

RESULTS OF CONSULTATION

Market participants had an opportunity to respond to the intended changes in the Policy Rule on Fitness 2012 between 15 July and 15 September 2022. DNB and the AFM received eight consultation responses. This feedback statement is a concise, point-by-point presentation of the key points of the responses together with comments from DNB and the AFM on these responses.

#	Subject	Explanatory notes	DNB/AFM comments	Changes
1	Make the changes for pension funds more explicit.	The Federation of the Dutch Pension Funds requests a more explicit account of the changes for pension funds, making it clear not only that pension funds must comply with the new Policy Rule, but – much more importantly – also what the reasons for and	<p>The changes are shown in the track changes document on which the Federation of the Dutch Pension Funds was able to provide input. The application of the Policy Rule to pension funds is contextualised in the preamble and has not been changed.</p> <p>The Policy Rule applies to enterprises as defined in point 1.1 of the Policy Rule. The Policy Rule provides a cross-sectoral framework for assessing suitability. The supervisors thus</p>	No.



		<p>objectives of the changes are. Also, due to the specific nature of pension funds, the Federation of the Dutch Pension Funds believes it would be better if the Policy Rule included more customisation.</p>	<p>ensure a transparent and equal assessment policy. At the same time, the Policy Rule provides proportional scope to address sector-specific discrepancies. For sector-specific implementation, additional explanatory notes are provided where relevant, including on the websites of DNB (Open Book on Supervision) and the AFM. For the pension sector, see, for example, the more detailed guidance with regard to <u>key function holders</u> (in Dutch). The supervisors thus aim to take account of the specific nature of the pension sector.</p>	
2	<p>More detailed explanation of the changes to suitability areas and competences.</p>	<p>The Federation of the Dutch Pension Funds believes the addition of the requirement of 'sight and control of long-term value creation' to the suitability area of management, organisation and communication (part 1.2(1)(A)) should not be part</p>	<p>The 'Management, organisation and communication' area is being tightened up in line with the capacity for change that is nowadays required of policymakers – partly in view of the challenges of climate change and sustainability. DNB and the AFM have provided clarification by means of the addition, as they now state explicitly that long-term value creation is a precondition for bearing effective ultimate responsibility as a director. A policymaker is expected to have sight of what is needed in order to add value and to be able to take steps to</p>	<p>Yes.</p>



		<p>of this suitability area. The supervisors are requested to clarify what long-term value creation this refers to and whether this requirement also applies to pension funds, which, by their very nature, are already focused on the long term.</p> <p>A more detailed explanation, clearly indicating added and changed competences, especially for pension funds, would also be desirable.</p>	<p>achieve it here and now (not merely have a vision of it). Society will also devote increasing attention to the importance of long-term value creation. This is also reflected in the Corporate Governance Code, which was recently updated.¹ This aspect is therefore referred to specifically in part A of the Policy Rule.</p> <p>The competences listed in the annex to the Policy Rule are neither exhaustive nor cumulative. Each competence can apply to any policymaker, depending on the position, collective and type, and the size and risk profile of the enterprise. This is not intended to be a substantive change but a clarification.</p> <p>The AFM and DNB are happy to accept some of the suggestions made and make adjustments to the competencies. The competences have been reviewed and, where necessary,</p>	
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¹ [Corporate Governance Code 2022 | Code | Corporate Governance Code Monitoring Committee \(mccg.nl\)](https://www.mccg.nl)

			tightened up, updated, added or deleted. For example, to better reflect the current social context, some definitions have been changed and some competences have been explicitly cited in the annex. Efforts have been made to provide clarity with regard to socially relevant competences and their definitions. Alignment was also sought with existing standards on competences (in Europe and elsewhere).	
3	Give a clearer explanation of the notion of reasonable cause.	<p>The Federation of the Dutch Pension Funds and Van Hasselt Law request a clearer explanation of the notion of reasonable cause.</p> <p>They draw attention to the framework conditions in the EBA/ESMA Guidelines. They also call for a focus on</p>	<p>On 6 July 2020, the AFM and DNB sent a <u>letter</u> (in Dutch) to the Minister of Finance with regard to the Ronnes motion on reassessment. It describes the structure of the reassessment process.</p> <p>When examining whether there is 'reasonable cause' for reassessment, the supervisor considers various factors. These include the nature and state of the changed facts and circumstances. If there is a supervisory antecedent, its seriousness is taken into account. The facts and circumstances are explained in more detail in the explanatory</p>	No.



		securing fundamental rights and guarantees.	notes to the Policy Rule. Fundamental rights and other relevant safeguards and conditions are taken into account when examining the 'reasonable cause' – and when conducting an assessment or reassessment.	
4	Assessment process and procedures of the AFM and DNB.	<p>Van Hasselt Law requests greater clarity on the assessment process and the procedures of the AFM/DNB. Specifically, the questions are as follows:</p> <ul style="list-style-type: none"> • What lead times should an institution/candidate expect? • What information is included in the file compiled for the 	<p>Not all of Van Hasselt Law's suggestions and questions relate directly to the evaluation of the Policy Rule.</p> <p>The underlying relevant laws and regulations, referred to in the preamble, set the statutory time limits for processing an assessment. These statutory time limits may vary. In the Policy Rule, the AFM and DNB have specified the aspects to be taken into account in a suitability assessment. Neither DNB nor the AFM are authorised to set different time limits independently. The same applies to the information to be supplied as part of an assessment; this can be found in the laws and regulations relevant to the target group.</p>	No.



		<p>assessment, and how can it be inspected?</p> <ul style="list-style-type: none">• What are the criteria for arranging an interview as part of the process in addition to the written documents?• How is the obtained information weighted? For example, the impression gained during an interview versus service record/references?	<p>An assessment interview is not a regular part of the suitability assessment. An assessment interview can add to the picture gained from the supplied file. Other information on the AFM and DNB assessment process can be found on DNB Open Book on Supervision and the AFM website.</p>	
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5	<p>Confidential adviser in an assessment process and the DNB-AFM cooperation panel.</p>	<p>Van Hasselt Law mentions the importance of the work of the confidential adviser (and awareness of this work) and the evaluation of the DNB and AFM cooperation panel.</p>	<p>During the assessment process, candidates can contact two external confidential advisers appointed by DNB and the AFM. The AFM and DNB provide information about this on their websites (DNB link, in Dutch) (AFM link, in Dutch). Candidates invited for an assessment interview also receive individually tailored information. The external confidential advisers report their findings to the DNB Executive Board and the AFM Executive Board every year.</p> <p>Part 1.8 of the Policy Rule refers to the cooperation between the AFM and DNB and establishes the panel consultation that is intended to achieve consistent application of the Policy Rule. The findings of the joint panel have been used in this evaluation of the Policy Rule. In addition to this feedback statement, a summary of the evaluation of the cooperation in the panel consultation has been published, providing feedback on the number and type of cases in which the AFM</p>	<p>No.</p>
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			and DNB have worked intensively together over the past two years.	
6	Consistent approach in the assessment process between DNB and the AFM.	Van Hasselt Law stresses the importance of a consistent approach in the assessment process between DNB and the AFM. According to Van Hasselt Law, an external evaluation such as that previously conducted by the Ottow committee, involving discussions with multiple stakeholders, could provide valuable insights to refine the policy pursued by the AFM and DNB and take appropriate control measures	The Policy Rule is intended to explain the aspects that the AFM and DNB take into account when assessing suitability and ensure that they are applied consistently. Partly in response to the recommendations of the external Ottow evaluation committee (December 2016), the AFM and DNB have endeavoured to make the working processes involved in an assessment as consistent and recognisable as possible. The supervisors provide transparent information on the assessment process and the required preparation on the website (DNB website , AFM website , in Dutch). In terms of content, the AFM and DNB adhere to the legal bases (and the corresponding statutory limits for lead times) as stated in the various national and European laws (see preamble to the Policy Rule) and to the frameworks set out in the Policy Rule.	No.

		to promote a consistent approach.		
7	Expertise and experience of supervisors.	Van Hasselt Law stresses the importance of expertise and experience in the conduct of assessments.	The AFM and DNB endorse this importance and ensure that their staff have sufficient knowledge and experience to carry out the work within their remit.	No.
8	Consistent information provision by DNB and the AFM.	Van Hasselt Law draws attention to the need for consistency in the information provided on the AFM and DNB websites. For example, only the FAQ on the AFM's site currently refer to the existence of a co-policy maker.	The provision of information on both websites is regularly reviewed and checked for consistency. For example, the DNB Open Book on Supervision website shows when there is a co-policy maker (see inter alia Assessments – what and why (dnb.nl) and Assessment of management board members, co-policy makers, supervisory board members and holders of a qualifying holding for crypto service providers (dnb.nl)).	No.
9	Compliance with the Anti-Money Laundering	Van Hasselt Law notes that the increased focus on <i>WWft</i>	The <i>WWft</i> does indeed provide a means of making directors aware of their responsibility with regard to integrity rules	Yes.



	and Anti-Terrorist Financing Act (WWft).	compliance and the impact on society is a useful means of making directors (and prospective directors) more aware of their collective and individual responsibility to counter excesses that have a social impact in the form of de-risking and unrestrained sharing of customer data.	(including de-risking and risks involved in sharing customer data). Directors must demonstrate their fitness to provide sound and ethical operational management, including careful treatment of customers, risk management and compliance with laws and regulations. The AFM and DNB have also further explained in the explanatory notes to the Policy Rule that under the <i>WWft</i> , within the collective of day-to-day (and other) policymakers, a policymaker is responsible for complying with the requirements arising from the <i>WWft</i> .	
10	Personal data protection.	Van Hasselt Law comments that it is important not to lose sight of the fundamental right to protection of personal data.	The AFM and DNB are happy to note this comment.	No.
11	Make diversity a more integral part of the assessment framework.	Montae & Partners believes that the Policy Rule put out to consultation should devote more attention to diversity, in	The AFM and DNB encourage diversity in the collective. Diversity ensures a broad view and different perspectives. The explanatory notes to the Policy Rule therefore devote a lot of attention to diversity in the collective. Diversity in this	No.



		line with the current spirit of the times and the observations of the monitoring committee. This applies in any event at the level of collective expertise.	regard goes beyond gender. Differences in knowledge, experience, age and professional and geographic background can also contribute positively to the governance of an enterprise as a whole. The supervisor therefore explicitly takes these diversity elements into account in its assessment process. The explanatory notes have also been updated to take account of recent developments in laws and regulations on diversity.	
12	Include members of stakeholder bodies and governance models.	Montae & Partners calls for consideration of the way in which the supervisor assesses the suitability requirements for members of a stakeholder body. This could include clarification of the way in which the required time commitment is assessed for such co-policymakers, partly	The variables are always considered in an assessment: the nature, role and function and the size and risk profile of the enterprise are taken into account as well as composition and functioning of the collective. With regard to the time commitment, as assessment is made of the prospective role and this is taken into account in the judgement. The candidate must have sufficient time for the intended role. Members of a stakeholder body and liquidators are both subject to the requirements set out in the Policy Rule, and the specific features of the role are taken into account in the suitability	No.



		<p>because they do not fall within the scope of Article 35a of the Decree implementing the Pensions Act and the Mandatory Occupational Pension Scheme Act. The same could be considered in the case of liquidators, although that is by definition a temporary role. In this regard, Montae & Partners requests that a distinction be drawn between directors in a parity model and executive and non-executive directors in other models.</p>	<p>assessment, part of which concerns the time commitment (part E). The Policy Rule thus provides for the requested distinction between the different models.</p>	
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13	Make change management a more integral part of the assessment framework.	Montae & Partners asks whether, given the major changes that lie ahead for the sector, it would not be better to focus more prominently on change management or 'adaptability'.	<p>The competences listed in the annex to the Policy Rule are neither exhaustive nor cumulative. The 'adaptability' competence refers to the policymaker's handling of significant and far-reaching processes that lie ahead in one specific sector, or in general. The supervisors believe this is sufficient to ensure that attention is devoted to the ability to deal with changes, such as the new Pensions Act.</p> <p>The addition of ensuring 'long-term value creation' in part A of the Policy Rule also contributes to this.</p>	No.
14	Scope of the Policy Rule.	The Dutch Banking Association asks why, in the proposed amendment to the Policy Rule, the supervisors stated that the ECB is 'in principle' not bound by the Policy Rule? What is the effect of this addition of 'in	<p>The ECB directly supervises Dutch significant banks and has exclusive competence to take the decisions based on the assessments. In conducting the assessments, the ECB applies relevant Union law as implemented in national legislation.</p> <p>However, the ECB is not unconditionally bound by the Policy Rule on Fitness; after all, a governing body can only adopt Policy Rules within its own powers, and the Policy Rules are only binding on the governing body that drew them up. When</p>	No.



		principle'? Which specific parts of the national Policy Rule is the ECB actually bound by, and under what circumstances?	the assessment competence was transferred to the ECB, the corresponding policy space went with it. If the ECB policy had deviated significantly from the policy conducted in the Netherlands up until that time, a transition period might be appropriate, for reasons of legal certainty, for example. However, this is not the case at present.	
15	Certified mutual insurance societies.	The Dutch Association of Insurers points out that 'certified mutual insurance societies' disappeared from the Dutch financial sector on 1 January 2016.	It is true that there are no longer any 'certified mutual insurance societies' operating in the Netherlands. These went on to operate as SII, SII-basic or exempt insurers with the introduction of Solvency II. DNB has accepted the suggestion and removed 'certified mutual insurance society' from the amended Policy Rule.	Yes.
16	Sufficiently independent members in the management body in its supervisory function.	The Association of Proprietary Traders comments that an amended internal reference (in part 2.2.1.5, the reference to 2.4.1 has been changed to 2.2.1.1)	Partly as a result of this consultation response, the AFM and DNB have concluded that the implementation of the amended EBA/ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders of banks and investment firms was incomplete. Since it has already been explicitly stated in the explanatory notes that	Yes.



		<p>makes it look as though it is a requirement to have already worked for a listed company or investment firm before being eligible for appointment as a member of the supervisory body of a listed investment firm, and it states that it does not believe this necessary or desirable.</p>	<p>the AFM and DNB apply the EBA/ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders of banks and investment firms when conducting assessments, the fifth paragraph of this article is redundant. This article has therefore been deleted.</p>	
17	Knowledge of ICT risk management.	<p>The Association of Proprietary Traders comments that the explanatory notes on the detailed requirements imposed on the management bodies of enterprises under DORA make it seem as if</p>	<p>We previously thought it would be useful to indicate in advance what the implications of DORA would be for the suitability requirements once DORA becomes applicable. Partly as a result of this consultation response, the AFM and DNB have come to the view that it is preferable not to refer to DORA yet until the rules are in force. DNB and the AFM have therefore decided to remove the references to DORA from the Policy Rule and the explanatory</p>	Yes.



		<p>every member of the board of a financial enterprise covered by DORA must be an ICT expert. It believes that this is disproportionate and detracts from the principle of a collegiate board where different areas of expertise come together. APT suggests making it explicit that there must be sufficient relevant knowledge and experience in the collective with regard to ICT risk management.</p>	<p>notes. Knowledge of ICT risk management among policymakers is nevertheless increasingly essential. For that reason, risk control and mitigation in the field of ICT (and ICT outsourcing) are indeed mentioned as relevant subjects under knowledge of sound and ethical operational management. Advisers and brokers (including reinsurance brokers) are not assessed for their knowledge of sound and ethical operational management, but they may fall within the scope of DORA. If an adviser or broker (including a reinsurance broker) falls within the scope of DORA, this may be a reasonable cause for the AFM to assess suitability by reference to the requirements of part 1.2.1.</p>	
18	Demonstrating suitability with a	<p>Adfiz states its opposition to the change whereby a policymaker no longer meets the suitability requirement if</p>	<p>The knowledge gained from relevant higher vocational (HBO or HBO+) programmes assumes a minimum level of knowledge and intellectual ability but usually barely covers the practice of financial services. The additional requirement</p>	Yes.



	<p>relevant higher vocational certificate.</p>	<p>they have a higher vocational certificate from an educational programme relevant to the enterprise.</p>	<p>of work experience in financial services as well as the higher vocational (HBO or HBO+) certificate, combined with acquired knowledge, thus ensures important competences, skills and professional conduct relevant to the independent management of a financial enterprise. The AFM and DNB do not wish to disproportionately limit the inflow of new independent advisers and have therefore decided not to remove the ability to demonstrate suitability by means of a relevant higher vocational (HBO or HBO+) certificate, but to leave it in place on condition that, in addition to the relevant higher vocational (HBO or HBO+) certificate, one year of relevant work experience has been acquired in the past 10 years. Such work experience may also have been acquired during studies on an internship at a relevant company (such as a financial service provider).</p>	
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19	Deviation from terms originating in general legal provisions.	An anonymous respondent considers that terms used in a Policy Rule must not deviate from terms used in a general legal provision implemented inter alia by the Policy Rule.	That is correct. The AFM and DNB do not deviate from legal provisions, but sometimes use generic terms in the Policy Rule for ease of understanding or readability.	No.
20	Change the definition of 'collective'.	An anonymous respondent states they do not fully understand the change in the definition of 'collective'.	The definition of collective has been supplemented so that it matches the relevant legal provisions. These legal provisions almost always refer to day-to-day policymakers and members of the supervisory body. This is not a new requirement, but a clarification.	No.
21	Introduction of new term 'competences'.	An anonymous respondent comments that a new term 'competences' has been introduced in part 1:1 and that this appears to overlap with the existing concept of suitability in part 1.2.	The inclusion of a definition of competences in the Policy Rule establishes a link between the content of the Policy Rule and the competences in the annex. Competences are skills, qualities and attitudinal aspects. Suitability consists of knowledge, skills and professional conduct and is evidenced by education, work experience and competences. Therefore, a policymaker needs more than skills alone to demonstrate	No.



			suitability. It is a combination of knowledge, skills and professional conduct. Suitability is demonstrated by education, work experience and competences.	
22	Alignment with suitability matrix.	An anonymous respondent comments that the breakdown in part 1.2 does not seem to match the suitability matrix in the annexes.	<p>The content of the suitability matrix depends on the group into which the enterprise falls. Enterprises in group A complete a different suitability matrix than enterprises in groups B and C. The suitability matrices reflect what the enterprise is required to demonstrate in the initial assessment. For example, the suitability matrix for an investment firm includes a question on managerial and hierarchical leadership experience, general and specific professional knowledge and suitability with regard to sound and ethical operational management, plus independence and sufficient time (if applicable).</p> <p>The breakdown in part 1.2 is requested in the suitability matrix for enterprises in group A and if there is reasonable cause to assess the policymaker by reference to the requirements of part 1.2.1.</p>	No.



23	Assessment times.	An anonymous respondent comments that it could be inferred from part 1.5(b) that it is possible to take office as a policymaker and only to be assessed thereafter, and suggests stating more explicitly that this concerns new assessments (of persons already assessed).	The supervisor always assesses the suitability of a policymaker before they take office. After the policymaker takes office, their suitability may be reassessed if there is reasonable cause. This has been clarified in part 1.5.	Yes.
24	Overlap with EBA-ESMA Guidelines.	With regard to the competences annex, an anonymous respondent comments that parts of it appear to overlap with and/or deviate from Annex II ('skills') of the Joint ESMA and EBA Guidelines on the	The Policy Rule on Fitness 2012 was amended on 15 January 2020, partly in response to the entry into force of the EBA/ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders of banks and investment firms. The requirements in these guidelines have been incorporated in the Policy Rule on Fitness. The relationship with the EBA-ESMA Guidelines has been clarified in the explanatory notes to the Policy Rule.	Yes.



		assessment of the suitability of members of the management body and key function holders, and suggests that the annex be disapplied for 'supervised institutions' already covered by the EBA Guidelines.		
25	Standards appear to refer to trustworthiness rather than suitability.	An anonymous respondent comments that in the overview of the legal provisions containing the suitability standards, some newly added standards appear to refer to trustworthiness rather than suitability.	The newly added standards all concern provisions in regulations. In the cited regulations, the standards of trustworthiness and suitability are in the same articles. Suitability is described differently in these regulations, namely as 'sufficiently experienced', 'possessing sufficient knowledge, skills and experience' and 'consisting of suitable members'.	No.



26	Unclear explanatory note on group B.	An anonymous respondent considers that the explanatory note in the grid on group B is unclear.	<p>Part 1.2.1 sets out the basic standard for suitability: 'Suitability consists of knowledge, skills and professional conduct. A policymaker's suitability should at least be clear from their education, experience, competences and ongoing professional conduct.' In the case of group B, this standard is met when the policymaker takes office by demonstrating that the policymakers meet the requirements of sections 1 and 2 of Chapter 2. Chapter 2, section 1 lists the general suitability requirements upon taking office for groups B and C and section 2 lists the specific suitability requirements upon taking office for group B.</p> <p>If there is reasonable cause, suitability will be assessed by reference to the requirements of part 1.2.1.</p>	No.
27	Knowledge of ICT risk management.	An anonymous respondent questions whether the management body should also have sufficient	<p>Management of ICT risks is listed in the Policy Rule under the relevant area of 'sound and ethical operational management'.</p> <p>In the explanatory notes on this area, IT and digital resilience have been added as part of suitability, with an explanation</p>	Yes.



		<p>knowledge of ICT risk management.</p>	<p>being given of the management body's implementation of IT risk management.</p> <p>Advisers and brokers (including reinsurance brokers) are not assessed for their knowledge of sound and ethical operational management, but they may fall within the scope of DORA. If an adviser or broker (including a reinsurance broker) falls within the scope of DORA, this may be a reasonable cause for the AFM to assess suitability by reference to the requirements of part 1.2.1.</p>	
28	<p>Reference to DORA is premature.</p>	<p>An anonymous respondent considers it premature to refer to DORA in the Policy Rule now, as DORA is not yet in force.</p>	<p>We previously thought it would be useful to indicate in advance what the implications of DORA would be for the suitability requirements once DORA comes into force. Partly as a result of this consultation response, the AFM and DNB have come to the view that it is preferable not to refer to DORA yet until the rules are in force.</p>	<p>Yes.</p>

		<p>The AFM and DNB have therefore decided to remove the references to DORA from the Policy Rule and the explanatory notes. Knowledge of ICT risk management among policymakers for a group of enterprises is nevertheless increasingly essential. For that reason, risk control and mitigation in the field of ICT (and ICT outsourcing) are indeed mentioned as relevant subjects under knowledge of sound and ethical operational management.</p>	
29	<p>EuSEF regulation.</p>	<p>In addition to the amendment to the suitability assessment for policymakers of a qualifying venture capital fund that was the subject of a previous consultation, as referred to in Article 3 opening words and (a) of the EuVECA Regulation, following the consultation the qualifying social entrepreneurship fund as referred to in Article 3 opening words and (a) of the EuSEF Regulation has also been added to the Policy Rule on Fitness. The policymakers of these funds are already assessed by the AFM on the basis of the EuSEF Regulation, but these assessments were erroneously omitted from the version of the Policy Rule on Fitness put out to consultation. The addition in the Policy Rule on Fitness makes clear that the AFM also assesses the suitability of policymakers of qualifying social entrepreneurship funds as referred to in Article 3 opening words and (a) of the EuSEF Regulation. Although the amendment was not put out to consultation, the requirement of having</p>	



		<p>suitable policymakers already followed from the EuSEF Regulation, which was put out to consultation. Furthermore, this is not a change to the existing practice, but the recording of it in the Policy Rule.</p>
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