

Feedback statement processing consultation responses "Interpretation of Wta Sections 16 and 16b"

In short - The Dutch Authority for the Financial Markets (AFM) held a consultation on a draft Interpretation of Sections 16 and 16b of the Wta from 20 January to 3 March 2026. The AFM received 14 responses to the consultation. In this feedback statement, the AFM explains how the responses to the consultation were incorporated in the final interpretation. The final interpretation has been published on the AFM's website.

The interpretation (Interpretation) provides further guidance on the principles enshrined in Sections 16 and 16b of the Dutch Audit Firms Supervision Act (Wta). Audit firms must comply with the legal requirements, including when admitting external investors.

This document has been drafted in the Dutch language and translated into English. In the event of inconsistency or discrepancy between the Dutch version and the English version of this publication, the Dutch version shall prevail.

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1. Introduction

On 20 January 2026, the Dutch Authority for the Financial Markets (AFM) invited market participants to respond to the draft Interpretation of Sections 16 and 16b of the Wta. The consultation was open until 3 March 2026. The AFM received 14 responses. These responses have enabled the AFM to clarify the Interpretation and associated explanatory notes. The AFM would therefore like to express its sincere thanks to the parties that responded to the Interpretation.

In this feedback statement, the AFM explains how the responses to the consultation have been incorporated in the Interpretation. The responses are not addressed individually but have been categorised under the following topics:

1. Overarching topics;
2. All executive board decisions fall under day-to-day policy;
3. Voting rights;
4. Measures to protect the investment; and
5. Examples and explanations of terms.

For each topic, a brief description of the response(s) received is provided, followed by an answer to the response(s) and a detailed explanation.

Next steps

The final 'Interpretation of Wta Sections 16 and 16b' was published on the AFM website in June 2026 simultaneously with the publication of this feedback statement.

2. Overarching topics

The AFM received a number of consultation responses expressing support for the intended clarification concerning the practical application of the majority requirements in Sections 16 and 16b of the Wta. Some of those responses also raised concerns about certain aspects of the Interpretation, stating that some matters were not sufficiently nuanced or their impact was too far-reaching. Two responses requested that no interpretation should be issued and that any shortcomings should be addressed at the European level. In addition, two responses called for attention to be paid to actual conduct as well as the formal structure of an audit firm.

Interpretation provides the AFM's explanation

In an interpretation, the AFM makes clear how it interprets and applies a requirement in its supervision, thereby contributing to clarity and predictability for the market. The fact that the AFM issues an interpretation of a requirement is a logical consequence of the use of open norms in legislation and regulations. Financial supervision legislation includes many open norms, and the limits inherent in such requirements must be determined in part on the basis of the context in which they are applied. By issuing an interpretation, the supervisory authority sets out the approach that it advocates. It is possible that the approach advocated by the supervisory authority will be tested in court.

The requirements to which this Interpretation relates are addressed to the audit firm. It is therefore ultimately up to the audit firm itself to determine how it will implement and intends to comply with the requirements in question. This Interpretation will help audit firms to take account of the AFM's explanation regarding the majority requirements in Sections 16 and 16b of the Wta. The AFM will indicate when it believes the requirements have been breached and possible action from the AFM can be expected. Hence, this Interpretation does not set requirements but is intended to clarify how the AFM interprets and applies the relevant requirements in its supervision.

It is ultimately up to the courts to issue final rulings on how requirements should be applied from a legal perspective.

One consultation response rightly pointed out that Sections 16 and 16b of the Wta apply to all audit firms, regardless of the financing method or ownership structure involved. The reason for this Interpretation is the increase in the number of audit firms admitting external investors. It nevertheless applies to all audit firms.

Material structure and actual behaviour

The formal structure informs the decision-making processes of voting rights holders and policy makers. At the same time, the AFM understands that the actual decision-making process is partly influenced by the material structure, including behavioural and cultural elements and informal relationships. These factors may influence the way in which formal powers are exercised in practice and hence the way in which Auditors exert decisive influence (as defined in the Interpretation). This material structure must also not undermine the principles enshrined in Sections 16 and 16b of the Wta. To make this clear, the Interpretation has been expanded to include an example on this point.

3. All executive board decisions fall under day-to-day policy

A number of organisations stated that the term ‘day-to-day policy’ should not be interpreted too broadly. They argued that not all decisions in an audit firm impact the firm’s quality policy, the autonomy of its professional practice or compliance with professional rules and codes of conduct.

Day-to-day policy

In short, Section 16 of the Wta states that the audit firm’s day-to-day policy must be determined in majority by auditors. The term ‘day-to-day policy’ is the implementation of Article 3(4)(c) of the Audit Directive¹, which refers to: ‘the members of the administrative or management body of the entity’. The executive directors of the audit firm are normally the persons who determine the policy. The determination of policy concerns policy and decision-making focused on the undertaking’s long-term strategy. This also includes determining the day-to-day policy, policy making and decision making focused on the actual day-to-day operation of the business.² Section 16 of the Wta and the Audit Directive draw no distinction between policy areas or specific topics within the organisation, such as compliance with professional rules and codes of conduct. The AFM therefore believes that the term ‘day-to-day policy’ in the Interpretation has been interpreted in accordance with the legislation and regulations.

¹ Directive 2006/43/EC.

² Parliamentary Papers II 2004/05, 29 708, no. 10, p. 239.

4. Voting rights

Various organisations called for attention to be paid to the principle that, in the exercise of voting rights, auditors must have decisive influence in an audit firm. The interpretation of the term 'voting rights' may depend on the legal form of the audit firm, but it should not be interpreted as 'influence' or 'control'; that is also to avoid conflict with Dutch company law and different interpretations by local supervisory authorities in other EU Member States.

Not tailored to one or more specific legal forms

Neither the Audit Directive nor Section 16b of the Wta is tailored to one or more specific legal forms; they apply to audit firms of whatever legal form. With regard to these audit firms – in whatever legal form – Article 3(4)(b) of the Audit Directive states that a majority of the entity's voting rights must be held – in short – by Auditors. This article was implemented in Section 16b of the Wta.

Explanation of parliamentary history

It is noted in the parliamentary history that, given the wording of the directive, "The wish to replace 'voting right' with 'control' and state that voting rights may be held 'directly or indirectly' in Section 16a of the Wta (AFM: now Section 16b), which sets rules governing the types of persons who may have voting rights in an audit firm, has not been fulfilled."³ This explanatory note shows that the legislature wished to align the terminology with that of the Audit Directive. It cannot be inferred from this that there is no relationship between voting rights and 'influence' or 'control'.

Voting rights and decisive influence

Different legal forms have different bodies in which interested parties are granted voting rights in order to exert influence on decision-making. For example, shareholders generally have the right to vote at the shareholders' meeting, members of an association have the right to vote at the members' meeting and partners have influence in a partnership (whether or not in a formal meeting of partners). The common factor is the influence that can be exerted in those bodies. In the case of an audit firm, the majority of voting rights (influence) in that body must be held by auditors, and Auditors must consequently have decisive influence. The AFM sees no conflict with Dutch company law in this regard. Furthermore, the AFM has no indications that the way in which local supervisory authorities in other EU Member States interpret the voting right requirement precludes this Interpretation.

Auditors' formal and material decisive influence

There is inconsistency between this principle and the fact that, although Auditors formally hold the majority of voting rights, the material structure prevents them from exercising that majority and therefore means they no longer have decisive influence. In other words: structures that result in Auditors being unable to block or sanction decisions in the decision-making body – despite having voted for or against them by a majority – are not permitted, save for the exceptions stated in the Interpretation.

³Parliamentary Papers II 2007/08, 31 270, no. 3, p. 8 (Explanatory Memorandum).

5. Measures to protect the investment

One organisation stated that the measures to protect the investment were presented as exhaustive, but that there is no basis for assuming an exhaustive list. In addition, various organisations stated that in practice there are more approval rights/qualified majorities that can also be regarded as basic measures to protect the investment. The current limited list is usual in the case of small minority interests because in those cases protection is offered only against dilution of the interest or the reduction of the rights of a shareholder. Generally, however, there are larger interests which, given the materiality of the investment, also justify some protection of the investment itself. More extensive protection does not directly affect the day-to-day policy of the audit firm.

Background to allowing exceptions

In the interest of auditors' independence and professional competence (quality), the European legislature has deemed it necessary for auditors to be able to exert decisive influence within the audit firm. However, the European legislature has not chosen to exclude investments by parties other than auditors. The AFM understands that it is too risky for third parties wishing to invest in an audit firm if the investment cannot be protected to some extent. Against this background, scope must be provided for basic measures to protect the investment. Since this concerns an exception permitted by the AFM to the principle enshrined in Sections 16 and 16b of the Wta that Auditors must have a decisive influence in the audit firm in the exercise of voting rights and the determination of day-to-day policy, a limited and exhaustive list is used. It is also important to prevent any impediment to the proper supervision of compliance with Sections 16 and 16b of the Wta.

Investing in an undertaking with a core public function

When considering the question of what basic measures are permitted to protect an investment in an audit firm, it is important not to treat it as an investment in an 'ordinary' undertaking. Since the undertaking concerned is one to which a licence has been granted for the exercise of a core public function – providing certainty for society by issuing opinions on the fairness of presented financial information – the European legislature has deemed it necessary to limit the role of non-Auditors in the undertaking. That is a known fact when investing in such an undertaking.

The basic protective measures that an investor in an 'ordinary' undertaking would wish to have available cannot be equated with basic protective measures that may be permitted as exceptions to the principles enshrined in Sections 16 and 16b of the Wta. The exceptions included by the AFM concern basic measures relating to the existential status of the undertaking: decisions that affect the most fundamental continuity and identity of the undertaking. In addition, there is a significant area in which, given the decisive influence of the Auditors, the investor must rely on well-considered decisions by Auditors (possibly supplemented by the powers of an independent body) when making an investment. The AFM is aware that this is an unusual context for investors, who are not bound by the rules of conduct and professional practice for Auditors. It is indeed unusual, since the investment is in an undertaking with a core public function.

Reconsideration of permitted exceptions

The consultation responses, which include various examples of approval rights that should be added to section 4.9 of the Interpretation, have prompted the AFM to reconsider the exceptions included. In order to preserve the decisive influence of Auditors, it is important to ensure that the exempted approval rights and qualified majorities apply only to the aforementioned existential status of the undertaking. Partly on the basis of suggestions in the consultation responses, the list of permitted approval rights has therefore been expanded to include decisions to change the nature of the organisation as an audit firm, applications for suspensions of payments and decisions to discontinue the activities of the audit firm. One of the exceptions, namely allowing other shareholders in the audit firm, does not pertain to the existential status of the audit firm but lies in the area of control. This has been withdrawn. In that area – except for the possibilities mentioned in section 4.5 of the Interpretation – it is necessary to rely on trust in well-considered decisions by Auditors. Auditors can be held liable under disciplinary law for their performance in that capacity, whereas third parties cannot. The suggestions in the consultation responses that do not relate to the existential status of the audit firm have therefore not been included. The area is clearly demarcated, but the AFM understands that this does not satisfy suggestions that the basic investment protection measures be expanded.

Approval rights for independent body or person

As indicated in section 4.5 of the Interpretation, approval rights regarding decisions other than those listed in section 4.9 may be granted to (i) the internal supervisory body when an audit firm has a system of independent internal supervision established in accordance with the requirements of Section 22a of the Wta and (ii) persons who, or other bodies whose members, meet the same independence requirements as those applicable to members of the mandatory internal supervisory body. The approval right is thus granted to persons/bodies independent of both the audit firm and the investor.

6. Examples and explanation of terms

Around a third of the consultation responses included comments on the examples, including the comment that the examples are complex or relate to special situations. It was also commented that one example was a detailed explanation rather than an illustrative example. It was further suggested that more examples be included. Finally, three consultation responses called for a more detailed explanation of terms and concepts or alignment with standard terminology.

Examples

Following the consultation responses, the AFM has simplified the examples and, where possible, made them more generic, to convey them more clearly as illustrations. The example considered more of a detailed explanation has been deleted. The number of examples has been increased.

Explanation of terms

Change from ‘professional and conduct obligation’ to ‘rules of conduct and professional practice’

One organisation advises changing ‘professional and conduct obligation’ to ‘rules of conduct and professional practice’. This has been amended in the Interpretation.

‘Auditors’

One consultation response comments that the word ‘auditors’ leads to confusion with regard to professional competence. In the Interpretation, the term ‘Auditors’ is used for the three types of voting rights holders, with one of these three types being a natural person who complies with the rules on professional competence (Section 16b(c) Wta). For the sake of clarity, the term ‘Auditors’ is shown in bold in the Interpretation.

No detailed explanation of ‘equivalent’

One consultation response requests a more detailed explanation of what is meant by the term ‘equivalent’ in Sections 16 and 16b of the Wta. This concerns rules that are ‘equivalent’ to existing or potential rules on the professional competence of external auditors. However, this falls outside the scope of this Interpretation.

Requirements for policy makers and Section 17 of the Wta

Another organisation believes a more detailed explanation should be given of the three requirements for policy makers, namely professional competence, fitness and properness, and that Section 17 of the Wta should be included in the Interpretation. However, the relevant requirements for policy makers are not part of this Interpretation. Furthermore, the AFM does not see any immediate ambiguities or points of contention regarding Section 17 of the Wta. It therefore sees no need for a more detailed explanation of the three requirements for policy makers or for further consideration of Section 17 of the Wta. Section 17 of the Wta has nevertheless been added in Chapter 6 (Legal framework).