems where the SFD regulations applies, and hence opening of insolvency proceedings will not affect transfer or netting order issued in the system prior to a court decision on insolvency proceedings. There are also adequate rules in all systems addressing a participant's default. Collateral can be used effectively in the event of a default.

Relevance of other jurisdictions

Standard 2 of the Supervisory Framework CSE stipulates that attention should be paid to the potential implications arising from the admission to the securities settlement systems of participants from countries where the legal provisions on insolvency, collateralization, settlement of foreign contracts, securities custody and links with other securities settlement systems etc. deviate from Dutch Law. In the case of cross-border links, the foreign CSDs holding securities for ENL or NIEC should meet sufficiently high standards. The legal assurance, if necessary backed by legal opinions, is checked by the Minister of Finance on adequacy for situations of bankruptcy. Only unless the foreign jurisdiction concerned can offer comparable guarantees as the Dutch Securities Giro Act, the Minister of Finance will approve of the link with the foreign CSD. Such a requirement for ministerial approval follows from the Securities Giro Act (article 35).

For the approval of the sale of Necigef to Euroclear Bank S.A./N.V., the AFM and DNB requested a legal opinion in order to determine whether the requirement concerning a sound legal basis, as referred to in the Supervisory Framework CSE and the Securities Giro Act, was observed. A key issue wherein the legal opinion had to provide insight, was the regulations and/or conditions (documentation) that apply to the relationship between Necigef and Euroclear Bank and on the enforceability of these regulations.

Assessment	Observed The legal basis for regulation and supervision could however be slightly more formal and direct. However this aspect has not effected the assessment of this Recommendation, but the assessment of Recommendation 18.
Comments	
Recommendation 2.	Confirmation of trades between market participants should occur as soon as possible after trade execution, but no later than trade date (T+0). Where confirmation of trades by indirect market participants (such as institutional investors) is required, it should occur as soon as possible after trade execution, preferably on T+0, but no later than T+1.
Description	<p>Exchange-traded transactions are confirmed by real-time messages after execution to all trading and clearing members involved. Correspondingly, potential problems would be noticed immediately.</p> <p>As for OTC trades, no exact figures are available, but most deals between direct market participants are confirmed on the trade date, albeit not in all cases through an automated trade confirmation system. Problems are then communicated the same day or the day after.</p> <p>With scheduled settlement instructions, pre-matching takes place, while the instruction can be reversed. The transaction only becomes binding from the moment the required securities are committed for delivery against payment on the desired settlement date specified (see further Rec. 1, subsection “Timing of finality”). For DVP settlements, matching of the settlement instructions is required by the CSD. In the event of a non-match, the parties involved in the transaction are informed on a real-time basis. This communication is repeated at the end of every working day as long as the duration of the transaction in question remains valid. FOP settlement instructions are executed by order of the counterparty responsible for delivery.</p> <p>The conditions which apply to the indirect participants’ relationship with direct market participants depend on the client agreements between the direct and indirect market participants. However, according to the Securities Trade Decree (section 28) a contract note shall be provided to the client. The content of such contract note is laid out in the Further Regulations (article 34), but there is no regulations for the timing of sending such contract notes.</p>
Assessment	Observed
Comments	
Recommendation 3.	Rolling settlement should be adopted in all securities markets. Final settlement should occur no later than T+3. The benefits and costs of a settlement cycle shorter than T+3 should be assessed.
Description	<p>Government debt instruments, private debt instruments and equities, whenever they are traded on the exchange, are settled on T+3. Exchange-traded derivatives are settled on T+1. Central bank operations are settled on T+1. For OTC transactions, settlement can take place on T up to T+100.</p> <p>With respect to exchange-traded transactions, the average daily percentage of fails relative to the total net clearing amount open for delivery (i.e., not the gross transactions) is actually about 6 percent before securities lending and 4 percent after securities lending. In the past, these percentages had been higher with daily maxima of 10 percent to 15 percent on average. However, 40 percent to 50 percent of these non-settlements lasted one day only, the reason being that securities which are open for delivery need to be deposited on T+2 at 22:00 hrs with Euroclear Netherlands, which was deemed too early by large US investors. The average duration is difficult to calculate, due to the application of continuous net settlement (see next question). Having investigated the number of fails, <u>Clearnet Amsterdam</u> has imposed penalties</p>

	<p>for non-settlements since February 2001, amounting to a maximum of €1,500 per clearing member per day. Some time after the introduction, the percentage of fails reached a similar level as before. A review of the settlement practice then indicated specific reasons for the fails, like complications of the actually shorter settlement cycle, dual listings and settlement links. It is anticipated that certain issues behind these reasons will be resolved in the further integration projects planned by Euroclear Bank and Clearnet.</p> <p>Non-settlements are marked to market and margined by Clearnet Amsterdam. Clearnet Amsterdam runs the CNS system, which nets fails against traded but not yet settled transactions.</p> <p>Clearnet Amsterdam monitors the open positions and has a formal requirement that fails will be closed out on T+14, when the buy-in procedure will be started.</p> <p>Clearnet Amsterdam Branch evaluated the settlement cycle in a memo dated 12 November 2001 in a review of the non-settlements. As mentioned above, the settlement cycle is in fact T+2 instead of T+3. The benefits exist in the settlement of transactions before trading starts at T+3, but the costs are a relative high percentage of one-day fails. The conclusion was that the existing settlement cycle should be maintained, but a differentiation was considered in penalizing the non-settlements, depending on the type of security. However, a revised penalty system has not been implemented in view of the expected developments in the field of clearing and settlement for the Euronext markets, especially the harmonization of settlement practices through the ESES project (the acronym stands for Euronext Stock Exchange Settlement).</p>
Assessment	Observed
Comments	
Recommendation 4.	The benefits and costs of a central counterparty should be assessed. Where such a mechanism is introduced, the central counterparty should rigorously control the risks it assumes.
Description	<p>All transactions on the Euronext exchanges are to be cleared (Euronext Rule Book, article 4601), and Euronext offers central counterparty clearing services through <u>Clearnet</u>. In addition to exchange-traded securities, market participants may choose to use Clearnet as the CCP for OTC bond and repo transactions. However, this is not used in the Dutch market.</p> <p><u>Netting</u></p> <p>Novation of the original transactions takes place in real-time when a transaction is registered with Clearnet (Clearing Rule Book article 1.3.5.3). The gross open positions are aggregated with respect to payment of cash or delivery of securities into net positions, at the end of each clearing day (Clearing Rule Book 1.3.5.6). The netting arrangement does not lead to novation. The netting is enforceable against clearing members in insolvency since Clearnet operates a system designated as system to which the SFD applies, in which transactions become irrevocable once they are accepted by the system.</p> <p><u>Risk Management</u></p> <p><u>Member requirements</u></p> <p>Clearnet imposes various standards on its members. The Clearing Rule Book contains financial and operational requirements (Title 1, Chapter 4). The main <u>financial requirements</u> are</p> <ul style="list-style-type: none"> - minimum own capital for General Clearing Members – € 25 million, increasing up to a maximum of € 37.5 million if clearing for more than nine trading members;

	<ul style="list-style-type: none">- minimum own capital for Individual Clearing Members - € 10 million <p><u>Operational requirements</u> are amongst others</p> <ul style="list-style-type: none">- sufficient expertise in clearing activities- operationally reliable technical systems and organizational structure- adequate risk management policy- imposing the same margin requirements on the clients as Clearnet imposes on the member <p><u>Credit risk</u></p> <p>Clearnet makes use of several financial resources to manage the credit or counterparty risk vis-à-vis its clearing members. As a result of the rights and obligations in regard to the clearing of securities, Clearnet mainly absorbs market risk and liquidity risk. The market risk is mitigated by a layered structure of financial resources, which cover potential losses from the change in market value of open positions after the default of one or more clearing members.</p> <p><u>Margin</u></p> <p>Margin requirements are the first line of defense for Clearnet. Clearnet performs a daily calculation of margin requirements for clearing members of the stock exchanges. Clearnet uses the SPAN system for calculating margin. The total amount of margin depends on the open positions of the three most recent trading days. The initial margin is calculated to cover for an adverse price movement equal to the one-day movement during the last 125 trading days calculated with a confidence interval of 99.7 percent. The margin parameters are reviewed monthly. Margin deposits and releases take place every day. The differences in valuation between actual market prices and settlement prices is blocked as margin. Prices are adjusted for illiquidity or large swings.</p> <p>Clearnet performs an intra-day calculation of margin requirements for clearing members of the option and futures exchanges. The total amount of margin depends on the entire derivatives position per underlying value. For derivatives Clearnet uses a portfolio calculation. For future contracts, also variation margin is settled.</p> <p><u>Clearing Fund</u></p> <p>The next important financial resource which is available to Clearnet in case of a defaulting member, is the clearing fund. All clearing members are required to contribute to the clearing fund. The total amount of the common clearing fund (regardless of market) depends on the largest exposure of an individual clearing member during the most recent period of two months. The exposure is calculated daily at a stress level equal to the worst 2-day price movement for 25 years, less the margin delivered by the member. The clearing fund should cover the largest two month average plus two standard deviations. The contribution of each member to the fund is calculated pro rata parte, based on each member's exposure. After a draw on the clearing fund, the fund will be immediately recalculated and members will be called for the replenishment of the clearing fund. Deposits and releases for contributions to the clearing fund happen every month.</p> <p><u>Collateral</u></p> <p>The initial margins and Clearing Fund contributions can be paid in cash or by delivering securities to Clearnet as collateral. Variation margin is to be paid in cash. The securities accepted by Clearnet as collateral, include certain Government bonds, as well as stocks included in some indexes on the Euronext markets (the latter only to cover margin). Securities are valued with a haircut depending on maturity. For stocks the haircut is 40 percent. An alternative to delivering collateral to Clearnet is to arrange for a guarantee in favor of Clearnet issued by a central bank, secured by a pledge of eligible securities. Virtually all Dutch clearing members prefer the latter</p>
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	<p>method of collateralization.</p> <p><u>Liquidity risk</u></p> <p>The liquidity risk, which is related to the payment obligation of Clearnet after a default by one of its members, is mitigated by the availability of liquid financial resources. For all stock markets, Clearnet calculates each day the maximum liquidity need of its clearing members at the day of settlement. These amounts need to be covered by margin, clearing fund, Clearnet's own funds and funds entrusted by third parties. If these funds would not cover the liquidity forecast, Clearnet would call for intra-day additional margin.</p> <p>Clearnet Amsterdam monitors that the largest amount to be paid by a Dutch member less the guarantee from DNB for this member, is covered by the € 200 million that Clearnet Amsterdam has deposited from its Treasury. If that deposit is not enough Clearnet Amsterdam will require additional deposits. In addition there is a stand-by facility offered by DNB for € 68 million, which is secured by the receivable securities.</p> <p>Clearnet is bound to strict investment guidelines regarding types of assets, credit ratings, maturities and tenors. Apart from the above-mentioned liquidity arrangements, Clearnet is allowed to enter into repo transactions in order to create extra liquidity.</p> <p><u>Multiple defaults</u></p> <p>Clearnet has the right to require that members replenish the Clearing Fund in the event of default. Hence Clearnet regularly tests that the largest exposure on a group is covered within an amount equal to two times the Clearing Fund. The additional financial resources described below will further mitigate the risk of a multiple default.</p> <p><u>Monitoring of clearing members</u></p> <p>Clearnet monitors monthly the financial standing of its clearing members. In addition the clearing members have to answer a questionnaire used by Clearnet/Euronext to evaluate the quality of the organization of the clearing member. Clearnet/Euronext bases its audit plan on the assessments of the questionnaire. Clearing members has to inform Clearnet of more fundamental changes in management, organization and systems.</p> <p><u>Default</u></p> <p>The French predecessor of <u>Clearnet</u>, which acted as the CCP on the commodities market, handled one default, but in a situation that does not compare to the present situation. The default induced changes in the risk management at that time.</p> <p>The Dutch predecessors of Clearnet have not experienced the default of a clearing member.</p> <p><u>Use of financial resources in the event of a default</u></p> <p>The available resources will be used in the following way:</p> <ol style="list-style-type: none">1. Margin posted by the defaulting member (as of October 2003 the total margins amounted to about € 5.5 billion, of which from the Dutch members about 1.5 billion.2. Clearing Fund contribution by the defaulting member3. Clearing Fund up to a maximum of € 280 million4. Insurance for € 150 million5. Remainder of Clearing Fund (as of October 2003 the Clearing Fund amounted to about € 300 million – in 2002, with a Clearing Fund of € 280 million, the Dutch clearing members accounted for 1/3 of the total contribution.)6. Clearnet's own capital (as of December 31, 2002, that capital was 287 million)
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	<p>7. On-demand guarantee from Euronext N.V., the major shareholder in Clearnet. It should be noted that the financial resources described under 4,6 and 7 also cover Clearnet's other activities as clearing house for OTC transactions.</p> <p><u>Assessment of necessary size of financial resources</u> The rationale behind the calculation of margin and Clearing Fund is described above. The size and the liquidity of margin and clearing fund are assessed by DNB, the AFM and the other CCC members. The insured amount is aimed at a multiple default and the pay-out under the policy has a term of 10 days.</p> <p><u>Availability of financial resources</u> The clearing fund described above contains securities deposited in the name of Clearnet or central bank guarantees in favor of Clearnet.</p> <p><u>Transparency of loss allocation</u> The loss allocation is defined in the Clearing Rule Book (sections 1.7.2 and 1.7.3 and further in Instruction I.7-1), describing the order in which financial resources will be used: margin, surplus collateral and clearing fund ('defaulter pays'), the remainder and the possible replenishment of the clearing fund ('survivors pay'), the insurance, and finally Clearnet's own funds and the parental guarantee.</p>
Assessment	Observed
Comments	
Recommendation 5.	Securities lending and borrowing (or repurchase agreements and other economically equivalent transactions) should be encouraged as a method for expediting the settlement of securities transactions. Barriers that inhibit the practice of lending securities for this purpose should be removed.
Description	<p><u>Regulatory framework</u> The securities lending and borrowing market is supported by Dutch law and by the international standard agreements for securities lending, applied to Dutch law. Repo transactions used to conflict with a provision in Dutch law regarding the transfer of securities (the so-called <i>fiducia-verbod</i>) and equivalent transactions used to be buy-and-sell-back transactions, until an exception to the law was created in 1998 with a view to facilitating euro monetary operations. At present, there are no barriers anymore that inhibit lending, repo and similar transactions.</p> <p><u>Facilities for securities lending</u> <u>ENL</u> and <u>NIEC</u> do not offer securities lending facilities in connection with the settlement process.</p> <p><u>Clearnet Amsterdam Branch</u> has organized an automatic arrangement for securities lending (<i>onverplicht-leverencircuit</i> or <i>leencarroussel</i>) in order to expedite securities settlement in case delivery fails. Two Dutch banks, ING Bank and Dexia Securities Services, render lending services to Clearnet with regard to the Dutch exchange-traded securities. The arrangement covers the most liquid securities traded at the markets organized by Euronext Amsterdam.</p> <p><u>Supervisory review</u> DNB in its capacity as the Dutch banking supervisor reviews how banks deal with the credit exposures resulting from securities lending transactions. The AFM have issued regulation regarding the collateralization requirements for investors in the Further Regulations (article 28, explanatory note).</p>
Assessment	Observed
Comments	
Recommendation 6.	Securities should be immobilized or dematerialized and transferred by book entry in CSDs to the greatest extent possible.
Description	Of the securities held in custody with <u>ENL</u> (which counts for 99.2 of the combined

	<p>value at ENL and NIEC) 37 percent, calculated by market value (60 percent if calculated by number of issues) is dematerialized. By far the largest part of these dematerialized securities is Dutch Government bonds. 33 percent of the securities are immobilized by means of a global note. 28 percent of the securities kept on book-entry accounts with ENL are held in physical form. 2 percent are kept with another CSDs. The level of dematerialization is much lower for shares where only 11 percent is dematerialized.</p> <p>The percentage that is dematerialized or immobilized is steadily increasing. For the remainder, the issue of new physical securities is discouraged because the high costs of operations and risk management related to physical handling is reflected in the fees of ENL.</p> <p>Typically, securities are transferred by book entry. Physical handling only takes place when securities that were originally issued as physical certificates are brought into the system of book-entry transfer (<i>girodepot</i>), or requested to be delivered out of the system (about 10,000 deposits and 8,000 withdrawals). The modification of the Dutch Securities Giro Act in 2000 provided the legal basis for securities in the name of ENL, further facilitating the issue of global notes and the registration of the security interests by book entry. Corporate bonds may still be issued as physical certificates, so-called CF securities. But all domestically issued and exchange-traded securities are either immobilized or dematerialized in ENL and fall under the legal protection of investors offered by the Securities Giro Act.</p> <p>Within <u>NIEC</u>, both physical and dematerialized securities are eligible for deposit. Depending on the conditions governing the issues, securities issued as physical certificates are either immobilized (e.g., global notes), or allowed to move freely into and out of the depository (bearer certificates).</p> <p><u>Registration</u></p> <p>The types of securities that are kept with ENL are mainly bearer securities or registered (dematerialized) securities. In case the securities are registered in a register kept by the issuer, ENL will appear in this register. Hence there is no need for a registration in the event of a transfer between two Admitted Institutions. A transfer becomes final when registered by ENL.</p>
Assessment	<p>Observed</p> <p>Even if there still is a substantial portion of securities that is not dematerialized or immobilized in form of a global note, virtually all securities are held in book-entry form.</p>
Comments	
Recommendation 7.	<p>Securities settlement systems should eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.</p>
Description	<p>The securities settlement system of <u>ENL</u> allows for the principle of delivery-versus-payment (DVP). For OTC transactions as far as the Trade-for-Trade facility is concerned, settlement is concluded on a real-time gross basis, corresponding to DVP model 1 (gross, simultaneous settlement of securities and fund transfers). The securities to be delivered are reserved on the delivering AI's account and a request to transfer the cash amount from the receiving AI's account to the delivering AI's account is sent to either DNB for transactions in euro or to KAS Bank N.V. for other major currencies. After receiving a confirmation of the cash transfer ENL will finally transfer the securities from the delivering AI's account to the receiving AI's account. If a confirmation is not received by the deadline for cash transfer the reservation on the delivering AI's account is reversed. This form of DVP is consistent with DVP model 1, gross settlement of securities and gross settlement of cash.</p> <p>OTC transactions may also be settled free-of-payment (FOP) with cash settlement in</p>

	<p>commercial bank money.</p> <p>Exchange-traded transactions concluded on Euronext are cleared through and are effectively settled DVP in accordance with the Clearnet Clearing Rule Book (article 1.3.5.7 and Instruction 1.3-1). All instructions are submitted on T+2. Technically the delivery to Clearnet takes place on T+2 by means of a provisional transfer (not possible to be reused prior to becoming final), followed on T+3 by the payment and the immediate delivery to the paying AIs. The cash settlement is a multilateral net settlement. In this case applies DVP model 3, simultaneous net settlement of securities and funds transfers.</p> <p>The cash side of the transaction is settled either by DNB in euro, or by KAS Bank N.V. in other major currencies.</p> <p>In 2002 the net settlement of exchange-traded securities amounted to 44 million, with an underlying gross value of € 507 billion (excluding derivatives). This amount is settled DVP. At the same time DVP-settled OTC-transactions amounted to € 682 billion. The underlying value for FOP-settled OTC-transactions is not known, but by volume it equaled 2/3 of the volume for DVP-settled OTC transaction. Assuming the same average value for OTC-transactions, the DVP-settled transactions counted for about 72 percent of the total value of settled transactions.</p> <p>However, it should be noted that the FOP-settled transactions include transactions for transfer of collateral. The FOP-settled transactions also include cross-border settlement through links that is not possible to settle DVP (cf. Recommendation 19). Taking those aspects into consideration the comparable settlement DVP is higher.</p>
Assessment	<p>Partly observed</p> <p>A substantial part of the transactions settled at ENL and NIEC, are not settled DVP. It is not possible from available statistics to determine whether 90 percent of the comparable transactions are settled DVP. If that would be the case the assessment category would be raised to “Broadly observed”.</p>
Comments	<p>DVP is not achieved in the cross-border links due to considerable legal complications. This will be achieved for those links which can be operated DVP after the implementation of the Single Settlement Engine within Euroclear group, which is expected to take place between 2005 and 2008. Depending on the effect on the total value settled DVP this could result in a higher rating category.</p>
Recommendation 8.	<p>Final settlement on a DVP basis should occur no later than the end of the settlement day. Intra-day or real-time finality should be provided where necessary to reduce risks.</p>
Description	<p><u>Definition of settlement finality</u></p> <p>The cash and securities transfers become final from the moment payment is made. In accordance with Volume 6 of the Dutch Civil Code (article 114), cash payment is generally deemed to have been made at such time the creditor’s account – which must be held in the country where the payment must or may be made – is credited. Analogous to this is that the transfer of securities becomes final when ENL has entered the securities by book-entry to the securities book-entry account of the party taking delivery in accordance with the Securities Giro Act (article 17). The parties involved are informed of this by <u>ENL</u> on a real-time basis. Due to the fact that ENL is a system designated as a system for which the SFD applies, there is not risk that a transaction will be revoked to the opening of insolvency proceedings against one of the parties to the transaction.</p> <p>For <u>NIEC</u>, which also is a designated system, the same timing of settlement finality applies.</p> <p>However, for securities settlement where the securities are transferred not between different book-entry accounts held with ENL, but between different accounts in the</p>

	<p>books of an AI (transfer within the collective deposit of an AI), the normal “zero-hour rule in the Dutch bankruptcy legislation will apply, and hence finality will not occur with certainty until the end of the transaction day.</p> <p>Furthermore, securities transactions via the linkage to another CSD can only be effected via delivery free of payment.</p> <p><u>Timing of settlement</u></p> <p>In processing orders a distinction is made between evening processing (on S-1 from 20.00 to 22.30 hours) and daytime processing (on S from 07.00-17.00 hours). Deliveries against payment are processed during the evening (from 20.00-22.00 hours) with settlement of the cash leg once and between 08.00 and 15.00 hours during the day with settlement of the cash leg every 30 minutes. The cash settlement makes settlement final and securities can be reused. This arrangement means that same-day value processing is possible for transactions involving delivery against payment which are submitted before 15.00 hours at the latest, while deliveries free of payment can be submitted up to 17.00 hours.</p> <p>Deliveries to <u>Clearnet</u> (net settlement) are made by ENL/NIEC following a request by Clearnet at 22.30 hours on S-1. Deliveries from Clearnet are made by ENL/NIEC around 09.00 hours on S, following a confirmation from Clearnet that cash settlement has taken place.</p> <p>Finality is achieved throughout the day following the settlement by <u>ENL</u> or <u>NIEC</u>. For OTC transactions, a need can be identified for intra-day finality. The Trade-for-Trade facility fulfils this need. For the CCP such need does not exist, since it can provide intra-day finality itself, through the means of novation and netting.</p> <p><u>Central Bank usage</u></p> <p>The securities settlement system of ENL is indeed used by the central banks in monetary policy operations and for collateralization (intra-day credit, standing facilities and guarantees for margin and Clearing Fund contributions).</p> <p><u>Links</u></p> <p>Transactions settled by the CSD through the available and approved links are final. A need can be identified though for extension of the possibilities especially for cross-border DVP settlement, which will be developed in the near future by Euroclear Bank.</p> <p><u>Revocation of transfer instructions</u></p> <p><u>ENL</u> prohibits the unilateral revocation of unsettled transfer instructions as soon as the securities balance is reserved. This will for OTC DVP-transactions occur when a transaction is matched and the cash settlement process for the respective settlement date is to start (20.00 hours on S-1 and from 07.00 hours on S). For FOP-transactions the securities balance is reserved when the settlement process for the relevant settlement date starts (20.00 on S-1). ENL does not receive provisional transfers from other CSDs.</p>
Assessment	Observed
Comments	
Recommendation 9.	Deferred net settlement systems should institute risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest obligation is unable to settle. In any system in which a CSD extends credit or arranges securities loans to facilitate settlement, best practice is for the resulting credit exposures to be fully collateralized.
Description	<p><u>Provision of credit to participants</u></p> <p><u>ENL</u> and <u>NIEC</u> do not provide credit to members by means of netted settlement. All</p>

	<p>settlement is gross settlement, with the exception of settlement of transactions cleared by Clearnet, where the netting takes place in the books of <u>Clearnet</u>.</p> <p><u>ENL</u> and <u>NIEC</u> does not provide any other forms of credit and do not act as CCP or in any other way guarantee settlement.</p> <p>As a CCP, <u>Clearnet</u> guarantees the timely settlement of the transactions to which Clearnet has become a party through novation.</p> <p><u>Effect of participants inability to settle</u></p> <p>In the event of a participants' inability to settle its obligation, both parties to the transaction are informed by means of an error message, stating the reasons of the non-settlement. Thereafter, it is left to the parties concerned to agree on some kind of an arrangement since, as stated above. <u>ENL</u> and <u>NIEC</u> do not guarantee settlement. Furthermore, ENL and NIEC have no access to credit lines or letters of credit. These are not necessary, given the fact that their settlement role is limited to providing for the technical infrastructure to enable settlement.</p> <p><u>Clearnet</u> has taken sufficient measures as to ensure timely settlement of the exchange-traded transactions, as described under Recommendation 4.</p> <p><u>Securities balances</u></p> <p>Participants are not allowed to have a debit balance on the account with <u>ENL</u> and <u>NIEC</u>.</p> <p><u>Risk for multiple failures</u></p> <p><u>ENL</u> and <u>NIEC</u> will only undertake the settlement of a transaction where the account balance (securities and funds) are sufficient to effect the transaction in question.</p>
Assessment	<p>Observed</p> <p>The CSD does not provide credit in any form and settles in principle all transactions gross. Hence the Recommendation is not applicable to the CSD. However, the CSD also settles transactions that are netted in the books of Clearnet as a result of Clearnet as CCP offering netting functionality. These transactions are settled as a multilateral net at the level of the CSD, but is to be covered by risk controls at the level of Clearnet. The risk controls in Clearnet, as described and assessed in Recommendation 4, ensures, at a minimum, timely settlement in the event that the participant with the largest obligation is unable to settle.</p>
Comments	
Recommendation 10.	<p>Assets used to settle the cash leg of securities transactions between CSD members should carry little or no credit risk. If central bank money is not used, steps must be taken to protect CSD members from potential losses and liquidity pressures arising from the failure of a settlement bank.</p>
Description	<p><u>Settlement agent</u></p> <p>The Dutch central bank, DNB, is the cash settlement agent for exchange-traded transactions, as well as OTC transactions settled DVP through ENL and NIEC to the extent they are to be settled in euro. For the settlement of transactions in foreign currencies, participants hold cash accounts at the KAS Bank N.V., a commercial bank. Over 95 percent of the settlement volumes are conducted in euro.</p> <p><u>ENL</u> and <u>NIEC</u> do not provide cash accounts or funds transfers in conjunction with securities transfers. Participant institutions only hold securities accounts with ENL and/or NIEC. ENL and NIEC do not engage in other commercial activities.</p> <p><u>Settlement bank risks</u></p> <p>As noted above, over 95 percent of the settlement volumes is conducted in euro and therefore through the central bank. The KAS Bank which operates as the cash settlement agent for transactions in foreign currencies is subject to prudential</p>

	<p>supervision of DNB and as such its financial condition is monitored and controlled. The choice for settlement banks with respect to the settlement of exchange-traded transactions is subject to a nihil obstat from the Dutch joint overseer. The general criteria are stipulated in the Supervisory Framework CSE. In practice, only two settlement banks, DNB and KAS Bank are being used with payment flows concentrated into one daily moment of settlement. Over 95 percent of the settlement volume is settled on the accounts with DNB.</p> <p><u>Liquidity risks</u></p> <p>From the moment the funds are credited to the cash account of the participant, they can be used for further activity.</p> <p><u>System for interbank transfer</u></p> <p>Settlement at DNB for transactions in euro will take place in the Dutch Large Value Payment System, TOP, owned and operated by DNB. The TOP system, a systemically important payment system has been assessed by DNB against the CPSS Core Principles for Systemically Important Payment Systems. The outcome of the assessment, which the Bank completed in 2002, was that TOP generally satisfies the Core Principles.</p>
Assessment	<p>Observed</p> <p>95 percent (by value) of cash settlement takes place in central bank money. The remainder settles in a commercial bank that is subject to prudential supervision.</p>
Comments	
Recommendation 11.	<p>Sources of operational risk arising in the clearing and settlement process should be identified and minimized through the development of appropriate systems, controls, and procedures. Systems should be reliable and secure and have adequate, scalable capacity. Contingency plans and back-up facilities should be established to allow for timely recovery of operations and completion of the settlement process.</p>
Description	<p>ENL, NIEC and Clearnet are adequately staffed. Procedures are available for managing different sources of operational risk. The operations are also regularly audited, both internally and externally.</p> <p>The SEF system of <u>ENL/NIEC</u> (<i>System Effecten</i>) is operated by Euroclear Bank S.A./N.V., Brussels (the parent company of ENL and NIEC) under a Service Level Agreement. The operation of the ENL/NIEC vault is outsourced to a subsidiary of Euronext Amsterdam.</p> <p>The clearing system of <u>Clearnet</u> is operated by ATOS-Euronext, Paris (an affiliate to the Euronext Group) under a Service Level Agreement. The CNS system that links the clearing system to the Dutch depository and cash systems is operated out of Amsterdam.</p> <p><u>Contingency plans</u></p> <p><u>ENL</u> and <u>NIEC</u> have a contingency plan and emergency procedures for the automated data processing in place, including plans for operations in the alternative site. These procedures are tested at least four times a year. The participants generally do not take part in these tests, but this is possible on their request. These contingency plans include the daily back-up of data. These data are preserved internally and externally at the back-up site.</p> <p>Regarding, the integrity of messages, a network security processor, i.e., SWIFT, renders messages secure and monitors whether transactions have been entered properly into the system (on the basis of electronic signature using keys and DES algorithms). Control routines are incorporated within the automated systems to ensure integrity of balances (proof reports). Correct settlement is further safeguarded by means of systems logs that actively signal possible aberrations.</p> <p><u>Clearnet</u> has developed an overall disaster recovery plan and contingency plans for</p>

	<p>the failure of its key systems. The plans are tested and reviewed twice a year with participation of the clearing members. An alternate site is installed at a distant location. Back-up facilities are available and running. Restoring data has been tested. Currently, Clearnet guarantees the preservation of all transaction data at the time of the disruption, even if both the trading system and the clearing system fail simultaneously. Depending on the situation, it may take a couple of hours to recover operations through back-up systems. General controls have been implemented to check the integrity of messages in the real-time clearing system and to reconcile the transactions with the output of the trading system. An audit trail is made during the entire transaction processing and stored.</p> <p><u>Reviews and audits</u></p> <p>The results of each audit at <u>ENL</u> and <u>NIEC</u> are submitted to the Board of Directors and to the supervisory authorities to assess the operational reliability of the system(s). Once every three years an EDP audit on the Necicom systems is conducted. If necessary, the audit department of Euroclear Bank S.A./N.V. conducts an interim EDP audit. The Internal Control department conducts audits on a daily basis.</p> <p>Internal control procedures are assessed by the external auditor on grounds of sufficiency and ease of implementation. The external auditor (PriceWaterhouseCoopers) assesses the internal control procedures and reports of such controls as well conducting his own random samples. The external auditor further ascertains whether the rules and procedures have been implemented in a correct and timely manner on the basis of a review of the internal audit department's dossiers. Audits and examination reports are not available for review by participants. Should circumstances so require such reports can be made available to the external auditor of the institution concerned.</p> <p>The Internal Audit Department of Euronext, the parent company of <u>Clearnet</u>, audits operations and IT each year and presents the report to the Board of Directors. Also external audits are conducted. The Internal Control department within the Clearnet organizations audits on a daily basis. EDP auditors of the supervisory authorities review the conducted audits. Especially in the context of the most recent clearing system migrations, the operational reliability has been thoroughly assessed by the Dutch and French regulators.</p> <p><u>Incidents</u></p> <p>In the last two years, <u>ENL/NIEC</u> has had one major operational problem (June 2003). The operator of the system, Euroclear Bank, Brussels made a mistake at a critical moment with the effect that settlement was delayed. (Following the terms of the SLA, the operator covered the compensation ENL/NIEC had to make. For this type of risks the service provider has a liability of € 17 million. Appropriate measures have been taken to prevent that a similar incident could reoccur.</p> <p>ENL and NIEC and have evaluated the capacity of the systems. The outcome of this evaluation was that the capacity percentage of the SSS was approximately 99 percent (99,8 percent for the central processing unit and 98,2 percent for the network). This number was calculated on the basis of a maximum load of two times the daily production and for data communication a maximum load of the data line of 30 percent.</p> <p>In the Netherlands, the clearing system of <u>Clearnet</u> has not failed during the last year. Clearnet manages the capacity of the clearing system processing as well as the data transmission between the market places and the central clearing system. In this respect, Clearnet increased the capacity after the cash clearing migration in Amsterdam with a view to enhance the performance of the system.</p>
Assessment	Observed

Comments	
Recommendation 12.	Entities holding securities in custody should employ accounting practices and safekeeping procedures that fully protect customers' securities. It is essential that customers' securities be protected against the claims of a custodian's creditors.
Description	<p><u>Arrangements for protection customers securities</u></p> <p>The customer protection follows from the Dutch Securities Giro Act, which states that the ultimate investor is the beneficiary owner and not the custodian and from the segregation of account holdings at the level of the Admitted Institutions (AIs). In case of insolvency on the side of the custodian, there is no risk of loss of ownership for the ultimate investors. Also, all admitted institutions of <u>ENL</u> should sign a declaration that they are insured against theft and loss of securities. Furthermore, all AIs are credit institutions or separate depository institutions belonging to a credit institution group and subject to prudential supervision by DNB.</p> <p>In case of <u>NIEC</u>, the customer protection follows from the Further Regulation, which states that the AIs have to make arrangements to sufficiently protect the rights of customers with regard to securities. AIs are obliged to segregate their own securities from customers' securities. Furthermore, all AIs are credit institutions and subject to prudential supervision by DNB.</p> <p><u>Reconciliation</u></p> <p>The frequency of reconciliation is a matter of the AIs themselves, but all AIs receive an electronic statement on their positions at the end of the day. AIs are subject to internal and external audits mainly for accounting reasons, but not as a consequence of their membership of <u>ENL</u>. The Further Regulations (Annex 4.9) requires that the stock balance is reconciled monthly. Reconciliation procedures are among those procedures that are assessed by supervisors (DNB and the AFM) in their assessment of internal control.</p> <p><u>Regulation of custodians</u></p> <p>Pursuant to the Securities Trade Decree (section 16) and the Further Regulations (sections 12-16), credit institutions and investment firms are required to ensure an adequate segregation of securities. This can be realized through the use of an AI under the Securities Giro Act, i.e., for securities kept in a book-entry account with ENL, or by using a separate depository institution.</p> <p>Such a depository institution, formerly referred to as a Vabef (<i>Vereenvoudigde Administratie en Bewaring Effecten</i>)-institution, can have no other activity than holding securities in custody as defined in their statutory goal. The institution must also have a certain minimum capital (€ 125,000) and a guarantee from a credit institution for the compliance of its obligations. Its direct shares are being held by an administrative trust office. In practice, almost all entities holding securities are credit institutions or, if a separate depository institution, belong to a credit institution group, and as such subject to regulation by DNB. DNB also reviews the procedures and internal controls within these organizations, also the ones used in the safekeeping of securities.</p>
Assessment	Observed
Comments	
Recommendation 13.	Governance arrangements for CSDs and central counterparties should be designed to fulfill public interest requirements and to promote the objectives of owners and users.
Description	<p><u>Governance arrangements</u></p> <p>The Board of <u>ENL</u> and <u>NIEC</u> is responsible toward the Board of Euroclear Bank S.A./N.V., the parent company. All information concerning the group structure and the systems as well as future plans concerning these issues are publicly available and can be found on the website. Euroclear also has Market Advisory Committees</p>

	<p>(MACs) in place, in which market participants are informed about system changes and where they can give their opinion on relevant issues. The representation in the Dutch MAC resembles the representation in the Netherlands Banking Association (<i>Nederlandse Vereniging van Banken - NVB</i>). The chairman of the Dutch MAC is present at the meetings with Board of Directors of ENL. In addition, ENL also installed a user council (<i>Gebruikersraad</i>), which discusses more technical issues.</p> <p><u>Clearnet</u> is an 80 percent subsidiary of the Euronext group and Clearnet's management is responsible toward the CEO of Euronext N.V. and to Euroclear. All information regarding the company, the clearing system and its activities is available on Clearnet's website. The clearing members are involved through the International User Committee, Market Advisory Committees (MACs) and Local User Committees. In projects, General Member Meetings are being organized on the relevant locations and information is available on the website. Contact with the regulators is organized via monthly Policy Meetings in the Amsterdam Branch and via meetings with the Co-ordination Committee on Clearing Euronext, monthly at technical level and quarterly at high level, in which all Euronext securities regulators and overseers are represented.</p> <p><u>Public interest, user needs and other objectives</u></p> <p><u>ENL</u> regularly presents its project plans and objectives to both the participants and the regulatory authorities, especially in circulars and Euroclear Group consultation papers. The objectives (e.g., to reduce risk, to increase efficiency) can be found in the annual report and on the website. The public interest is ultimately taken into account by the Securities Giro Act, authorizing the Minister of Finance to rescind decisions made by ENL, whenever such a decision were to conflict with the law or the articles of association. Participants have an influence on the system's decision-making process through the MACs referred to above. Major decisions are communicated through the MACs and also in electronic messages and circulars.</p> <p><u>Clearnet</u> communicates the Clearnet Clearing Model to the public through the Clearnet website, identifying all relevant stakeholders and their interests, and explaining how Clearnet aims at meeting the identified requirements. Clearnet's decision-making can be influenced by the International and Local User Committees. Major decisions are announced on General Member Meetings and to owners via internal communication with Euronext and to Euroclear. Important risk and/or legal decisions are published in the Rule Book, in Instructions and in Notices.</p> <p><u>Management</u></p> <p>Management is held responsible and made accountable for its decision-making vis-à-vis the Boards of Directors of its parent companies. Managing directors are screened by the regulators ("fit and proper test") before the approval of their appointment. Incentives include remuneration schemes.</p> <p><u>Board of Directors</u></p> <p>The board of <u>ENL</u> was assessed by the Dutch regulator before its appointment was approved. The assessment concerned both the expertise and the reliability of the intended management. The accountability structure is arranged within the Euroclear Group, user interests and public interests are discussed during the MAC, the user council and during periodic meetings with the regulators. <u>Clearnet</u>'s management is appointed by the Boards of Directors of Euronext and Euroclear, subject to regulatory approval.</p>
Assessment	Observed
Comments	
Recommendation 14.	CSDs and central counterparties should have objective and publicly disclosed criteria for participation that permit fair and open access.

Description	<p><u>Disclosure of admission and exit rules</u></p> <p>The admission rules of <u>ENL</u> and <u>NIEC</u> are publicly disclosed in the ENL Disclosure Framework published on the Euroclear Bank website, where also the NIEC Rules are found. The system rules for entry and exit are laid down in the Admission Rules of Necigef and in the NIEC Rules (also published on the website). At the time, these Admission Rules were published in the Official Bulletin (<i>Staatscourant</i>).</p> <p>Furthermore, the Securities Giro Act offers applicants of Euroclear Netherlands the possibility to lodge an appeal against a decision for membership with the Minister of Finance, thereby promoting the objective implementation of the rules.</p> <p><u>Clearnet's</u> admission rules can be found in the Clearing Rule Book under Chapter 4 Membership. The rules are objective and public.</p> <p><u>Admission rules</u></p> <p><u>ENL</u></p> <p>The following institutions can be admitted as participants (AIs) (Necigef Admission Regulation, article 2):</p> <ul style="list-style-type: none">- Credit institutions (Dutch or within the EEA) that are in the business of custody, management and administration of securities on behalf of a third party- The Dutch State- DNB- Foreign CSDs- Some specific Dutch clearing and nominee institutions <p>Securities intermediaries (investment firms) that are not credit institutions can be a participant only for Money Market Papers and Medium Term Notes for their own account. This exception for Money Market Papers and Medium Term Notes follows from the existence of such a market between professionals (intermediaries).</p> <p>According to the ENL Disclosure Framework 2003 there is an additional requirement on foreign CSDs that does not clearly follow from the Admission rules, namely that a foreign CSD must be supervised (as is the ENL itself).</p> <p>Admission and withdrawal of participants is subject to the prior approval from the AFM, according to a Decree 2000 under the Securities Giro Act. However, this requirement is not found in the English translation of the Decree in the ENL Disclosure Framework.</p> <p><u>NIEC</u></p> <p>The institutions that can be admitted as participants (AIs) are the following (NIEC Rules, article 1):</p> <ul style="list-style-type: none">- Participants in ENL- Credit institutions (Dutch or within the EEA) that are in the business of custody, management and administration of securities for a third party- Other institutions that are in the business of custody, management and administration of securities for a third party, and fulfils certain special requirements- DNB- Foreign CSDs- A specific Dutch clearing institution <p>The special requirements for the other institutions are the following:</p> <ul style="list-style-type: none">- The sole business should be custody, and no business that involves business risk is allowed- A Dutch credit institution guarantees the other institution if it incurs a loss that can not be covered from funds- The credit institution guarantees the clients of the other institution that the latter complies with all its obligations
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	<ul style="list-style-type: none">- The other institution is independent from the credit institution <p>In practice the admission is subject to prior approval from the AFM. However, this does not follow from the NIEC Rules, or any supervisory act. NIEC is however not regulated in any direct way, but supervised following the licensing requirements for Euronext.</p> <p><u>Clearnet</u></p> <p>The following institutions can become a Clearing Member (Clearing Rule Book, article 1.4.1.2):</p> <ul style="list-style-type: none">- French credit institutions- French investment firms- French institutions whose principal activity is clearing- Foreign institutions of these three types, given that the relevant French Authority (<i>Conseil des Marchés Financiers</i>) approves it. <p><u>Fair treatment</u></p> <p><u>ENL</u> and <u>NIEC</u></p> <p>The admission criteria are set up with a view to ensure the proper functioning of the system. Therefore, all participants that apply for membership are required to be a credit institution, or a separate depository as stated above, which are subject to prudential supervision and deemed to be financially sound. There are no extra requirements for remote members from outside the EEA to become an AI of <u>ENL</u> or <u>NIEC</u> if they are CSDs (or similar to CSDs). Non-EEA credit institutions which are not CSDs are however not accepted as participants in ENL and NIEC. The actual admission will be subject to the prior approval by the AFM, as it is the case with national members.</p> <p>Similarly, <u>Clearnet</u> imposes financial and operational requirements to its members. Most clearing members are credit institutions or investment firms, directly supervised by the applicable regulators. For access to the CCP function in the Netherlands (i.e., to become a member of Clearnet in order to clear transactions executed on Euronext Amsterdam), members also need to become an admitted institution of Euronext Amsterdam first. This condition applies for all members and it is related to the 'vertical' structure of the Dutch oversight on clearing activities via the securities exchange and it will probably be abolished with the upcoming change in Dutch legislation.</p> <p><u>Exit rules</u></p> <p>The exit terms are also publicly available and can be found in the Admission criteria mentioned above. There are two possibilities: either the participant initiates the termination of membership (this is possible as of the 1st of January of any given year), or <u>ENL</u> can withdraw access to a participant, but this is only possible in four cases:</p> <ul style="list-style-type: none">(i) should the participant institution no longer meet the requirements for participation as laid down under article 2 of the Admission Rules;(ii) in cases of bankruptcy, suspension of payments to creditors (including a provisional payments moratorium) or dissolution of the participant institution;(iii) should the participant fail to observe the provisions of the Securities Giro Act;(iv) should the participant fail to observe the necessary requirements for the proper conduct of giro-based securities transactions. <p>Under the Securities Giro Act (article 5) the opportunity is given to lodge an appeal to the Minister of Finance against a decision to withdraw the membership of a participant, or a decision to refuse admission.</p> <p>The exit of participants needs prior approval of the AFM.</p> <p><u>NIEC</u> is also entitled to terminate the participation with immediate effect if the circumstances as referred to in (i), (ii) and (iv) above apply or if the participant, being</p>
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	<p>a natural person, dies or loses the ability to dispose freely of his/her assets and/or income. In practice, the exit of participants of NIEC requires prior approval by the AFM. This does not follow from the NIEC Rules (cf. Admission rules above).</p> <p>Clearing members of <u>Clearnet</u> may terminate their memberships at all times. The termination can only become effective, as stated in the Admission Agreement, once all the financial obligations vis-à-vis Clearnet, related to open positions of a clearing member, are fulfilled. If a clearing member does not fulfill its financial obligations, it constitutes a default. If a clearing member no longer meets its financial requirements, Clearnet has the possibility to take the following measures:</p> <ul style="list-style-type: none"> - suspend its membership; - terminate its membership; - refuse to register transactions; - impose specific conditions. <p>These measures are described in the Clearing Rule Book (article 1.4.4.1).</p>
Assessment	<p>Partly observed</p> <p><u>ENL</u> and <u>NIEC</u> do not admit non-EEA institutions other than CSDs as participants. Such a restriction based on location can not be regarded as motivated from a risk perspective. It should be possible to handle any potential risk through a requirement for participants to be subject to prudential supervision.</p> <p><u>ENL</u> and <u>NIEC</u> do not neither accept investment firms as participants. Investment firms are supervised and hence the risk for the two CSDs should be limited.</p> <p>There is in practice a requirement that a foreign CSD is supervised in order to be admitted as participant <u>ENL</u>. This is not stated in the Admission regulation, but can be found in the Disclosure Framework. This aspect has had less importance for the assessment.</p>
Comments	<p>ENL is in the process of proposing to the authorities that investment firms can be admitted as participants. However, only such a change would not be sufficient to achieve a higher assessment category. In order to achieve a higher assessment category, the unfair treatment of non-EEA credit institutions must be removed.</p>
Recommendation 15.	<p>While maintaining safe and secure operations, securities settlement systems should be cost-effective in meeting the requirements of users.</p>
Description	<p><u>Cost control and benchmarking</u></p> <p><u>ENL</u> is a for-profit organization, with the purpose to provide custody and administration of securities and the management of giro-based securities traffic on behalf of its participant institutions as defined under the Securities Giro Act. The fees of ENL is determined after approval of the Minister of Finance. <u>ENL</u> has recently implemented procedures within their organization and investigates the profitability of each service provided. A project group 'Profitability' will build a model to assess the profitability of each service and create a sustainable pricing structure. The aim is to create a better balance between costs and charges.</p> <p><u>Clearnet</u> benchmarks its fees against the fees of its direct competitors and receives feed-back from its user base about the cost compared against the service level provided. The current operational consolidation process and the systems migrations are mainly driven by cost and efficiency considerations.</p> <p><u>Review of service levels</u></p> <p>As noted earlier, <u>ENL</u> and <u>NIEC</u> have intensive contact with the users of the systems, amongst others through the Market Advisory Committees. In these meetings users can and do make comments regarding pricing and the service level of ENL and NIEC. Operational reliability is regularly being reviewed (cf. Recommendation 11).</p> <p><u>Clearnet</u> surveys its users through account managers and gathers further input through internal and external discussions as a basis for decision-making in regard to its</p>

	service levels. Also the Market Advisory Committee is a forum wherein clearing members can review planned system changes and provide Clearnet with suggestions, if deemed necessary, on ways to implement such changes better taking into account the member's interests.
Assessment	Observed
Comments	
Recommendation 16.	Securities settlement systems should use or accommodate the relevant international communication procedures and standards in order to facilitate efficient settlement of cross-border transactions.
Description	<u>ENL</u> and <u>NIEC</u> make use of the SWIFT Network. This network uses electronic mailboxes and remote connections and is internationally accepted.
Assessment	Observed
Comments	
Recommendation 17.	CSDs and central counterparties should provide market participants with sufficient information for them to accurately identify the risks and costs associated with using the CSD or central counterparty services.
Description	<p><u>Disclosure of system information</u> The <u>ENL</u> (Necigef) admission regulation and application form, the Rules for book-entry deposits, the <u>NIEC</u> Rules, the Disclosure Framework 2003 and the Association of Global Custodians Questionnaire 2002–03 are public and accessible to all market participants through the Euroclear website (www.euroclear.com). The ENL Guidelines, in which the rules for achieving DVP is laid out, is not published, but available to participants.</p> <p>The Clearing Rule Book, the Admission Agreement, the Instructions, the Notices, the Risk Management & Financial Framework and the Risk Access Guide are public and accessible to all market participants through the <u>Clearnet</u> website (www.clearnetsa.com).</p> <p><u>CPSS/IOSCO Disclosure Framework</u> The CPSS-IOSCO Disclosure Framework (January 2003) is completed and disclosed on the website by <u>ENL</u>. The Dutch authorities have approved this disclosure framework under the condition that it is updated regularly.</p> <p>The CPSS-IOSCO Disclosure Framework is not completed by <u>NIEC</u>. It does not intend to do so, because its risk management and operations are largely comparable to ENL.</p> <p>The Disclosure Framework and all other relevant ENL/NIEC information are available in both the Dutch and English language. It can be found on the <u>Euroclear</u> website.</p> <p>The relevant Dutch authorities (the AFM and DNB) have not published their answers to the key questions regarding the implementation of the CPSS/IOSCO Recommendations for Securities Settlement Systems. The authorities are concerned that information given to them pursuant to supervisory regulations, are regarded as secret according to the supervisory acts. Without publishing detailed assessments the authorities are transparent in the way that a summary of the assessment is published in some way, e.g., in the Quarterly Bulletin of DNB.</p> <p><u>Clearnet</u> publishes all relevant information in English and French.</p> <p><u>Review of disclosures</u> As stated above the ENL Disclosure Framework has been approved by the authorities under the condition that it is updated regularly (at least at every major system change).</p> <p>The responsibility for updating Clearnet's disclosures is taken by the Legal department.</p>

<p>Assessment</p>	<p>Observed</p> <p>The disclosure of information relating to Clearnet is comprehensive, and so is the disclosure relating to ENL.</p> <p>However, in some details the <u>ENL</u> disclosure could be more correct or precise. The description of treatment of foreign participants in section III.C.1 is not totally comprehensive. The requirement for a credit institution to have a “European passport”, i.e., having domicile within the EEA is not mentioned in that section (but in the next, III.C.2), and hence the text can be misleading. The description of the DVP procedure (section V.E.2.e) is not totally exact, when it states that the final transfer of funds is not preceding the final transfer of securities, which is not case (the securities are reserved awaiting confirmation of the final cash transfer). The requirement for prior approval of admission by the AFM is not mentioned in section III. A minor issue is that the role of the share register in the Dutch legislation could be slightly more clearly described (section V.B).</p> <p>The description of how DVP is achieved for transactions cleared through <u>Clearnet</u> could be more precise and comprehensive.</p> <p>The commented issues does however not change the overall assessment that there is a high degree of transparency, but shows the importance of a having a thorough review of what is disclosed.</p> <p>The Dutch authorities could, together with the institutions concerned, consider if it would be possible to publish the answer to the key questions. Such a publication may increase the transparency and give users of the system further comfort. Such a publication is however not a requirement, since the Disclosure Framework is published.</p>
<p>Comments</p>	
<p>Recommendation 18.</p>	<p>Securities settlement systems should be subject to regulation and oversight. The responsibilities and objectives of the securities regulator and the central bank with respect to SSSs should be clearly defined, and their roles and major policies should be publicly disclosed. They should have the ability and resources to perform their responsibilities, including assessing and promoting implementation of these recommendations. They should cooperate with each other and with other relevant authorities.</p>
<p>Description</p>	<p><u>Basis for regulation/oversight</u></p> <p>One of the tasks of DNB is to promote the smooth operation of the payment system (Bank Act, section 4.2) and to make a contribution within the European System of Central Banks to promote the smooth functioning of the payment system (Bank Act, section 3.1.e). This is an explicit legal basis for oversight of payment systems and an implicit legal basis for the oversight of securities clearing and settlement systems by DNB. However, for this oversight DNB has no legal instruments.</p> <p>For clearing and settlement of transactions executed on Euronext, DNB has together with the AFM been given an additional oversight task, for which it has certain instruments (see further below).</p> <p>A <u>securities settlement system</u> is in itself not subject to supervision according to relevant acts. The formal legal basis for the performance of oversight and supervision of the securities clearing (and settlement) systems is formed by the Securities Trade Act (section 22.2), according to which the Minister of Finance shall verify the settlement system when recognizing (licensing) a securities exchange. This can be considered an indirect approach as the supervisory and oversight activities on Clearnet and Euroclear are established via the license agreement of the stock exchange granted by the Minister of Finance. The Act (section 22.3) also gives the Minister the authority to impose restrictions and conditions for licensing an exchange.</p> <p>A central institute who <u>operates a book-entry system</u> within the framework of the</p>

	<p>Securities Giro Act is subject to supervision by the AFM on behalf of the Minister of Finance, following the Securities Giro Act (article 2, sections 1 and 4) and a ministerial decree of April 17, 2000.</p> <p>A clearing organization such as a central counterparty is itself not subject to supervision according to relevant acts. However, clearing might be interpreted as a part of settlement according to Securities Trade Act.</p> <p>The Dutch authorities have implemented the oversight and regulatory rules in the following way.</p> <p>When Euronext was given a license in September 2000, one condition, following the authority for the Minister in the Securities Trade Act, was that the clearing and settlement systems used on the exchanges adhered to the rules in the <i>Supervisory Framework CSE</i>. Pursuant to that the Dutch joint overseer, i.e., DNB and the AFM, have the responsibility and authority to assess any significant system change with respect to clearing and settlement and need to give prior approval. In case of developments such as change of ownership and/or further consolidation, the Dutch overseer advises the MoF, which needs to express a <i>nihil obstat</i>.</p> <p>Applied on the different institutions, the arrangements for oversight and supervision are the following:</p> <p><u>ENL</u> falls under the direct supervision of two supervisors. On the one hand, ENL acts as a central institute within the framework of the Securities Giro Act. With regard to this function, ENL is supervised by the AFM on behalf of the Minister of Finance. On the other hand, ENL operates a securities settlement system for Euronext traded Securities and is hence subject to the oversight of DNB and the AFM pursuant to the conditions stated in the exchange recognition of Euronext based on the Securities Trade Act (see above).</p> <p><u>Clearnet</u> is a French credit institution, CCP and securities settlement system and as such directly governed by the applicable French law, particularly the Monetary & Financial Code (<i>Code Monétaire et Financier</i>). Apart from French law, Clearnet, by operating the clearing organization for Euronext traded securities, is subject to the oversight of DNB and the AFM pursuant to the conditions stated in the exchange recognition of Euronext based on the Securities Trade Act (see above). In other jurisdictions where Clearnet performs clearing activities, local law and regulation also applies. Pursuant to the responsibilities of DNB and the AFM, a number of system changes have recently been assessed, like the cash clearing migration in Amsterdam and the centralization of collateral management and derivatives settlement.</p> <p><u>Role of market infrastructure institutions</u></p> <p>In a sense <u>Euronext</u> as the licensed exchange has some responsibility for oversight/supervision of clearing and settlement. This oversight is mainly focused on clearing. Euronext monitors the quality of its clearing members' organization, based on a questionnaire. The assessment results in a plan for further supervisory activity, including on-site inspection. The prudential supervision is left to <u>Clearnet</u>, a subsidiary of Euronext. Clearnet monitors monthly the financial standing of its clearing members.</p> <p><u>Clarity of roles and responsibilities</u></p> <p>The responsibilities of the regulatory authorities are laid down in the Supervisory Framework CSE. This supervisory framework agreement is available to all market participants. According to the Covenant on Cooperation in respect of Securities Clearing and Settlement Systems, May 1998 between DNB and the STE (nowadays the AFM) (<i>Convenant van samenwerking</i>), duties with regard to policymaking come under the responsibility of both authorities, while checking compliance is the task of the AFM as well as the task of approving the management of the relevant institutions.</p>
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	<p>The coordination of the policy-related activities is organized through a joint Committee.</p> <p>With respect to ENL, according to a separate Cooperation Covenant from April 2000, changes of the rules, amendments to the articles of association, changes of admission rules and relations with foreign CSDs are joint tasks. Appointment and dismissal of management, admission and rescinding of participants, admission of new types of securities and changes in fees are the tasks of the AFM.</p> <p>The supervisory framework and all covenants are not published. Nevertheless, the responsibilities as well as the major policies of the AFM and DNB are publicly disclosed through the annual reports and quarterly bulletins. Furthermore, DNB has published a brochure describing the institutional framework for oversight, the objects and the exercise of oversight and the assessment criteria. In addition, articles and speeches are written regarding this oversight task.</p> <p>The instruments available to the joint overseers as set out in the Supervisory Framework CSE, are that they in the event that activities pursued by the system operators are deemed to be damaging the safety and integrity of the system, can (i) instruct that the activities are discontinued and (ii) indicate what measures need to be taken to improve the situation. However, the sanction available, revocation of the exchange license is in the hands of the Minister. The Minister also has the right to annul decisions by ENL, and decisions by ENL can be appealed to the Minister. As stated earlier, DNB and the AFM also consult the MoF prior to decisions on major structural changes.</p> <p><u>The oversight organization</u></p> <p>DNB has an Oversight section within its Payments Systems Policy Department. The section has a staff of 8, with a broad competence including legal, IT and risk competence. Besides overseeing securities settlement systems, the section oversees fund transfer systems and payment instruments. The AFM has for oversight and regulation of clearing and settlement systems a staff of 3, all with relevant market competence. In addition, other resources within the AFM, such as legal and EDP expertise, are also used for oversight and supervision.</p> <p>The oversight/supervision by AFM is funded through the Government budget and the AFM charges Euronext a fee for oversight of clearing and settlement systems. DNB's oversight activity is funded through the budget of DNB.</p> <p>There is exchange of information and views and regular contact between the two authorities. The two overseers jointly meet with Clearnet and ENL/NIEC each month.</p> <p><u>International cooperation</u></p> <p>To adequately perform the oversight duties in the increasingly international context, Memorandums of Understanding have been agreed with the relevant authorities.</p> <p>All relevant national authorities involved in the regulation, supervision and oversight on Clearnet are joined in the Co-ordination Committee on Clearing Euronext on the basis of MoU Clearing. The goal of the international co-operation is to exercise adequate and efficient supervision and oversight on Clearnet. This is partly achieved by developing a coherent framework for the co-coordinated supervision and oversight on Clearnet, based upon the best practices and legal responsibilities of the respective authorities and international standards used for the supervision/oversight of clearing systems, like the CPSS-IOSCO Recommendations for securities settlement systems, and with references to the more general standards of the European Association of Clearing Houses. These Joint guidelines were forwarded to Clearnet in July 2002. Currently, the first version is in the process of being updated by the CCC members. The CCC meets monthly and quarterly. The latter being a meeting on board level and the former a meeting on a more supervisory/oversight level.</p>
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	In order to ensure the efficient supervision and oversight of Euroclear Bank's cross-border activities, the Belgian, French and Dutch authorities have signed the MoU Settlement.
Assessment	<p>Broadly observed</p> <p>The AFM and DNB are currently supervising and overseeing the securities clearing and settlement systems in the Netherlands, i.e., Clearnet, ENL and NIEC. This is done in an efficient way, with both authorities cooperating well. However, it is only ENL that is subject to supervision directly from relevant Acts. Clearnet and NIEC are supervised indirectly as a licensing requirement for Euronext. This indirect way of supervision and oversight might have potential draw-backs that could limit the effectiveness.</p> <p>The supervisory framework used for clearing and settlement is not published to the general public, and hence the oversight process might formally be regarded as not fully transparent. However, the DNB has published information on its oversight activities in several other ways, that gives the general public insight in the oversight process. These findings relating to transparency have had no importance for the choice of assessment category.</p>
Comments	<p>The MoF is currently in the process of drafting a <i>Financial Supervision Act</i>, of which the fourth part will deal with the financial infrastructure. The work on legislation for the financial infrastructure has been going on since 1999, and is now integrated in the work on a comprehensive Financial Supervision Act</p> <p>The infrastructure part will state the supervisory requirements for payment and securities settlement systems. The split in responsibility between the AFM and DNB will also be laid out in the Act. The current timetable indicates an implementation by the end of 2005. If the new Act makes it clear that e.g., an institution that operates as a central counterparty or a securities settlement system, are subject to direct supervision, and that the roles of DNB and the AFM are clear, Recommendation 18 would be observed.</p> <p>In addition, the MoF is currently in the process of establishing an <i>Act for the supervision of clearing members</i>. This legislation is planned to be implemented during the second half of 2004. However, this legislation will not apply on the clearing organization itself, and hence will not result in a higher assessment category.</p>
Recommendation 19.	CSDs that establish links to settle cross-border trades should design and operate such links to reduce effectively the risks associated with cross-border settlement.
Description	<p><u>Links used</u></p> <p><u>ENL</u> has established the following links with foreign CSDs to settle cross-border trades:</p> <ul style="list-style-type: none"> - bilateral links with Euroclear France, SegInterSettle (Switzerland), CIK (Belgium), OKB (Austria) and Clearstream Frankfurt (Germany), Monte Titoli (Italy), CADE (Spain), SCLV (Spain) and APK (Finland); - unilateral outgoing to CREST (England) and DTCC (USA); - unilateral incoming from Euroclear Bank and Clearstream Luxembourg. <p><u>NIEC</u> is only linked to Euroclear Bank through a unilateral incoming link. All these links are direct links. Links established by <u>ENL</u> with other CSDs are subject to formal approval by the Dutch Minister of Finance. This requirement follows from the Securities Giro Act (article 35). The foreign CSD wherein the securities for ENL are held, should meet various requirements. Part of the assessment includes an examination of the financial and operational integrity of the linked CSD. Furthermore, the foreign legal regime should offer comparable guarantees as Dutch law with regard to ownership. In such an instance, the Minister of Finance will approve the link.</p>

	<p><u>DVP-links</u> These securities transactions can only be effected through delivery free of payment.</p> <p><u>Extension of credit</u> ENL and NIEC are not allowed to extend credit in any way.</p>
Assessment	<p>Observed</p> <p>DVP-links are not in place. This is not a unique situation for the Netherlands but a common problem for the whole of Europe. It also something that can not be solved by a single country by its own. Nevertheless, for an international economy like the Dutch, it is important that business transactions (purchases and sales) are settled.</p> <p>The links in place does as such not impose risks for the users. The risks are related to the fact that business transactions using the links are settled DVP. However, the risks related to the fact that not all transactions are settled DVP, has affected the assessment of Recommendation 7. Hence, Recommendation 19 could be regarded as observed.</p>
Comments	<p>DVP is not achieved in the cross-border links due to considerable legal complications. This will be achieved for those links which can be operated DVP after the implementation of the Single Settlement Engine within Euroclear group, which is expected to take place between 2005 and 2008. Euroclear Netherlands will then be able to provide DVP-links in central bank money. If it following the implementation of these DVP-links, ceases to exist links that do not support DVP, Recommendation 19 could be observed.</p>

D. Recommended Actions to Improve Observance of the Recommendations

<i>Reference recommendation</i>	<i>Recommended action</i>
<i>Recommendation 7</i>	<p>The <u>AFM</u> and <u>DNB</u> should generally promote the use of DVP for settlement, and support any changes that could enhance the possibility of achieving DVP.</p> <p>With regard to settlement through cross-border links, DNB and the AFM should consider the recommended actions for Recommendation 19.</p> <p>The degree to which there will be a reduction in FOP-transactions will determine if a higher assessment category will be achieved.</p>
<i>Recommendation 14</i>	<p>The <u>AFM</u> and <u>DNB</u> should approve a proposal from ENL to admit investment firms as participants. The AFM and DNB should further suggest to ENL, and when applicable NIEC, to review their Admission Regulation so they become open and fair. In such a revision the authorities and the system operators should consider allowing supervised non-EEA credit institutions to participate. The review should also consider making sure that the Admission Regulation is fully consistent with the practice used. In that context the requirement for foreign CSDs to be supervised should be put in the Regulation. If all the suggested changes were made, Recommendation 14 would be observed.</p>

<i>Reference recommendation</i>	<i>Recommended action</i>
<i>Recommendation 18</i>	<p>The MoF should finalize the project for a Financial Supervision Act as soon as possible, ensuring that operators of clearing and settlement systems are subject to direct supervision. The roles of the AFM and DNB should be clear and unnecessary overlapping should be avoided. The implementation of such a new Act would make it possible to observe Recommendation 18.</p> <p>However, it should be noted that DNB as a central bank according to international standards, such as the Core Principles for Systemically Important Payment Systems, has responsibilities as an overseer, which DNB should be able to fulfill.</p> <p>The AFM and DNB should consider if their Supervisory Framework and covenants could be fully published, in order to further enhance transparency.</p>
<i>Recommendation 19</i>	<p>In addition, though not needed to improve observance, the AFM and DNB should support the Euroclear initiatives to develop cross-border DVP links, and they should further promote that system participants require such links in order to reduce risk. The Dutch authorities are dependent on the participation by the authorities in other countries in order to achieve such cross-border solutions.</p>

E. The Authorities' Responses

113. The authorities are in broad agreement with the assessment of the securities clearing and settlement systems and the general overview of payment systems.

114. Part of the recommendations will be addressed with the enactment of the Financial Supervision bill. This act will give explicit legal oversight powers to DNB and AFM (i.e., recommendation 18).

115. Regarding the recommended action on the admission rules of Euroclear Netherlands, these rules are under review in order to broaden access to include non-EEA credit institutions (recommendation 14).

116. With respect to the development of cross-border DVP-links between CSDs, although not needed to improve observance, the authorities endorse the view that it is important to support Euroclear initiatives, and that system participants should require such links in order to reduce risk. However, the relevant dimension to solve barriers for cross-border links is European rather than national and, therefore, cannot be resolved unilaterally. This puts the Netherlands in the same position as a number of other European countries, including countries which have already participated in the FSAP.

ABBREVIATIONS

<i>Abbreviation</i>	<i>Explanation</i>
AFM	The Netherlands Authority for Financial Markets (<i>Stichting Autoriteit Financiële Markten</i>)
AI	Admitted Institution - participant in ENL or NIEC
CCC	Co-ordination Committee Clearing, with representation of the Belgian, Dutch, French and Portuguese Authorities.
CCP	Central counterparty
CSD	Central Securities Depository
CSE	Clearing and settlement Euronext
DNB	De Nederlandsche Bank N.V. - the Dutch Central Bank
DVP	Delivery versus payment
EACC	Euronext Amsterdam Commodity Clearing N.V.
EEA	European Economic Area – the European Union together with Iceland, Liechtenstein and Norway.
ENL	Euroclear Netherlands, formally <i>Nederlands Centraal Instituut voor Giraal Effectenverkeer B.V.</i> (“Necigef”), the Dutch CSD
FOP	Free of payment
Further Regulations	Further Regulations on the Supervision of the Securities Trade 1999 (<i>Nadere regeling toezicht effectenverkeer</i>) –divided 2002 into Further Regulations on Prudential Supervision of the Securities Trade and Further Regulations on Market Conduct Supervision – references refer to the 1999 consolidated version.
NIEC	Euroclear NIEC, formally <i>Nederlands Interprofessioneel Effectencentrum B.V.</i>
MAC	Market Advisory Committee – consultative forums used by Euroclear and Clearnet
MoF	Ministry of Finance (<i>Ministerie van Financiën</i>)
MoU Clearing	Part II of Memorandum of Understanding on the coordinated regulation, supervision and oversight of the Euronext Group (between the relevant authorities in France, Belgium, the Netherlands and Portugal -Banque de France, Commission Bancaire/Comité des Etablissements de Crédit et des Entreprises d’Investissement, Conseil des Marchés Financiers, Nationale Bank van België/Banque Nationale de Belgique, Commissie voor het Bank- en Financiënwezen/Commission Bancaire et Financière, DNB, the AFM, Banco de Portugal and Comissão do Mercado de Valores Mobiliários)
MoU Settlement	Memorandum of Understanding on the cooperation concerning the supervision/oversight of the settlement activities of Euroclear Bank relevant for transactions concluded on the Euronext markets (between the relevant authorities in France, Belgium and the Netherlands - Banque de France, Commission Bancaire, Conseil des Marchés Financiers, Nationale Bank van België/Banque Nationale de Belgique, Commissie voor het Bank- en Financiënwezen/Commission Bancaire et Financière, DNB and the AFM)
Necigef	<i>Nederlands Centraal Instituut voor Giraal Effectenverkeer B.V.</i> – the statutory name of ENL.
NVB	The Netherlands’ Banking Association - <i>Nederlandse Vereniging van Banken</i>

<i>Abbreviation</i>	<i>Explanation</i>
SFD	European Settlement Finality Directive 98/26/EC
Securities Giro Act	Securities Giro Administration and Transfer Act 1977 (<i>Wet giraal effectenverkeer - Wge</i>)
Securities Trade Act	Act on the Supervision of the Securities Trade 1995 (<i>Wet toezicht effectenverkeer - Wte</i>)
Securities Trade Decree	Decree on the Supervision of the Securities Trade 1995 (<i>Besluit toezicht effectenverkeer - Bte</i>)
STE	Securities Board of the Netherlands (<i>Stichting Toezicht Effectenverkeer</i>) - previous name of the AFM
Vabef	<i>Vereenvoudigde Administratie en Bewaring Effecten</i> - depository institution with restricted business.

V. ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

A. General

Information and methodology used for the assessment

117. A detailed assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Netherlands was prepared by a team of assessors that included staff of the International Monetary Fund (IMF) and an expert not under the supervision of IMF selected from a roster of experts in the assessment of criminal law enforcement and non-prudentially regulated activities. IMF staff reviewed the relevant AML/CFT laws and regulations, and supervisory and regulatory systems in place to deter money laundering (ML) and financing of terrorism (FT) among prudentially regulated financial institutions. The expert not under the supervision of IMF staff reviewed the capacity and implementation of criminal law enforcement systems.

118. The team consisted of Ian Carrington (IMF, MFD), Margaret Cotter (IMF, LEG) and Jack de Kluiver, United States Department of Justice, fulfilling the role of Independent AML/CFT Expert (IAE) to deal with law enforcement issues.

119. To conduct the assessment, the team visited the Netherlands from December 1–14, 2003, and held discussions with officials of the Ministry of Finance, the Ministry of Justice, De Nederlandsche Bank (DNB), the Financial Markets Authority (AFM), the Pension and Insurance Chamber (PVK), the National Public Prosecutor's Office (OM), the Netherlands Bankers Association (NVB), the Financial Expertise Center (FEC), MOT (the Netherlands Financial Intelligence Unit), BLOM (Dutch Police Unit responsible for AML/CFT), FIOD-ECD, KLPD Nationale Recherche, UTBT as well as with representatives of the private sector, including several banks, insurance companies, investment service providers, and money service offices.

120. The assessment team is grateful for the high degree of cooperation and warm hospitality received from all the participants during its visit and especially expresses gratitude to the Ministry of Finance for the excellent organization of the visits and the substantial time it devoted to the completion of the self-assessment questionnaire.

121. The following categories of regulated financial institutions, were included within the scope of the assessment: banks, securities firms, insurance companies, money remittance firms and casinos.

General situation of money laundering and financing of terrorism¹⁰

122. *The Dutch financial system is highly developed and very sophisticated and, although well regulated, the Netherlands has many densely populated urban centres that provide an attractive target for both “placement” and “layering” money laundering. International criminal activities with a nexus to the Netherlands generate substantial amounts of cash income that need to be laundered into the legitimate economy. For example, the Netherlands is a major entry point for heroin and cocaine into Western Europe, and is a significant transit point for heroin, cocaine, hash and cannabis destined for North America. The Netherlands is one of the foremost manufacturers of synthetic drugs such as amphetamines and MDMA (Ecstasy) and major exporter of those drugs from Western Europe to North America. In addition, the Netherlands has one of the busiest and most accessible international airports in the world, as well as the largest seaport in the world and is the hub for much of the trade in Western Europe, which generates enormous quantities of freight that criminals can use as a cover up for illegitimate activities like drug trafficking. The Netherlands has seen a marked increase in activity by Eastern European organized criminal organizations. These organizations are often involved in the human trafficking of women, sophisticated VAT avoidance schemes and other organized criminal activities, including narcotics trafficking. The Netherlands is an open society, with immigrants from and links to all parts of the world, and hence criminals from all over the world can misuse the presence of their compatriots to set up illegal businesses that affect other jurisdictions more than criminality in closed societies.*

123. As for terrorist financing potential the Netherlands has sizeable immigrant and “guest worker” population that is reportedly better integrated into the mainstream society than are many immigrant communities in Western Europe. Nonetheless, some members of these communities do send substantial amounts of money to relatives in countries with suspected terrorist cells, which could make it difficult to detect terrorist financing. Thus, the immigrant segment of the Dutch population, in theory, could provide cover for terrorist financing.

124. The Netherlands is a Financial Action Task Force (FATF) member and was last evaluated in 1997. While recognizing a very strong AML framework, FATF also noted some areas for consideration by the authorities. Specifically, the evaluation mentioned that money laundering was not a separate offense, that the coverage of foreign predicate offenses was not clear, that an otherwise solid confiscation system had a judicially recognized exception for criminal assets transferred to legal entities and that there was no discretionary authority to grant mutual legal assistance in the absence of a treaty. It also noted an emphasis in the system on cash money laundering, a lack of reports in the securities and insurance sectors and the absence of reliable statistics to judge effectiveness. Many of these points have been addressed by the authorities in the Netherlands.

¹⁰ Portions of the assessment attributable to the IAE are shown in italicized text throughout this report.

Overview of measures to prevent money laundering and terrorism financing

125. Until December 2001, the Netherlands addressed the penalization of money laundering through receiving stolen goods (fencing) provisions. It set up its preventive regime with the adoption of the Identification of Services Act in the late 1980s, which created customer identification and record keeping obligations for the financial sector, and the adoption of the DUTA, which created a reporting obligation. Entities now subject to these two acts include banks, insurance companies, credit card companies, securities institutions, currency exchange organisations, money transfer institutions, casinos, and gatekeepers such as dealers in expensive goods (e.g., cars, ships, jewelry, diamonds, art and antiques) and persons in professional capacities such as lawyers, notaries, estate agents, tax consultants, chartered accountants, and company managers. The DUTA created the office for the disclosure of such transactions, MOT, which serves as the Netherlands' FIU, in 1994. The Unit is within the Ministry of Justice.

126. The Identification of Services Act requires identification of all customers when entering a business relationship, for example when opening a checking account, a savings account, a securities deposit account, renting a safe deposit box, etc. In addition, customer identification is required for a transaction or series of related transactions in excess of EUR 10,000 which takes place on an occasional basis. Banks and other financial institutions are required to keep records on customers and account owners. These institutions are protected with respect to their cooperation with MOT and law enforcement agencies. There are also requirements for certain reporting based upon thresholds, for instance for dealers in high value goods and for insurance matters. A broad range of unusual transactions as well as suspicious transactions must be reported.

127. Since the 1998 FATF report, the Netherlands has undertaken numerous steps that have enhanced its AML/CFT framework. For example, the DUTA was extended to cover money remittance services, and money remittance and exchange was placed under supervision. Money laundering controls for dealers in high-value goods such as vehicles, precious stones or metals, or works of art and persons in professional capacities such as lawyers, notaries, estate agents, tax consultants, chartered accountants, and company managers were introduced so that obligations of identification, record keeping, and reporting of suspicious transactions are now applicable. The Netherlands adopted a separate criminal money laundering offense. This offense is applicable to all serious crimes which include all offenses penalized with a maximum sentence of six months or more. While it is not explicit in the Dutch legal provisions that foreign crimes may serve as predicate offenses to money laundering, authorities believe that there is a legal basis for such crimes serving as predicate offenses in the legislative explanation for the previous ML (fencing) provision.

128. Amendments to the Criminal Procedure Code in 2001 introduced improvements to a confiscation regime that had already provided for a wide range of possibilities for asset freezes and confiscation of illegal proceeds. The amendments addressed, among other things, secreting of assets through legal entities that was occurring under judicial precedent. A network of multilateral and bilateral treaties together with extradition and mutual legal

assistance provisions in the Dutch Criminal Procedure Code and the Dutch Execution of Foreign Judgments (Transfer) Act permit extradition, judicial assistance, and enforcement of foreign confiscation judgments. However, there are no provisions permitting a grant of mutual assistance involving coercive measures on a discretionary basis absent a treaty. The Netherlands is not a bank secrecy jurisdiction and bank records and other forms of assistance are available through mutual legal assistance channels.

129. Financing of terrorism is addressed through the criminal provisions for preparation and participation in a criminal organization rather than as a separate offense. Terrorism financing is subject to domestic jurisdiction and punishment regardless of where the act occurs. The Code of Criminal Procedure and the Sanctions Act provide broad authority to prosecutors and the police to identify, freeze and seize criminal proceeds and terrorist assets. The authorities have circulated to all financial institutions the list of individuals and entities included on the UN SCR consolidated lists. Several accounts have been frozen.

130. The Netherlands is a party to the 1988 UN Drug Convention and the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime. In 2000, the Netherlands signed the UN Convention against Transnational Organized Crime, and expects to ratify the Convention by mid-2004. The Netherlands ratified the UN International Convention for the Suppression of the Financing of Terrorism (ICSFT) in 2002. MOT is a member of the Egmont Group. The Netherlands also participates in Moneyval and CFATF.

131. The transportation of cash and bearer monetary instruments across Netherlands borders is not subject to control and the authorities await EU consideration of the issue. Presently, there are no cross-border reporting requirements for members of the public, and there is no declaration requirement at the border relating to the amount of currency that legally can be brought into or taken out of the Netherlands. However, both Customs and Immigration authorities must report to MOT those matters where in the exercise of their usual duties unusual amounts of money are detected.

132. The Netherlands financial sector regulators play a key role in the country's AML/CFT regime. The DNB, AFM and PVK have AML/CFT oversight responsibilities for the institutions for which they have supervisory responsibility. In June 2002, the DNB, in conjunction with the bankers association, issued the Basle Committee CDD paper to credit institutions indicating that they should observe standards set out in the paper. In May 2003 the DNB took the further step of issuing an explanatory memorandum on the CDD paper. For the present, this is the most substantive formal AML/CFT guidance issued by the DNB. The PVK and AFM have not issued specific formal AML/CFT guidance notes.

133. The regulators have all developed risk analysis tools which, among other things, cover the management of risk associated with AML/CFT. These tools allow the regulators to get an early picture of institutions' internal risk management and control environments and highlight areas in need of attention. On the basis of these assessments the regulators plan their supervisory program which may include on-site visits. The DNB has been active in

enforcing Netherlands AML/CFT standards in the overseas branches and subsidiaries of Netherlands' banks. Visits are made routinely to the overseas offices of these institutions. With the imminent merger of the DNB and PVK the general approach adopted in respect of banks is likely to be used for insurance entities where applicable.

134. One very important function undertaken by the regulators is the assessment of the fitness and propriety of board members of financial institutions. This assessment is undertaken on all persons who are members of supervisory and executive boards. In undertaking these assessments the regulators benefit from the services of the National Public Prosecutor responsible for AML/CFT who conducts reviews of the law enforcement aspects of the assessments.

135. There is strong collaboration between the regulators and the financial services sector with the latter joining government authorities in a number of initiatives that are part of the development of the AML/CFT regime. The bankers association, for example, issued the CDD paper jointly with DNB and has in the past provided personnel to MOT to assist in the training of the agency's staff. All regulators consult regularly with the industry on planned developments.

B. Detailed Assessment

136. The following detailed assessment was conducted using the October 11, 2002 version of Methodology for assessing compliance with the AML/CFT international standards, i.e., criteria issued by the Financial Action Task Force (FATF) 40+8 Recommendations (the Methodology). It is based generally upon the status as of December 12, 2003, the final day of the mission.

Assessing Criminal Justice Measures and International Cooperation

Table 8. Detailed Assessment of Criminal Justice Measures and International Cooperation

I—Criminalization of ML and FT
(compliance with criteria 1-6)
Description
Conventions (1)
The Netherlands is a party to the United Nations Convention on Illicit Drugs and Psychotropic Substances (Vienna Convention) which entered into force in 1990 and is implemented through the Act on Illicit Substances and other provisions. The Netherlands also is a party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention) (ratification October 10, 1993) and the UN International Convention for the Suppression of the Financing of Terrorism (ratification in December 2001, and entry into force in January, 2002). It has not yet ratified the Palermo Convention, which was signed in December 2000. Ratification is expected before June 2004 when the Netherlands assumes the EU Presidency. Authorities indicate that all substantive changes in domestic law necessary to implement the law have already been made in previous changes of law and the processes necessary for ratification to occur have been initiated.

The Netherlands has implemented the United Nations Security Council Resolutions (SCRs) 1267, 1269, 1333, 1373, and 1390 mainly through directly applicable European Union legislation, in particular Council Regulation (EC) 2580/2001 of 27 December 2001 on imposing certain specific restrictive measures directed against certain persons and entities in order to combat terrorism, and Council Regulation (EC) No 881/2002 of May 27, 2002 (and subsequent amendments) on imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban. Both Council Regulations imposed directly applicable obligations on European Union member States to freeze the assets of terrorists or terrorist organizations listed in the UN SCRs.

The main legislation for implementing the obligations arising from the UN SCRs, in particular 1373, is EU Council Regulation (EC) No 881/2002 referenced above which is effective in the Netherlands. Article 2(1) of the Regulation provides for the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex 1 to the Regulation, and obliges all natural or legal persons, entities and bodies within the European Union to provide information that would facilitate compliance with the Regulations (i.e., the freezing of terrorist funds) to designated national authorities and to the European Commission. In the Netherlands, the Ministry of Finance is the designated institution that collects and provides information on assets frozen to the Commission. The other legal mechanism for the implementation of UN SCRs in the Netherlands is through domestic legislation, specifically the Sanctions Acts and regulations issued under the Act. That Act requires the freezing of assets of individuals or entities named in regulations issued under the Act. The Netherlands amended its Sanctions Law in 2002, to permit the government to impose financial sanctions and administratively freeze on the basis of international agreements or obligations, or decisions made by international organizations. This has permitted the Netherlands to comply with UN Security Council Resolution 1373 with regard to terrorists or terrorist groups based within the European Union, since such persons or groups are not covered by EU Council Regulations.

Criminalization of Money Laundering (2, 5)

The Netherlands has criminalized money laundering through Articles 420bis, 420ter and 420quarter of the Criminal Code, which set forth several different offenses. Article 420 bis makes it a crime knowing goods have proceeded directly or indirectly from a crime:

- *to hide or conceal the true nature, origin, location, alienation or relocation of the goods,*
- *to hide or conceal the party entitled to the goods,*
- *to possess goods, or*
- *to acquire, have in possession, transfer or convert or make use of goods.*

Goods include all property and property rights. Articles 420 bis and 420 quarter.

Article 420quarter makes these same actions an offense if a person should reasonably suspect the goods have proceeded directly or indirectly from a crime. Article 420ter addresses punishment if a person engages in money laundering on a habitual basis. These provisions were introduced in December 2001. Prior to that time, a fencing offense (receiving stolen goods) was used as the charge in cases of money laundering.

Predicate offenses for these ML offenses are all offenses, including fiscal offenses, penalized with at least a maximum possible sentence of six months imprisonment or more (as well as some offenses penalized with less than six months). Criminal Code, Book 2 "Offenses", Economic Offenses Act, and other acts.

Penalties for ML vary depending upon the money laundering provision charged. Convictions for knowing violations under Article 420bis may result in imprisonment not exceeding four years and a fine of up to EUR 45,000. Habitual offenders under Article 420ter may be punished with up to six years and a fine of up to EUR 45,000. Those who are found guilty under the provisions with the reasonable suspicion standard in Article 420 quarter are subject to a maximum term of one year and a fine of up to EUR 45,000. Corporations face fines

of up to EUR 450,000. Those convicted may also have professional licenses revoked. Article 420quinquies, Criminal Code. The sanctions for the basic ML offence are in accordance with the EU Council framework decision of June 26, 2001 that requires such an offence to have a maximum term of not less than four years.

Persons may be convicted of both ML and a predicate offence but conviction on a predicate offence is not necessary for a ML conviction. It is not necessary to prove a link between the ML and a specific predicate offence for a conviction to occur, but the prosecution must establish that the source of the funds was criminal activity.

The offense of money laundering extends to property that directly or indirectly represents the proceeds of crime and extends to any type or property (means and rights in property, physical or intellectual, and legal claims). This is based upon the fact that property as referenced in the ML provisions is property as defined under the Civil Code, Book 3, Articles 1, 3, and 6.

Authorities indicate that conduct that occurs in another jurisdiction may constitute a predicate offense, although this is not explicit through provisions in the Criminal or Criminal Procedures Codes in the Netherlands but rather based upon a legislative explanation accompanying the previous ML (fencing) provision. Authorities explained that the term “crime” under Article 420bis is broad enough to cover foreign criminal conduct as long as the underlying conduct is also criminal in the Netherlands. . Even where the underlying conduct is punishable in the Netherlands, but not in the jurisdiction where the conduct occurred, the authorities believe that a ML prosecution could occur in the Netherlands for such conduct. There are no cases addressing the latter matter.

In addition to criminal ML offenses, violations of obligations to report under the DUTA, to conduct customer due diligence and maintain records under the Identification of Services Act and of obligations to freeze and take other actions under the Sanctions Act constitute criminal offenses under the Economic Offenses Act.

Criminalization of FT (3, 5)

The Netherlands is implementing the ICSFT based in large part upon a number of pre-existing Criminal Code provisions, some of which have been amended to ensure they will meet the needs of ICSFT. Authorities rely most heavily on Articles 46 (preparation for a criminal offense) and 140 (participation in a criminal organization) of the Criminal Code. Articles 45, 46a, 47, and 48 of the Code (attempts to commit a crime, participation in a crime and serving as accessory to a crime) could also be used.

- Article 45 makes an attempt to commit a crime punishable if the intention of the perpetrator has manifested itself in the first act of the commission of an offense.
- Article 46 makes preparation for any crime carrying with it a term of at least 8 years punishable if the perpetrator intentionally "acquires, manufactures, imports, re-exports, exports or has in his possession goods (including monies or other property) that are apparently designated for the commission of that crime. The financing of a criminal offence falls within the scope of making preparations for a crime under Section 46 of the Criminal Code. Participation is punishable by one half the penalty for the offense being prepared for and in the case of a life sentence by 10 years.
- Article 46a makes the attempt to induce another to commit a crime by means of, among other things, offering opportunity or means a crime. One who intentionally procures the commission of an offence by making a donation or a pledge, or by making resources available, is liable to prosecution. Both attempting to commit a terrorist attack, and attempting to procure the commission of a terrorist attack would constitute a criminal offense under Article 46a of the Criminal Code.
- Article 47 provides that perpetrators are defined as those who commit the offence, have it committed or participate in it as well as those who intentionally elicit an offence by means of, among other things,

offering the opportunity, means or information.

- Article 48 provides that those who intentionally assist in the commission of a crime or intentionally provide the opportunity, means, or information for its commission shall be punished.
- It is also possible that financing or supporting terrorism may be a criminal offence if it can be classified as joint perpetration of or complicity in an offence, or procuring its commission, or an attempt to procure its commission.
- Article 140 provides that participation in an organization whose purpose is to commit crimes is punishable with a term of imprisonment of up to six years and a fine. This includes participation in a terrorist organization.

These provisions combined with designated crimes (for instance murder, manslaughter, various terrorism offenses enacted in compliance with international treaties, etc.) and, as an alternative, the criminal offense of participation in a criminal organization make the financing of criminal acts of a terrorist nature under the law of the Netherlands a crime. Existing criminal offenses in the Netherlands cover the scope of the nine international treaties appearing in the annex to the ICSFT. Thus, to the extent that the Article 46 preparation and Article 47 participation crimes cover financing for such offenses, conduct set forth under Article 2, paragraph 1 of the Convention is fully addressed. In addition, the financing of any criminal act carrying a term of at least 8 years including an act that would be considered an act of terrorism is a preparation offense under the Dutch Criminal Code. Under the Convention, any act can be a terrorist act, provided it is intended to cause death or serious bodily injury to certain persons, and provided its purpose is to intimidate a population, or to compel a government or an international organization to do or abstain from doing something.

A terrorism bill currently under consideration in Parliament, the Act of Terrorism Act, will enhance these provisions in a number of ways. The bill, which will implement the European Union Council Framework Decision of June 13, 2002 on Combating Terrorism (2002/475/JHA) will increase penalties when a criminal act qualifies as a terrorist act. To qualify as a terrorist act the criminal act must be one of the crimes defined in Article 83 (which covers a wide range of offenses that could be associated with terrorist activity under the Dutch Criminal Code) and must be undertaken with the intent set forth in proposed Article 83a (that of arousing fear in the population of a country or part thereof; forcing a government or international institution to do something or to refrain from doing something or to accept something; or seriously disrupting or destroying the basic political, constitutional, economic, or social structures of a country or an international institution). In such instances, the applicable maximum will be increased by a half. For instance, crimes that otherwise have a maximum of 12 years imprisonment will have a maximum of 18 years imprisonment. As applied to the relevant criminal offenses, it would permit such offenses in the context of terrorism to be punishable by 8 to 15 years imprisonment (New Article 140a Penal Code). The Act also provides a new Article 140a and Article 140(4) that will supplement the current Article 140. These articles will criminalize explicitly participation in an organization the object of which is to commit acts of terrorism and define participation as including the providing of monetary or other material support and providing money to persons who are members of the organization. Participation will be punished with 15 years imprisonment and leadership of a terrorist organization with a life sentence. This will ensure that there is no question in the Dutch context that funding of a terrorist organization constitutes participation. Such organizations are already considered criminal organizations under current Article 140.

There is an independent basis for instituting criminal proceedings for violations of provisions of the Sanctions Act 1977 that relate to the implementation of the UN and EU freeze lists. In the Netherlands, engaging in any financial or economic transaction with a person or organization whose name appears on an international list is a violation of the Sanctions Act. This violation in turn is a criminal offence punishable by up to six years' imprisonment under the Economic Offenses Act. To establish liability under the Sanctions Act, it is not necessary to show that offender was aware of the purpose of the financial transaction. It is sufficient for conviction that a provision of the Sanctions Act adopted in accordance with international decisions has been violated willfully or through significant negligence.

For preparation for an offense or participation in a criminal organization under Articles 46 and 140 of the Penal Code, penalties currently range from a maximum of 4 to 10 years and a fine. The changes expected with enactment of the new Act on Terrorism would increase these penalties to 8 to 15 years and a fine.

Under Articles 2 and 4(13)-(14) of the Criminal Code, terrorism financing offenses occur if the provision or collection of assets takes place in the Netherlands even if the terrorists or terrorist organization are located outside of the Netherlands or the terrorist act takes place or is to take place elsewhere. The Article 140 participation in a criminal organization offense applies even if participation is in a foreign organization.

Scienter (4)

In the Netherlands, the offences apply to those who knowingly engage in ML or FT. For ML, persons are also liable on a reasonable suspicion basis. For the FT, the preparation offense also includes a concept less strict than knowingly in that the acquiring or collection of funds must only be apparently or at first sight intended to be used in the commission of the crime. It is a basic underlying principle of Dutch criminal law that intentional elements of offenses may be inferred from objective factual circumstances. Whether an act was committed knowingly is to be decided by the judge.

Legal entities have criminal liability in the Netherlands. Offenses, including ML and FT offenses, extend to any entity whether natural or legal. Article 51, Criminal Code.

Adequacy of Legal Means and Resources (6)

The Netherlands has virtually all the necessary legal means and resources to prevent systemic ML and FT from occurring. The substantive money laundering laws in the Wetboek van Strafrecht, as set forth in Articles 420bis through 420quater, defines as the predicate for money laundering the use of proceeds of any “misdrijf” or “crime”, namely, all criminal offences located in Third Book of the Wetboek van Strafrecht. Money laundering occurs when the accused has the intent to conceal the nature, source, location, or ownership of such proceeds or if the accused simply participated in any act that involves such proceeds. The “predicate” criminal activity covered by the Dutch money laundering laws includes all the serious offences and many minor ones. The Dutch ML provisions also cover a sufficiently wide range of culpability levels, including professional or habitual money laundering, “actual knowledge” laundering, and “implied knowledge” laundering, and provides for equally layered levels of incarceration for these offences, namely, six, four, and one year(s), respectfully.

The Netherlands has a comprehensive AML reporting scheme to protect the integrity of its financial system and places reporting obligations on everything from traditional financial institutions to foreign exchange operators, money remitters, casinos, dealers in high value goods, and, most recently, professionals who act as “gatekeepers” such as lawyers, accountants and realtors. Thus, the Netherlands now has covered all possible areas that have any real risk of becoming involved in the “placement” stage of money laundering. The Dutch AML reporting system requires that all reporting entities and persons report instances of “unusual transactions,” rather than a dual suspicious transaction and currency threshold transaction reporting system. What constitutes an “unusual transaction” involves references to both objective and subjective criteria, which includes currency thresholds. These criteria are set forth in the Dutch AML regulations in sufficient detail and with adequate explanations to give all reporting entities and persons more than adequate guidance on when to file “unusual transaction” reports (UTRs). The current legal regime does not require the reporting institutions or persons to make “suspicious” transaction determinations. Rather, that function is relegated to the Netherlands’ proactive FIU, the Meldpunt Ongebruikelijke Transacties (MOT). The MOT actively monitors all reported unusual transactions through an interactive database that assigns scores to all “unusual” transactions as they occur and once inputted into the UTR database. The MOT works very closely with its law enforcement counterpart, the BLOM, in a joint review team called the MBA-unit, in which the BLOM investigators will query law enforcement information to supplement MOT’s UTR data to determine jointly which UTRs should be classified as suspicious and, thus, be disclosed to all Dutch law enforcement agencies. When the MBA-Unit detects serious suspicious or contemporaneous suspicious activity it can often dispatch this suspicion to Dutch police in the field in real-time. The details about numerous legal structures involved in AML and CFT activities,

including the MOT and the BLOM, and their structure, functions, and capacity is set forth in detail in criteria 24, 25, 28, and 29.

As for funding of AML and CFT enforcement, the Dutch re-evaluated the funding and staffing of all the various entities concerned with AML/CFT enforcement after the events of 9-11. The budgets and the number of staff have been increased in all areas, with the apparent exception of prosecutorial capacity, particularly at the national level. On 15 November 2001 the Dutch government issued a report called "The Integrity of the Financial Sector and the Fight Against Terrorism." This report pledged a total amount of EUR 10.9 million for AML and CFT financial sector integrity. This includes funds for hiring extra personnel at the MOT, implementing new AML and CFT legislation, and other enhancements to the effectiveness of and the enforcement of AML/CFT legislation. The policy document was a part of the Governmental "Action Plan on Combating Terrorism and Promoting Safety" issued September 2001. More recently, a reoccurring EUR 90 million appropriation was added (in addition to existing appropriated funds) to combat terrorism in general. Of this, the total amount of EUR 10.6 million annually was assigned to AML and CFT enforcement above and beyond the EUR 10.9 million for AML/CFT mentioned earlier. This funding was primarily for extra personnel for the AIVD (the Secret Service) and a faster implementation of plans already initiated in order to facilitate investigations related to the financing of terrorism.

Analysis of Effectiveness

The Netherlands has ratified and implemented all international conventions that are directly relevant for AML/CFT legislation, with the exception of the Palermo Convention. The Vienna and Strasbourg Conventions were ratified in 1990 and 1993 and their implementation by the Netherlands does not raise any issues. Ratification of the Palermo Convention is expected shortly.

The UN SCRs relating to the financing of terrorism are implemented by the Netherlands through directly applicable EU regulations (where terrorists or terrorist groups designated originate from non-EU countries) and the Sanctions Act (where terrorists or terrorist groups designated originate from within the European Union) and the various lists are expeditiously forwarded by the Government and supervisors to the private sector.

The criminal offenses of ML under Articles 420 bis-420quinquies follow the international standards set forth by the Vienna, Strasbourg and Palermo Conventions. They cover self-laundering, and apply to laundering committed by legal persons. The mens rea (scienter) requirement for both ML and FT is at a minimum knowing. Some ML offenses also impose liability if the offender should reasonably have suspected. Although the new criminal money laundering offenses have standards of both knowing and reasonable suspicion, some prosecutors believe that the courts are, at least in some instances, applying a stricter standard for proof regarding the source of the funds than occurred when ML was charged as a receiving offense. When charged as a receiving offense, it was generally sufficient for the prosecution to establish that funds were apparently coming from criminal activity. The prosecutors view courts as imposing in some instances a stricter standard under 420bis-420quinquies. This serves as a disincentive to prosecutors as they consider whether to pursue ML charges. A careful evaluation of case outcomes and developing law under the new provisions is important, so that appropriate adjustments in the provisions can be made, if necessary, to ensure a successful ML prosecution program.

A legislative explanation accompanying the previous ML (fencing) provision provides a basis for a conclusion that predicate offenses are covered but a more explicit and conclusive basis would be preferable.

Rather than making the financing of terrorism a crime in a separate provision, the Netherlands relies on pre-existing criminal code provisions, primarily on the offense of participation in a crime and participation in a criminal organization, as well as provisions on attempts, complicity, procuring, etc. to meet ICSFT Convention obligations. Some aspects of the provisions were amended to ensure that it is explicit that FT is covered, and the Acts of Terrorism Act (under consideration in Parliament) makes explicit that participation includes the provision of monetary or other material support both in preparation for a crime and to persons who are members of a terrorist organization. Under these provisions, the offense being prepared for does not need to be committed

and the intent element is in accordance with (and may be more generous than) that set forth in ICSFT.

The Netherlands approach of using a preparation offense to criminalize FT is a method of meeting the basic ICSFT requirements. Netherlands' preparation offense covers any crime as long as the maximum penalty is at least 8 years. In this respect it is broader than ICSFT which covers crimes defined in nine international treaties appearing in the annex to the Convention as well as generically defined terrorism activity. With respect to intent, the preparation crime covers collecting, dealing in funds "apparently intended" for the commission of a crime. Authorities indicate this means "apparently or at first sight" intended, and includes the concept of should have known. It is broader than the intent requirement of ICSFT which addresses collecting or dealing in funds with the intention the funds should be used or knowledge they are to be used in carrying out an offense.

The Dutch preparation offense is relatively new (enacted in 1994) and the authorities indicate it has been used in other contexts. Preparation does not, as an attempt, require the initiation of a crime. Its purpose for inclusion in the Dutch Criminal Code was to address those preparing to commit a serious crime, in particular, in the Dutch context, drug trafficking. Assuming judicial interpretations do not establish elements not now apparent in the text of the Dutch preparation crime, it should serve the purpose of permitting successful FT prosecutions. With the expected enactment of the Acts of Terrorism Act and its explicit provision defining participation as including provision of monetary and other material support to organizations and providing money to persons who are members of the organization, a full range of FT activities should be covered.

The penalties for ML, although they meet the minimum requirements of the EU Council framework decision, are low when compared with penalties in many other jurisdictions.

Overall, the legal AML and CFT regime of the Netherlands is one of the best in the world. Nonetheless, there are some weak points. The Dutch do not have an in personam bulk currency smuggling offence nor any border currency reporting requirements outside of formal Customs declarations and declarations made to the Military Police. Thus, the only gaping hole in the AML legal regime is the lack of threshold currency reporting requirements for currency leaving and entering into the Netherlands, although the assessors were informed that the issue will be addressed through an EU-regulation, or through national legislation in case the EU might not reach consensus. In addition, local police and prosecutors have under-utilized the available forfeiture provisions, which tends to undermine overall AML enforcement and will adversely affect future CFT efforts as well. For example, the alarming increase in the stockpile of unfinished or incomplete Article 36 forfeiture proceedings still pending with the public prosecutor's office indicates that this office needs to redirect more resources to the problem. Failure to complete forfeitures in a timely manner can result in both a denial of due process for the property owners and will likely lead to the unnecessary dissipation of otherwise forfeitable assets. Emphasis should be placed upon reinvigorating the use of forfeiture as a law enforcement tool as the forfeiture investigation process often uncovers ML and FT offences, additional criminal targets, and is often the best way to find and convict high level or king-pin criminal targets and plays a key role in dismantling criminal organizations.

The current ML provisions do not make it clear that circumstantial evidence should be sufficient to show that property involved in money laundering offence is the proceeds of a predicate offence. The higher level of evidentiary scrutiny should be on the "knowledge" prong of the ML offence. Nor should the "knowledge" element of the offence have to be specific as to which underlying offence the proceeds came from, but rather it should be sufficient that the accused had knowledge or should have known that the property was likely generated by a "misdrijf" (criminal offence) and not any legitimate source. In practice, some prosecutors feel that judges are apparently requiring an un-mandated higher level of proof than was required under the old "fencing" provisions, which the new money laundering laws were intended to replace. According to prosecutors, this is creating a "chilling effect" on the use of the new ML provisions. So much so that prosecutors will likely refrain from using the ML laws as a tool for prosecution in favor of other legal provisions such as the fencing provisions which are easier to prove, but carry less punishment. This will have a severe negative impact in effective AML/FT enforcement efforts.

Although the potential sentences for money laundering are within European norms, they are still quite low. The

maximum sentence for a habitual or professional launderer is only six years, which is the same or similar to a sentence that can be issued for less serious one-time offences such as perjury under oath (Article 207 WtBk v. Sr), use of a counterfeit seal (Article 216 WtBk v. Sr.) and false statements in an official document (Articles 225-227 WtBk v. Sr.). The ML sentences are also significantly less than what one can receive for similar “serious” fiscal offenses such as counterfeiting currency knowingly distributing counterfeit currency (9 years) (Articles 208 and 209 WtBk v. Sr.) and extortion (9 years) (Article 317 WtBk v. Sr.).

Recommendations and Comments

- Ratify the Palermo Convention, as planned as soon as possible. Consider making explicit in Dutch law that foreign crimes may serve as predicate offenses. This would serve as a conclusive basis rather than reliance on a legislative explanation applicable to the previous ML (fencing) offense.
- Within this year, undertake an evaluation of case outcomes and developing law under the new criminal ML provision and make any legal adjustments/amendments to the ML criminalization necessary to ensure ML prosecutions are successful.
- Consider an increase in the maximum penalty for engaging in ML.
- Enact legislation as the Acts of Terrorism Act which makes explicit that provision of monetary support to a terrorist organization constitutes criminal participation.
- *Enact bulk currency smuggling offences and border currency reporting requirements, on projected common EU standards if possible, rather than waiting for EU consensus on this issue.*
- *Consider completely lifting the Parliamentary ban on the use of long-term criminal- civil infiltrators for ML investigations, but under direct control of prosecutors and under strictly followed guidelines.*
- *Consider creating a forfeiture fund and use monies to train law enforcement and police in AF, ML, and FT investigation and prosecutions, to support ongoing stalled forfeiture efforts, and to remit funds back to victims without the need to hire legal private legal counsel and resort to the civil courts for recourse.*
- *Permit the Board of Attorney Generaal (het College van Procurers-Generaal) to set realistic national forfeiture guidelines and prosecutorial standards for certain types of delicts, such as ML and FT offences and all economic offences that involve victims.*
- *Make the consideration of forfeiture a mandatory part of any offence prosecuted that in theory can generate proceeds of more than EUR 10,000 or some other monetary threshold of realizable assets. At the very least the forfeiture option must be considered by the prosecutor, and that prosecutors be required to provide reasons to the BOOM as to why a viable forfeiture was not pursued.*
- *Clarify the burden of proof in ML cases.*
- *Raise the 6, 4, and 1 year sentences for ML offences by 3, 2, and 1 years respectively, to accurately reflect the serious nature of the ML offence. Consider mandatory minimum sentences for serious or repeat offenders and serious offences from which judges can depart only for good cause shown.*

Implications for compliance with FATF Recommendations 1, 4, 5, SR I, SR II

1: Compliant
4: Compliant
5: Compliant
SR I: Compliant
SR II: Compliant

II—Confiscation of proceeds of crime or property used to finance terrorism
(compliance with criteria 7-16)
Description
Confiscation (7)
<p>Dutch law provides for the confiscation of laundered property, of proceeds from the commission of offenses, including ML and FT offenses, and of instrumentalities used or intended for use in the commission of offenses. Articles 33–35 (forfeiture as a part of sentencing) and Articles 36a-36f (confiscation as a measure for illegally obtained profits), Criminal Code. Confiscation/forfeiture applies to:</p> <ul style="list-style-type: none">• property obtained, in whole or part, by means of an offense, or from the proceeds of the offence,• property in relation to which the offense was committed,• property used to commit or prepare for the offense, and• property intended for the commission of an offense. <p>There are both value and property based provisions in Dutch law. Courts may issue orders for payment of an amount of money equivalent to the illegal profits gained. Except in simple cases where proceeds are easily forfeited under Articles 33 – 35 of the Criminal Code as part of the criminal sentence, confiscation occurs in a separate proceeding that takes place after the criminal conviction has been obtained. The proceedings can be commenced within two years following conviction thus permitting time for a thorough investigation relating to proceeds amounts and sources, but most cases accompany the main criminal proceedings . A specialized public prosecution office, BOOM, assists prosecutors with the confiscation aspects of criminal prosecutions, and complex cases are handled by prosecutors from BOOM. Under the Dutch system, confiscation is discretionary rather than mandatory and requires a criminal conviction.</p> <p>In the separate proceeding, a court may order a sentenced person to pay a sum the court estimates to represent illegally obtained profits or advantages. Article 36e, Criminal Code. The amount may be imposed for the offense of conviction, for similar offenses, and for other offenses punishable by a fine with a maximum of EUR 45,000. For the offenses other than the offense of conviction, there must be “sufficient evidence” that the offense was committed by the person, a burden lower than that required for conviction. Authorities indicated this means that there must be reasonable evidence connecting the offender to the other crimes. The general standard applicable in the court’s consideration of evidence at the confiscation hearing is that it is more likely than not that the property represents proceeds of crime. A specific connection between the assets and offence is not required.</p> <p>Under Article 94a(3) of the Code of Criminal Procedure, confiscation also covers goods belonging to third persons where the third party knew or should reasonably suspect the goods represent the proceeds of crime. Such persons may also be ordered to pay an amount of money equivalent to the proceeds held. Gifts are caught by these provisions and may also be addressed through a civil revocatory action. Article 94a(3) applies to both natural and legal persons, and accordingly assets transferred to legal entities are covered as long as there is a showing of knowledge on the part of the legal entity.</p> <p><u>Provisional measures</u> are provided for in Article 94a(J) of the Code of Criminal Procedure. When there is a suspicion of a criminal offense, a seizure order may be issued by an examining magistrate, or in the case of special financial investigation already authorized by an examining magistrate, by the public prosecutor. The seizure order may cover goods (including all property and property rights):</p> <ul style="list-style-type: none">• that may be subject to confiscation or forfeiture;

- that may assist in disclosing the truth or establishing illegally obtained profits or advantage; and
- if the criminal offense is punishable with a fine carrying a maximum of EUR 45,000, to ensure eventual payment of a fine or to satisfy a value based order relating to illegally obtained advantage.

If there is a need to act quickly based upon a UTR/STR or foreign request for a freeze, authorities indicate they are able to effect asset freezes within a matter of hours. In the case of suspicious activity, financial institutions often notify MOT and BLOM at the same time, but even if this does not occur, through the MBA-unit (the joint MOT-BLOM task force), the matters moves quickly from BLOM to the prosecutor or investigating magistrate who may issue the order.

Property of Organizations. The provisions on confiscation, forfeiture and seizure are applicable to investigations, prosecutions and convictions under Article 140 of the Penal Code which makes participation in an organization whose object is to commit crimes an offense. Once a principal in the organization is convicted, any monies held by that person even those stemming from criminal activities in which he did not take part are subject to confiscation. Under Dutch law, confiscation is limited to the property of the accused.

Confiscation without criminal conviction. Confiscation without a criminal conviction is not possible in the civil law system in the Netherlands. However, as noted, proceeds of offenses other than the offense of conviction are subject to confiscation. In addition, under the Dutch system, fugitives may be convicted even though they are not present for the proceedings. Also, as long as there is a criminal conviction for one offense, confiscation is possible for other charges upon which there is an acquittal or discharge from prosecution if it is determined a criminal offense was committed or by decision of the court on the request of the public prosecutor. (Article 36b1 (3)-(4), Criminal Code).

Powers to identify and trace (8)

Under the Dutch Code of Criminal Procedure powers to identify and trace assets stem from Article 96(a), the general provision that provides for seizures and requires that financial institutions turn over records. The powers are available even if a formal investigation against an identified target is not yet open. All that is needed is a suspicion a criminal offense has been committed. Seizure powers set forth in Article 96(a) may be used both for basic investigative purposes and in support of potential confiscation. Prosecutors and investigators have used Article 96(a) to clarify the background of suspicious financial flows even when there has not been an identified suspect.

Special financial criminal investigations may be initiated by public prosecutors to determine illegal profits or advantage if there is suspicion a crime has been committed punishable with maximum fine of EUR 45,000 and there is a suspicion there was a financial advantage of some importance. Articles 126 – 126f of the Code of Criminal Procedure. Such investigations must be authorized by an examining magistrate. In these investigations, investigating officers may review the financial position of the person under investigation and to do so, order any person to provide documents, to explain data, and to state whether he/she hold any assets of the person under investigation and specify those assets. The public prosecutor may order seizures under Article 94a. The examining magistrate may order searches and exercise the powers normally reserved for a preliminary inquiry. In addition, if needed to effect the seizure of goods, the public prosecutor may search premises believed to have documents or other data relevant to financial position, without the occupant's permission. These provisions permit identification and tracing of proceeds in financial investigations.

A bill currently before Parliament, the Financial Data Requisition Act, which is expected to pass early next year, will provide some refinements to the powers to identify and trace and secure customer identification orders. It will facilitate the process of investigators ascertaining quickly whether a customer has an account, and implement Protocol 2 (16 October 2001) to the European Union Convention on Mutual Legal Assistance.

Rights of bona fide third parties (9)

Pursuant to Articles 552a-552g of the Code of Criminal Procedure, the rights of innocent third parties are protected. Anyone with an interest in property may file a claim in writing, have it heard and pursue a lifting of a seizure on a timely basis.

Authority to void contracts. (10)

Concerning the possibility of voiding contracts that aim to frustrate seizure, confiscation or forfeiture orders, the authorities noted that a contract a person knows or should know will prejudice authorities in a recovery are unenforceable under Dutch law. They pointed out that under Article 3-40 of the Dutch Civil Code, acts in breach of public order are null and void. This would apply, for example, if entering into the contract constituted a criminal offense or if the contract was concluded to hinder the ability of the state to recover a financial claim. In addition, pursuant to Article 94d(2) of the Code of Criminal Procedure, the public prosecutor may declare null and void fraudulent conveyances which include legal acts performed by an accused or convicted person in the year preceding the commencement of an investigation of the person.

Statistics (11)

The BOOM (Bureau Ontnemingswetgeving Openbaar Ministerie) has the primary responsibility for overseeing the forfeiture program in the Netherlands. Although the BOOM keeps statistics on the amount and the value of items it has seized and those items and amounts ultimately realized in forfeiture in Article 36 forfeitures, the BOOM currently does not keep track of such information by the type of offense.

Training (12)

Training in forfeiture matters is available for both police and prosecutorial staff, but is not mandatory and seems to be available in limited quantities. In addition, the BOOM publishes newsletters updating all police and prosecutors that work in the AF area on the most recent jurisprudence, legislative developments, and program analysis. BOOM also produces detailed annual reports and various studies. BOOM has a hotline to assist police and prosecutors, a website for law enforcement personnel and provides legal advice and assistance to prosecutors on an ad hoc basis. The SSR (Studiecentrum Rechtspleging) has various courses: "Introduction to Financial Investigations", "Using Financial Investigations" and a two-stage course "Confiscation of property of assets in Criminal law". The BOOM in conjunction with the SSR trains the Judiciary, which include judges and prosecutors, but it was unclear how many judges or prosecutors have availed themselves of this training. The IAE was unable to confirm that "all administrative, supervisory, investigative, prosecutorial and judicial authorities follow special courses relation to AML/CFT at their respective institutions" as very few persons interviewed seem to have an keen understanding of what specialized training was available, and these are the people who would likely receive or give such training. For police officers, Judges and prosecutors, AML/CFT-related issues are part of the basic training, refresher courses and continuing education courses. The IAE saw no evidence of systematic and wholesale training of persons involved in ML, FT, and AF matters, but rather it seems to occur on an ad hoc basis. Even if all law enforcement and judicial personnel are exposed to these concepts during basic training, this is insufficient. AF is an area of the law that changes very quickly, especially over the last 5 years. AF law is often very complicated and requires specialized knowledge to execute properly and effectively.

The LSOP (Politie Onderwijs- en Kenniscentrum) is the central point for all police training in the Netherlands (national police and regional police) and has several specialized courses: "Working on a financial investigation", "Financial-administrative truth finding", "Fraud in complex matters", "Confiscation in complex matters" and "Money-flows Related to the Financing of Terrorist Activities." Further, the LSOP has modules in financial investigation (from beginners' level through university level courses). Dutch authorities claim that "during the training of police personnel attention is paid to the importance of adequately investigating cases related to money laundering and the financing of terrorism," although the results obtained to date do not seem to support this.

In addition to training many units generated literature, studies and newsletters in the AML and CFT areas, such

as the MOT and the FEC. Also many groups including the BOOM, the Functioneel Parket, the MOT, and the BLOM engage in "outreach" activities trying to encourage police and prosecutors to use AML, CFT and AF legislation and procedures.

Statistics on FT forfeitures (13.1)

See discussion in criterion 11

Freezing for FT (13, 14)

In the area of FT, any person or institution in the Netherlands, in particular those authorized to hold accounts, is obliged to freeze without delay funds or other property belonging to terrorists or terrorists organizations identified by the United Nations SCRs. The latter were implemented in the Netherlands by means of directly applicable European Council Regulation No. 881/2002. In addition, if a reasonable suspicion arises that funds belong to terrorists or terrorist organizations, prosecutors also may institute criminal proceedings and apply for appropriate measures at court (e.g., production of bank account records, or provisional injunction to freeze property).

UNSCR 1267 and 1390) are implemented through EU Regulation 881/02, which is applicable in all EU member states. Council Regulation (EC) No. 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban orders the freezing of the assets of persons and organizations included on the list drawn up by UN Sanctions Committee 1267. Amendments to the list are automatically incorporated in an annex to the Regulation. The Regulation also prohibits making funds available or providing financial services to the listed persons/organizations.

UNSCR 1373 has been implemented through EU common position 2001/391/CSFP, and EU-Regulation 2580/2001. If all EU member states agree, a person/entity is designated as part of a common position on a EU-terrorist list. For listed persons/entities who are from outside the EU, assets are frozen under EU regulation 2580/2001. For listed persons/entities from within the EU ("internal terrorists"), while there is enhanced cooperation, the EU regulation for freezing is not applicable. In the Netherlands, freezing of the assets of so called "internal terrorists" on the EU list occurs based upon a ministerial regulation issued under the Sanctions Act.

In addition, even in the absence of an EU listing, a person or entity may be designated by the Netherlands on a national basis. After September 11, 2001, the Netherlands amended its Sanctions Act to permit the government to administratively freeze individual terrorist properties on a national level. Under Article 2 of the Sanctions Act 1977, the Netherlands may take national measures by ministerial order/regulation to comply with treaties, resolutions, or recommendations of bodies of international institutions or international agreements.

Under a decree pursuant to the Sanctions Act 1977 on the reporting of transactions that might be linked to terrorist financing, financial institutions must report any request for a financial service if a person/entity on any list is a requesting party or is involved in some other way. In such cases financial institutions must notify MOT, which forwards the information to the appropriate authorities.

FIOD-ECD oversees compliance with the Sanctions Act and in addition, the Dutch financial supervisory authorities oversee the extent to which systems in place in financial institutions permit effective CFT action. Also Customs has been designated as a supervisor of the Sanctions Act.

The violation of obligations arising from Council Regulation 881/2002 or national legislation is an offence under the Sanctions Act 1977 and the Economic Offences Act. For violations, offenders may be sentenced to up to six years' imprisonment.

Procedures for disseminating freeze lists

Procedures set forth in the Ministry of Finance’s “Freezing of Assets Protocol” address the distribution to and processing by financial institutions of national and international lists of persons and entities with terrorist links. The Ministry of Finance receives the lists. In some cases they are evaluated by the AIVD, before being passed on to the financial supervisory authorities who post the lists on their websites, and send them as circulars to the institutions they supervise. The financial institutions enter the names in their systems. If there is a match or a possible match, they are to immediately notify the Ministry of Finance and the AIVD. If there is a match, assets are frozen immediately, and in the case of possible matches, the assets may be frozen, depending on the outcome of an investigation by the AIVD. If there are grounds for initiating a prosecution, AIVD refers the matter to the public prosecutor.

By early 2004, there will be administrative organization and integrity rules setting forth standards for institutions to ensure there is an ability to comply within their institutions with timely freezing of assets of individuals and organizations that appear on the lists.

Asset Forfeiture Fund (15)

Dutch law does not provide for an asset forfeiture fund for confiscated property. Confiscated assets go into the general public funds. The cost of conducting confiscations/forfeitures come from the public fund and authorities believe it would not be desirable to have the costs associated with the forfeiture of assets including costs for investigation and intelligence initiatives to have to be funded from a dedicated fund.

Asset Sharing (16)

Under Articles 13 through 13f of the Act on Execution of Foreign Judgments (Transfer) Act, the Netherlands may seize and confiscate of property at foreign request based upon a treaty. Under Strasbourg Convention and bilateral treaties with the US and the UK, the sharing of confiscated property is possible. Asset sharing can occur with or without a treaty although the existence of a treaty facilitates such sharing. Authorities have noted that asset sharing is not common in the legal systems of continental Europe. However, the upcoming EU Council Framework Decision on the mutual recognition of confiscation orders will provide an explicit basis for asset sharing.

Analysis of Effectiveness

The Dutch confiscation regime has both property and value based provisions, is not mandatory and applies to economic benefits deriving from any criminal offence. Confiscation requires a criminal conviction, but assets and proceeds from conduct in addition to the offence of conviction are subject to confiscation. Defendants who have fled may be prosecuted when absent, and confiscation of a fugitive’s assets is also permissible.

When applied to ML or FT, confiscation applies to proceeds, instrumentalities, laundered property, income or profits derived from the proceeds as well as the value of the proceeds and laundered property.

Under amendments to the confiscation provisions, assets transferred to legal entities are subject to confiscation under the general rule that assets in the hands of third parties are reachable based upon the third party’s knowledge of the illicit nature of the assets. Article 94a(3), Code of Criminal Procedure. Accordingly, the shielding that occurred under the Bucro case of assets held by a third party legal entity controlled by an offender is not longer permissible.

The seizure regime under Article 94 of the Code of Criminal Procedure empowers prosecutors to secure assets or other property that may become subject to confiscation, as well as items conducive to disclosure of the truth or that will demonstrate profits are illegally obtained. Since the Dutch confiscation system is in part value-based and a purpose of seizure is to safeguard any eventual confiscation order, substitute assets are subject to seizure.

Prosecutors and police officials noted that freezes of financial accounts can be effected quickly, and that they have not encountered problems under the current legal framework in immobilizing assets. Should there be evidence that the current system (orders issued by investigating magistrate or prosecutor) does not secure assets quickly enough, consideration should be given to empowering MOT to order freezing of accounts, subject to subsequent control by the prosecution.

Specific provisions exist for the protection of bona fide third parties and there are adequate provisions for voiding contracts that aim to frustrate claims resulting from the operation of AML/CFT laws.

The Dutch confiscation regime provides for the confiscation of proceeds relating to participation in a criminal organization including a terrorist group if a person is charged with participation in a group. Confiscation can occur of all funds that the defendant has control of that represent criminal proceeds or instrumentalities, even from criminal offenses that he did not take part in.

Although authorities indicate no problems have been encountered in tracing proceeds under current provision of law, the Financial Data Requisition Act (Nr. 28353), under consideration in Parliament will provide refinements to the powers to identify and trace and secure customer identification orders, including a mechanism for a quick confirmation on the existence of an account.

The UNSCRs relating to the prevention or suppression of FT have been effectively implemented in the Netherlands through directly applicable EU legislation and regulations under the Sanctions Act. These provide a sufficient basis for Dutch authorities to freeze without delay funds or other property of terrorists or terrorist organizations listed by the UN or by individual Governments.

The Netherlands does not have an asset forfeiture fund. It is able to share confiscated assets with another jurisdiction when the confiscation has occurred at foreign request.

The failure to track seizure and forfeiture data by offense type deprives the authorities of data that would otherwise help assess to what extent the laws that combat ML and FT contribute to the forfeiture program and therefore the effectiveness of the Netherlands AML/CFT regime. The BOOM thinks that it should be possible to alter their tracking system to capture most of this information. There are however some practical problems in tracking all such information. For example, Dutch forfeitures can also be based upon offences for which the defendant was not convicted, making the tracking of forfeitures by offence type more difficult. Nor does the BOOM receive data on items seized and forfeited under Article 33 WtB Sr, or those items forfeited pursuant to "transactie" under Article 74 WtB Sr., because these matters, for the most part, are handled by local prosecutors, who are not answerable to the BOOM. The failure to capture this data undermines the other statistical data maintained by the BOOM and prevents it from evaluating the overall effectiveness of the forfeiture program and the relative effectiveness of the various forfeiture options.

The availability of training in the area of AF, ML and FT is quite limited. There are only two courses for prosecutors and judges, a beginner's level and an advanced course, but neither is mandatory. For police the training in basic financial investigations is mandatory. Any police agent that wishes to move up into the supervisory ranks will have to take advanced AF and financial investigation training courses to obtain a promotion in rank. Judging by the disappointing seizure and forfeiture statistics and discussion with forfeiture prosecutors indicating there is a general lack of understanding, will, and traditional institutional resistance to financial investigations it is hard to believe that training has been adequate in these areas. There also is a resistance to the use of AF and ML laws in regional prosecutorial and police units and neither the BOOM, the BLOM nor the MOT, like many national units in the Netherlands have the power to force the issue nor the manpower to handle all the cases not pursued at the local level. All assets forfeited in the Netherlands go into the general treasury. The Netherlands does not have an Asset Forfeiture Fund that could be used to pay for the expenses associated with tracking data, help fund AF, AML, CFT training for both law enforcement and the private sector, defer costs incurred in long-term and complex financial and AF investigations, or support other law enforcement initiatives in the AML and CFT areas. Jurisdictions that set up forfeiture funds and use the money to promote further law enforcement or asset forfeiture efforts have seen a marked growth in the number

<i>of successful forfeitures.</i>
Recommendations and Comments
<ul style="list-style-type: none"> • Should there be evidence that the current system of freezing transactions through orders issued by the investigating magistrate or prosecutor does not secure assets quickly enough, consideration should be given to empowering MOT to order freezing of accounts, subject to subsequent control by the prosecution. • As planned in the Financial Data Requisition Act under consideration in Parliament, enhance powers to identify and trace and secure customer identification orders. • Ensure that asset sharing can occur in domestic matters where there has been foreign assistance. • Make confiscation of criminal proceeds in ML and FT matters mandatory. • <i>BOOM tracking information should include data fields which indicate whether ML or FT offenses form the basis of a seizure or eventual forfeiture.</i> • <i>That a method be developed to capture non-Article 36 forfeiture activity such as Article 33 forfeitures and forfeitures obtained by “transactie” under Article 7 as well as fiscal penalties often applied in these cases.</i> • <i>Require mandatory forfeiture, ML and FT training for all prosecutors and police that handle forfeitable offenses set forth in Article 36 and prosecute or investigate economic offenses.</i>
Implications for compliance with FATF Recommendations 7, 38, SR III
7: Largely Compliant (confiscation not mandatory). 38: Largely Compliant SR III: Compliant
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels
(compliance with criteria 17-24)
Description
<p>FIU (17)</p> <p>An FIU (Office for Disclosure of Unusual Transactions (MOT)) was established in 1994 and is a member of the Egmont Group. MOT receives and analyses all unusual transaction reports (with the exception of unusual amounts of money found by the Royal Military Police in immigration and border control settings that are reported directly to BLOM). It is an administrative body within the Ministry of Justice headed by an official appointed by the Minister of Justice in cooperation with the Minister of Finance.</p> <p>Article 9 of DUTA establishes an obligation to disclose all unusual transactions to MOT. Under Articles 8 and 15 of DUTA, the Ministers of Finance and Justice after consultation with MOT establish lists of indicators for unusual transactions. Institutions with reporting obligations must report unusual transactions (UTRs) based upon these lists of indicators which are industry specific. Many indicators have their source in typologies; others are based upon objective standards with required reporting of transactions over a specified threshold. In addition, subjective indicators (e.g., suspicion that transaction may be related to ML, suspicion that customer seeks to avoid a threshold) are also set forth. There is an indicator for FT requiring reporting to MOT and police of transactions for or on behalf of persons named on the various freeze lists. The indicators cover both actual and attempted transactions. There is no requirement that there be an actual suspicion that ML has occurred or that the transaction is linked to a predicate offense.</p>

UTRs are analyzed by MOT, and if found suspicious, are forwarded as STRs to all police forces, including a specialized investigative police unit, BLOM. UTRs become STRs if MOT analysis results in a judgment that a transaction is suspicious, if the transaction and police records match in some way, or if there is a request by the public prosecutor or police authorities to MOT for a search of the database relating a particular matter. STRs are placed in an internal police internet system, the Intranet Suspicious Transactions. The information may then be used by BLOM and other police units for any investigation, not only for ML investigations. MOT has developed software that it uses in its analysis of incoming reports to assist in determining which of the many transactions it receives annually are suspicious transactions that should be reported on to the police.

BLOM is a specialized investigative police unit that works closely with MOT, assists other police units in KLPD as well as regional police forces investigating ML cases and supports prosecutors in ML cases. It analyses STRs for the National Public Prosecutor for AML/CFT and develops ML cases to present to other police units for further action. MOT and BLOM participate together in the MBA-unit, a unit for mutual analysis of unusual and suspicious transaction reports. This unit combines MOT and BLOM knowledge and their access to databases. Each day the MBA-unit reviews some of the most promising incoming UTRs to develop them and ensure they receive special attention.

UTR information may be used for ML cases as well as for any other case where police authorities or the prosecutor believe the information could be useful. One way that UTR information may become STR information (and thus information available to the police generally) is through MOT's consideration of requests made by the public prosecutor at police request for information that may relate to persons under investigation. MOT reviews its database in response to such requests and forwards the information on to BLOM and other police units as suspicious transactions. Information in UTRs is also used to detect FT. Reporting institutions that detect an attempted transaction with a person or organization on freeze lists must report the attempted transaction to MOT.

Guidelines for the identification of complex and unusual transactions and suspicious patterns of behavior take the form primarily of the indicators issued under the authority of Article 8, DUTA. Indicators are issued and revised regularly. Other guidance comes in the form of keeping reporting institutions aware of developments in the field of ML, as MOT is required to do under Article 3, DUTA. MOT has established a website, a newsletter and a 24/7 hotline all of which are resources to ensure reporting institutions are kept advised of ML developments. The Working Group on indicators (WG IND), which consists of reporting institutions, MOT, BLOM, the Ministries of Justice and Finance, and supervisors, discusses new indicators on a regular basis and serves as a platform for the discussion and development of new typologies.

Article 11, DUTA provides MOT with full authority to mandate the manner and methods used in making disclosures. Most reporting institutions, other than gatekeepers and dealers in high value goods, must file reports electronically on a secure web-site or diskette. Gatekeepers and dealers in high value goods report through designated forms. Reporting by fax or telephone is also possible in cases where the report might lead to an immediate arrest. DUTA requires reporting parties to report as soon as possible. BC-MOT, the Committee that oversees MOT, has made clear that this means reporting on objective indicators within 14 days, on subjective indicators within 30 days and in urgent matters within 48 hours.

MOT is not empowered to take temporary preliminary measures to ensure financial institutions to not complete transactions while reports are being considered. In cases where a seizure of funds is needed, MOT must report the matter to BLOM who then must seek an order from the public prosecutor to immobilize funds. MOT has provided technical assistance to candidate EU member countries, as well as assistance in the creation of FIUs on a global basis. It has taken the lead in establishing the FIU-NET that provides a secure electronic exchange of information between FIUs.

Additional Documentation (18)

MOT is also empowered to request further information to assess whether information received as part of a report should be onwardly disclosed. Both the reporting party and the provider of financial services involved in the

reported event are required to provide additional information within a time limit set by MOT. Article 10, DUTA.

FIU access to information (19)

MOT has access to numerous public and non-public databases including HKS (all official police records), National Interpol database, Dutch Chamber of Commerce database, GBA (official office of records for city-councils/municipalities), VIS (database of stolen or missing identity documents), FIOD (tax authorities and fiscal police database), matching BOOM databases (Bureau for confiscation of the public prosecutors), matching VROS (database for criminal record of the criminal investigation departments), FIU-NET (automatic access EU-FIU database), Lexis-Nexis (international database), RDW (database for all motor vehicles), Dunn and Bradstreet (Universal Chamber of Commerce database) and the Egmont Secure Web (information exchange).

BLOM has access to HKS (all official police records), MRO-VROS (national crime investigation register), NCIEs (national register of criminal or criminal-linked subjects), IPS (Serious Crime register of the national police), various registers of the national police, among which are LFS (Register for document fraud), National Firearms register, database of the anti human trafficking police unit, OPS (register for traced criminals and linked information), VIS (database of stolen or missing identity documents), NCIS-LIST (database for screening of people), WINSTON database (all suspicious transactions), Interpol Netherlands Database, Interpol Lyon Database, Europol database, FIOD (tax authorities and fiscal police database), SIOD (social-security investigation unit database), AID-database (special crime investigation units) Koninklijke Marechaussee database (database of the military police, also responsible for immigration), databases of various foreign crime investigation units, information from Dutch liaison officers in other jurisdictions, information from foreign liaison officers in the Netherlands, land register database, BVR-database and FIBASE-database (tax authorities & tax investigation service), Rentebase (tax authority database with all reports of all interest payments by any bank), Customs database of money transports, GBA (official office of records for city-councils), CJIB-database (Central Justice Collection Unit database, register of all administrative and judicial fines), RDW (database for all motor vehicles) and the MOT-register through the MOT on a case by case basis.

As noted, MOT and the BLOM work together in a MBA-unit. This permits access to and sharing of information from the respective databases without violations of privacy regulations.

Sanctions for non-reporting (20)

MOT is not empowered directly to order sanctions against reporting parties for failure to report. However, if institutions fail to report, MOT or supervisors report the matter to the National Public Prosecutor and, as applicable, to supervisory authorities. FIOD-ECD then investigates as an enforcement authority to determine whether a criminal violation of the Economic Offense Act has been committed or, as a secondary matter, whether the reporting party is an accomplice to an ML or FT offense. Penalties for non-compliance include a maximum imprisonment of two years and a maximum fine of EUR 11,250. Section 1, 6, Economic Offences Act. Additional punishments include complete or partial closing of the undertaking, deprivation of rights and disqualifications from specified advantages. Section 6(2) and 7, Economic Offences Act.

The mission was advised that MOT has reported several instances of non-reporting to the public prosecutor, and such matters have been investigated and considered although no case has yet merited criminal prosecution. In the Netherlands, supervisory authorities are responsible for supervising compliance with the reporting obligation. Article 17b, DUTA, Decree pursuant to DUTA. There have been several prosecutions for failure to report, mainly against banking institutions, based on grounds other than information of the MOT.

Responsibility for supervising compliance is as follows:

- Central Bank of Netherlands (DNB): Credit institutions, casinos, credit card institutions, money transfers institutions, company service providers, investment companies, and bureau de change.

- Financial Markets Authority (AFM): Securities and asset management.
- Pension and Insurance Chamber (PVK): Life insurance
- Bureau Financial Supervision (BFT): Accountants, lawyers, tax advisors, notaries.
- Tax authorities and Economic Control Agency (FIOD-ECD): Real estate agents, dealers in goods of high value (precious stones, precious metals, jewelers, gems, vehicles, ships, art, antiques).

Supervisors currently have limited administrative sanctioning powers based on general supervisory powers relating to the integrity of financial institutions. Authorities plan an amendment in 2004 to DUTA to provide supervisors with the ability to impose fines, penalties and punitive damages specifically for non-compliance with DUTA.

Dissemination of information (21, 22)

On the domestic level, MOT is authorized to disseminate information for investigation. Under Article 3b of DUTA, dissemination of information is a duty. MOT forwards UTRs it deems suspicious to all police units including BLOM by placement on the Intranet Suspicious Transactions system. MOT however is not currently authorized to share information with supervisors although changes are expected in the first part of 2004 to address this issue and permit sharing of information in some circumstances.

With respect to foreign counterparts, MOT may freely share information with other FIUs. International cooperation is permitted on the basis of article 3g of DUTA which provides that it is a duty to maintain contact with police and non-police authorities of foreign governments that have duties similar to those of the MOT and Article 13 of the Data Protection (Police Files) Decree which provides for issuance of police files to police authorities in another country if it is necessary to do so:

- to enable the police in the Netherlands to carry out their duties effectively;
- to prevent a serious or dangerous threat, or to investigate a crime which has seriously disrupted the legal order in that country; or
- to enable police duties to be carried out effectively in other jurisdictions, on the grounds of a request regarding a specified person or case.

Article 13 further provides MOT must take into account the extent to which guarantees exist in the other country regarding the appropriate use of the data and the protection of privacy. Information is made available only on the condition that it will be used exclusively for the purpose for which it was provided.

For the Netherlands, an MOU is not necessary for sharing, but MOUs have been signed with countries that require them as the Netherlands Antilles, Aruba and Australia. MOT has also established contacts with foreign FIUs and investigating authorities through its membership in the Egmont Group, Interpol and Europol. Police cooperation is permitted under the Code of Criminal Procedure, the Police Register Act and the Data Protection (Police Files) Decree, which also enable cooperation with foreign police-type FIUs. An EU Decision of October 17, 2002 also mandates cooperation in the form of exchange of information between the central financial units of member states of the European Union. The Dutch MOT is part of the FIU-NET which was initiated by the Netherlands and set up to ensure ready access and dissemination of information. All information sharing with foreign authorities is handled by a central unit.

MOT's database is a police register under the Police Register Act and is protected from disclosure under the provisions of that Act and those of a Decree under the Act, the Data Protection (Police Files) Decree. See, Article 4 of DUTA.

FIU Statistics (23)

The MOT keeps statistics on almost all relevant data covered by this criterion. The MOT publishes statistics in its annual reports on the number of “unusual” transaction reports (UTRs) it receives from the reporting entities and persons required to file UTRs. The MOT primarily breaks that data down by types of business sectors required to report UTRs (e.g., banks, foreign exchange houses, remitters, etc.) and the types of objective or subjective criteria that generated the reports (currency thresholds, suspicious behavior, smurfing, etc). The MOT further breaks-down its data by geographical region, the total and average value of reported transactions, the amounts and types of foreign currency involved, the average time each financial sector takes to report a UTR to the MOT, the longest time anyone in a financial sector has taken to report an unusual transaction, the number of transactions completed after being reported, and those UTRs that were not completed by the reporter. The MOT similarly tracks the number of UTRs that obtain the level of “suspicious” transaction reports (STRs) after being analyzed by the MOT, the percentage of UTRs that become STRs and breaks down the source of the suspicion, namely, a police database match, BOOM database match, law enforcement request for information, or MOT’s own investigations. All STRs are disseminated by the MOT to law enforcement as a matter of course through a secure database that is accessible to all Dutch law enforcement investigators, local and national.

Even though the BLOM, a police unit attached to the MOT, works-up thousands of STRs into 200 to 300 potential cases annually, and presents these matters to various police investigation units for follow-up, neither the MOT, BLOM, the police, nor prosecutors keep formal statistics on how many UTRs or STRs actually result in investigations, prosecutions or convictions.

Requests for assistance from domestic law enforcement entities are closely tracked, as well as the responses thereto. In 2003, to date, there have been almost 700 requests for information by domestic prosecutors and police. The MOT also tracks requests for information from foreign sources and information the MOT requested of foreign partners. To date in 2003 the MOT received 1,365 inquiries from foreign sources and 76 inquiries have been made by the MOT to other FIUs.

Due to the type of system employed by the MOT, namely, analyzing all “unusual” transactions and referring only “suspicious” ones to law enforcement, in essence all “suspicious” matters are spontaneously referred to law enforcement as a matter of course. The MOT realizes that it does not have access to all law enforcement information or necessarily has all the expertise needed to analyze UTRs. Thus, the MOT entered into a partnership with the BLOM to analyze UTR information jointly for limited purposes. In these “MBA” teams MOT investigators work together with BLOM investigators and work-up the most “unusual” transactions reported on a given day, using the tools and data available to both units, and then refer the most suspicious of such matters to police and prosecutors for immediate investigation. These referrals can also be deemed “spontaneous” referrals to law enforcement as they are analyzed by the MOT and BLOM separately before they are referred for investigation. This unique cooperative effort made the later discussed HARM initiative possible.

Large currency transactions are not required to be reported as a matter of law, however, currency thresholds often are objective indicators that could cause a reporting entity or person to file an UTR. The MOT keeps separate statistics on the number of UTR and STR reports filed because they met a currency transaction threshold objective indicator within the all various reporting categories that have such objective indicators.

FIU structure, funding, staffing (24)

The MOT’s primary function is to collect UTR data from reporting entities and persons and analyze UTRs for suspicious activity and to disseminate STR information to law enforcement for further investigation. The MOT also vets and processes requests for MOT database checks on targets of investigations from domestic and foreign law enforcement entities, analyzes ML trends and identifies ML typologies, reports and analyzes relevant statistical data on an annual basis, and protects the privacy, integrity and security of financial information provided to the MOT. The MOT currently has 26 employees, not including the persons working on the PHARE project. The bulk of the MOT’s employees (15 in all, including the FIOD-ECD investigator that sits as a liaison officer to the MOT) are in the investigatory units, who have the primary responsibility of determining which

UTRs qualify as “suspicious” transactions and this is the most labor-intensive activity the MOT engages in.

The MOT’s suspicious transaction methodology relies upon highly automated systems and uses computers and carefully designed software programs to analyze MOT’s databases, yet the MOT has a relatively small IT department with two systems analysts, and one data entry person. This is in part possible because 85% of all UTRs that come into the MOT are submitted in some type of electronic format and data entry does not consume too much of the MOT’s resources. The percentage of electronic filers would be higher, but many of the entities and persons added to AML reporting schemes in recent years do not have ready access to or possess sophisticated computer systems or lack the computer skills needed to submit electronic data. Many large reporting entities report UTR data via the internet on a secure MOT created website with standardized interfaces for each type of reporting industry. The MOT policy unit has five employees, including two individuals dedicated to strategic analysis. The policy unit handles a variety of duties, including being active participants in FATF and Egmont Group, going to FEC meetings and working on FEC initiatives and studies, creating and implementing the FIU.NET (an electronic means that allows European FIUs to quickly determine if other FIUs have, or do not have, information about specific targets) and supporting the PHARE project, which seeks to improve AML systems in Central and Eastern Europe by providing support and training to entities involved in AML enforcement in those countries, and working with other parts of the AML/CFT apparatus within the Netherlands. The MOT appears to be adequately funded.

The MOT is an independent body that operates under the Ministry of Justice. The MOT closely guards the privacy of information received by it. Only transactions that are deemed suspicious are made available to law enforcement through secure websites, so only about 20% to 25% of matters reported to the MOT are ever disclosed to law enforcement agencies. UTRs can only be obtained by law enforcement agencies via special requests approved by a national prosecutor in charge of AML/CFT matters in the FP, which are then approved by the BLOM and the MOT. Thus, the MOT protects the privacy interests of UTRs very closely. Law enforcement cannot use STRs they receive as the sole evidence for ML offenses, and tend to use them only as investigatory leads. Hence, the risk of further disclosure of this subset of MOT information is also small. All reports that are more than five years old are stripped of identifying information and remain in BLOM analytical databases as anonymous transactions. Onsite security at the MOT and BLOM was very tight and unauthorized persons will find it very difficult to enter or leave the premises without the proper credentials and cardkeys. The MOT and BLOM uses industry standard computer security software and firewalls to protect its data from unauthorized electronic intrusions and no such intrusions have been detected by the MOT. The MOT actually requested known computer hackers to attempt to break into MOT-web, the MOT’s computer network, but they were unsuccessful.

The MOT publishes annual reports that contain very detailed statistical breakdowns and analysis of statistical data, identifies and explains new typologies, lists recent ML and FT developments and activities. The MOT also publishes booklets that give reporting guidelines and tips to reporting entities and persons.

Analysis of Effectiveness

MOT is a member of the Egmont Group and as such meets all relevant criteria established by that Group. MOT receives, analyzes and disseminates ML and FT-related disclosures submitted to it by reporting entities.

For analyzing ML-related transaction, MOT has access to various databases (including police databases) and financial information to determine whether a transaction is suspicious. It may require both from the party filing the report and from the provider of the financial services further information to assess whether the information received as part of a report should be disclosed.

MOT has its own database and no other authority has access to it except for the sharing within the MOT/BLOM MBA-unit as necessary for the unit’s consideration of UTRs. That sharing is protected by confidentiality arrangements. The database is securely protected. Information disclosed to MOT is shared with police authorities and available to them once a UTR is deemed a suspicious transaction. Information cannot be shared with supervisory authorities, although this matter is expected to be addressed through legislation in early 2004. MOT is authorized to share information with foreign FIUs and does so on a regular basis.

MOT is not empowered to take temporary preliminary measures to ensure financial institutions (FIs) do not complete transactions while reports are being considered. In cases where a seizure of funds is needed, MOT must report the matter to BLOM who then must seek an order from the public prosecutor or investigating magistrate to immobilize funds. Authorities indicated that in cases of urgency, MOT refers UTRs to BLOM and other police units as suspicious transactions within minutes or hours.

Supervisors currently have limited administrative sanctioning powers based on general supervisory powers relating to the integrity of financial institutions. Authorities plan an amendment to DUTA to provide supervisors with the ability to impose fines, penalties and punitive damages specifically for non-compliance with DUTA.

The MOT's tracking of UTR and STR data is fairly complete and comprehensive, but fails to paint an accurate picture of the utility of such information to law enforcement operations. For example, there are no formal statistics on how many UTRs or STRs actually result in investigations, prosecutions or convictions or even materially assist such ventures. There was particular interest from reporting institutions about the utility of UTR data for law enforcement operations. There was a complaint from one bank official that the MOT failed to give constructive feedback (as opposed to the less meaningful Statutory confirmation that the UTR submitted was deemed suspicious by the MOT) to reporters of UTRs, although specific feedback (i.e., the reasons why it was deemed suspicious) on a referrals is likely legally problematic due to privacy concerns. Statistics on which types of UTR or STR information resulted in positive law enforcement action would allow reporting entities and persons to focus on areas that seem to be particularly helpful to law enforcement or which may indicate areas of risk or vulnerability upon which reporting persons and entities should focus more AML resources.

The BLOM and the MOT are often unaware how STRs are used nor know the result of certain investigations that are initiated or aided by data collected or disseminated by the MOT, because that information is in the possession by the local and national police and prosecutors that handled the matter. Although the MOT keeps track of the number of UTRs and how many identified UTR or STR subjects are found in existing law enforcement databases it does not keep track of whether the passing on of these matches had any practical effect on ongoing cases, lead to new investigations or resulted or assisted in obtaining a prosecution. About 20 to 25 percent of UTRs reported to the MOT are designated as STRs.

The number of reports handled by the MOT has increased dramatically over the last three years. This is in part due to the events of 9/11, the implementation of new reporting obligations on larger numbers of entities and persons in new financial sectors such as money remitters, gatekeepers and retailers of high value goods, and to an increased awareness of money laundering risks within the political realm and financial sectors. The amount of UTRs filed almost tripled in the last three years from almost 48,000 in 2000, to over 137,000 in 2002. In 2003, there will likely be more than 170,000 UTRs. The amount of STRs as determined by the MOT also increased from 2000 to 2002, but only doubled from 11,000 to about 24,000 transactions. In 2003, there will be more than 35,000 STRs. It is unclear whether this is due to a lack of capacity to analyze the increased volume of data, is due to a "learning-curve" for new filers who may be over-reporting transactions that are not really unusual, or is an indicator that objective and subjective criteria needed to be re-evaluated in certain reporting sectors.

There were very low numbers of UTRs coming from the insurance industry, but this was not a cause for concern for law enforcement effectiveness. This low number is likely due to four causes. First, the only real risk for money laundering in the insurance industry lies with whole life insurance policies, a product that not widely marketed or sold in the Netherlands because Dutch retirement and social security benefits are quite generous. Second, money laundering through life insurance policies, certainly at the placement stage, will almost always be detected by financial institutions that accept deposits from insurance professionals or by the banking entities through which payment for the policy was made. Third, there is only little anecdotal evidence that the insurance industry outside of life insurance contract has been used to launder large amounts of criminal proceeds, with the exception of monies obtained via insurance fraud, which is more a financial integrity and fraud detection problem than a true ML concern. Finally, many insurance products can help defer tax liability. Thus insurance products are scrutinized closely by revenue authorities for evidence of tax evasion. This additional scrutiny makes many insurance products a less attractive vehicle for laundering funds.

Post-9/11 the MOT has seen an increase in personnel (about six employees were added), but this increase is not proportionate to the amount of increased data that the MOT has had to analyze since then. The amount of information the MOT has to analyze has increased dramatically, in fact, by as much 300 % over the last three years, while the increases in the number of personnel (and likely funding increases) grew only by about 25 %. The drastic increase in UTR filings is in part due to the events of 9/11, the increased number of new financial sectors the MOT now receives UTRs from, and an increased sensitivity to AML issues. However, this increase in data must be placing some strain on the MOT's effectiveness. The high level of automation within MOT could help explain why greater amount of additional labor is not required to handle the large increase in UTR filings since 2001. On the other hand, several AML entities the IMF team met in the Netherlands indicated that, in their opinion, the number of UTRs the MOT received had become unworkable for them and there was a consensus that the number of UTRs analyzed by the MOT needed to be cut-down significantly.

The Ministry of Finance and the Ministry of Justice, the competent authorities for the DUTA are restructuring the way UTR determinations will be made by reporting entities and persons and how STR determinations are made within the MOT are made as well. The Ministry of Finance and the Ministry of Justice have already altered the way that gatekeepers and high value goods dealers are required to report transactions. Future UTR reporting will occur on a "risk-based" analysis and will move away from the more rigid listed indicator UTR tests used in the past. In other words, reporting institutions and persons will be able to declare transactions as "unusual" even though they lack certain objective or subjective factors previously required to make a transaction "unusual" under old system. Conversely, they can eliminate reporting transactions as "unusual" as defined by objective or subjective factors under the old system, if an otherwise legitimate reason for the transaction is discovered. Considering that reporting institutions in the Netherlands have never been required to make truly discretionary determinations as to whether certain financial conduct is "unusual" or not, the elimination of a purely listed criteria reporting system may result in some over-reporting by large financial institutions which prefer to err on the side of caution. Hopefully, this will be off-set by the elimination of the reporting of threshold and other transactions by long-standing legitimate bank customers that has occurred in the past.

The MOT should be complemented on its dedication of resources and expertise to the PHARE project. Once these countries become part of one Europe, as the MOT realizes, your AML/CFT regime is only as strong as the weakest link in the AML/CFT chain. If these new EU countries do not have strong AML and CFT regimes upon entry into the EU, then all criminal proceeds generated in Euros within the EU will flow into those jurisdictions with weaker controls thus effectively circumventing the tighter controls in EU countries like the Netherlands.

Recommendations and Comments

- As planned, introduce administrative sanctions for violations of DUTA.
- (See recommendation in section on Confiscation regarding providing MOT ability to secure assets, if needed).
- *The MOT and the BLOM should investigate ways in which it can better track the use of UTR and STR data in investigations, prosecutions and convictions. However, it is clear that in order to accomplish this goal, either the MOT, the BLOM, and the FP would need more control or more involvement in all ML, FT and financial investigations, or the local police and local prosecutors must be required to track such information and report it to the MOT.*
- *Require all users that have access to the MOT STR database indicate if he or she will use the MOT data obtained to initiate an investigation, complement an ongoing investigation, or simply use it to assist a pending prosecution as part of the logon process into the STR database.*
- *For keeping track of convictions that involve information or evidence generated by MOT data leads, for every conviction that involves evidence of a financial nature, the police or prosecution should do a "post mortem" and determine whether MOT data was used to aid the investigatory process, and to what extent*

<p><i>such information aided the trial of the case (crucial, moderate, incidental, or no effect on conviction or forfeiture) and this information should be reported to the MOT.</i></p> <ul style="list-style-type: none"> • <i>Consider assigning more investigators to the MOT and BLOM.</i>
<p>Implications for compliance with FATF Recommendations 14, 28, 32</p>
<p>14: Compliant 28: Compliant 32: Compliant</p>
<p>IV—Law enforcement and prosecution authorities, powers and duties</p>
<p>(compliance with criteria 25-33)</p>
<p>Description</p>
<p><i>Designated authorities (25)</i></p> <p><i>The Netherlands has created several impressive specialized national financial investigatory units that have investigatory responsibilities for ML and FT enforcement. First, there is the BLOM which analyzes suspicious financial information passed on by the MOT for the benefit of various criminal investigatory units, with the hope of providing viable targets of investigation to the various national and local investigatory units. The BLOM currently has about 23 employees of which 18 are financial investigators. In the near future the BLOM will be expanded to 32 full-time employees, but it is unclear where the additional manpower will be utilized. The BLOM is often asked to support ongoing criminal investigations by exploiting information in existing law enforcement and other informational databases and then providing detailed analysis of such information.</i></p> <p><i>The second investigatory body with AML and FT investigatory authority is the Fiscale Inlichtingen en Opsporings Dienst-Economische Controle Dienst (FIOD-ECD), which is largest and traditionally the most fiscally-minded and trained law enforcement investigatory organization. FIOD-ECD, the criminal investigation service of the Tax and Customs Administration, primarily focuses upon the investigation of fiscal and fraud matters in tax, customs, bankruptcy, trademark, copyright, securities, and other similar fiscal fraud offences referred to it the Dutch IRS and by supervisory entities the FIOD-ECD works with or for. The FIOD-ECD is managed from the national level and has 600 to 700 investigators divided into 60 teams and located in 12 regional offices. In addition to the general financial investigatory expertise that all its investigators possess, in 2001 the FIOD-ECD created a specialized money laundering unit, the Money Laundering Knowledge Group (MLKG), which was set up to help Tax and Customs officials recognize money laundering patterns within their inspection activities. The MLKG acts as the ML resource for Tax and Customs Authorities, providing intelligence to such authorities, liaising with outside ML investigatory units, generating criminal ML cases and supporting financial cases. The MLKG has 11 investigators and 3 tax and customs agents assigned to it. The MLKG's goals for 2004 are to initiate at least 25 ML or fiscal offense cases a year of which at least 5 cases will be major ML cases, identify ML trends through intelligence gathering, facilitate UTR filings to the MOT by Customs and Tax auditors, and focus upon asset forfeiture as an integral part of FIOD-ECD criminal investigations.</i></p> <p><i>The third investigatory body with AML and CFT responsibilities is the newly formed Nationale Recherche (NR) employing about 700 investigators, created to investigate major criminal matters on the national level, under the supervision of the National Prosecutors Office. The Dienst Recherche Onderzoeken (DRO), one of five branches within the NR, is the primary vehicle for ML investigations within the NR. The DRO is a merger of various specialized national police investigatory units which previously dealt with organized crime investigations, complex financial and economic crime investigations, environmental crimes and other complex offences, but that previously operated as separate specialized national investigatory units. Generally, the DRO will handle long-term or complex investigations that require special financial or other specialized technical investigatory or forensic expertise. The DRO also supports local investigations that require expert assistance or experience generally not found within regional police units, including financial investigatory assistance. There will be five DRO units with a total of 70 investigators under a unified command structure. In addition to investigators, the</i></p>

DRO has a large pool of in-house forensic and non-investigatory financial experts, who are available to support both the DRO and regional police investigatory units.

The fourth investigatory unit with some ML and FT investigatory responsibilities is a DRO unit called the Terrorismebestrijding en Bijzondere Taken (UTBT), a specialized anti-terror unit that focuses upon preventing terrorism, investigating terrorism and analyzing terrorist trends, but also plays a role in identifying the methods and means used by terrorists to finance their activities. In addition to these national investigatory units some of the larger regional police organizations, such as Amsterdam/Amstelland, have separate Financieel Economische Recherche (FER) units that focus on the investigation localized financial or economic offences that arise in a specific police region, including ML and FT offences. These regional units are integrated in the investigation services of the regional police organizations. These regional units can be supported by the national units such as the DRO, FIOD-ECD, and BLOM, but they are in essence autonomous units that are not under any national or consolidated command structure. All the Dutch investigatory entities seem to possess high-level investigatory capabilities and, combined, have sufficient resources to attack ML and FT problems in the Netherlands.

The National Public Prosecutor for AML/CFT in the Functioneel Parket (FP) is an official coordinating responsibility for AML/CFT and has oversight responsibility for cases initiated from MOT information and generated into investigatory leads by the BLOM, the immediate law-enforcement intelligence analysis partner of the MOT. The College van Procureurs Generaal (head regional prosecutors) has a designated an attorney-general for AML/CFT. The attorney-general responsible for AML/CFT is also chair of the BC-MOT, but is unclear to what extent this person has effected AML/CFT policy within the regional prosecutorial bodies and what control he or she has over the regional prosecutors. The BLOM and the National Public Prosecutor for AML/CFT actively and passively assist and inform national investigatory units, the regional police units and regional public prosecutors to investigate and prosecute ML and FT matters, but have no power to force any of these units to act. Prosecutorial responsibility and division of labor for prosecuting ML and FT cases is divided in a manner similar to the responsibilities of the police agencies.

The National Public Prosecutor at the FP supervises all ML and FT cases that come out of the specialized financial investigation units MOT and BLOM. ML cases are subsequently prosecuted by local prosecutors or prosecutors of the National Prosecutors Office. The cases that go to the FIOD-ECD are dealt with by the case-prosecutors at the FP (11 in total). The cases initiated by the DRO and UTBT (both are part of the Nationale Recherche) are being dealt with by four case-prosecutors in the LP (Landelijk Parket, National Prosecutors Office) situated in Rotterdam. All cases investigated by the newly constituted Nationale Recherche are dealt with by specially assigned public prosecutors, specialized in organised crime.

The BOOM has agreed to assist the FIOD-ECD MLKG with some of its ML cases. However, there are only a few prosecutors within the BOOM, whose prosecutorial resources and ability to order regional prosecutors to bring forfeiture cases is very limited. It is difficult to place an exact number on the on the number of prosecutors specifically dedicated to prosecuting ML and FT offences as most offices do not have specialized and formalized prosecutorial units with specific ML or FT responsibility.

Legal Basis for investigative techniques (26)

The Netherlands acted in 2000 through the Special Powers of Investigation Act to provide a specific legal basis for a wide range of investigative techniques. The provisions of the act are now reflected in Articles 126g through 126u and 126ij of the Code of Criminal Procedure. Under the provisions, the following special investigative techniques, among others, are available in connection with ML, FT and predicate offences:

- undercover operation/covert investigation by police officers or with civilian assistance;
- controlled delivery (considered a form of systematic observation);
- search of premises and persons;
- recording of telecommunications and of confidential communications;
- provision of information from telecommunication provider;

- systematic observation; and
- surreptitious tracking and listening devices and cameras.

These investigative techniques are applicable under certain conditions and in some instances only if related to criminal offenses of a specific gravity. All money laundering offenses are covered.

Investigative measures must be authorized by the public prosecutor by a warrant or written order. For FT, the Act on the Intelligence Service provides a legal basis for additional investigative techniques used by the AIVD (Secret Service) after authorization by the Minister.

Use of investigative techniques (26.1)

In the Netherlands ML and FT investigations can use the full panoply of coercive measures and special investigatory powers in all ML cases and in cases FT cases under the proposed Anti-Terrorism Act and in practice these methods have been used with great success in ML cases and in cases involving common predicate offences for ML. However, due to a Parliamentary ban, it is not permissible for law enforcement to use long-term undercover criminal- civil infiltrators in ML(non-TF) matters, which makes it very difficult for law enforcement to effectively infiltrate ML organizations.

Ability to compel financial records (27)

Dutch law enforcement authorities are able to compel the production of bank account records, including customer identification records, under Article 96a of the Code of Criminal Procedure once a criminal investigation has commenced. In principle, police officers may seek such records but as a matter of practice, public prosecutors who are also senior police officers sign demands for records in the case of requests to financial institutions. The investigation must be one for which there is a maximum penalty of 4 years or more and the defendant would be eligible for pre-trial detention. Articles 67 and 67(a), Code of Criminal Procedure. As only very minor crimes do not meet these criteria, financial and other records are readily available.

In addition, MOT has power to require follow up reports from reporting institutions relating to transactions reported in order for it to assess information provided. However, once a transaction is reported as suspicious to BLOM, BLOM does not have similar access and must seek an order from a public prosecutor in order to require the financial institution to provide additional information. The National Public Prosecutor for AML/CFT who heads BLOM may issue such an order.

Co-operation and information sharing (28)

The primary body or initiative that promotes interagency cooperation in the ML and FT arena is the FEC (Financial Expertise Centre). The FEC is currently under the Ministry of Finance and has plenary meetings every six weeks (Selection Platform) and eight weeks (Information Platform). In FEC representatives from all the supervisory bodies such as AFM, DNB and PVK, the Taxation and Customs Authority, the FIOD-ECD, the KLPD, the MOT, the FP, the AIVD and the regional police corps of Amsterdam/Amstelland cooperate. The FEC has a sizeable staff of 8 to co-ordinate and support the tasks of FEC, but much of the work is also completed by the participant members. The FEC has two primary functions. First, the Information Platform the FEC participants initiate, prepare, publish and distribute comprehensive joint interagency studies on typologies and industry segments that often lead to new legislation or new reporting guidelines. To date there have been nine such studies including reports on Money Transfer Service Providers, terrorist financing, and currency exchange entities. The second important function of the FEC is that in the Selection Platform all participants can submit factual (including anonymous) real life suspected ML examples and discuss those with other member participants who often have different areas of expertise and perspectives on financial crimes. This process allows each government entity involved in AML and CFT enforcement to learn what may really be behind a suspicious transaction when the hypothetical or actual matter is discussed with other FEC participants who may have a more informed perspective on the type of transaction involved.

One of the results of the “Policy Document on the Integrity of the Financial Sector and the Fight against Terrorism,” was the creation of a Taskforce of FIOD/ECD – KLPD. This has led agreements on Joint criminal investigations, reinforcement of mutual information exchanges and the coordination of law enforcement activities. It was unclear how this arrangement was working in practice.

The MOT and the BLOM have developed the MBA-unit, where employees of the MOT and the BLOM analyze unusual transactions together. The objective of the MBA-unit is to generate an effective output of the MOT-data. The MBA-unit fine-tunes the supplied data to police and special national police units standards and provides by its own initiative suspicious transactions based upon profiles and typologies formulated by the MOT side of the MBA-unit.

All reporting institutions, the regulatory supervisors, the ministries of Finance and Justice, the BLOM, the police and the public prosecutors are members of the BC-MOT (the Council of support for the MOT) as well as the Head of the MOT. These same institutions participate in the WG IND (Working Group on Indicators), a group that advises the Ministries of Finance and Justice on the functioning of current indicators and the desirability for new indicators. This Working Group discusses new typologies and immediately incorporates them into new indicators with the input of law enforcement authorities, the reporting institutions/private sector formulate, and the MOT and develops the best indicators to spot the newly identified trends.

Law Enforcement and prosecution agencies structure, funding, staffing (29)

See generally discussion in criteria 25, above. The policy “Document on the Integrity of the Financial Sector and the Fight against Terrorism” resulted in an appropriation of an extra € 10.9 million annually for AML/CFT enforcement beginning in 2002. Crime prevention and public safety have been an important political issue during the last few years in the Netherlands, leading to two general election campaigns that focused on these issues and leading to increases in police and prosecutorial budgets in general. Furthermore, while the current government has pledged to cut overall government spending with a proposed 20% reduction of work force in government employees, the current government pledged to maintain the level of the current government workforce dedicated to national and internal security, including those involved in anti-terrorism, crime prevention, and general public security and safety in general.

Stats on ML and FT investigations, prosecutions, and convictions (30)

Before 2002 the Netherlands did not criminalize money-laundering under a separate penal code offence, but instead relied upon jurisprudence that allowed the “fencing” provisions to be used to prosecute such cases. Therefore statistics relating to the number of investigations, prosecutions and convictions based on ML cannot be produced before that period. The Netherlands currently has no FT offence (but will soon) and the Dutch are aware of no case that qualifies as a prosecutable FT offence. In December 2001 the new Article 420bis et seq. of the Wetboek van Strafrecht were introduced, and since that time some statistics are available. At present, there are no truly accurate statistics on ML and FT investigations, prosecutions, and convictions, or whether such matters were initiated based upon UTRs, STRs, street investigations, or predicate offenses due to the fragmentation of ML and FT investigatory and prosecutorial responsibilities. The FP plans on pulling all ML files to do an analysis of such information for 2003, to the extent this is possible, because many ML matters are handled at both the national and local level, without the knowledge of FP and would require obtaining data from numerous sources. Nonetheless, the Dutch authorities cobbled together some ML statistics for 2002, which are discussed below.

Typologies and trends on current ML and FT methods and techniques (31)

See discussions in criteria 23 and 29.

Training in ML and FT(32)

See discussion in criteria 12.

FT, prosecution and forfeiture problems (33)

See in part response to criteria 28. At the present time, it is unknown how the Dutch handle any systemic problems they have with seizing, forfeiting and confiscating the proceeds of crime and the coordination of efforts to do same between the various law enforcement and prosecutorial bodies and offices that are involved in forfeiture. Possibly the BOOM chairs an interagency working group in forfeiture matters.

Analysis of Effectiveness

There are designated officials responsible for investigating and prosecuting ML and FT. In general, MOT and other law enforcement authorities have adequate powers and techniques to investigate ML and FT offenses including the wide range of investigative techniques that are specifically provided for under the Special Powers of Investigation Act. Prosecutors indicated that bank records are readily obtainable and that special investigative techniques are available as needed.

While MOT may gather records before an investigation of a particular offense is opened, BLOM has not been granted similar powers and must seek an order from the public prosecutor in order to complete a preliminary assessment of a suspicious transaction, although this order may be issued by the National Public Prosecutor for AML/CFT.

In spite of a comprehensive legal regime and numerous law enforcement units with the authority to prosecute and investigate ML and FT offences there seem to be resource allocation, communication, and structural inefficiency issues on the front lines of the AML/CFT enforcement. This is an inherent characteristic of the Dutch governmental hierarchy, often derogatorily called the “polder” system, in that many government functions are controlled at the local or regional level with little meaningful national oversight and lots of duplication of effort at various levels. In spite of dedicating significant resources to AML and CFT enforcement, the Netherlands still struggles to provide adequate support on the investigatory and prosecutorial side of ML and FT investigations, apparently due to the fact that AML and CFT resources and expertise are spread out over these multiple AML/CFT regional and national bodies. These entities often share information and resources, but, generally, they tend to act independent from each other.

The BLOM acts mostly as an intelligence gathering organization for the investigating police units, and it has to “sell” potential ML cases to the regional police offices, who often seem disinterested in pursuing such matters, or “sell” them to the specialized national investigatory units who only want to handle bigger cases, which many of the BLOM referrals do not result in. The BLOM has no authority to investigate the matters itself, nor can it force local or national police to open an ML investigation. On the other hand, one major complaint from police units tasked with combating ML and FT matters is that the ML targets provided by the BLOM were often very “small players” (such as know-nothing money couriers and smurfs) deemed too insignificant to require the dedication of significant investigatory resources. The relatively low penalties for basic ML offenses combined with the current tendency of the judiciary to require a relatively high showing of a connection between laundered proceeds and the underlying criminal offense that produced the proceeds, the inability to use criminal-civilian infiltrators and the relatively low jail terms for ML offences means that a successful ML investigation of a low level ML target will rarely form the basis for a successful case against ML organizations or the leaders of such organizations.

Although information and analysis provided by the MOT and the BLOM often provide “value” to existing police investigations, such information rarely initiates an investigation. The only exception to this rule is the HARM (Hit And Run Money laundering) program, which relies upon the cooperation of local police. HARM cases are based upon unusual transactions reported by financial institutions in real time that are immediately deemed suspicious by the MOT, and are worked-up by the BLOM within hours into “hot leads” for local law enforcement agencies to handle. HARM operations involve the immediate surveillance of the suspected, usually street level, money launderer, which often results in his immediate arrest and the seizure of large sums of

currency. However, although HARM cases frequently resulted in seizures and arrests and successfully disrupted the criminal activity of the targets and the organizations for whom they work, HARM operations rarely resulted in convictions for ML offences or in actual final forfeitures of the seized currency. One local police unit complained that they have been able to seize a lot of money but forfeit little of it.

Similar problems appear to exist on the prosecution side of the process. Although a prosecutor within the FP has the "responsibility" for overseeing the leads and cases generated by the MOT, BLOM, and other national units, particularly in ML and FT matters, that prosecutor's office has no control over the regional police resources that should, in theory, assist in investigating such matters. Nor does the national prosecutor have the power to require local prosecutors to pursue a case developed by local or national police when the FP does not have the resources to do so. Cases initiated by local prosecutors that may help resolve untested and important issues of law in the ML and FT area, or are otherwise important to promote AML and CFT policies, FP prosecutors don't prosecute FT and ML offences, but only supervise some special police units with tasks in these areas.

The primary FP national prosecutor who has oversight responsibility for AML and CFT matters sits on numerous interagency working groups and commissions and has little time to attend to a full prosecutorial slate. The FP only handles major fraud cases by itself, but the FP prosecutors don't prosecute FT and ML offences, and only supervise some special police units with tasks in these areas, leaving prosecution to the National Prosecutors Office, with whom the assessment team did not meet. Also, a relatively small number of prosecutors and police at the local level that have the experience and training needed to handle ML and FT cases are available to work investigations referred to regional bodies. Running a money laundering investigation requires a certain level of expertise in both financial matters as well as experience in traditional law enforcement operations typically reserved for the investigation of major criminal organizations such as the use of wire-taps, long-term surveillance, searches, infiltrators and other coercive measures. Several police sources indicated that few local prosecutors possess such multi-disciplinary skills or lack experience in running such investigations.

At present there are simply too many prosecutorial and police units that have AML, CFT responsibilities, and there is no clear command structure or any coordinated or coherent AML/CFT investigatory or prosecutorial policy mechanism or national strategy. There currently is a great level of prosecutorial ML expertise at the national and regional level, but a lack of an ability to coordinate resources. There is a larger willingness to take on ML and FT matters and great resources at the national police and investigatory level, but in terms of numbers of prosecutors there is more prosecutorial manpower in the regional offices. However, the ML and FT experts in national prosecutorial units have no control over or little access to these resources. Somehow, the resources of the regional offices must be placed under the direct or indirect control of national headquarters entities that have been tasked with AML and CFT responsibilities. This will avoid any needless duplication of effort, and foreclose the potential for competition for resources (and targets) between local and national entities, a problem that exists in other legal systems. Moreover, in most countries, AML and CFT law enforcement policy is set at a national rather than regional level. Such integration of resources should not be too difficult to accomplish, as each major police and prosecutorial region already has prosecutors and investigators that can handle ML and FT cases and it could simply be a matter of restructuring the current command structure and resources and place them under national control.

As for the use of investigatory techniques, one Nationale Recherche Unit had some success using such methods in the investigation of a ML organization that laundered the proceeds of crime using underground banking methods (a.k.a. Hawalla or Hundi). However, the maximum sentences obtained in that case (4 years) makes one wonder whether the extraordinary resources expended to obtain the positive result, such as the use of extended long-term surveillance, dozens of wire-taps, surreptitious cameras, and tracking devices was worth it. Nonetheless, as an intelligence gathering exercise about the vulnerability of underground banking systems to FT offenses this DRO case was an important first step in understanding the challenges that face law enforcement in this area of investigation. Underground banking systems work on high levels of trust and are an ideal method of moving terrorist funds, but the investigatory methods employed by the KLPD DRO were too labor intensive to be effective on a large scale. The inability to use criminal-civilian infiltrators greatly hampers ML/FT investigations into underground banking systems as such organizations can usually only be infiltrated by persons of the same ethnic and criminal background and who are known to the targets socially.

Both the FEC and MBA-unit appear to be very effective ways of law enforcement sharing of information and ideas. The MOT-BC and WG IND are excellent ways for the private sector to have input in UTR reporting and gives law enforcement insight into industry concerns and the burden placed upon industry by reporting requirements.

The Netherlands provided the following relevant ML prosecution statistics for fiscal year 2002:

The BLOM used 5888 STR's to put together 237 new investigations. These investigations are mostly based on ML charges. However, the initiation of investigations based on STRs by other police units is completely unknown (see discussion on criterion 23 above). Out of these 237 investigations only a total of 95 cases were brought before the courts. There are an unknown number of cases before court that have been investigated by mostly local police forces and these cases not known to the FP.

The FP has served a summons for ML offences in 73 cases. In thirteen of these cases the summons was issued on related offences committed by the suspect other than an ML offence. Three cases were dealt with through a settlement with the Public Prosecution Office and six cases were dismissed. As of 1 May 2003, out of the 73 cases in which a summons was issued, 28 cases resulted in a ML conviction (five of the 28 cases resulted in a conviction, for something other than ML). Five cases resulted in an acquittal, two cases were on appeal and eight cases are still pending before court. 27 cases resulted in a jail sentence, four cases resulted in financial penalties and, seven cases resulted in a "community service" sentence. The average length of punishment for the cases involving jail time was not provided. In 19 of the 95 cases brought before the courts, ancillary forfeiture cases are pending or have been dealt with.

In 2003 (through the end of April 2003) a total of 44 ML cases were brought before the courts. In 43 cases the Public Prosecutors Office issued a summons based on ML violations. Only four of these cases have been dealt with as of mid-2003, two cases have resulted in a conviction, and two cases have led to an acquittal. The rest of the cases are still pending before the courts.

Recommendations and Comments

- *The Netherlands' AML/CFT system might benefit from further consolidation of resources within the police and prosecutorial units currently tasked with enforcing AML and CFT laws at national level.*
- *Pass some type of non-conviction based forfeiture procedure to deal with the actual forfeiture of assets seized in HARM and other forfeiture cases that do not result in convictions.*
- *ML and FT investigation and prosecution policy should be controlled and coordinated through a more centralized model.*
- *Dedicated regional investigators and prosecutors should handle the ML and FT matters at the local level, should be answerable to the national units. These persons, as part of the national structure, should be assigned to work in the various police regions on a full-time basis on ML, FT cases in regions that have significant ML, FT and other economic crimes investigatory caseloads.*
- *In addition to setting policy, the national units should supervise the cases handled by the regional units, keep track of relevant ML and FT investigatory and prosecutorial statistical data, set ML and FT policy and handle only the largest and most complex cases that by their nature require a national approach or require a disproportionate amount of resources that would overburden any regional office.*
- *Authorize the use of criminal-civilian infiltrators for serious ML and all FT cases, with strict prosecutorial oversight.*
- *All ML and FT investigations and use of STR data to initiate same should be reported by local and national police units to the BLOM.*

<ul style="list-style-type: none">• <i>Results of and basis for all ML and FT investigations and prosecutions should be reported to and recorded in the COMPAS-public prosecution information system.</i>
Implications for compliance with the FATF Recommendation 37
37: Compliant
V—International Co-operation
(compliance with criteria 34-42)
Description
Mutual Legal Assistance (34, 36)
<p>The Netherlands can provide mutual legal assistance (MLA) on the basis of international treaties, and in the case of certain non-coercive measures, on the basis of domestic law. If a bilateral or multilateral treaty is in force, the provisions of the treaty govern the execution of requests for MLA and provisions of the Dutch Code of Criminal Procedure applicable to mutual assistance are used to the extent they do not conflict. If no treaty exists, the Code of Criminal Procedure applies, and assistance is limited to measures that do not require coercion.</p> <p>The Netherlands is a party to a number of bilateral and multilateral treaties for the provision of MLA. It is a party to the European Convention on Mutual Assistance in Criminal Matters of 1959 and its Additional Protocol. It is a party to bilateral mutual legal assistance treaties with Australia, Canada, United States and Surinam. These are applicable to both ML and FT-related cases. Compulsory measures, such as production of records, search of persons or premises, seizure and obtaining evidence for investigations and prosecutions are covered by these treaties, subject to conditions including dual criminality. Negligent ML is an offense under the law in the Netherlands, so assistance is available for both intentional and negligent conduct. Assistance is available both where the investigation or proceeding relates only to ML and where it relates to both a predicate offense and ML.</p> <p>In addition to the bilateral and multilateral treaties, the Netherlands implements European Union Framework Decisions, some in process and others in force. The decisions cover issues such as the European Arrest Warrant (2002/584/JHA of 13 June 2002), the execution in the EU of orders freezing property or evidence (2003/577/JHA of 22 July 2003), and measures related to money laundering, identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (2001/500/JHA of 26 June 2001).</p> <p>For non-treaty requests, Article 552l of the Code of Criminal Procedure sets forth several bases for denial which include:</p> <ul style="list-style-type: none">• reason to suspect an investigation/prosecution is to punish for religious, ideological or political belief or nationality or race;• conviction for the same crime; and• the request is for investigation of an offense for which the individual is being prosecuted in the Netherlands. <p>Treaties to which the Netherlands is a party generally have similar provisions.</p> <p>The Code of Criminal Procedure requires that reasonable requests not based upon a treaty be complied with (Article 552k(2)). At the same time it limits the kinds of assistance available in the absence of a treaty. Assistance involving coercive measures including the production of documents, the hearing of persons unwilling to appear voluntarily, and search and seizure is available only if there is a treaty. (Articles 552o and 5520oa, Code of Criminal Procedure). In addition, assistance in political or tax offense matters is available only pursuant to a treaty. (Article 552n).</p> <p>With respect to procedures, Articles 552h-552p of the Code of Criminal Procedure, provide specific methods for dealing with requests. Incoming requests are forwarded to public prosecutors for action after evaluation by the Ministry of Justice office which serves as the Central Authority, the Bureau Internationale Rechtshulp in</p>

Strafzaken. As a matter of practice the requests generally go to ten international legal assistance centres in prosecution offices where they are evaluated and forwarded to police officials who may execute them or to a public prosecutor and examining magistrate if the request requires such involvement. Once work on a request is complete, either the public prosecutor or the Ministry of Justice forwards the materials to authorities in the requesting jurisdiction. Provisions in the Dutch Code of Criminal Procedure are available generally in execution of request as long as treaty requirements are met.

Foreign confiscation orders also may be recognized and enforced, and assets frozen in the Netherlands during the pendency of the foreign criminal proceeding on the basis of a convention or treaty. Assistance in identifying, freezing, seizing and confiscating proceeds and substitute assets is available to parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which entered into force for the Netherlands in 1994, and to the United States pursuant to a bilateral treaty. As MLATs generally cover only evidence, there must be a separate treaty for confiscation and seizure. Domestic legislation, the Execution of Foreign Judgments (Transfer) Act, is used to effectuate the assistance. Only those measures that could be taken in the Netherlands had the underlying conduct occurred domestically may be taken in support of these requests. There is a requirement of a serious offense, that is a fifth category offense, one for which the maximum fine is EUR 45,000. ML and FT, as well as all major crimes, fit this category.

Use, Implementation, and Tracking of Requests (35, 37)

The Netherlands claims to have few formal predicate requirements for international cooperation, therefore making it very easy for other jurisdictions seek cooperation from the Netherlands. Assistance in support of requests for legal assistance can be provided without a treaty, with the exception of coercive measures like search and seizure or application of special powers like cross-border surveillance, placing bugs, etc. The Netherlands is a party to numerous treaties and conventions covering mutual legal assistance in criminal matters and extradition. See criterion 34 for a further description of these treaties. Please see also criterion 36 for a list of the treaties, MOUs and other agreements with respect to ML and AF to which the Netherlands is party. See also discussion in criterion 42.

The Netherlands uses the same or similar conduct test rather than same element test for the basic dual criminality analysis that must be met before mutual assistance is rendered to a country.

Timely and effective follow-up is given to requests for MLA. The Netherlands has developed a National Uniform Registry System of International Legal Assistance (LURIS). This reporting system is constantly being developed and updated to meet the Netherlands' obligations under the growing number of international treaties and agreements in this area. At present, LURIS records the requesting authority, the date of request, the criminal facts, the requested measures, the result of the request and the answer given to the requesting authority. The system also records requests from police and judicial authorities to their police or judicial counterparts. In a more limited way, the system also records outgoing requests. However, until now, LURIS was not recording the relation between ML and the predicate offence, or separate cases of Terrorism and FT, as both are not yet defined as separate criminal acts within LURIS (due to the delay between changes in legislation and changes in LURIS). During 2002, the Netherlands 176 requests involving money laundering of which 101 have been disposed by mid-2003.

The time between the request for MLA relating to the seizure of goods and the execution of a sentence can be 2 years. In all other cases, the average time between the request and the execution of the request is 40 days.

Extradition (40, 36)

Extradition takes place only pursuant to a treaty. The Netherlands is a party to the European Convention on Extradition of 1957 and its Second Additional Protocol (1978). It is also party to the Schengen Treaty (applicable with [Austria](#), [Belgium](#), [Denmark](#), [Finland](#), [France](#), [Germany](#), [Greece](#), [Iceland](#), [Italy](#), [Luxembourg](#), the [Netherlands](#), [Norway](#), [Portugal](#), [Spain](#) and [Sweden](#)). The Netherlands also has concluded bilateral extradition treaties with Argentina, Australia, Bahamas, Canada, China, Hong Kong, India, Kenya, Liberia, Malawi,

Mexico, Monaco, New Zealand, Pakistan, Romania, San Marino, Serbia, Suriname, Tanzania, Uganda, United Kingdom, United States, Serbia and Montenegro.

Crimes punishable by a minimum penalty of more than one year for states that are a party to the European Convention on Extradition, or in the case of Schengen Treaty partners by more than 6 months are extraditable on a dual criminality basis. These including ML and FT. For the bilateral treaties, the treaties generally require dual criminality. Most treaties cover ML, although some older treaties which adopted the list approach have not been updated and do not cover the offense of ML.

The Netherlands will extradite its own nationals upon the condition that, at the option of the offender, the sentence may be executed in the Netherlands. The country seeking extradition must be a party to the Convention on the Transfer of Sentenced Persons and agree to make a convicted Dutch national available for execution of sentence in the Netherlands. Persons facing capital punishment will not be extradited unless there is guarantee against capital punishment. Under Article 5 of the Criminal Code, prosecutors in the Netherlands may prosecute Dutch nationals who commit crimes outside of the Netherlands if the underlying conduct is also criminal in the Netherlands (Article 5, Criminal Code) In addition, FT offenses may be prosecuted in the Netherlands if the suspect is found the Netherlands (Article 4(14) Criminal Code) or the victim has Dutch nationality ((Article 4 (14) Criminal Code). If extradition is denied because the person sought is a Dutch national and cannot be extradited because no assurance can be made regarding execution of the sentence in the Netherlands or guarantee made against the death penalty, the requesting country is invited to initiate a transfer of prosecution.

FT and extradition

FT, which is criminalized through participation and preparation offenses, currently carries a penalty of 4 to 10 years and is expected soon to carry a penalty of imprisonment ranging from eight to fifteen years. It qualifies in general as an extraditable offense. Even if a FT offence has occurred outside the Netherlands, the Netherlands may assume jurisdiction and prosecute if the perpetrator is a Dutch citizen or foreign citizen that cannot be extradited.

Law Enforcement Exchange of Information (37)

Through Interpol, Europol and police-to-police networks, law enforcement authorities in the Netherlands regularly provide assistance to authorities in other jurisdictions and exchange information regarding subjects of investigations as long as reciprocity and protections regarding confidentiality and use are assured. Also, the Netherlands has established ten International Centers of Judicial Assistance staffed by police officers and prosecutors to assist in ensuring timely execution of requests both for police assistance and mutual legal assistance.

Cooperative Investigations (38)

Under the law and practice in the Netherlands, cooperative investigations with foreign authorities including use of controlled delivery may be authorized by a public prosecutor under the Special Powers of Investigation Act (part of the Code of Criminal Procedure) which covers matters such as controlled delivery, placement of listening devices and cross border surveillance. Although a treaty request is not necessary for a controlled delivery to take place at foreign request, there must be dual criminality.

Investigative techniques that involve telephone interception and bugging may be used in support of a foreign requests if there is a treaty, dual criminality and suspicion of an offense that meets the same requirement that would be applicable in a comparable domestic matter (i.e., crime for which pre-trial detention can be imposed) (Article 552ao). Other special powers may be used for both treaty and non-treaty requests (Article 552ao).

Coordinating seizure and forfeiture actions, sharing (39)

The Netherlands has an asset sharing agreement with the USA (Agreement between the Government of the

Kingdom of the Netherlands and the Government of the United States of America Regarding Mutual cooperation in the Tracing, Freezing, Seizure and Forfeiture of Proceeds and Instrumentalities of Crime and Sharing of Forfeited Assets) and the UK (Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great-Britain and Northern Ireland to supplement and facilitate the Operation of the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, concluded at Strasbourg on 8 November 1990, 15). The Netherlands also has an agreement with Luxemburg to share assets on the basis of a letter of understanding. These agreements have arrangements that deal with the coordinating of seizure and forfeiture actions and the sharing of confiscated assets with other countries. However, an agreement is not strictly necessary for the Netherlands to share forfeited assets. Asset sharing is also possible, and done, on a case by case basis, on the legal basis of the UN Vienna Convention and the European Convention of Strasbourg and on the basis of articles 13 through 13f of the Act on the transfer of the enforcement of sentences. Coordination of seizure and forfeiture actions is done on an ad-hoc basis, on the same legal basis as asset sharing.

No Terrorist Safe-harbor (41)

The government of the Netherlands is aware that terrorists always search for safe havens, that is, countries with weak immigration, identification and criminal laws. Therefore, the Netherlands applies a low threshold for extraditions of suspected terrorists (see criterion 40). Low penalties and sentences for terrorism and terrorist financing also constitute a danger, as this may make it attractive for terrorists to base operations in such jurisdictions. The Vreemdelingenwet of 2000 (Immigration law) has provisions to protect the Netherlands from being a safe haven. This includes the denial of access (Article 3), the withdrawal of a residence permit (Articles 18 and 22) and expulsion out of the Netherlands (Article 67).

Financial, human or technical resources. (42)

There are 9 regional International Centres of Judicial Assistance (ICJA) teams and 1 national team. ICJAs consist of police officers and public prosecutors, combining police knowledge and skills and legal knowledge and legal tools of the public prosecutors office. The ICJAs play a key role expediting the speed with which of MLA requests are completed. The LURIS system registers all incoming and outgoing requests and how long each request took to complete. The Ministry of Justice plans to implement policies to broaden cooperation between law-enforcement and judicial bodies, especially with the members of the European Union. The European Judicial Network should be expanded in the near future. EuroJust recently became functional, which would create judicial assistance shortcuts as the usual central authority to central authority request model can be side-stepped in favour of jurist to jurist or police to police assistance for more types of information. Finally, by the beginning of the year 2004 police services of different EU countries will start working together in joint investigation teams, on the basis of the EU MLA convention 2000 and the Council Framework decision on joint investigation teams.

Analysis of Effectiveness

The Netherlands has a fairly comprehensive set of bilateral and multilateral treaties for providing MLA and extradition in ML and FT cases. In the absence of such treaties, it may neither provide assistance in the nature of coercive measures nor extradite for ML, FT or other offenses. The applicable MLA treaties enable Dutch authorities to provide assistance that involves compulsion, e.g., production of records, search of premises or seizure of evidence. The assistance requested, e.g., the production of bank records, is executed according to domestic law, which provides an adequate basis for securing such records. Mutual assistance is not hampered by bank secrecy as there are no specific bank secrecy provisions in the Netherlands. However, the requirement for a treaty or other agreement in force means that Dutch authorities are not able, on a discretionary basis and in the absence of a treaty, to provide assistance that requires the use of coercive measures, even where there is dual criminality. It would be helpful, as the 1998 FATF report concluded, to have legislation that permits, without obliging the provision of such assistance in the absence of a treaty on a reciprocal basis.

Although the extradition of Dutch nationals is prohibited absent an agreement that the national may serve his/her

sentence in the Netherlands, Dutch authorities invite a transfer of prosecution in such settings.

There have not been recent cases to evaluate the effectiveness of Dutch laws and procedures in the recognition of foreign confiscation or forfeiture judgments. The Dutch confiscation scheme was improved through amendments passed in 2001, and officials have indicated that they should be able to recognize and enforce non-conviction based foreign forfeiture orders such as those from common law countries that have civil forfeiture provisions. A financial investigation would commence and the matter would essentially be translated into the Dutch system for addressing confiscation. While Dutch authorities may undertake only those measures in support of the foreign request that could be taken if they were confiscating or seizing in a domestic case, the wide range of powers and measures in the Dutch system and the fact that the measures are available for all serious crimes means that there should be an ability to assist with most requests.

There are however several potential issues regarding recognition of foreign confiscation orders. First is the question of the extent of any review of the foreign judgment to determine if a similar confiscation would have occurred in the Netherlands (dual confiscability), and the second is a related issue of whether the amount of the foreign judgment is accepted on its face or whether in “translating” the order into the Dutch system, it would under take to alter the sentence (if the order is part of the criminal proceeding) or confiscation into some other amount.

In theory, the Netherlands is in a position to provide a great range of mutual legal assistance in AF, ML, and FT matters. In practice, however, it is unclear how effective this assistance has been and the assistance in forfeiture matters appears to be virtually untested. Because the LURIS tracking system cannot separate out requests for general evidentiary assistance and those that have confiscation or forfeiture components to it, the Netherlands was unable to provide data on the number of requests for assistance they received that had confiscation components to it. The Netherlands can only point to one case in the last three years in which they have shared proceeds of forfeiture efforts with a foreign government. This is an indicator that the Dutch effort to assist other countries in forfeiture matters needs more attention. Moreover, there is great legal uncertainty in the Netherlands about its ability to enforce non-conviction based forfeiture judgments, which is problematic as several important EU partners (the U.K. and Ireland) and other major treaty partners such the United States have such procedures and use them extensively. Nonetheless, the BOOM has developed a theory it is willing to test should a foreign government present the Netherlands with a non-conviction based forfeiture judgment for execution in the Netherlands. Only time will tell if this theory works in practice. There seemed to be a lack of knowledge within the unit of the Ministry of Justice (MOJ) that handles mutual legal assistance requests about the extent the Netherlands could use its domestic forfeiture provisions to assist other nations. Fortunately, the BOOM has assigned a prosecutor to work with the MOJ and that should improve forfeiture assistance by the Netherlands in the future. The reported average response time to foreign requests for information of 40 days is very good and well above the average time most nations take to respond to requests for assistance. At present, the Netherlands does keep track of ML MLA requests, but not differentiated on the type of predicate offense, but the Ministry of Justice indicated that this data could easily be captured and the Netherlands intends to do so.

Recommendations and Comments

- Consider permitting mutual legal assistance in the absence of a treaty on a discretionary basis with an assurance of reciprocity.
- Monitor the practical effectiveness of the current MLA and confiscation law in permitting recognition of foreign forfeiture and confiscation orders.
- *Improve mutual legal assistance efforts in confiscation matters, particularly for non-conviction based confiscation efforts by other nations.*

Implications for compliance with FATF Recommendations 3, 32, 33, 34, 37, 38, 40, SR I, SR V

3: Compliant
32: Compliant

<p>33: Compliant 34: Compliant 37: Compliant 38: Largely Compliant (for 35.2, 39) 40: Compliant SR I: Compliant SR V: Compliant</p>

Assessing preventive measures for financial institutions

Table 9. Detailed Assessment of the Legal and Institutional Framework for Financial Institutions and its Effective Implementation

<p>I—General Framework (compliance with criteria 43 and 44)</p>
<p>Description</p>
<p>Legal and Institutional</p> <p>Legal framework</p> <p>Each of the regulated sectors has its own legislation, for instance the Act on the Supervision of the Credit System (Credit Institutions Act), Act on Supervision of Insurance Institutions (Insurance Act), Act on the Supervision of the Securities Trade (Securities Act), Act on the Supervision of Collective Investment Schemes, and Act on Money Services. Each one regulates, with some differences, the granting and revocation of licenses, supervisory powers, inspection function, reporting requirements, disclosure of information and penalties for breach of the law among other things. Changes in this framework for supervision are planned with new legislation expected to be completed by July 2005 that will result in a single act for supervision of all sectors, the Financial Supervision Act. This will replace all existing legislation for supervision.</p> <p>The principal AML/CFT legislation in the Netherlands is set forth in the Identification of Services Act (ISA) and DUTA. Together, these set out the measures to prevent money laundering and the financing of terrorism. DUTA created MOT, establishes a reporting duty, and assigns supervisory responsibilities for overseeing compliance with the reporting obligation. ISA requires identification of customers before a transaction is conducted or service provided. Where an obligation to report exists under DUTA, there is also an obligation that the service provider identify customers under ISA. Sector specific laws, decrees and regulations address the maintenance of internal procedures, fit and proper standards and employee screening. Authorities in the Netherlands are also considering consolidating DUTA and ISA into a single statute and updating the provisions of these acts in connection with the implementation of the revised FATF 40 recommendations.</p> <p>Scope of AML regulation</p> <p>The duties to disclose unusual transactions and to identify customers/clients apply to a wide range of sectors and professions. The sectors, businesses and persons are set forth in ISA and DUTA and in Royal Decrees supplementing those acts. In the Netherlands, the obligation to report unusual transactions applies to banks, life insurance companies, credit card companies, securities institutions, currency exchange organisations, money transfer institutions, casinos, DNB, and gatekeepers such as dealers in expensive goods (e.g., cars, ships, jewellery, diamonds, art and antiques) and persons in professional capacities such as lawyers, notaries, estate agents, tax consultants, chartered accountants, and company managers. A duty is imposed on all supervisors to report suspicions of ML to MOT. Article 17, DUTA. Netherlands has acted to cover all activities and professions included in the amended European Directive (Directive 2001/97/EC). The customs authority, while not included under DUTA, reports unusual movements of money and commodities to MOT pursuant to internal guidelines. The Royal Military Police, responsible for border and immigration control, reports suspicious movements of monies and commodities to</p>

BOOM.

Money transmission. Informal banking networks such as Hawala, Hindi and Chit are prohibited in the Netherlands, unless registered (and therefore supervised) under the Act on Money Services, which regulates money transmission and exchange offices and places service providers under DNB supervision. Such businesses must meet the reporting obligations set forth in DUTA and in the decree based on the Sanctions Act 1977 on the reporting of FT transactions, as well as the customer identification obligation set forth in ISA. All registered money transaction offices are required to check their systems against the published sanctions lists.

High value goods. Dealers in gold, diamonds and other similar high value commodities are obliged under ISA to identify any customers engaged in transactions of EUR 15,000 or more in cash, or performing an unusual transaction. These transactions also must be reported to MOT.

Regulator/supervisor

Currently, compliance with DUTA and ISA is overseen by the DNB (banks, cash transaction offices, money transfer institutions, credit card companies, company service providers and casinos), the PVK (life insurance companies), AFM (securities and investment institutions), FIOD-ECD (traders in high value commodities and real estate brokers) and BFT, the Financial Supervision Office (other non-financial institutions as accountants, lawyers, tax advisors, etc.). Pursuant to Article 17b DUTA and Article 8(a) ISA, ministerial decrees place this responsibility on the specified supervisors. Failure to comply with the obligations set forth in DUTA and ISA (for instance the obligation to report, to keep records and to conduct identification) is a criminal offence under the Economic Offences Act and carries a maximum prison sentence of four years. With the anticipated change to a single supervisory act and the merger of DNB and PVK, it is expected that the revamped DNB will in effect take over supervision of insurance companies and pension funds.

Supervisors each have specialized AML/CFT units (integrity divisions) that are responsible for ensuring implementation of general AML/CFT laws and policies through regulations and guidelines, and for formulating policies for their sectors. Their tasks, duties and powers are based on underlying sector specific laws, the DUTA, the ISA and/or the Sanctions Act. Based upon their general supervisory powers conferred under sector specific statutes (Article 22, Credit Institutions Act, Articles 70 and 98 of the Insurance Act and Article 11 of the Securities Act and a similar provision in the Act on the Supervision of Investment Institutions (Investment Institutions Act) and on powers granted to them under the recently enacted Act on Actualization and Harmonization of Supervision ("Harmonization Act") (Article IIIN which introduces Article 22a of the Credit Institutions Act, Articles VO and VU which introduce Articles 70a and 98a of the Insurance Act) (effective December 1, 2003), supervisors may issue regulations and guidelines to implement international standards that protect the integrity of institutions (FATF recommendations, Basel, IOSCO and IAIS principles).

Secrecy protection (43)

*As the Netherlands does not have bank or financial institution secrecy laws, no lifting of such laws is necessary when records are made available for law enforcement purposes. The information reporting institutions disclose to MOT is protected by the Police Registers' Act and the Data Protection (Police Files) Decree. Information gathered by supervisors in the course of prudential supervision is protected by Article 64 of the Credit Institutions Act, Article 182 of the Insurance Act, Article 31 of the Securities Act and Articles 24 and 27 of the Investment Act. However, these laws provide gateways for the onward disclosure of such information to law enforcement and other appropriate recipients on both a domestic and international basis. See, Criteria 21, 22 *supra* and 66, 67 *infra*. There is however, a restriction on disclosure of specific information by MOT to supervisors, which is expected to be addressed in early 2004.*

Designated competent authorities (44)

On the political level, the Ministers of Finance and Justice share responsibility for ensuring the effective implementation of the FATF 40+8, and each ministry has designated divisions for ML/FT. In the Ministry of

Finance, the Financial Markets Integrity Division has 12 positions dedicated to AML/CFT. In the Ministry of Justice, the Criminal Investigation Policy Department has 3 positions for AML/CFT. Financial supervisors (DNB, PVK and AFM) have responsibility within their sectors for implementation of FATF Recommendations and have designated divisions to oversee compliance with AML/CFT and other integrity issues. They conduct on-site visits that cover AML/CFT, issue sector specific directives, regulations and guidance, and work with institutions to ensure their compliance.

The National Public Prosecutor for AML/CFT has the coordinating responsibility for prosecutions under the ML and FT laws. The Ministry of Justice is the competent authority for mutual legal assistance. MOT serves as the competent authority for receiving and analyzing UTRs for both ML and FT. A designated Attorney General for AML/CFT chairs BC-MOT, the Council that advises and supports MOT. BC-MOT has representatives from the Ministries of Justice and Finance, reporting sectors, supervisory authorities and police as well as the National Public Prosecutor for AML/CFT.

The Financial Expertise Center, consisting of supervisors, tax authorities, tax investigation services – economic control service, national police corps, the MOT, public prosecutors, AIVD and the regional police in Amsterdam, works on a cross-agency basis to conduct inter-agency studies and consider trends and typologies. This centre, initiated in 1998, is a powerful tool in the effort to study and improve the AML/CFT institutional structure in the Netherlands and mould it to fight the latest forms and threats relating to ML and FT. Both in its study of specific topics and its recommendations for changes in legislation/regulation and policy to address area studied (for instance back to back loans, non-profit organizations, money transmission) and in its platform for bringing together representatives of many different supervisory and law enforcement agencies to address specific potential targets or areas for consideration and investigation, it serves as a focal and unifying force in the fight against ML/FT.

Implementation

In June 2002, the DNB in conjunction with the bankers association issued the Basle Committee customer due diligence paper (CDD) to credit institutions indicating that they should observe standards set out in the paper. Credit institutions were subsequently asked to benchmark their current practices against the requirements of the paper and determine where gaps existed. In May 2003, the DNB took the further step of issuing an explanatory memorandum on the CDD paper. The DNB may be consulted on general issues as well as institution specific matters to ensure operational changes will be acceptable to both supervisory authorities and the institution.

The majority of the banks have undertaken the gap analysis. At the time of the mission, the DNB was still in the process of reviewing the results of the analysis and will at a later stage develop CDD risk profiles of credit institutions. The DNB is however encouraged that initial results indicate that most institutions are making good progress towards implementing the CDD requirements. Discussions with the bankers association and some banks indicated that some requirements as outlined in the paper are already in place within the banking sector and that institutions are at various stages in putting all required measures in place. Some institutions visited indicated they would be compliant with the CDD requirements during the course of 2004. In at least one instance the expected date for full compliance is December 2004. Feedback from institutions in this regard varied from the DNB's expectation that institutions would be fully compliant with CDD by the end of 2003.

Some banks either did not undertake the analysis or reported disappointing results in their progress to meet the required standards. The DNB will as a priority focus on those institutions where there are serious deficiencies with respect to the implementation of CDD. Specific attention will be placed on client acceptance policies and procedures, account monitoring and risk management.

The gap analysis revealed that no bank is able to comply with the requirement for worldwide monitoring in respect of KYC on a consolidated basis. The major impediment in this regard are legal restrictions in host countries on the cross border sharing of customer specific information. Countries imposing these restrictions include some members of FATF. This problem is not unique to the Netherlands and is unlikely to be resolved in the short term.

In undertaking the gap analysis, some credit institutions found it necessary to review their approach to assessing the

risk implicit in certain business lines, against the CDD standards. It is expected that this will lead to changes to the conduct of business with some customer groups.

Apart from the legislative and regulatory framework, the paper represents the principal guidance given to banks on matters related to customer identification. At the time of the mission the AFM and PVK had not issued similar guidance to the institutions for which they have regulatory responsibility. These firms were guided by the provisions of the law and the standards implicit in risk analysis tools used by these regulators. (See criterion 65)

Although some of the practices reflected in the CDD paper may already in essence be required under the Regulation on Organization and Control (ROC), the authorities planned to have them set forth in separate binding regulations issued by DNB and applied to all credit institutions. These regulations were issued on January 1, 2004 under the Decree on Integrity, which was issued on December 1, 2003 and implements the Act on the Actualization and Harmonization of Supervision (Harmonization Act) which came in effect on that date. Article III N of the Harmonization Act (introducing article 22a of the Credit Institutions Act) provides that rules are to be laid down by Ministerial Decrees and ultimately supervisory regulations to address customer due diligence and other policies to prevent use of an institution for criminal activity. DNB plans to adopt rules setting forth minimum requirements for policies, procedures and measures within the next few months.

The three regulators in the Netherlands all use risk-based approaches in undertaking their work. Each regulator has developed tools aimed at generating risk profiles of institutions. These profiles are an important input in the development of supervisory work programs. Increasing reliance is being placed on these tools and on-site inspections are being undertaken more selectively.

Article 4 of ASCS provides that it may be provided by Royal Decree under the advice of the DNB that a group of credit institutions associated with a central credit institution can be exempt from the DNB's supervision provided that the central institution can adequately provide such supervision. The DNB has acted under this provision with regard to the supervision of one bank's domestic operations. The bank in question is a cooperative which includes 350 member banks. Under the existing arrangement the DNB has agreed that the supervision of member banks will be undertaken by a central organization owned by the banks. However the DNB undertakes occasional on-site inspections of member banks. The central organization undertakes on-site inspections of each member bank every year. This approach appears inconsistent with the risk-based approach used by the DNB. With an audit staff of 88 and a goal in inspecting each institution every year the effectiveness of the central organization's surveillance of member banks may not be comparable to that exercised by the DNB in respect of other credit institutions.

At the time of the mission there was no regime for the regulation of trust activity. The term "trust" as used in the Netherlands usually refers to a person who provides company management services. The Netherlands is in the process of implementing a regime for the regulation of this activity. New legislation was enacted post mission on March 1, 2004.

Analysis of Effectiveness

Legal and Institutional

- Designated authorities have responsibility for AML/CFT and the Ministries of Finance and Justice are actively involved in AML/CFT on both the national and international levels. There are clear lines of responsibility currently for AML/CFT supervision, but with the expected change to a single supervisory law and continued existence of several supervisory bodies, it will be important that both the supervisors and industry are very clear as to who has responsibility for supervising all aspects of each institution's AML/CFT compliance.
- Confidentiality is lifted in appropriate circumstances in almost all instances but sharing by MOT with supervisors of specific information needs to be addressed as planned.
- *On secrecy protection, although supervisors have indicated it is possible to share fully and freely with*

<p><i>domestic law enforcement authorities under the gateway provisions of current supervisory laws (since law enforcement concerns also affect the integrity of regulated institutions and supervisors may always share in support of their basic mandate), law enforcement has not always received the full level of sharing it needs when matters are at an early stage of consideration in task force settings. Changes in legislation are expected that will open this gateway even further.</i></p> <ul style="list-style-type: none"> • <i>Merger of the DUTA and ISA and updating of the provisions of the act (specifics in subsequent sections of this report) would enhance the AML/CFT framework.</i> <p>Implementation</p> <ul style="list-style-type: none"> • <i>Areas of concern in respect of the arrangement for the supervision of the member banks of the cooperative include the effectiveness of the work undertaken by the central organization given available resources and its approach to its oversight function and whether as an organization owned by the member banks it can be considered to have the necessary level of independence from its member banks/owners to conduct such work.</i> • <i>The absence of AML/CFT guidance notes for the insurance and securities sector were a weakness in the arrangements at the time of the mission. The issuance of regulations post-mission on January 1 2004, which include the CDD requirements, are an important step towards addressing some of the concerns in relation to AML/CFT supervision of insurance and securities firms.</i>
<p>Recommendations and Comments</p> <ul style="list-style-type: none"> • Ensure there are clear lines of responsibility for AML/CFT supervision under the Financial Supervision Law (expected by July 2005) and that this is communicated to all industry participants. • Ensure MOT is able to share specific information with supervisors as planned. • Adopt legislation as planned that makes it explicit that supervisors may share information in support of domestic law enforcement. • Following the issue of regulations under the Decree of Integrity on January 1, 2004, AFM should begin the process of benchmarking the practices of securities firms against the provisions of the CDD paper. The DNB should do likewise for insurance companies following its merger with PVK. • The current arrangement with the central organization for the supervision of its member banks on behalf of the DNB should be reviewed as planned in the new Financial Supervision Act to ensure that the DNB's regulatory objectives in relation to AML/CFT are being satisfied. • The authorities should develop comprehensive AML/CFT Guidance Notes relevant to all financial sectors. • Consider merger of DUTA and ISA.
<p>Implications for compliance with FATF Recommendation 2</p>
<p>2: Largely Compliant (issues with disclosure by MOT to supervisors)</p>
<p>II—Customer identification</p> <p>(compliance with criteria 45-48 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 68-83 for the banking sector, criteria 101-104 for the insurance sector and criterion 111 for the securities sector)</p>
<p>Description</p>
<p>Customer Identification (46)</p>

Legal and Institutional

Identification requirement

ISA and the Decree issued pursuant to ISA require that service providers that have a reporting obligation (i.e., all financial institutions, gatekeepers and professionals) identify all customers as well as persons acting on behalf of customers that engage in transactions as follows:

- when opening accounts, renting safe deposit boxes or taking into custody securities, notes, precious metals;
- for occasional customers, if the amount is EUR 10,000 or more;
- for a series of related transactions over EUR 10,000;
- for money remittance and exchange, for all transactions regardless of amount;
- in the case of a payment in cash of a value of EUR 15,000 or more for high value goods;
- in the case of life insurance, if the premium is above EUR 1,000 per year or EUR 2,500 if a one time payment, and if a payment of proceeds is above EUR 2,500;
- if a transaction must be reported as unusual based upon the indicators, and identification has not taken place.

Under Articles 65 and 67 of the Regulation on Organization and Control (ROC) (issued under Article 22(1) and 30c(1) of the Credit Institutions Act), and the recently issued Decree on Integrity (October 2003), credit institutions, insurance companies, investment institutions, mutual associations and securities institutions must have internal rules in place on establishing the identity, nature and background of their customers.

Exceptions to the Identification Requirement

- Identification need not occur if the customer is a bank or another financial institution in a country listed by Ministerial Decree and is registered in its home country in the manner specified in the EU directive. Articles 2(5) and 5(5), ISA. A Decree issued by the Minister lists countries that are members of FATF. Recent FATF members Russia and South Africa have not yet been added to the list (in anticipation of the general overhaul of ISA and DUTA) and Gulf Cooperation Council members are not part of the list.

Parties acting on behalf of another (47)

- Financial institutions must verify whether persons appearing are acting in their own name or on behalf of a third party and establish the identity of third parties (Article 5 (2)-(3), ISA). In addition under Article 5 (4), if an institution knows or should reasonably suspect that the person appearing is not acting in his/her own name, it must take all reasonable measures to discover the identity of the client on whose behalf the person acts.

Legal entities

- If the customer is a legal entity, service providers in the Netherlands are required to verify legal existence and structure of the entity, and identify the person(s) acting on behalf of the entity (Articles 3 (2)-(3) and 5, ISA).

Evidence of identification

- Identification must occur based upon an official or other identifying document (passport, identification card or driver's license), and the institution must record and keep a record of specific identification information. The identification obligation is set forth in Article 2 (2)-(4) and 6, ISA.

Consequences of lack of identification

- Service may not be provided without seeking identification and provision of a record unless the identification is derived from an existing identified account. Articles 2 and 3, ISA.

Retroactivity

- In the Netherlands, customer identification requirements came into place in 1988. Because of the administrative burden involved, identification requirements have not been made applicable on a retroactive basis to all old accounts through transitional provisions. However, through a change in ISA in 2002, for any transfer of funds in excess of EUR 10,000 into or out of an account where identification is based on pre-1989 information, there must be identification under ISA.

Anonymous Accounts (45)

- Financial institutions are prohibited from maintaining anonymous accounts or accounts in fictitious names through the requirement in the ISA that they secure proper identification and maintain records of identification. Articles 2, 5, 6, and 8, ISA. These Articles require that account holders and others receiving services including legal entities be identified, and prohibit the provision of services in the absence of such identification.

Numbered Accounts

- Numbered accounts are permitted if proper identification has occurred. Under DNB Regulation on Protected Accounts (July 1, 1999), banks must have restrictive policies regarding the opening of numbered accounts, and must ensure in the case of such accounts that the identification records are available to supervisory authorities, the bank's compliance officer and appropriate bank personnel. Numbered accounts may be opened only to protect the privacy and safety of a customer. The institution must maintain a central register with information regarding the account, have internal controls that ensure the completeness and accuracy of the data, and commission an annual external audit of such accounts. Articles 2, 4 and 6, DNB Regulation.

Derived Identification

- Under Article 4 (1)-(3) of ISA, there is a requirement in establishing a non face-to-face account that the initial deposit come from an account where the individual has been identified. Under this Article, derived identification is permissible only based upon an account at an institution in a state where the institution possesses a permit from competent authorities there, or in another state designated by the Minister of Finance. This applies for member states of the European Union and other states designated by the Minister of Finance.

Introduced business

- Under Section 5 (5) of ISA, there is an exemption for introduced business. An institution that relies on an introducing party must ensure the introducer has established the identity of the client in accordance with the ISA, and the institution providing the identification data can be an institution registered and supervised in accordance with the relevant EU-directives or established and supervised in a FATF member state or a

lawyer or notary established within the EU.

Renewal of Identity if doubts appear (46)

- There are no specific requirements regarding renewal of identity if doubts appear but institutions are expected to renew identification in such circumstances. Under the ISA, service may be provided only if an institution has established the identity of a person. The authorities state that a corollary to this is that if doubts exist regarding the identity, service should not be provided. According to the authorities, the provisions of the ISA also imply institutions need to know their clients on an ongoing basis, as do the provisions of CDD from the Basel Report. Supervisors plan to issue regulations to address this issue more specifically.

Wire Transfers (48)

- Currently, there is no legally binding requirement that regulated institutions include detailed originator and beneficiary information on funds transfers and related messages, although including some originator information appears to be a common banking practice. A European Regulation applicable to the Netherlands is expected before the date FATF set for full implementation of SR VII. In addition, the DNB is considering regulation on the national level that would be effective before February 2005. Domestic clearance currently occurs on the basis of an account number, with name and address information (automatically generated by clearing house Interpay) provided to the beneficiary. For international transactions, banks send the name and address of the account holders. In some circumstances, the account number is sent as well.

Implementation

45. Financial institutions appear generally to have established systems to ensure that clients are identified in accordance with ISA. All regulators enforce the requirements of ISA by reviewing documents used to identify customers during on-site inspections. Institutions visited categorized customers into various risk categories requiring more stringent due diligence to be undertaken for customers falling into the higher categories. All banks in the Netherlands have access to shared databases known as the External Reference Application (EVA) and Verification and Identification Document System (VIS). EVA provides the names of persons whose application for banking services was refused. VIS provides information on stolen identification documents. The databases are very useful tools in the customer due diligence process. Insurers use a system that is similar to EVA; they use a system called EVI (External Reference Index).

It is commonplace for insurance companies and securities firms to rely on identification undertaken by other institutions, principally banks. The practice which is known as derived identification is allowable as a result of certain exemptions created under Article 4 of ISA. The exemptions relate to circumstances in which the institution accepting the customer is not receiving a cash payment at the outset of the relationship and payments received have already passed through an account at an institution located in a country that is a member state of the European community, a country that is party to the treaty regarding the European Economic Area or a country in a state designated by the Minister of Finance.

While bearer shares are not generally used in the Netherlands, they can be issued by Dutch companies. CDD provides the very general guidance that extra care is required in dealing with entities that issue such instruments. A circular issued by DNB in June 2001 advised banks that when dealing with bearer shares they should comply with Article 1 (1) (b) (7) of ISA and the DUTA where the value of the securities exceeds Guilders 25,000 or there is a suspicion of money laundering. It is apparently the practice that bearer shares are immobilized, but no requirement or guidance was seen in this regard.

Trusts, as known to common law countries are not generally used in the Netherlands. The term "trust" as used in the Netherlands usually refers to a person who provides company management services. Many international group structures include one or more Dutch legal entities or partnerships. Trust offices are involved in setting up and

maintaining such structures. Trust offices undertake the management of legal entities and partnerships on behalf of other enterprises. Management usually involves the trust office acting as manager of the object company and providing a correspondence address and administrative support.

Under new legislation which is expected to come into force in February 2004, trust offices will be required to have up-to-date information on the ultimate beneficial ownership of all entities under management and the purchaser of any entity being sold. There will be a requirement that records show that the trust office has knowledge of (a) the source and destination of funds of the object company, (b) the relevant parts of the group structure and (c) the objective for which the structure was set up. If the trust office itself acts as a trustee, it must know who the settlor of the trust is.

Article 5 of ISA allows financial institutions to use business introducers. The practice is more commonly referred to in the Netherlands as outsourced identification. The CDD paper sets out the following framework for the use of business introducers:

- The introducer should comply with the minimum customer due diligence practices set out in the paper;
- The customer due diligence procedures of the introducer should be as rigorous as those which the bank would have conducted itself for the customer;
- The bank must satisfy itself as to the reliability of the systems in place by the introducer to verify the identity of the customer;
- The bank must reach agreement with the introducer that it will be permitted to verify the due diligence undertaken by the introducer at any stage; and
- All relevant identification data and other documentation pertaining to the customer's identity should be immediately submitted by the introducer bank, who must carefully review the documentation provided. Such information must be available for review by the supervisor and the financial intelligence unit or equivalent agency, where appropriate legal authority has been obtained. DNB reports that during its on-site inspections it reviews a sample of the documentation for such customers accounts to ascertain that these procedures are followed.

While the above CDD requirements were drafted into its policy document on financial and economic crime, in speaking to one credit institution it appeared that they were not being used in practice.

46. CDD Para. 27 requires banks "to obtain all information necessary to establish to their full satisfaction the identity of each new customer." Financial institutions visited have policies in place to identify customers in accordance with the provisions of Article 3 of ISA and CDD. Identity is usually based on government issued identification documents. These documents are examined by regulators when reviewing the due diligence practices employed by licensees.

Discussions revealed that numbered accounts are used in the Netherlands (see discussion under criterion 45) . CDD 30 requires that where such accounts are used they should be subject to the same KYC procedures applied to all other customers. During their on-site visits regulators assess if these accounts are maintained in accordance with the provisions of Article 4 of the ISA and the DNB regulation on protected accounts.

47. CDD para. 21 indicates that the definition of customer should include the person or entity "on whose behalf an account is maintained," "the beneficiaries of transactions conducted by professional intermediaries" and any person or entity connected with a transaction who is in a position to pose a significant reputational or other risk to the bank.

Discussions with the regulators and FIs indicate that beneficial owners are treated as identification subjects and that adherence to this practice is assessed during on-site visits.

An area of apparent uncertainty relates to instances in which insurance companies are requested to make a payment to a third party. No specific guidance has been given in this regard. It does not appear that the language of the ISA Article 5 (“a natural person acting on behalf of third party”) is seen by all insurance companies to cover the circumstances outlined above. This also highlights a potential weakness of using the CDD document as guidance for insurance companies. The document was drafted for banks and does not address risks that are peculiar to other FIs.

48. Banks indicated that they have traditionally included customer identification information with wire transfers to the extent allowed by the SWIFT format. They further indicated that they intend to amend current practices to provide full details now that the previous technical difficulties have been resolved. DNB expects banks to comply with the requirements of SR VII within the deadline established by FATF.

Analysis of Effectiveness

Legal and Institutional

- While there is a specific provision regarding withholding services if in establishing initial identity there are reasonable doubts regarding the accuracy of submitted information, (Article 2(1), ISA), there is reliance on general CDD principles for renewals of identity. Although those principles underscore the importance of ongoing due diligence, specific guidance that FIs should be re-establishing identity through the Article 2(2)-(4) procedures would be helpful.
- The Netherlands, as other countries, has yet to meet the SR VII requirement on wire transfers. As FATF two-year period is the outside date, implementation before that date as is being considered should occur if possible.

Implementation

- Although the CDD paper addresses a number of issues relevant to establishing an effective AML/CFT regime, it was not intended to be used as a detailed guidance note for FIs and heavy reliance on this document creates certain gaps. This is particularly the case in relation to risks that are not common to the banking sector.
- The DNB circular of June 2001 which deals with bearer shares relates to instances in which a bank is actually handling the shares. It does not provide guidance to institutions for dealing with corporate customers that issue such shares. The only guidance in this regard comes from CDD which advises that extra care is required in dealing with entities that issue bearer shares. This recommendation is very general and does not offer much in the way guidance on this subject. It is an example of the fact that CDD was not intended to be used as the sole guidance to financial institutions on due diligence issues.
- The absence of guidance by the AFM and PVK to assist institutions in meeting the requirements of AML/CFT laws and regulations is considered a weakness. This has been addressed in part with regulations issued under the Integrity Decree in January 2004.
- The lack of clarity in relation to circumstances in which an insurance company is requested to make a payment to a third party is of concern. The authorities have advised that on a post-mission basis action has been taken to address this issue.

Recommendations and Comments

- Address more specifically as planned a requirement that there be renewal of identity if in the course of a business relationship doubts occur regarding the identity of a client.

<ul style="list-style-type: none">• At least within the two-year period referred to by FATF, amend relevant laws to require that accurate and meaningful originator information (name, address and account number) on funds transfers remain with the transfer throughout the payment chain.• DNB should provide more specific guidance to licensees on measures that should be adopted to minimize the risk inherent in dealing with bearer shares. Consideration should be given to a requirement for bearer shares to be immobilized. While this is often done in practice, it is not required.• DNB should clarify that the CDD guidance related to introduced business is applicable to the practice of outsourced identification as used by some institutions in the Netherlands.• See previous recommendation regarding the development of comprehensive Guidance Notes.
Implications for compliance with FATF Recommendations 10, 11, SR VII
10: Largely Compliant (need to strengthen guidance on some customer identification issues; greater specificity/guidance on renewals of identity) 11: Largely Compliant (issues relating to identifying beneficial owners in insurance transactions and bearer shares issues) SRII: Not Rated (Recommendation given two year implementation period by FATF)
III—Ongoing monitoring of accounts and transactions (compliance with Criteria 49-51 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 84-87 for the banking sector, and criterion 104 for the insurance sector)
Description
Legal and Institutional Transaction Monitoring (49) The responsibility of financial institutions to pay attention to all complex, unusual large transactions and patterns of transactions and maintain information on such transactions is addressed in the Netherlands' legal framework through the requirement in DUTA that all reporting institutions collect and report all transactions falling under the objective and subjective indicators, and by various regulations applicable to financial institutions that require policies and practices to address integrity risks. In the Netherlands, all unusual transactions must be reported including large transactions with no apparent economic purpose. For those that are considered for reporting but not reported, with the exception of the securities sector, there are not specific requirements that institutions maintain records relating to these transactions and the decision not to report these transactions to MOT. In the securities sector, under Further Regulations of Conduct on the Supervision of the Securities Trade 2002, Annex at Article 4.25, institutions must keep records of transactions that have led to internal reporting, the reasons for disclosing or not disclosing the transactions to MOT, as well as the transactions that have been reported to MOT. A Regulation on Incidents at Credit Institutions and Insurance Companies, adopted post-mission and with an implementation date of July 1, 2004 at the latest, imposes a similar requirement on credit institutions and insurance firms. Jurisdictions with inadequate AML/CFT systems (50) Although there are no legal provisions in Netherlands law that specifically require FIs to give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT, the requirement is part of an institution's ongoing duty to protect against integrity risks (Decree on Integrity). Within the framework of their duties to monitor accounts and customers, FIs must monitor transactions and/or business relations with persons, companies

or FIs from countries that have not taken effective measures to combat ML or FT. Supervisors have indicated it is a violation of supervisory laws to engage in a transaction with specified jurisdictions.

Incoming Wire Transfers (51)

FIs are at present not required to give enhanced scrutiny to wire transfers that do not contain complete originator information. The authorities advised that they await a common European Union regulation in this respect. The obligation to review incoming wire transfers, however, is part of the general obligation of banks and other FIs to develop and maintain programs to combat ML.

Implementation

49. Paragraph 53 of CDD indicates that banks should have an understanding of the normal trend of activity associated with a customer's account so that activity that falls outside of the established pattern can be detected. It recommends that banks should establish systems to detect unusual or suspicious patterns of activity. Discussions with FIs indicated that such systems are in place. However most of them are predominantly manual systems. A number of the larger institutions are at various stages of migrating to automated systems to undertake analysis of account activity. At least one bank has already rolled-out its system. Another institution expects to start its roll-out in 2004.

50. Para 51 of CDD outlines instances in which banks should exercise caution in developing correspondent banking relationships. It suggest that banks should not establish relationships with an institution incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated group. It also indicates that banks should be particularly cautious in developing relationships with respondent banks located in FATF Non Cooperating Countries and Territories (NCCT) countries and others known to have poor KYC practices and lax AML/CFT regimes. Para 52 draws attention to the potential for correspondent accounts to be used as payable-through accounts.

50.1 Following each update of the NCCT list, the Minister of Finance on behalf of the Minister of Justice sends a letter to Parliament which addresses the proposed response of the Netherlands to dealing with institutions from countries on the NCCT list. The Minister indicates that the Netherlands will take all possible counter measures against countries on the list. Countermeasures were instituted against Nauru and the Minister of Finance asked supervisors to take action to ensure institutions under their supervision would not conduct business with citizens and entities of Nauru. Supervisors informed FIs that dealing with persons/institutions from Nauru would be considered a violation of their supervisory laws and measures would be taken if they engaged in such practices.

The DNB, PVK, and AFM issue circulars to their licensees indicating that caution should be exercised in conducting business with institutions from listed countries. The three regulators also publish these circulars on their websites. The regulators also provide institutions with a list of the names of known terrorists as issued by the United Nations. On a weekly basis, the regulators review information from a number of international sources and update it where necessary. FIs receive a notification whenever the list is updated.

Discussions with FIs revealed high levels of awareness about the NCCT process and jurisdictions considered to have lax AML/CFT regimes. Some institutions have policies which preclude them from undertaking specific types of business with residents of certain countries.

51. *Since banks in the Netherlands include some identity information with wire transfers, they are alerted when they are confronted with transfers that do not have such information. They request this information when it is not immediately available and generally displayed a concern that wire transfers represent a potential vulnerability in their efforts to protect their institutions from abuse. Two institutions pointed to a concern that even where such information is included in the wire transfer they have to rely on the systems employed by the originator bank to provide the correct customer identity information.*

<p>Legal and Institutional</p> <ul style="list-style-type: none"> • General provisions exist to ensure enhanced due diligence by FIs with regard to customers or businesses originating from NCCT jurisdictions and there are active measures by supervisory authorities to ensure FIs do not conduct business with countries subject to counter measures. • With respect to incoming wire transfers, there is as yet no requirement in place. Although there is a two year phase in for the FATF requirements, all efforts should be made to comply as soon as possible. <p>The securities sector, but not other sectors, has regulations in place ensuring that findings are kept available regarding transactions considered for disclosure to MOT but not disclosed. Authorities have reported that on a post mission basis, DNB/PVK issued a regulation on CDD which contains a requirement to maintain all records of client acceptance, ongoing monitoring and transactions of a client for at least five years.</p> <p>Implementation</p> <ul style="list-style-type: none"> • Regulators have implemented adequate measures to provide institutions with information on countries with KYC standards that do not meet acceptable standards. Institutions have responded positively by putting systems in place to protect against the related risk.
<p>Recommendations and Comments</p> <ul style="list-style-type: none"> • Within the two-year period established by FATF impose an obligation, consistent with SR VII, on FSPs to give enhance scrutiny to wire transfers that do not contain complete originator information and provide guidance that encourages compliance on an immediate basis. • Ensure in all sectors that institutions are required to maintain records of transactions considered for reporting but not reported and that these records are available for supervisory review. (On a post-mission basis, authorities report that DNB/PVK issued a regulation on CDD that addresses this matter.) • See previous recommendation regarding the development of comprehensive Guidance Notes.
<p>Implications for compliance with FATF Recommendations 14, 21, 28, SR VIII (should be VII)</p>
<p>14: Largely Compliant (need to ensure maintenance of records regarding transactions considered for reporting) 21: Compliant 28: Compliant SR VII: Not Rated (FATF has established two-year period for compliance)</p>
<p>IV—Record keeping</p> <p>(compliance with Criteria 52-54 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 88 for the banking sector, criteria 106 and 107 for the insurance sector, and criterion 112 for the securities sector)</p>
<p>Description</p>
<p>Legal and Institutional</p> <p>Identification records (52)</p> <p>Record keeping rules set forth by the ISA address maintenance of documents that enable the identification of the customer and other information (supporting evidence and records). For identification documents, Article 7 of the ISA requires that all service providers (including credit institutions, insurance and securities sector participants and others obliged to conduct identification as gatekeepers) maintain records of the identification data obtained under the ISA</p>

with specifics on the nature of the document used for identification including its number and date and place of issue. The records must be accessible throughout the retention period of at least 5 years, which starts running :

- after the end of the business relationship, and
- in the case of one-off transactions or sales of high value goods, from the date of service.

Other information that must be maintained includes the customer's name, address and date of birth; the nature of the service; and particulars regarding the account opened including the account number or other information relevant to the kind of business relationship opened (assets held, amount related to cashing in of bond, etc.).

Account files and correspondence

For documents other than identification documents (business correspondence and account files other than transaction records), the authorities indicate the duty on the part of the institutions to record and retain the documents is inherent in the ongoing CDD obligation under the Integrity Decree of December 1, 2003 issued under the Harmonization Act.

There are no requirements in the ISA. Authorities also rely on general provisions in the Civil Code (Articles 2(10) and 3) regarding businesses maintaining records and the general guide on account opening that is a supplement to the Basel CDD standards. Authorities have noted that on a post mission basis, DNK/PVK issued a regulation of CDD which at Section 7 sets forth a requirement to maintain all records of client acceptance, ongoing monitoring and transactions of a client for at least five years.

Transaction Records (53)

For transaction records, requirements for the most part are found under laws non-specific to AML/CFT for maintenance of such records. In the Netherlands, all business records must be maintained for at least 7 years (Articles 2(10) and 3 of the Civil Code; Articles 2(1) and 52(4) of the General Act on Taxation). For securities, the Annex to the Further Regulations on the Conduct of the Supervision of the Securities Trade provides detailed requirements for transaction records although the period of time for maintenance is not set forth in the regulation. Authorities have noted that on a post mission basis, DNK/PVK issued a regulation of CDD which at Section 7 sets forth a requirement to maintain all records of client acceptance, ongoing monitoring and transactions of a client for at least five years.

Availability of records (54)

Customer records must be maintained in a manner such that they will be accessible to competent authorities (Article 6, ISA). Under Article 5.2 of the General Administrative Law, supervisors have unrestricted access to all records maintained by entities under their supervision. MOT has access to supplemental information necessary for consideration of an UTR, and domestic law enforcement authorities have access through the processes and procedures set forth in response to Criterion 27.

Implementation

52. Para. 26 of CDD suggests that banks should develop clear standards on what customer identification records should be maintained. It recommends that copies of customer identification documents should be maintained for at least five years following the date on which the account was closed. Discussions with financial institutions indicated that this requirement is met and that a number of institutions maintain records for longer periods. The Further Regulation on the Conduct of Supervision of the Securities Trade establishes requirements for client records, from a prudential rather than due diligence perspective. The regulation does not establish a requirement in relation to the period for which records should be maintained, but there are requirements in general law. (See 53, above).

53. Para. 26 of CDD recommends that transaction records should be maintained for five years after the transaction has taken place. The Further Regulation on the Conduct of Supervision of the Securities Trade sets out

<p>requirements for the maintenance of records related to processing and ordering, settlements and general transactions. It is required that transaction records should show for each client, the nature of transaction, the number and type of securities, the execution price, the identity of any counterparties, the date and time of the transaction the amount of commission and other costs. It is required that transaction records should be sufficient to develop historical analyses by client and stock. There is however no stipulation in the regulation about the period for which records should be maintained.</p> <p>Although ISA does not address the maintenance of transaction records, all institutions indicated that they maintain these records for at least five years after transactions and in some cases for as long as seven years.</p> <p>54. Notwithstanding the absence of specific reference to transaction records in AML/CFT legislation (besides the obligation to keep records of transactions disclosed under DUTA), institutions visited indicated that such records were maintained in a manner that made them easily available to competent authorities. The regulators also indicated that they expected that all records would be so maintained and verified this during on-site visits.</p>
<p>Analysis of Effectiveness</p>
<p>Legal and Institutional</p> <p>Only customer identification records are addressed in the ISA. For transaction records as well as account correspondence and documents relating to the account relationship (other than the initial customer identification documents), the authorities for the most part (besides the obligation to keep records of disclosed transaction under DUTA) rely on requirements in general law (i.e., Harmonization Law and recent Integrity Decree, Civil Code and Taxation Act) or for transactions that must be disclosed on the obligation to keep records under the DUTA. Particularly for account relationship materials, it would be helpful to have record keeping requirements clearer. There is no requirement/guidance specific to AML/CFT on this, and authorities should consider updating law to address these additional record keeping requirements to supplement the current ISA customer identification records requirement. Authorities have noted that on a post mission basis, DNK/PVK issued a regulation of CDD which at Section 7 sets forth a requirement to maintain all records of client acceptance, ongoing monitoring and transactions of a client for at least five years.</p> <p>Implementation</p> <ul style="list-style-type: none"> • Guidance given to credit institutions via the CDD paper and the general practices of FIs in relation to record keeping accord with best practice. • At the time of the mission, no guidance in relation to record keeping was provided to insurance and securities firms that was equivalent to that provided by the CDD paper. This situation is expected to be rectified by the CDD paper for insurance and securities firms is early 2004.
<p>Recommendations and Comments</p> <ul style="list-style-type: none"> • Incorporate specific recordkeeping requirements for account relationship materials (post account opening) and transaction records in revisions to ISA/DUTA Act. • See previous recommendation regarding the development of comprehensive Guidance Notes.
<p>Implications for compliance with FATF Recommendation 12</p>
<p>12: Largely Compliant (no specific requirement on post account opening materials)</p>
<p>V—Suspicious transactions reporting</p> <p>(compliance with Criteria 55-57 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 101-104 for the insurance sector)</p>
<p>Description</p>

Legal and Institutional

Obligation to Report (55)

As part of the general reporting obligation under the DUTA, FIs and other service providers are required to make reports of unusual transactions. Article 9 of the DUTA requires service providers to report to MOT without delay any unusual transaction performed or planned. This includes suspicious transactions as well as other transactions. It is an offence under the Economic Offences Act to fail to report an unusual transaction.

The disclosure must include the identity of the client, information on the client's means of identification, the nature, time and place of the transaction, the grounds upon which the transaction is designated as unusual, and other information. Unusual transactions are defined based upon indicators issued and updated on a regular basis by the Ministers of Justice and Finance.

As to requirements on FIs that they have procedures in place for reporting transactions and have those communicated to all appropriate personnel, in the securities sector there is a specific requirement (Annex, Articles 4.23-4.25, Further Regulations of Conduct on the Supervision of the Securities Trade 2002). In the banking sector, authorities rely on the general requirements in Article 65 of the Regulation on Organization and Control and similar regulations in the insurance sector. Under Articles 65 and 67 of the Regulation on the Organization and Control (ROC) (issued under Articles 22(1) and 30c(1) of the Credit Institutions Act), credit institutions must have policies in place to control integrity risks. These must include policies based upon the DUTA and ISA. The policies must be communicated to all personnel and incorporated into the institution's organizational and administrative procedures. The legal underpinning for the requirement for internal procedures was recently strengthened (post-mission) with the issuance of the Decree on Integrity on December 1, 2003 under the Harmonization Act and a regulation, the Regulation on Incidents at Credit Institutions and Insurance Companies that imposes specific requirements and affected institutions must comply by July 1, 2004.

Liability protection for reporting (56)

There is protection from criminal and civil liability for those who file an UTR with MOT (Articles 12 and 13, DUTA). Data or information supplied shall not be used "as a basis for or serve the purposes of a criminal investigation or prosecution on suspicion, nor shall it be used as evidence in support of charges" of violations of the ML provisions or certain other offenses by the person furnishing the information or a person who cooperated with the furnisher of the information. In addition, persons who make disclosures are not liable for damages suffered by a third party because of a disclosure unless in the circumstances, the disclosure should not have been made. These provisions cover the institution as well as persons, including directors, officers and employees involved in any way in the reporting process.

Tipping-off (57)

Article 19 of DUTA contains a tipping off prohibition. It prohibits persons performing duties under DUTA (that is, persons making reports) from using any information furnished or received under DUTA, or from making the information known "otherwise or further than shall be required for the exercise of duties or by the provisions of this Act." Those violating this provision may be sanctioned criminally under the Economic Offences Act.

Financial institutions must provide such additional information as MOT requests (Article 10, DUTA).

Implementation

In the Netherlands, guidelines to assist financial institutions in detecting patterns of suspicious activity take the form of the list of indicators for reporting, as well as the guidance provided through MOT's website, news alerts and annual report. The Ministry of Finance has a special hotline and website (www.minfin.nl/integriteit) to respond to questions on AML/CFT. Various task forces and consultative bodies also serve as vehicles for providing guidance.

55.1 CDD Para 55 indicates that “channels for reporting suspicious transactions should be clearly specified in writing and communicated to all personnel.” CDD also indicates that an institution's internal procedures should be capable of assessing whether a particular transaction meets the requirement for reporting to law enforcement or supervisory authorities. (See description, criterion 49).

Banks make approximately 35,000 UTRs annually, while security firms and insurance companies make virtually no reports. Insurance companies made 1 report in 2001 and 2 reports in 2002. This is in part a result of the significantly lower level of risk as compared to the banking sector. However, it is also undoubtedly linked to the perception of a number of persons in the insurance sector that there is in fact no risk at all. There is a general view held by the insurance industry that its position between the banks, who undertake due diligence on their customers, and the tax authorities to whom reports are made in respect of all payments under life insurance contracts, insulates the sector to the extent that it does not have to maintain a high level of alertness to AML/CFT risks.

Institutions were generally concerned about the heavy burden placed on them by the reporting system. There is a perception among regulated institutions that the administrative burden of the reporting system is disproportionate to the positive results generated. The banker’s association is of the view that there should be a decrease in quantity and an increase in quality of reports made to MOT and indicated that some consideration was being given to a recommendation that there should be a move towards a more subjective reporting system. In developing this recommendation, a representative group from the industry is currently reviewing their past experience in reporting to MOT, 100 case studies from Egmont and FATF typologies.

55.2 MOT has provided reporting institutions with information on money laundering including a general description of money laundering and information on relevant legislation. It is currently working with the compliance officers association to publish information on money laundering typologies and general information on its activities. The list of published indicators also provides reporting institutions with some idea of potential areas of vulnerability of the financial system.

Apart from the advice and directions given by MOT to reporting institutions, some banks have made personnel available to MOT to familiarize its staff about certain issues related to the financial sector including the analysis of financial transactions.

See response to criterion 23

Periodically information is sent to financial institutions to address a specific area of AML/CFT risk. In March 2002, for example, the DNB sent a letter to all banks warning of the risk inherent in back-to-back loan arrangements and made recommendations on procedures that should be adopted to protect against the potential risks inherent in these arrangements.

Analysis of Effectiveness

Legal and Institutional:

- At the time of the mission, other than for the securities sector, there were no specific requirements for FIs that they have procedures in place for reporting transactions and have those communicated to all appropriate personnel. Authorities relied on Articles 65 and 67 of the Regulation on Organization and Control (ROC) (issued under Articles 22(1) and 30c(1) of the Credit Institutions Act), which provides that credit institutions must have policies in place to control integrity risks. These must include policies based upon the DUTA and ISA. The policies must be communicated to all personnel and incorporated into the institution's organizational and administrative procedures. The legal underpinning for the requirement for internal procedures was recently strengthened (post-mission) with the issuance of the Decree on Integrity on December 1, 2003 under the Harmonization Act and a regulation imposing some specific requirements with compliance required by July 1, 2004.
- The tipping off prohibition, although it has worked in practice thus far, is limited in its scope. It applies only

<p>to the institution and persons within the institution making the report. However, authorities informed the mission that it was clear from the interpretation accompanying the law that the purpose of the provision is broader: that the client not be informed. As the DUTA is amended, this provision should be given attention and expanded to ensure that the client is not informed by anyone who comes into contact with information regarding the reporting or the consideration of a decision to report before reporting occurs.</p> <p>Implementation</p> <ul style="list-style-type: none"> • Arrangements for the reporting of suspicious transactions amongst credit institutions are adequate. Notwithstanding the significantly lower vulnerability of the securities and insurance sectors, very low levels of reporting appear to be, in part, the result of the view that these sectors are virtually immune to AML/CFT. Notwithstanding this perception, there is room to further sensitize the insurance sector to its potential for abuse by persons seeking to conceal the proceeds of crime. • At the time of the mission no guidance in relation to suspicious transaction reporting was provided to insurance and securities firms that was equivalent to that provided by the CDD paper. On a post mission basis, a CDD paper became effective for insurance and security firms.
<p>Recommendations and Comments</p> <ul style="list-style-type: none"> • Expand scope of tipping off prohibition to ensure that anyone who comes into contact with information regarding the reporting or consideration of a decision to report is prohibited from tipping off. • For sectors other than securities consider specific requirements that regulated institutions have procedures in place for reporting transactions and have those communicated to all personnel. On a post-mission basis, authorities adopted a regulation imposing specific requirements with compliance required by July 1, 2004. • See previous recommendation regarding the development of comprehensive Guidance Notes.
<p>Implications for compliance with FATF Recommendations 15, 16, 17, 28</p> <p>15: Compliant 16: Compliant 17: Largely Compliant (enhancements to tipping off prohibition needed) 28: Compliant</p>
<p>VI—Internal controls, Compliance and Audit</p> <p>(compliance with Criteria 58-61 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 89-92 for the banking sector, criteria 109 and 110 for the insurance sector, and criterion 113 for the securities sector)</p>
<p>Description</p>
<p>Legal and Institutional</p> <p>Internal Procedures (58)</p> <p>Financial institutions must have procedures in place for reporting based upon the indicators. Under Articles 65 and 67 of the Regulation on Organization and Control (ROC) (issued under Articles 22(1) and 30c(1) of the Credit Institutions Act), credit institutions must have policies in place to control integrity risks. These must include policies based upon the DUTA and ISA. The policies must be communicated to all personnel and incorporated into the institution's organizational and administrative procedures. The legal underpinning for the requirement for internal procedures was recently strengthened with the issuance of the Decree on Integrity on December 1, 2003 under the Harmonization Act. Under the Decree, which applies to credit institutions, insurance companies, investment institutions, mutual associations and securities firms, institutions must have internal rules in place:</p>

- to establish the identity, nature and background of their customers, and
- to pursue an appropriate policy to ensure that confidence in their organization or the financial markets in general is not damaged because of their customers.

Financial supervisory authorities must set rules governing these requirements, and may fine failures to comply. Supervisory authorities, industry associations and the institutions have in many instances already issued recommendations and guidelines.

Money service offices must have internal control procedures and measures in place that will ensure the business' compliance with the DUTA and ISA. Articles 4–6, Money Services Regulation.

For the securities sector, participants must have procedures in place, and comply with the procedures, to identify and disclose unusual transactions. (Regulations of Conduct on the Supervision of the Securities Trade 2002, based upon Decree on the Supervision of the Securities Trade, under Securities Act).

Under Articles 70 and 98 of the Insurance Act, insurers must have adequate internal control mechanisms, and PVK may issue recommendations and guidelines for internal control, which it has done.

Training

At the time of the mission, no specific requirements were yet in law or regulation regarding training or that institutions have policies in place regarding training. Rather training is considered part of the general requirement that institutions have internal procedures and programs to control risk. The ROC (applicable to credit institutions) and the Decree on Integrity (applicable to credit institutions, securities and insurance sectors) require internal procedures necessary to control risks. For money services providers, Article 9 of the Money Services Act requires internal procedures to control risks. On a post mission basis, under the Decree on Integrity and the Regulation on CDD (article 7) credit institutions and insurers must include CDD in the training of the relevant staff.

Authorities indicate that in the revision of the DUTA and ISA (and the consideration of a merger of the acts into a single law) to, among other things, address the revised FATF 40 recommendations, there is a plan to require specifically that institutions have internal policies on training.

Internal Audit

Credit Institutions. The Regulation on Organization and Control (ROC) which DNB issued under the Credit Systems Act (Articles 22(1), 30c(1)) requires credit institutions to have a permanent internal audit function that operates under the control of senior management and has sufficient independence to report its findings directly to the chairman of the management board on its own initiative. (Articles 21-23 of ROC).

Money remittance and transfer. Money transaction offices must have procedures for internal control for compliance with DUTA and ISA. Articles 4-5, Regulations on the Conduct of Business by and the Administrative Organization on the Act on Money Services. Article 9, Money Services Act. This includes providing regular reports to the Minister of Finance regarding the management and administrative organization.

Insurance. Articles 70 and 98 of the Insurance Law provides that insurers must have adequate internal control mechanisms. Regulations have been issued but do not specifically cover internal audit.

Securities. Under Article 24 of the Further Regulation of the Conduct of Supervision of Securities Trade, supervised institutions are required to have internal audits.

Compliance officer (59)

There are no requirements that financial institutions designate compliance officers specific to AML/CFT at management level.

Credit Institutions: Under Article 69 of the ROC, institutions must have an independent compliance function for the monitoring of compliance with internal standards, rules and codes of conduct. The particulars on incorporation of this function into the organization are left to the organization and are dependant in part upon its nature and size. Under this general requirement, credit institutions are expected to appoint a suitably qualified and experienced officer at their institution to whom UTRs are made by staff. The regulation recommends that the compliance officer should be authorized to contact directly the designated member of the supervisory board in cases that involve the possible non-compliance with guidelines by members of the management board.

Securities. There must be an adequate administrative organization on anti-ML procedures. This is the responsibility of the highest management of the institution (Further Regulations of Conduct on the Supervision of the Securities Trade 2002, Annex 4.25).

Insurance. Under articles 70 and 98 Insurance Law, insurance firms/agents must have proper administrative procedures and adequate internal control mechanisms.

Recruitment of Staff (60)

General administrative organization and integrity requirements in the supervisory laws require financial institutions to check the integrity (i.e., criminal and employment records) of employees before employing them. The Decree on Integrity and the Regulation on Integrity-sensitive positions also requires this.

Credit institutions. Article 65 of ROC requires institutions to have a policy plan that addresses standards for recruiting staff who possess required integrity and expertise. On a post-mission basis regulators have issued the Regulation on Integrity-sensitive functions which addresses more specifically recruitment requirements for credit institutions and insurers.

Money remittance/transfer. Under Article 7 of the regulations applicable to money services offices, offices must review the integrity of new and existing staff members by obtaining information from previous employers, and require a certificate of good behavior under the Judicial Records Act.

Securities. Securities institutions must obtain written references on prospective employees that work on services covered by the Act in order to consider whether the person is fit and proper (Further Regulation on the Prudential Supervision on the Securities Trade 2002, Article 42 and Annex, Article 4.24).

Insurance. For insurance, currently there is reliance on general integrity requirements, but regulations to be issued under the Integrity Decree will specifically address recruitment. On a post-mission basis regulators have issued the Regulation on Integrity-sensitive functions which addresses more specifically recruitment requirements for credit institutions and insurers.

Overseas operations (61)

Credit and financial institutions are obliged to maintain appropriate controls and standards in their subsidiaries and branches abroad on the basis of Article 65 of the Regulation on Organization and Control. Where the minimum AML/CFT requirements in the host jurisdictions are lower than those of the Netherlands, FIs visited indicated that, in practice, they apply the higher Dutch standards to their overseas branches and subsidiaries. The establishment of overseas branches and subsidiaries is subject to the permission of DNB on the basis of Articles 16, 16a, and 16b of the Credit Supervision Act. Dutch financial institutions are expected to oversee their branches and as part of their integrity responsibilities to check to see that they are observing appropriate AML/CFT measures (for instance through audits).

Implementation

58. Paragraphs 55–58 of CDD indicates that institutions should have routines for “proper management oversight, systems and controls, segregation of duties, training and other related policies.” It indicates that there should be an internal audit function to evaluate the risk management controls and that employees should be adequately trained.

The three regulators indicated that their broad objectives in terms of AML/CFT and related areas is to ensure that institutions have control environments designed to recognize and control risk including those related to AML/CFT. A document is being developed jointly by the DNB, PVK, and AFM to give guidance to all financial institutions on a number of issues related to internal systems and controls including those relevant to AML/CFT.

The institutions visited appeared to have appropriate internal systems and controls to undertake customer due diligence and maintain identification and transaction records. They generally have AML/CFT training programs for their staff. In some instances these included online modules that must be completed by staff periodically and which are followed by assessments in which staff is required to obtain a passing grade. Some securities firms require their staff to undergo programs, which include training related to AML/CFT at the Netherlands Institute for the Banking and Stock Broking Industry. For these firms AML/CFT training is focused on front office, research and dealer staff. While the institute’s general banking and securities programs include a module on money laundering it has also developed courses which focus of specific banking products which highlight areas where the products are vulnerable to abuse in the context of money laundering.

The Institute has also developed courses for the police and the office of the public prosecutor. The objective of the courses is to provide information on general financial sector issues related to fraud and perceived vulnerability to money laundering. Some of the material used in the course is based on information provided by the industry.

As can be expected, the level of resources devoted to training varies across the financial sector with the emphasis being greatest in the banking sector. Not all firms appear to attach an equally high level of importance to maintaining an on-going training program. At least one insurance company visited did not have an on-going training program for staff.

59. The Netherlands does not have a specific requirement for the designation of an AML/CFT compliance officer. The general practice seems to be for institutions to assign AML/CFT compliance responsibilities to an officer with other compliance functions.

60. Regulators undertake fit and proper examinations of persons who are deemed to determine the day-to-day policy of a financial institution. This includes but is not limited to board members. Regulators also expect that FIs will undertake such examinations for all key staff. FIs indicated that they assess prospective employees on the basis of relevant knowledge and experience and also request references from previous employers. One securities firm visited indicated that due to the importance of integrity in the conduct of its work, approximately one-third of its employees are required to produce certificates of good character. Certificates are required for staff working in customer acceptance, dealing and research. Regulators review an institution’s files during on-site inspection to satisfy themselves that appropriate checks have been made when hiring new staff.

61. CDD Para. 64 indicates that banks should seek to attain a minimum standard in respect of KYC polices for local and overseas operations. It further indicates that parent banks should communicate policies and procedures to overseas operations and should develop a routine to test compliance. Para 66 requires that where the KYC standards differ between home and host countries, the higher standard should be followed. All institutions visited that had cross border group relationships indicated that they all adhered to the highest standard required of a member of the group and imposed the standards required of the parent on branches and subsidiaries. The DNB undertakes overseas inspection of foreign braches and subsidiaries of banks based in the Netherlands and assess the extent to which the Netherlands standards are being applied.

Analysis of Effectiveness

<ul style="list-style-type: none"> • At the time of the mission a requirement for internal procedures regarding ongoing training was not explicit. Authorities indicate a specific requirement was introduced post mission (Decree on Integrity and Regulation on CDD (article 7). • Internal audits are required in the banking and securities sectors but as of the time of the mission were not specifically noted in laws/regulations for insurance. • Institutions are not required to designate compliance officers at the management level responsible for AML/CFT. In practice, most institutions have designated an officer with other operational responsibilities as the compliance officer. While the practice of assigning AML/CFT compliance responsibilities to an officer with other compliance functions is not unique to the Netherlands, it would be desirable to establish a requirement that a senior officer carry the specific designation. • There appear to be inconsistencies in the importance that financial institutions attached to providing AML/CFT training for their staff particularly in the insurance sector.
<p>Recommendations and Comments</p> <ul style="list-style-type: none"> • Introduce an explicit requirement for internal procedures regarding ongoing training, as planned. Amend laws/regulations to address an internal audit function for insurance. Authorities indicate that on a post mission basis a requirement on training was introduced. • Amend laws/regulation to require a management level compliance officer for AML/CFT. • Regulators should redouble their efforts through the provision of guidance, and on-going surveillance, to ensure that all FIs, particularly within the insurance sector, provide staff with adequate levels of training related to AML/CFT on an on-going basis. • See previous recommendation regarding the development of comprehensive Guidance Notes.
<p>Implications for compliance with the FATF Recommendations 19, 20</p> <p>19: Largely Compliant (Need to address specifically duty to have procedures for ongoing employee training and internal audit in some sectors and requirement for management level compliance officer.) 20: Compliant</p>
<p>VII—Integrity standards</p> <p>(compliance with Criteria 62 and 63 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 14 for the securities sector)</p>
<p>Description</p> <p>Integrity standards (62)</p> <p>The Netherlands addresses integrity standards for policymakers (executive and supervisory board members) and significant ownership interests (shareholders/stakeholders) through various provisions in the statutes that regulate each sector. (See, Ministerial Decree on Integrity Testing for listing of provisions in sectoral laws). The laws apply to: 1) those who determine or co-determine policy, or who are to be appointed to do such, as directors and managers of supervisory boards; and 2) and holders and prospective holders of various significant levels of capital or voting rights (generally 5%, <u>see</u>, e.g., Article 9(1), Credit Institutions Act). Not all senior managers in financial institutions are reviewed for integrity by the supervisors, and as a general practice such reviews are conducted only for executive and supervisory board members. Senior managers not reviewed by supervisors must pass a thorough review within their own institution. However, there is not access in these industry reviews to the same level of background data for screening (law enforcement data, etc.). A Ministerial Decree was issued in April 2000 on Integrity Testing which sets</p>

forth a standard review process and norms for all supervisors.

For money services, the law applies to management official or other key persons as well as to directors. It provides for screening only for integrity. Articles 2(1) and 5(2) of the Act on Money Services.

In considering both an application by a FI to carry on business and post licensing appointments of new policymakers, supervisory authorities must be satisfied that the executive and supervisory board members and significant owners are fit and proper.

The test for integrity, the Netherlands equivalent of fit and proper involves a conclusion by the Supervisory Authority that a person has not engaged in any of a series of actions that provide evidence that a person lacks truthfulness, responsibility, law-abidingness, openness, honesty or certain other specified characteristics. In addition to criminal convictions, SA may consider dismissal, acquittals or discharges from prosecution, facts and circumstances set forth in official reports, and matters relating to financial issues as well as past supervisory issues.

Controls to risk of corporate vehicles (63)

In the Netherlands there are several measures in place to prevent unlawful use of entities that might be used as conduits.

- Shell corporations would be captured under the general requirement for FIs to know their customer and maintain records of identity. Apart from this general requirement there are no specific provisions to avoid the misuse of shell corporations. Companies with little economic substance/presence in the Netherlands are often administered by company and trust service providers (CTSP), and a law to supervise such providers is expected in February 2004. See Criterion 45 supra. CTSPs are subject to the ISA and DUTA.
- Non-profits (foundations and associations) must register with the Chamber of Commerce, following approval by a notary and must keep accounting records. Some charities register with the tax authorities in order to qualify for a favorable tax treatment (reduced inheritance tax rate). Not all (smaller) charities stand to gain from this registration, since individual donations below a certain threshold (€ 8.483 for bequests, € 4.243 for gifts) are exempt from gift tax. Deductibility of donations for the income tax does not depend on the registration of the charity (only to the extent that the donations exceed 10 % of the gross income of the donor). Moreover, it is not impossible for foundations and associations to raise and disburse funds without reporting to the tax authorities.
- Registered charities must submit their financial statements to the Tax and Customs Administration Under the Inheritance Act, the Tax and Customs Administration is responsible for auditing the financial statements and examining whether an organization's spending is in the public interest. Audits – which until now have been limited to paper audits only - are conducted on a risk-oriented basis, and are designed to ensure implementation of the Tax Investigation Act including its provisions relating to ensuring an organization serves the public interest. While a private Central Office for Fundraising Organizations (CBF) oversees charities that agree voluntarily to abide by its standards (which are considerably stricter and more encompassing than those of the tax authorities), generally only the larger and well-known charities are part of this voluntary network. Their number is only 250 compared to a total of 14.000 charities that are registered with the tax authorities. However, given their average size, they represent a large percentage of the total flows of donations in the Netherlands. Neither the CBF nor the tax authority conduct on site inspections of charities in the Netherlands. There is no verification of the use of funds in third countries.
- The large majority of foundations and associations that are not registered with the tax authorities under the Inheritance act or the Central Office of Fundraising have no obligation to publish annual accounts or to have their accounts audited (as this only applies to large foundations with commercial activities). There is also no supervisor for these entities. If there is serious doubt whether a foundation is complying with statutory requirements or its constitution, or whether its board is discharging its duties properly, the public prosecutor may question the foundation. However, in practice this hardly ever happens and the compulsory powers of

the public prosecutor are rather weak. Stronger measures, such as the summoning of files, dismissal of directors or disbandment require a court decision under the Dutch civil code.

- Authorities in the Netherlands, through FEC, have identified these weaknesses and are considering measures to address them. They are considering problems relating to non-profits and methods that might be used to enhance review and monitoring of non-profits and charities using a risk based approach, and expect that working groups addressing this matter will propose more effective procedures and implementation of existing law as well as changes in laws and regulations to enhance oversight.
- FIOD-ECD plays an active role in investigating organizations.

Implementation

62. Regulators undertake fit and proper examinations of persons who are deemed to determine the day-to day policy of a FI. This includes but is not limited to board members. Regulators also expect that FIs will undertake such examinations for all key staff. The tests are performed on members of the supervisory and executive boards. Directors are assessed at the start of their term and if deemed necessary at any time during their tenure. The National Public Prosecutor responsible for AML/CFT conducts the law enforcement aspects of the review at the request of the supervisory authorities. In conducting the review he uses the resources of the BLOM. The review is permitted under Article 14a of the Data Protection (Police Files) Decree.

The DNB, AFM and PVK have drafted a policy rule as a basis for evaluation and decision making with regard to fitness and propriety. The regulators report that where administrative courts have been brought into the picture they have almost always found that decisions made were in accordance with the rule. On three occasions in 2002 directors were removed from institutions due to fit and proper concerns.

The central organization of the cooperative of banks undertakes fit and proper examinations of the board members of its member banks. It however does not have a working relationship with the prosecutor's office and cannot therefore submit its questionnaires to this office. This is an important distinction between the fit and proper examinations undertaken by the DNB and those undertaken by the central organization of the cooperative.

The Council of Financial Regulators (currently comprised of the DNB, PVK and AFM) is looking into the possibility of undertaking similar examinations for persons who are not board members but who are deemed to have an influence on the policy of an institution.

Any shareholder holding more than 5% of shares must provide information to the DNB and receive a declaration of no objection from DNB.

63. Not-for-profit organizations in the Netherlands usually take the form of foundations or associations. They are required to be registered in the trade register of the administrators of the (there is no general registration of foundations and associations with the tax authorities, only foundations with commercial activities and foundations and associations which apply for a reduced inheritance tax are registered as such). Filing obligations for registered charities include tax returns and annual accounts. (There is no link whatsoever between foundations and Trust Offices; Trust Offices usually administer commercial entities with overseas owners and relatively little economic substance; these entities are vulnerable to misuse, which is why we impose suitable regulation and supervision on the Trust Offices, including the need to know the beneficial owner of each company they administer). Foundations which are not registered with the tax authority have hardly any obligation to publish their accounts and there is little oversight of these entities. There are no immediate plans to provide guidance to financial institutions (and other reporting entities) on customer due diligence for these entities, nor is there any specific guidance for reporting unusual transactions by non-profits.

The authorities have uncovered three instances in which non-profit organizations or charities were implicated in the financing of terrorism. None of them were registered with the tax authorities. Moreover, there are some other cases

where there are some concerns about possible misuse of foundations, which are not charities.
Analysis of Effectiveness
<ul style="list-style-type: none"> • Integrity standards are set forth in the laws for each sector, but senior management not part of the executive board does not generally go through screening by supervisors, although there is a legal basis for screening any policymaker. Under a Ministerial Decree, there are uniform standards that should ensure a thorough vetting of individuals for fitness and propriety. • The registration and reporting responsibilities imposed on a limited number of foundations and associations (those that register with tax authorities) While this provides a rudimentary framework for monitoring the activities of some of these entities it excludes the vast majority of foundations and associations and is therefore limited in its effectiveness. There is need to review the current arrangements and to develop more specific directions to be given to the financial sector in relation to their dealings with these entities and for measures that will ensure reporting and transparency for charities and non-profits in addition to those that register with the tax authorities and for other measures that would enhance the transparency and supervision of such organizations. The pending legislation for the supervision of trust offices will enhance the AML/CFT regulatory framework in relation to these entities. • The approach adopted by regulators to the assessment of the fitness and propriety of board members is comprehensive. • The inability of central organization to benefit from information known to the prosecutor's office in undertaking fit and proper examinations, makes this process potentially less effective than the fit and proper examinations undertaken DNB.
Recommendations and Comments
<ul style="list-style-type: none"> • Extend integrity testing by supervisors in practice to a wider range of senior management outside of the Executive Board. • The working group on non-profits in the Netherlands should come up with reasonable measures to improve the transparency and monitoring of foundations and associations in general as well as with measures to improve the registration, regulation and monitoring of charities. • Further direction should be given to financial institutions in respect of their dealings with non-profit organizations. This could include information on the characteristics of these types of entities with which FIs should be familiar, guidance on the persons who should be subject to due diligence and the type of documents that should be examined. • Consideration should be given to rectifying the deficiency identified in the central organization's fit and proper examinations. • See previous recommendation regarding the development of comprehensive AML/CFT Guidance Notes.
Implications for compliance with FATF Recommendation 29
29: Largely Compliant (senior management not part of executive board not generally screened by supervisors; issues relating to the central organization of the cooperative in undertaking fit and proper examinations)
VIII—Enforcement powers and sanctions
(compliance with Criterion 64 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 93-96 for the banking sector and criteria 115-117 for the securities sector)
Description

<p>Legal and Institutional</p> <p>Enforcement powers (64)</p> <p>Criminal penalties are available for infractions such as non-reporting, untimely reporting, or lack of compliance with customer due diligence or records maintenance requirements. Administrative fines and penalties are not currently available, but as part of the planned amendments to ISA and DUTA, as a general rule, supervisors will be able to impose administrative penalties (fines, penalties and punitive damages) for violations of the ISA/DUTA. Consideration is being given, in the case of attorneys and notaries, to providing for the imposition of measures by self-regulatory bodies. Currently supervisors address an institution's non-compliance in these areas by referring the matter for consideration for criminal prosecution. FIOD-ECD investigates and considers referral of cases for criminal sanctions under the Economic Offenses Act. For criminal sanctions, see Criterion 20 <u>supra</u>.</p> <p>While as a general rule, administrative sanctions are not available for the DUTA or ISA violations, since there are no specific provisions in Dutch law regarding this, if violations are repeated and rise to a level such that they seriously affect the integrity of an institution, supervisors could use the range of administrative sanctions available under the supervisory laws such as cease and desist orders, withdrawal of license and administrative fines. See, e.g., Articles 15, 9, 90b, 90c, Credit Institutions Act; Articles 19, 48b, 48c, Securities Act; Article 15, Investment Act; Articles 148, 29, and 30, Insurance Act.</p> <p>Currently, if the DNB ascertains that a credit institution is not complying with AML/CFT requirements, it notifies the institution. If necessary, in addition, under Articles 14 and 28 of the Credit Institutions Act, it provides a ruling on actions the institution must take. If violations are serious, it may refer the matter for criminal consideration.</p> <p>For money remittance/transfer offices, the Act on Money Services provides for withdrawal of registration, directions on actions to be taken, cease and desist orders and administrative fines. Articles 5, 10, 20, and 21, Act on Money Services.</p>
<p>Analysis of Effectiveness</p>
<p>Legal and Institutional</p> <ul style="list-style-type: none">• The effective lack of administrative sanctions for violations relating to non-reporting and full compliance with identification and record keeping requirements, except where violations rise to an egregious level, is a limitation on the system which authorities have recognized and plan to change.
<p>Recommendations and Comments</p>
<ul style="list-style-type: none">• Introduce administrative sanctions for violations of the ISA and DUTA as planned.
<p>IX—Cooperation between supervisors and other competent authorities</p> <p>(compliance with Criteria 65-67 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 97-100 for the banking sector and criteria 118-120 for the securities sector)</p>
<p>Description</p>
<p>Legal and Institutional</p> <p>Cooperation between domestic supervisors (66)</p> <p>Supervisors can exchange information with each other. (Articles 65, 67a and 68, Credit Systems Act; Articles 11 and 183 (1), Insurance Act; Article 27, Investment Act; and Articles 33 and 36, Securities Act). The DNB, AFM, and PVK also cooperate through Council for Financial Supervisors (RFT). Through the council, the supervisors have adopted standard practices with respect to integrity issues. See Policy Rule on Integrity Testing.</p>

Cooperation with other domestic authorities (66)

Supervisors are members of the Financial Expertise Center (FEC), BC MOT and WG IND and these groups provide a ready means for cooperation in all matters. The FEC, BC MOT and WG IND have been active overseers of Netherlands' AML/CFT program, meeting often and tasking members with many of the legislative and other initiatives that are currently being put into place.

Supervisors provide advice to MOT and police investigators as needed on the operations and commercial activities of financial institutions, including on general matters helpful in analysis of UTRs or in conducting investigations. Laws also contain provisions regarding assistance. The gateways for provision of assistance to police authorities are Article 65 of the Credit Institutions Act, Article 33 of the Securities Act, and Article 183 of the Insurance Act, under which supervisors may disclose information if such disclosure is in support of their underlying missions. These provisions have been interpreted broadly in support of wide discretion for supervisors to disclose information to public prosecutors and other law enforcement officials in the Netherlands. In addition, the expected single supervisory act will contain a provision permitting supervisors to disclose information in such circumstances as well as in any circumstance where the public prosecutor needs the information in furtherance of his/her responsibilities.

International cooperation (67)

Supervisors may co-operate on an international level both spontaneously and upon request regarding AML/CFT matters. Each of the sectoral acts contains provisions making co-operation possible on a broad basis with foreign supervisory authorities. The Minister of Finance has delegated this authority directly to the supervisors. However, the foreign authority may only use the information for the purpose for which it has been passed on to it and must assure confidentiality (Article 65, Credit Institutions Act; Article 33, Securities Act; Article 27, Investment Act; Article 183, Insurance Act; Article 14, Money Services Act). Supervisors do not generally receive requests from foreign law enforcement or FIUs. In the case of such requests, information would be provided only after consultation with the Minister of Justice.

Implementation.

Structure, Staff, Funding of Supervisor (65)

65. The DNB's supervision department has principal responsibility for all matters related to supervision of credit institutions. However, it relies considerably on the specialist skills of the DNB's integrity division on matters related to AML/CFT. The integrity division has developed an integrity audit tool in 1997, which is used by all supervising teams for assessing integrity risks (including AML/CFT). The integrity division has a staff complement of 11 persons with a range of skills in the areas of financial sector regulation, law and accountancy. In cooperation with the supervising teams, the unit undertakes fit and proper test on board members of FIs and on and off-site AML/CFT surveillance. Much of its work is done through off-site surveillance which tries to assess the control environment at institutions. Integrity audits are undertaken on the basis of this assessment. Approximately 20 of the 140 banks are visited annually by the integrity division. The division also reviews credit card companies and casinos to ensure that appropriate AML/CFT regimes are in place. There are four credit card entities in the Netherlands. They are visited on average twice a year.

Within the PVK, AML/CFT oversight is the responsibility of the Centre of Expertise which deals generally with integrity issues. The PVK has recently developed a surveillance tool which assesses nine main areas of risk (including AML/CFT) faced by licensees. The tool assesses institutions' AML/CFT vulnerabilities and assesses the control measures employed. As a part of a survey undertaken of all life insurers in 2002, a number of institutions were selected for on-site visits. The Centre undertakes fit and proper test. Approximately 60% of the 419 licensed insurers are visited annually by the Centre for these tests.

The AFM has developed a questionnaire for the assessment of internal control policies and practices employed by licensed institutions. The questionnaire which includes an assessment of AML/CFT systems and controls is completed by institutions and is subsequently analyzed by the AFM. On the basis of the results of the analysis,

<p>institutions are selected for risk interviews. On average, interviews are held annually in respect of large firms and every three years for small firms. The AFM has a staff of 35 dedicated to supervisory activities.</p> <p>66. There is close collaboration among all regulators and other agencies whose work covers AML/CFT issues. Apart from bilateral channels, there are interagency mechanisms such as the FEC and the Council of Regulators which includes the DNB, PVK, and AFM. These agencies have worked jointly on a number of projects. A current example is an on-going initiative of the three regulators to develop common integrity standards for all FIs. There has also been close collaboration in other initiatives such as the development of indicators of unusual transactions. There is at present a new initiative involving MOT, the Ministry of Finance, regulators and the bankers association to revise the approach used in compiling the list of indicators of unusual transactions.</p> <p>67. All regulators indicated that they all cooperate with foreign supervisors in providing supervisory information in response to request. The DNB undertakes inspections of foreign owned branches and subsidiaries on behalf of home regulators and also facilitates the on-site inspection of foreign owned entities in the Netherlands by foreign regulators.</p>
Analysis of Effectiveness
Legal and Institutional <ul style="list-style-type: none">• Legal provisions relating to gateways for cooperation by supervisors appear adequate. Implementation <ul style="list-style-type: none">• Of the three regulators, the DNB has developed the most robust regulatory regime in relation to AML/CFT. The merger of the DNB and PVK represents an opportunity for a similar approach to be adopted for the insurance sector to the extent merited by the AML/CFT risk faced by insurance firms.
Recommendations and Comments
Implications for compliance with FATF Recommendation 26
26: Compliant

Casinos

All casinos in the Netherlands are owned and operated by the Dutch government and all profits go into the Dutch treasury. There is one casino franchise-Holland Casino-that has about a dozen locations nationwide. Financial operations within Holland Casino are very tightly monitored. First, anyone seeking to gamble in Holland Casino must register with the casino and get his or her own casino identification number. This process includes identity verification (passport or driver's license) and, if need be, obtaining bank account information from the gambler for the deposit of winnings, if any. Second, the casinos are subject to UTR reporting requirements. Most security personnel at casinos are former law enforcement officials and thus are very aware of ML threats and trained at spotting same. The number of UTR filings for Dutch casinos has doubled in recent years (from 931 in 1999 to 1,997 in 2002), but the number of STRs generated from these UTRs remains relatively constant (at about 400 a year). The majority of the UTR and STR filings (about 1/3) deal with a suspicion of money laundering. Only about 10 percent of UTR filings deal with cash purchases of chips with more than 10,000 Euros. The total amount of funds involved in STRs generated by Dutch casinos for 2002 totaled only \$10.5 million Euros, a very small amount when compared to other reporting industries (banks EUR 469.5 million, money transfer businesses EUR 365.9 million, exchange houses EUR 68.25 million). Casinos can act as a currency exchange entity, but only at a cashier location and not at the gaming tables, where only Euros are accepted.

There is one area of ML risk within the Holland Casino structure. Players may ask that monies exchanged for game tokens at Holland Casino be deposited into a personal bank account. However, according to Dutch law,

only the day's "winnings" can be deposited into a personal account and, even then, only into a bank account in the name of the player who won such money. For example, a player who bought EUR 50,000 in currency into a casino and who obtained EUR 70,000 in casino gaming tokens at the end of play only would be allowed to transfer EUR 20,000 of the value of exchanged tokens into his personal bank account and would have to leave the casino with EUR 50,000 in currency he came in with. There are some practical limitations in enforcing this policy, such as the difficulty in keeping track of a gambler's winnings, but due to the high number of surveillance cameras in a casino, Dutch authorities are confident that they are able to track all significant winnings with relative accuracy. Any bank transfers must be made the same day and cannot be deferred for later date.

Although, there is no prohibition on the amount of currency one can exchange in a casino, the equivalent of a EUR 10,000 exchange will always result a UTR filing based upon the objective UTR factors set by the MOT. The Casinos are supervised on AML by the DNB since 2002, which admits it does not have a lot of experience in regulating such entities, but is learning fast. A recent Dutch investigatory news television program featured the "confessions" of a dismissed Holland Casino employee, who claimed that he witnessed a substantial amount of money laundering at Holland Casino during his employment there. This has led to political and law enforcement inquiries, and internal audits, but to date no evidence of criminal activity has substantiated the claims made by this employee. Overall, the risk that casinos in the Netherlands will be a major entry point for criminal proceeds into the legitimate economy is low.

Description of the controls and monitoring of cash and cross-border transactions

Table 10. Description of the Controls and Monitoring of Cash and Cross-Border Transactions

Criterion R 22	
Countries should consider implementing feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements (Recommendation 22)	
Description	<p>There are no current controls or reporting requirements regarding cross border movements of cash. Legislation is being drafted to impose controls on cross border cash movements, but is on hold pending EU legislation on this issue. Under European law, countries are not to implement new national legislation if a European Directive or Regulation is in drafting or negotiation stage.</p> <p>The Customs Services investigates unusual cross-border transportation of money, checks and high value goods based on its guidelines. Unusual transports are reported to the MOT. In 2001, Customs reported 139 unusual transactions to MOT. Of these, 29 were forwarded as suspicious to BLOM. In 2002, Customs reported 183 unusual transactions and the MOT forwarded 85 as suspicious.</p> <p>In addition, the Royal Military Police, the force that controls Dutch borders, reports suspicious inflows and outflows to BLOM and seizes cash in appropriate instances.</p>
Criterion R 23	
Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerized data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information	
Description	The DUTA list of indicators covers many currency transactions, but there is not a mandated reporting of all transactions above a certain amount.

C. Ratings of Compliance with FATF Recommendations, Summary of Effectiveness of AML/CFT Efforts, Recommended Action Plan and Authorities’ Response to the Assessment

Table 11. Ratings of Compliance with FATF Recommendations Requiring Specific Action

FATF Recommendation	Based on Criteria Rating	Rating
1 – Ratification and implementation of the Vienna Convention	1	Compliant
2 – Secrecy laws consistent with the 40 Recommendations	43	Largely Compliant
3 – Multilateral cooperation and mutual legal assistance in combating ML	34, 36, 38, 40	Compliant
4 – ML a criminal offense (Vienna Convention) based on drug ML and other serious offenses.	2	Compliant
5 – Knowing ML activity a criminal offense (Vienna Convention)	4	Compliant
7 – Legal and administrative conditions for provisional measures, such as freezing, seizing, and confiscation (Vienna Convention)	7, 7.3, 8, 9, 10, 11	Largely Compliant
8 – FATF Recommendations 10 to 29 applied to non-bank financial institutions; (e.g., foreign exchange houses)		See answers to 10 to 29
10 – Prohibition of anonymous accounts and implementation of customer identification policies	45, 46, 46.1	Largely Compliant
11 – Obligation to take reasonable measures to obtain information about customer identity	46.1, 47	Largely Compliant
12 – Comprehensive record keeping for five years of transactions, accounts, correspondence, and customer identification documents	52, 53, 54	Largely Compliant
14 – Detection and analysis of unusual large or otherwise suspicious transactions	17.2, 49	Largely Compliant
15 –If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the FIU	55	Complaint
16 – Legal protection for financial institutions, their directors and staff if they report their suspicions in good faith to the FIU	56	Compliant
17 – Directors, officers and employees, should not warn customers when information relating to them is reported to the FIU	57	Largely Compliant
18 – Compliance with instructions for suspicious transactions reporting	57	Compliant
19 – Internal policies, procedures, controls, audit, and training programs	58, 58.1, 59, 60	Largely Compliant
20 – AML rules and procedures applied to branches and subsidiaries located abroad	61	Compliant
21 – Special attention given to transactions with higher risk countries	50, 50.1	Compliant
26 – Adequate AML programs in supervised banks, financial institutions or intermediaries; authority to	66	Compliant

cooperate with judicial and law enforcement		
28 – Guidelines for suspicious transactions’ detection	17.2, 50.1, 55.2	Compliant
29 – Preventing control of, or significant participation in financial institutions by criminals	62	Largely Compliant
32 – International exchange of information relating to suspicious transactions, and to persons or corporations involved	22, 22.1, 34	Compliant
33 – Bilateral or multilateral agreement on information exchange when legal standards are different should not affect willingness to provide mutual assistance	34.2, 35.1	Compliant
34 – Bilateral and multilateral agreements and arrangements for widest possible range of mutual assistance	34, 34.1, 36, 37	Compliant
37 – Existence of procedures for mutual assistance in criminal matters for production of records, search of persons and premises, seizure and obtaining of evidence for ML investigations and prosecution	27, 34, 34.1, 35.2	Compliant
38 – Authority to take expeditious actions in response to foreign countries’ requests to identify, freeze, seize and confiscate proceeds or other property	11, 15, 16, 34, 34.1, 35.2, 39	Largely Compliant
40 – ML an extraditable offense	34, 40	Compliant
SR I – Take steps to ratify and implement relevant United Nations instruments	1, 34	Compliant
SR II – Criminalize the FT and terrorist organizations	2.3, 3, 3.1	Compliant
SR III – Freeze and confiscate terrorist assets	7, 7.3, 8, 13	Compliant
SR IV – Report suspicious transactions linked to terrorism	55	Compliant
SR V – provide assistance to other countries’ FT investigations	34, 34.1, 37, 40, 41	Compliant
SR VI – impose AML requirements on alternative remittance systems	45, 46, 46.1, 47, 49, 50, 50.1, 52, 53, 54, 55, 56, 57, 58, 58.1, 59, 60, 61, 62	rated where applicable
SR VII – Strengthen customer identification measures for wire transfers	48, 51	Not rated

Table 12. Summary of Effectiveness of AML/CFT Efforts for Each Heading

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
I—Criminalization of ML and FT	<p>The Netherlands has ratified and implemented all international conventions directly relevant for AML/CFT, except for the Palermo Convention which it expects to ratify shortly. A sound structure is in place for implementation of UN Security Council Resolutions relating to FT through domestic law and practice and directly applicable EU regulations.</p> <p>Criminal ML offenses follow the international standards set forth by the Vienna, Strasbourg and Palermo Conventions. Self-laundering is covered, and legal persons have liability. ML and FT offenses apply to persons who knowingly engage in activities, and for some ML offenses, there is a reasonable suspicion standard. Intent may be inferred. Whether foreign</p>

	<p>crimes may serve as predicate offenses is untested, and is not explicit in Netherlands law although a legislative explanation provides some support. Penalties for ML are low when compared with those in many other jurisdictions and should be reviewed. Although new criminal ML offenses have standards of both knowing and reasonable suspicion, the courts have, at least in some instances, been applying a stricter standard for proof regarding the source of the funds than occurred when ML was charged as a receiving offense and a careful evaluation of case outcomes and developing law under the new provisions should be undertaken.</p> <p>FT is criminalized primarily through provisions on preparation for a crime and participation in a criminal organization with aspects amended or being amended to ensure comprehensive coverage. The Acts of Terrorism Act is expected to make explicit that the provision of support in preparation for a crime or to terrorist organizations or their members falls within the concept of participation. With this, there will be an added measure of clarity that a very wide range of FT activities are subject to criminal sanction.</p> <p><i>Overall, the legal AML and CFT regime of the Netherlands is one of the best in the world, but there are some weak points. The Dutch do not have an <u>in personam</u> bulk currency smuggling offence nor any border currency reporting requirements outside of formal Customs declarations and declarations made to the Military Police. In addition, local police and prosecutors seem to under-utilize the forfeiture provisions, which tend to undermine overall AML enforcement and will adversely affect future CFT efforts.</i></p> <p><i>The current ML provisions do not make it clear that circumstantial evidence should be sufficient to show that property involved in money laundering offence is the proceeds of a predicate offense. Judges are apparently requiring a higher level of proof than was required under the old “fencing” provisions, which is creating a “chilling effect” on the use of the new ML provisions.</i></p> <p><i>Although the potential sentences for money laundering are within European norms, they are still quite low. The ML sentences are also significantly less than what one can receive for similar “serious” fiscal offenses such as counterfeiting currency knowingly distributing counterfeit currency (9 years) (Articles 208 and 209 WtBk v. Sr.) and extortion (9 years) (Article 317 WtBk v. Sr.).</i></p>
II—Confiscation of proceeds of crime or property used to finance terrorism	<p><i>Confiscation is addressed through both property and value based provisions, and applies to economic benefits from any criminal offense. Confiscation applies to proceeds, instrumentalities, laundered property, income or profits derived from the proceeds as well as the value of the proceeds and laundered property. Although regularly imposed, it is not mandatory. A criminal conviction is a pre-requisite to confiscation, but assets and proceeds from conduct other than the offense of conviction may be confiscated. There are specific provisions for the protection of bona fide third parties and adequate provisions for voiding contracts that aim to frustrate the recovery of proceeds. Recent amendments ensure the availability of confiscation for assets an offender transfers to a third party legal entity, and should be effective in addressing judicial precedent shielding such assets.</i></p>

	<p><i>Provisional measures are available including measures to freeze funds of terrorists and those who finance terrorism. Substitute assets are subject to seizure. Although the authorities have found securing assets through issuance of orders of an investigating magistrate or prosecutor adequate thus far, consideration should be given to empowering MOT to order freezing of accounts, subject to subsequent oversight, if delays are encountered in immobilizing assets.</i></p> <p><i>Although authorities indicate no problems have been encountered in tracing proceeds under current provision of law, the Financial Data Requisition Act (Nr. 28353), under consideration in Parliament will provide refinements to the powers to identify and trace and secure customer identification orders, including a mechanism for a quick confirmation on the existence of an account.</i></p> <p><i>The Netherlands may share confiscated assets with other jurisdictions requesting a confiscation and should also ensure it may share in domestic cases where foreign authorities have provided assistance.</i></p> <p><i>The UNSCRs relating to the prevention or suppression of FT have been effectively implemented in the Netherlands through directly applicable EU legislation and regulations under the Sanctions Act, and these provide a sufficient basis for Dutch authorities to freeze funds and other property of terrorists and terrorist organizations. listed by the UN or by individual Governments.</i></p> <p><i>The Netherlands does not have an asset forfeiture fund. It is able to share confiscated assets with another jurisdiction when the confiscation has occurred at foreign request.</i></p> <p><i>The failure to track seizure and forfeiture data by offense type deprives the authorities of data that would otherwise help assess to what extent the laws that combat ML and FT contribute to the forfeiture program and therefore the effectiveness of the Netherlands AML/CFT regime. The availability of training in the area of AF, ML and FT is quite limited. There also is a resistance to the use of AF and ML laws in regional prosecutorial and police units and neither the BOOM, the BLOM nor the MOT, like many national units in the Netherlands have the power to force the issue nor the manpower to handle all the cases not pursued at the local level. All assets forfeited in the Netherlands go into the general treasury. The Netherlands does not have an Asset Forfeiture Fund that could be used to pay for the expenses associated with tracking data, help fund AF, AML, CFT training for both law enforcement and the private sector, defer costs incurred in long-term and complex financial and AF investigations, or support other law enforcement initiatives in the AML and CFT areas.</i></p>
<p>III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels</p>	<p>The Dutch FIU, MOT is an administrative body within the Ministry of Justice which was established in 1994. It receives, analyzes and disseminates ML and FT-related disclosures, and is a member of the Egmont Group It has access to a wide range of public and non-public databases and has full powers to require additional information needed to assess reports.</p> <p>MOT may share information with police authorities, but not all</p>

	<p>information with supervisory authorities. This will be addressed through legislation in early 2004. MOT is authorized to share information with foreign FIUs and does so on a regular basis.</p> <p>Supervisors currently have limited administrative sanctioning powers based on general supervisory powers relating to the integrity of financial institutions Authorities plan amendments that will provide supervisors with the ability to impose fines, penalties and punitive damages specifically for non-compliance with DUTA.</p> <p><i>The MOT's tracking of UTR and STR data is fairly complete and comprehensive, but fails to paint an accurate picture of the utility of such information to law enforcement operations. For example, there are no formal statistics on how many UTRs or STRs actually result in investigations, prosecutions or convictions or even materially assist such ventures.</i></p> <p><i>Post-9/11 the MOT has seen an increase in personnel (about six employees were added), but this increase is not proportionate to the amount of increased data that the MOT has had to analyze since then. The amount of information the MOT has to analyze has increased dramatically, in fact, by as much 300 % over the last three years, while the increases in the number of personnel (and likely funding increases) grew only by about 25 %.</i></p> <p><i>Future UTR reporting will occur on a "risk-based" analysis and will move away from the more rigid listed indicator UTR tests that have been used in the past Considering that reporting institutions in the Netherlands have never been required to make truly discretionary determinations as to whether certain financial conduct is "unusual," or not, the elimination of a purely listed criteria reporting system may result in some over-reporting by large financial institutions which prefer to err on the side of caution, but this hopefully will be off-set by the elimination of the reporting of threshold and other transactions by long-standing legitimate bank customers that has occurred in the past.</i></p>
IV—Law enforcement and prosecution authorities, powers and duties	<p><i>MOT and other law enforcement authorities have adequate powers to require production of records, and investigative techniques are available as needed.</i></p> <p><i>In spite of a comprehensive legal regime and numerous law enforcement units with the authority to prosecute and investigate ML and FT offences there seem to be resource allocation, communication, and structural inefficiency issues on the front lines of the AML/CFT enforcement. This is an inherent characteristic of the Dutch governmental hierarchy, often derogatorily called the "polder" system, in that many government functions are controlled at the local or regional level with little national oversight and lots of duplication of effort at various levels.</i></p> <p><i>At present there are simply too many prosecutorial and police units that have AML, CFT responsibilities, and there is no clear command structure or any coordinated or coherent AML/CFT investigatory or prosecutorial policy mechanism or strategy. There currently is a great level of prosecutorial ML expertise at the national and regional level, but a lack of</i></p>

	<p><i>an ability to coordinate resources. There is a larger willingness to take on ML and FT matters and great resources at the national police and investigatory level, but in terms of numbers of prosecutors there is more prosecutorial manpower in the regional offices. However, the ML and FT experts in national prosecutorial units have no control over or little access to these resources. Somehow the resources of the regional offices must be put under the direct or indirect control of national headquarters entities that have been tasked with AML and CFT responsibilities. This will avoid any needless duplication of effort, and foreclose the potential for competition for resources (and targets) between local and national entities, a problem that exists in other legal systems. Moreover, in most countries, AML and CFT law enforcement policy is set at a national rather than regional level. Such integration of resources should not be too difficult to accomplish, as each major police and prosecutorial region already has prosecutors and investigators that can handle ML and FT cases and it could simply be a matter of restructuring the current command structure and resources and place them under national control.</i></p>
V—International cooperation	<p><i>The Netherlands has a fairly comprehensive set of bilateral and multilateral treaties for providing MLA and extradition in ML and FT cases. In the absence of such treaties, it may neither provide assistance in the nature of coercive measures nor extradite for ML, FT or other offenses. The applicable MLA treaties enable Dutch authorities to provide assistance that involves compulsion, e.g., production of records, search of premises or seizure of evidence. The assistance requested, e.g., the production of bank records, is executed according to domestic law, which provides an adequate basis for securing such records. Mutual assistance is not hampered by bank secrecy as there are no specific bank secrecy provisions in the Netherlands. However, the requirement for a treaty or other agreement in force means that Dutch authorities are not able, on a discretionary basis and in the absence of a treaty, to provide assistance that requires the use of coercive measures, even where there is dual criminality. It would be helpful, as the 1998 FATF report concluded, to have legislation that permits, without obliging, the provision of such assistance in the absence of a treaty on a reciprocal basis.</i></p> <p>Although the extradition of Dutch nationals is prohibited absent an agreement that the national may serve his/her sentence in the Netherlands, Dutch authorities invite a transfer of prosecution in such settings.</p> <p>There have not been recent cases to evaluate the effectiveness of Dutch laws and procedures in the recognition of foreign confiscation or forfeiture judgments. The Dutch confiscation scheme was improved through amendments passed in 2001, and officials have indicated that they should be able to recognize and enforce non-conviction based foreign forfeiture orders such as those from common law countries that have civil forfeiture provisions. A financial investigation would commence and the matter would essentially be translated into the Dutch system for addressing confiscation. While Dutch authorities may undertake only those measures in support of the foreign request that could be taken if they were confiscating or seizing in a domestic case, the wide range of powers and measures in the Dutch system and the fact that the measures are available for all serious crimes means that there should be an ability to assist with most requests.</p>

There are however several potential issues regarding recognition of foreign confiscation orders. First is the question of the extent of any review of the foreign judgment to determine if a similar confiscation would have occurred in the Netherlands (dual confiscability), and the second is a related issue of whether the amount of the foreign judgment is accepted on its face or whether in “translating” the order into the Dutch system, it would under take to alter the sentence (if the order is part of the criminal proceeding) or confiscation into some other amount.

In theory, the Netherlands is in a position to provide a great range of mutual legal assistance in AF, ML, and FT matters. In practice, however, it is unclear how effective this assistance has been and the assistance in forfeiture matters appears to be virtually untested. Because the LURIS tracking system cannot separate out requests for general evidentiary assistance and those that have confiscation or forfeiture components to it, the Netherlands was unable to provide data on the number of requests for assistance they received that had confiscation components to it. The Netherlands can only point to one case in the last three years in which they have shared proceeds of forfeiture efforts with a foreign government. This is an indicator that the Dutch effort to assist other countries in forfeiture matters needs more attention. Moreover, there is great legal uncertainty in the Netherlands about its ability to enforce non-conviction based forfeiture judgments, which is problematic as several important EU partners (the U.K. and Ireland) and other major treaty partners such the United States have such procedures and use them extensively. Nonetheless, the BOOM has developed a theory it is willing to test should a foreign government present the Netherlands with a non-conviction based forfeiture judgment for execution in the Netherlands. Only time will tell if this theory works in practice. There seemed to be a lack of knowledge within the unit of the Ministry of Justice (MOJ) that handles mutual legal assistance requests about the extent the Netherlands could use its domestic forfeiture provisions to assist other nations. Fortunately, the BOOM has assigned a prosecutor to work with the MOJ and that should improve forfeiture assistance by the Netherlands in the future. The reported average response time to foreign requests for information of 40 days is very good and well above the average time most nations take to respond to requests for assistance. The Netherlands optimism about the future effectiveness of EuroJust is admirable, but only time will tell if that model will actually result in faster cross -border mutual legal assistance within the EU. At present, the Netherlands does not keep track of ML MLA requests based upon the type of predicate offense, but the Ministry of Justice indicated that this data could easily be captured and the Netherlands intends to do so.

Even though the Netherlands has recently passed laws that allows it to remove immigrants with terrorist connections more readily, the fact remains that traditionally the enforcement of immigration laws in the Netherlands has been very limited in the past five years. Thus, many illegal immigrants who entered the Netherlands prior to immigration reforms are unlikely to be affected by the new stricter laws. Even though the new immigration laws are on the books, it remains unclear to what extent they have been enforced or whether adequate resources have been dedicated to enforce them.

Legal and Institutional Framework for All Financial Institutions	
<p>I—General framework</p>	<p>Designated authorities have responsibility for AML/CFT and the Ministries of Finance and Justice are actively involved in AML/CFT on both the national and international levels. There are clear lines of responsibility currently for AML/CFT supervision, but with expected change to a single supervisory law and continued existence of several supervisory bodies, there must be clarity for supervisors and industry regarding responsibility for supervising all aspects AML/CFT compliance.</p> <p>Confidentiality is lifted in appropriate circumstances in almost all instances, but sharing by MOT with supervisors needs to be addressed as planned.</p> <p><i>On secrecy protection, although supervisors indicate it is possible to share fully and freely with domestic law enforcement authorities under the gateway provisions of current supervisory laws (as law enforcement concerns also affect the integrity of regulated institutions and sharing for such may occur), law enforcement has not always received the full level of sharing it needs when matters are at early stages of consideration. Changes in legislation are expected that will open this gateway even further.</i></p> <p>Areas of concern in respect of the arrangement for the supervision of the central organization of the cooperative of banks include the effectiveness of the work undertaken by the central organization given available resources and its approach to its oversight function and whether as an organization owned by the member banks it can be considered to have the necessary level of independence from its member banks/owners to conduct such work.</p> <p>The absence of AML/CFT guidance notes for the insurance and securities sector were a weakness in the arrangements at the time of the mission. The issuance of regulations post mission (on January 1, 2004), which include a CDD requirement, is an important step in addressing some of the concerns relating to AML/CFT supervision for insurance and securities firms.</p>
<p>II—Customer identification</p>	<p>Under ISA and a Decree under ISA, all service providers including gatekeepers and professionals must identify customers and persons acting on behalf of customers. There is provision for withholding services if in establishing initial identity there are reasonable doubts, but reliance on general CDD principles for renewals of identity. For legal entities, there must be verification of legal existence and structure, and the person acting on behalf of the entity. Identification must be based upon an official document as a passport, identity card or driver's license. Anonymous accounts and accounts in fictitious names are prohibited and numbered accounts are permitted only with identification and strict procedures.</p> <p>The Netherlands does not yet meet the SR VII requirement on wire transfers.</p> <p>Although the CDD paper addresses a number of issues relevant to establishing an effective AML/CFT regime it was not intended to be used as a detailed guidance note for FIs and heavy reliance on this document creates certain gaps. This is particularly the case in relation to risks that</p>

	<p>are not common to the banking sector.</p> <p>The DNB circular of June 2001 addressing bearer shares relates to instances in which a bank is handling the shares and does not provide guidance to institutions for dealing with corporate customers that issue such shares. The only guidance in this regard comes from CDD which advises that extra care is required in dealing with entities that issue bearer shares. This recommendation is very general and does not offer much in the way guidance on this subject. It is an example of the fact that CDD was not intended to be used as the sole guidance to financial institutions on due diligence issues.</p> <p>The absence of guidance by the AFM and PVK to assist institutions in meeting the requirements of AML/CFT laws and regulations is a weakness and is addressed in part by regulations are issued under the Integrity Decree in January 2004.</p> <p>The lack of clarity in relation to circumstances in which an insurance company is requested to make a payment to a third party is of concern. The authorities have advised that on a post-mission basis action has been taken to address this issue.</p>
<p>III—Ongoing monitoring of accounts and transactions</p>	<p>All unusual transactions must be reported including large transactions with no apparent economic purpose. Regulations are in place or are being put in place to ensure that for each sector findings are kept available regarding transactions considered for disclosure to MOT but not disclosed. General provisions are used to ensure enhanced due diligence by FIs for customers or businesses from jurisdictions with inadequate measures and for specified jurisdictions subject to counter measures, transactions are prohibited. For incoming wire transfers, requirements are not yet in place and will comply with FATF phase in period.</p> <p>Regulators have implemented adequate measures to provide institutions with information on countries with KYC standards that do not meet acceptable standards. Institutions have responded positively by putting systems in place to protect against the related risk.</p>
<p>IV—Record keeping</p>	<p>ISA addresses customer identification records, but not transaction records or account correspondence for which authorities rely on requirements in general law or for transactions that must be disclosed on the obligation to keep records under DUTA. Additional record keeping requirements in an amended or consolidated DUTA/ISA to supplement the current ISA customer identification records requirement would be helpful.</p> <p>Guidance is given to credit institutions via the CDD paper. The general practices of financial institutions in relation to record keeping accord with best practice. While at the time of the mission, there was no guidance in relation to record keeping to insurance and securities firms, the situation has been rectified with CDD paper becoming effective for insurance and security firms.</p>
<p>V—Suspicious transactions reporting</p>	<p>DUTA provides that unusual including suspicious transactions must be reported. For the securities sector, there are specific requirements that there be procedures in place for reporting transactions, and similar requirements were put in place post mission for credit institutions and insurance companies with a requirement for compliance by July 1, 2004.</p>

	<p>The tipping off prohibition applies only to the institution and persons within the institution making the report, but interpretation indicates overall purpose that client not be informed. DUTA amendments should address this.</p> <p>Arrangements for the reporting of suspicious transactions among credit institutions are adequate. Notwithstanding the significantly lower vulnerability of the securities and insurance sectors, very low levels of reporting appear to be, in part, the result of the view that these sectors are virtually immune to AML/CFT.</p> <p>At the time of the mission no guidance in relation to suspicious transaction reporting was provided to insurance and securities firms that was equivalent to that provided by the CDD paper. This situation will be rectified in part in early 2004 when the CDD paper becomes effective for insurance and security firms.</p>
<p>VI—Internal controls, compliance and audit</p>	<p>At the time of the mission a requirement for internal procedures regarding ongoing training is not yet explicit. Internal audits are required in the banking and securities sectors but not specifically noted in laws/regulations for insurance. Institutions are not required to designate compliance officers at the management level responsible for AML/CFT. It would be desirable to establish a requirement that a senior officer carry the specific designation of AML/CFT officer. There appear to be inconsistencies in the importance that FIs attach to providing AML/CFT training for their staff particularly in the insurance sector.</p>
<p>VII—Integrity standards</p>	<p>Policy makers and shareholders are subject to integrity screening. However, senior management not part of the executive board does not generally go through screening by supervisors. Uniform standards apply that ensure a thorough vetting of individuals for fitness and propriety, and the approach adopted by regulators to the assessment of the fitness and propriety of board members is comprehensive. The inability of central organization of the cooperative to benefit from information known to the prosecutor's office in undertaking fit and proper examinations, makes this process potentially less effective than the fit and proper examinations undertaken DNB.</p> <p>Registration and reporting responsibilities are imposed on foundations and associations and there is pending legislation for the supervision of trust offices. There is need for more specific directions to be given to the financial sector in relation to their dealings with these entities.</p>
<p>VIII—Enforcement powers and sanctions</p>	<p>Criminal penalties are available, but the effective lack of administrative sanctions except where violations rise to an egregious level should be and is being addressed.</p>
<p>IX—Co-operation between supervisors and other competent authorities</p>	<p>Supervisors can exchange information with each other, and can cooperate internationally both spontaneously and upon request.</p>

Table 13. Recommended Action Plan to Improve the Legal and Institutional Framework and to Strengthen the Implementation of AML/CFT Measures in Banking, Insurance, and Securities Sectors

Criminal Justice Measures and International Cooperation	Recommended Action
I—Criminalization of ML and FT	<ul style="list-style-type: none"> • Ratify the Palermo Convention, as planned as soon as possible. • Consider whether it would be helpful to make it explicit in Dutch law that foreign crimes may serve as predicate offenses. • Within the next year, undertake an evaluation of case outcomes and developing law under the new criminal ML provision and make any legal adjustments/amendments to the ML criminalization necessary to ensure ML prosecutions are successful. • Consider an increase in the maximum penalty for engaging in ML. • Enact legislation as the Acts of Terrorism Act which makes explicit that provision of monetary support to a terrorist organization constitutes criminal participation. • <i>Enact bulk currency smuggling offences and border currency reporting requirements, on projected common EU standards if possible, rather than waiting for EU consensus on this issue, which may take many years.</i> • <i>Consider legalizing the use of long-term criminal- civil infiltrators for ML and FT investigation under strict control of prosecutors and under strictly followed guidelines.</i> • <i>Consider creating a forfeiture fund and use monies to train law enforcement and police in AF, ML, and FT investigation and prosecutions, to support ongoing stalled forfeiture efforts, and to remit funds back to victims without the need to hire legal private legal counsel and resort to the civil courts for recourse.</i> • <i>Assign forfeiture specialists to every investigation and prosecution of a major financial ML offence and any FT offence.</i> • <i>Permit the Board of Attorney Generaal(het College van Procurers-Generaal) to set realistic national forfeiture guidelines and prosecutorial standards for certain types of delicts, such as ML and FT offences and all economic offences that involve victims.</i> • <i>Make the consideration of forfeiture a mandatory part of</i>

	<p><i>any offence prosecuted that in theory can generate proceeds of more than EUR 10,000 or some other monetary threshold of realizable assets. At the very least the forfeiture option must be considered by the prosecutor, and that prosecutors be required to provide reasons to the BOOM as to why a viable forfeiture was not pursued.</i></p> <ul style="list-style-type: none"> • <i>Clarify the burden of proof in ML cases.</i> • <i>Raise the 6, 4, and 1 year sentences for ML offences by 3, 2, and 1 years respectively, to accurately reflect the serious nature of the ML offence. Consider mandatory minimum sentences for serious or repeat offenders and serious offences from which judges can depart only for good cause shown.</i>
<p>II—Confiscation of proceeds of crime or property used to finance terrorism</p>	<ul style="list-style-type: none"> • Should there be evidence that the current system of freezing transactions through orders issued by the investigating magistrate or prosecutor does not secure assets quickly enough, consideration should be given to empowering MOT to order freezing of accounts, subject to subsequent control by the prosecution. • As planned in the Financial Data Requisition Act under consideration in Parliament, enhance powers to identify and trace and secure customer identification orders. • Ensure that asset sharing can occur in domestic matters when assistance has been provided by foreign authorities. • Make confiscation of criminal proceeds in ML and FT matters mandatory. • <i>BOOM tracking information should include data fields which indicate whether ML or FT offenses form the basis of a seizure or eventual forfeiture.</i> • <i>That a method be developed to capture non-Article 36 forfeiture activity such as Article 33 forfeitures and forfeitures obtained by “transactie” under Article 74.</i> • <i>Require mandatory forfeiture, ML and FT training for all prosecutors and police that handle forfeitable offenses set forth in Article 36 and prosecute or investigate economic offences and pay for this training from a dedicated forfeiture fund.</i>
<p>III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels</p>	<ul style="list-style-type: none"> • As planned, introduce administrative sanction for violations of DUTA. • (See recommendation in section on Confiscation regarding providing MOT ability to secure assets, if needed).

	<ul style="list-style-type: none">• <i>The MOT and the BLOM should investigate ways in which it can better track the use of UTR and STR data in investigations, prosecutions and convictions. However, it is clear that in order to accomplish this goal, either the MOT, the BLOM, and the FP would need more control or more involvement in all ML, FT and financial investigations, or the local police and local prosecutors must be required to track such information and report it to the MOT.</i>• <i>Require all users that have access to the MOT STR database indicate if he or she will use the MOT data obtained to initiate an investigation, complement an ongoing investigation, or simply use it to assist a pending prosecution as part of the logon process into the STR database.</i>• <i>For keeping track of convictions that involve information or evidence generated by MOT data leads (as UTRs and STRs cannot be used as evidence), for every conviction that involves evidence of a financial nature, the police or prosecution should do a “post mortem” and determine whether MOT data was used to aid the investigatory process, and to what extent such information aided the trial of the case (crucial, moderate, incidental, or no effect on conviction or forfeiture) and this information should be reported to the MOT.</i>• <i>Consider assigning more investigators to the MOT and BLOM.</i>
<p>IV—Law enforcement and prosecution authorities, powers and duties</p>	<ul style="list-style-type: none">• <i>Give the national prosecutors in the FP more control over local police and prosecutorial assets in ML and FT investigations.</i>• <i>The Netherlands’ AML/CFT system might benefit from further consolidation of resources within the police and prosecutorial units currently tasked with enforcing AML and CFT laws at national level.</i>• <i>Pass some type of non-conviction based forfeiture procedure to deal with the actual forfeiture of assets seized in HARM and other forfeiture cases that do not result in convictions.</i>• <i>ML and FT investigation and prosecution policy should be controlled and coordinated through a national police and national prosecutorial authorities who specialize in such matters (e.g., FIOD-ECD, NR and FP) and these authorities should be permitted to set national AML and CFT law enforcement goals and policies through the FEC or other multi-agency bodies.</i>

	<ul style="list-style-type: none"> • <i>Dedicated regional investigators and prosecutors should handle the ML and FT matters at the local level, should be answerable to the national units. These persons, as part of the national structure, should be assigned to work in the various police regions on a full-time basis on ML, FT cases in regions that have significant ML, FT and other economic crimes investigatory caseloads.</i> • <i>In addition to setting policy, the national units should supervise the cases handled by the regional units, keep track of relevant ML and FT investigatory and prosecutorial statistical data, set ML and FT policy and handle only the largest and most complex cases that by their nature require a national approach or require a disproportionate amount of resources that would overburden any regional office.</i> • <i>Authorize the use of criminal-civilian infiltrators for serious ML and all FT cases, with strict prosecutorial oversight.</i> • <i>All ML and FT investigations and all uses of STR data to initiate same should be reported by local and national police units to the BLOM.</i> • <i>All ML and FT prosecutions and results thereof must be reported to the FP, including the length of sentence, amount of fine, the amount of the forfeiture, if any, and the suspected predicate offence for the ML offence.</i>
<p>V—International cooperation</p>	<ul style="list-style-type: none"> • Consider permitting mutual legal assistance in the absence of a treaty on a discretionary basis with an assurance of reciprocity. • Monitor the practical effectiveness of the current MLA and confiscation law in permitting recognition of foreign forfeiture and confiscation orders. • <i>Improve mutual legal assistance efforts in confiscation matters, particularly for non-conviction based confiscation efforts by other nations.</i>
<p>Legal and Institutional Framework for Financial Institutions</p>	
<p>I—General framework</p>	<ul style="list-style-type: none"> • Ensure there are clear lines of responsibility for AML/CFT supervision under the Financial Supervision Law (expected by July 2005) and that this is communicated to all industry participants. • Ensure MOT is able to share specific information with supervisors as planned.

	<ul style="list-style-type: none"> • Adopt legislation as planned that makes it explicit that supervisors may share information in support of domestic law enforcement. • Following the issuance of regulations under the Decree of Integrity on January 1 2004, AFM should begin the process of benchmarking the practices of securities firms against the provisions of the CDD paper. DNB should do likewise for insurance companies following its merger with PVK. • The current arrangement with the central organization for the supervision of its member banks on behalf of the DNB should be reviewed as planned in the new Financial Supervision Act to ensure that the DNB's regulatory objectives in relation to AML/CFT are being satisfied. • The authorities should develop comprehensive AML/CFT Guidance Notes relevant to all financial sectors. • Consider merger of DUTA and ISA.
<p>II—Customer identification</p>	<ul style="list-style-type: none"> • Address more specifically as planned a requirement that there be renewal of identity if in the course of a business relationship doubts occur regarding the identity of a client. • At least within the two-year period referred to by FATF, amend relevant laws to require that accurate and meaningful originator information (name, address and account number) on funds transfers remain with the transfer throughout the payment chain. • DNB should provide more specific guidance to licensees on measures that should be adopted to minimize the risk inherent in dealing with bearer shares. Consideration should be given to a requirement for bearer shares to be immobilized. While this is often done in practice it is not required. • DNB should clarify that the CDD guidance related to introduced business is applicable to the practice of outsourced identification as used by some institutions in the Netherlands. • See previous recommendation regarding the development of comprehensive Guidance Notes.
<p>III—Ongoing monitoring of accounts and transactions</p>	<ul style="list-style-type: none"> • Impose an obligation, consistent with SR VII, on FSPs to give enhance scrutiny to wire transfers that do not contain complete originator information and provide guidance that encourages compliance on an immediate basis. • Ensure in all sectors that institutions are required to

	<p>maintain records of transactions considered for reporting but not reported and that these records are available for supervisory review. Authorities indicate that this has been addressed on a post-mission basis.</p> <ul style="list-style-type: none"> • See previous recommendation regarding the development of comprehensive Guidance Notes.
IV—Record keeping	<ul style="list-style-type: none"> • Incorporate specific recordkeeping requirements for account relationship materials (post account opening) and transaction records in the revisions to ISA/DUTA. • See previous recommendation regarding the development of comprehensive Guidance Notes.
V—Suspicious transactions reporting	<ul style="list-style-type: none"> • Expand scope of tipping off prohibition to cover those who come into contact with information regarding the reporting or consideration of a decision to report. • For sectors other than securities consider specific requirements that institutions have procedures in place for reporting transactions and have those communicated to all personnel. On a post-mission basis, authorities adopted a regulation imposing specific requirements with compliance required by July 1, 2004. • See previous recommendation regarding the development of comprehensive Guidance Notes.
VI—Internal controls, compliance and audit	<ul style="list-style-type: none"> • Introduce an explicit requirement for internal procedures regarding ongoing training, as planned. Authorities indicate that on a post mission basis a requirement on training was introduced. • Amend laws/regulations to address an internal audit function for insurance. • Amend laws/regulation to require a management level compliance officer. • Regulators should redouble their efforts to ensure that all financial institutions, particularly within the insurance sector, provide staff with adequate levels of training related to AML/CFT on an on-going basis. • See previous recommendation regarding the development of comprehensive Guidance Notes.
VII—Integrity standards	<ul style="list-style-type: none"> • Extend integrity testing by supervisors in practice to a wider range of senior management outside of the Executive Board.

	<ul style="list-style-type: none"> • Further direction should be given to financial institutions in respect of their dealings with non-profit organizations. This could include information on the characteristics of these types of entities with which financial institutions should be familiar, guidance on the persons who should be subject to due diligence and the type of documents that should be examined. • The working group on non-profits in the Netherlands should come up with reasonable measures to improve the transparency and monitoring of foundations and associations in general as well as with measures to improve the registration, regulation and monitoring of charities. • Consideration should be given to rectifying the deficiency identified in the fit and proper examinations undertaken by the central organization of the cooperative of banks. • See previous recommendation regarding the development of comprehensive Guidance Notes.
VIII—Enforcement powers and sanctions	<ul style="list-style-type: none"> • Introduce administrative sanctions for violations of ISA and DUTA as planned.
IX—Co-operation between supervisors and other competent authorities	
Banking Sector based on Sector-Specific Criteria	
II—Customer identification	
III—On-going monitoring of accounts and transactions	<ul style="list-style-type: none"> • For sectors other than securities consider specific requirements that institutions have procedures in place for reporting transactions and have those communicated to all personnel. On a post-mission basis, authorities adopted a regulation imposing some specific requirements with compliance required by July 1, 2004.
IV—Record keeping	
VI—Internal controls, compliance and audit	<ul style="list-style-type: none"> • Consideration should be given to rectifying the deficiency identified in the fit and proper examinations undertaken by the central organization of the cooperative of banks.
VIII—Enforcement powers and sanctions	
IX—Co-operation between supervisors and other competent authorities	
Insurance Sector based on Sector-Specific Criteria	
II—Customer identification	<ul style="list-style-type: none"> • More specific guidance should be given in relation to instances in which insurance companies are requested to make a payment to a third party. Guidance should require that such parties must be identified.
III—On-going monitoring of accounts and	

transactions	
IV—Record keeping	
V—Suspicious transaction reporting	<ul style="list-style-type: none"> For sectors other than securities consider specific requirements that institutions have procedures in place for reporting transactions and have those communicated to all personnel. On a post-mission basis, authorities adopted a regulation imposing some specific requirements with compliance required by July 1, 2004.
VI—Internal controls, compliance and audit	<ul style="list-style-type: none"> Regulators should redouble their efforts to ensure that all financial institutions, particularly within the insurance sector, provide staff with adequate levels of training related to AML/CFT on an on-going basis.

Authorities’ response to the Detailed Assessment Report

- The Netherlands wishes to thank the members of the IMF assessment team for all the work that had to be done to produce this comprehensive report of high quality. The Netherlands welcomes the general conclusion of the report that the Netherlands complies fully with most of the FATF 40 + 8 Recommendations. This is in line with the outcome of previous self-assessments by the Netherlands for the FATF.
- One of the reasons for the Netherlands to ask the Fund for an assessment was the belief that no self-evaluation can match the thoroughness, open-mindedness and comprehensiveness of an assessment by independent experts. The outcome of this assessment by Fund experts has lived up to this expectation. Many of the recommendations made by the assessment team will be implemented as planned in the course of a revision of the two most important AML laws (DUTA and ISA). Other recommendations have already been implemented since the mission was completed. This relates to new integrity regulations for the banking and insurance sector and to a set of measures to enhance the fight against money laundering and terrorist financing (a.o. the merger of the MOT and the BLOM and close cooperation between the national police and the fiscal investigation authorities on complex money laundering cases).
- For a detailed Authorities’ Response, also on the detailed assessors’ recommendations, the Netherlands wishes to refer to the Authorities’ Response in the “Report on Observance of Standards and Codes — FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism”. Concerning the Detailed Assessment Report, the Netherlands would like to address the following few areas.
- The Dutch Authorities oppose the suggestion in Paragraph 6 that the Netherlands is a major entry point for heroin into Western Europe, and is a significant transit point for heroin, cocaine, hash and cannabis destined for North America. This suggestion is not and cannot be substantiated in any way. See also: World Drug Report 2004 (UNODC) for data on trafficking and smuggling patterns (see for example for cocaine towards the U.S. p. 55) and Global Drug Trends 2003 (UNODC). Both publications are available at

www.unodc.org.

- The use of criminal civilian infiltrators in Dutch law enforcement operations is subject to a parliamentary ban, due to concerns - amongst others- that actions of a criminal infiltrator can scarcely be supervised making it impossible to ascertain whether the criminal infiltrator does not under the cover of a law enforcement operation commit crimes the criminal intended to commit already. It should be noted however that this ban only concerns the use of criminal civilian infiltrators and does not extend to non-criminal civilian infiltrators.

Civilian infiltrators are to be understood as persons, not being investigative personnel, taking part in or assisting a group of persons or a criminal organization which can reasonably be suspected to commit or have committed a criminal offence. The infiltrator cooperates in the criminal activities undercover: it is by no means clear for the criminal group that it is dealing with an infiltrator. This civilian infiltrator is however only to be understood as a 'criminal civilian infiltrator' - to which the prohibition applies - if he or she commits the same types of offences as the organization in which he or she is infiltrating; is involved in or can be associated with the offences committed by the organization in which he or she is infiltrating; and has - in the context of the committed or yet to be committed offences- what can be considered a relevant criminal record. It is important to note that this prohibition on the use of criminal civilian infiltrators by definition only concerns (long term/deep cover) infiltration actions by criminal civilians, taking part in the criminal activities. So the prohibition does not concern for example using criminals in sting operations or buy/sell actions. Furthermore, this prohibition on the use of criminal civilian infiltrator does not provide a significant obstacle for the provision for mutual legal assistance.

Secondly, the Dutch authorities do not concur with the implied conclusion of the assessors that this prohibition forms a serious hindrance in money laundering investigations. There are no indications to assume that criminal civilian infiltrators would significantly further money laundering investigations nor is there ground to assume that they - if their use was not prohibited - would be used to any significant extent in money laundering investigations.

- On the issue of the level of penalties (p.11, p.12, and p.13) the Dutch authorities would like to stress that the serious nature of the crime of money laundering is adequately reflected in the level of the penalties for money laundering offences, also considering that the level concurs with EU and FATF standards in this area. Furthermore, as it is possible under Dutch law to prosecute for multiple offences in conjunction and apply cumulative sentences (up to one and a third of the highest penalty foreseen), the maximum sentence for money laundering offences can be substantively higher. If for example, a money launderer is prosecuted for both participation in a criminal organization and money laundering, the maximum penalty can be as high as 8 years imprisonment. Therefore, the Netherlands see at present no need to further raise the level of penalties, nor does it see reason for adopting a regime of mandatory minimum sentences for serious offences or

repeat offenders, a system that would essentially seriously impinge on the discretion and autonomy of both the public prosecution service and the judiciary.

- The Dutch authorities do not agree with the comments that training of law enforcement and judicial personnel in money laundering, terrorist financing and asset forfeiture is insufficient (p. 16). For that reason, the minister of Justice has recently outlined in a letter to parliament that acquiring and keeping specialised expertise in financial-economic matters up to the required standard within the police forces, public prosecution service and judiciary requires unremittant attention and investments. Since the end of the 1990s the development of financial expertise and application of specialised knowledge and skills in law enforcement has however taken a big leap. While there is always room for improvement – as outlined in the abovementioned letter which make clear that financial investigative techniques should take an even more prominent role in law enforcement in general and not just in investigations of financial-economic crimes – the remarks that training in forfeiture matters is not mandatory (p. 16/19), seems to be available in limited quantities (p. 16/19), not sufficient attention is paid to the importance of adequately investigating cases related to money laundering and financing of terrorism (p. 16/19), are incorrect.
- While the authorities of course agree with the assessors that seizure and forfeiture instruments are useful instruments (pp. 18–20) in the fight against certain types of crime and as such require special attention (as it has outlined in a letter to parliament of June 21, 2004 TK 2003–04, 26268, nr. 6), it is not of the opinion that this warrants such drastic measures as making the confiscation of criminal proceeds in ML and FT matters mandatory. This would not be necessary, as in the Dutch system other financial settlement modalities, such as fines and fiscal claims, have proven to be highly effective. It is left to the discretion of the public prosecution service – also keeping in mind that this discretion of the public prosecution service is one of the central features of the Dutch criminal justice system - to decide whether asset forfeiture or confiscation is possible and most likely to be effective in comparison to other measures that may be taken. In addition it is important to mention that a general instruction of the public prosecutors office (“Aanwijzing ontneming”) asks all prosecutors to investigate and seize criminal proceeds in case of an intended required fine of at least € 500 or criminal proceeds estimated at the moment of seizure € 500 or more.
- The authorities subscribe to the view that the availability of sufficient data is important in order to evaluate the effectiveness of the anti-money laundering and counter-terrorist financing measures. This includes the recommended tracking of seizure and forfeiture data by offense type (p.20), tracking of the use of UTR and STR data in investigations, prosecutions and convictions (p. 28) and reporting the results of and basis for all ML and FT investigations (p.35). In all cases it will have to be considered if the benefit of having these data available outweigh the costs of the personnel requirements and technical readjustments to tracking systems involved. Improvements in this area should be placed in the broader context of ongoing and future harmonization of the registration of

investigative information and improvements to the IT-systems of the police services in general.

- Financing of terrorism cases are already dealt with in the ‘centralised model’ jointly by the LP (national prosecutors office) and the FP (functional prosecutors office), as is recommended (p. 34, p. 35). With the respect to money laundering *policy* the authorities have taken steps to centralize this (as evidenced by the central instruction on money laundering prosecutions by the Board of Procurators-General), with respect to money laundering *investigations* the Netherlands however underline the need to deal with money laundering cases on all different levels of investigation.
- The authorities are of the opinion that it would not be necessary to make it explicit in the written text of the Dutch law that foreign crimes may serve as predicate offences. First of all, there is legal reference that endorses the coverage of foreign crimes to serve as predicate offences. Secondly, in practice there are no problems with respect to this point. Finally, the recommendation that mutual legal assistance should in the absence of a treaty be possible on a discretionary basis with an assurance of reciprocity MLA is endorsed by the authorities, as this is already possible. In the Netherlands, only requests requiring coercive measures need to be treaty based.