

Disclaimer

This is an English translation of the original Dutch text, furnished for convenience only. In case of any conflict between this translation and the original text, the latter will prevail.

Legal framework: notification letters financial reporting

Listed below you will find some relevant sections of the legal framework (1 July 2021). The latest information can be found on <https://wetten.overheid.nl/> albeit in the Dutch language.

Wet toezicht financiële verslaggeving (Financial Reporting Supervision Act, hereinafter *Wtfv*)¹

Section 1

In this Act and the provisions ensuing from this Act, unless otherwise stipulated, the following terms will have the following meaning:

- a. [...]
- b. issuer of securities (hereinafter issuer): an issuer as referred to in Section 1:1 of the *Wet op het financieel toezicht* (Financial Supervision Act, hereinafter *Wft*)² of which the Netherlands is the home Member State as referred to in Section 5:25a(c) of this Act:
 - 1. with a registered office in the Netherlands in accordance with its articles of association, the securities of which are admitted to trading on a regulated market, as referred to in Section 1:1 of the *Wft* or to trading on a system comparable with a regulated market from a state which is not a Member State as referred to in Section 1:1 of the *Wft* which is located or operates in a state which is not a Member State of the European Union;
 - 2. with a registered office in accordance with its articles of association in another Member State or a state that is not a Member State, the securities of which are admitted to trading on a regulated market as referred to in Section 1:1 of the *Wft*;
- c. [...]
- d. financial reporting:

1 Originally translated as the 'Act on the Supervision of Financial Reporting' on the Ministry of Finance website.

2 Originally translated as the 'Act on Financial Supervision' on the Ministry of Finance website.

1. the annual accounts or financial statements adopted as referred to in Section 361 of Book 2 of the Dutch Civil Code;
2. the management report as referred to in Section 391 of Book 2 of the Dutch Civil Code;
3. the data that are added to the annual accounts and the management report pursuant to Section 392 of Book 2 of the Dutch Civil Code;
4. if the issuer has its registered office in another Member State, the financial statements drawn up and made generally available in accordance with Section 5:25c(1) and (4) of the Wft and the management report drawn up and made generally available in accordance with Section 5:25c(1) and (4) of the Wft;
5. if the issuer has its registered office in a state that is not a Member State, the financial statements and management report drawn up and made generally available in accordance with Section 5:25c (1) and (5) of the Wft or the annual financial reporting made generally available in accordance with Section 5:25c (1) in conjunction with Section 5:25v (1);
6. the declarations made generally available in relation to the financial statements and the management report, as referred to in Section 5:25c (2)(c) of the Wft; and
7. the semi-annual accounts made generally available, the semi-annual management report made generally available, and the statements made generally available, as referred to in Section 5:25d of the Wft, or the semi-annual financial reporting made generally available under Section 5:25d (1) in conjunction with Section 5:25v (1);
8. the prepared management report on payments made to governments, as referred to in Section 5:25e of the Wft or in Section 392a of Book 2 of the Dutch Civil Code.

[...]

Section 2

1. Under the Wftv, the Authority for the Financial Markets (hereinafter AFM) may request an issuer to provide a further explanation concerning the application of the regulations of Section 3 of the IAS Regulation, Title 9 of Book 2 of the Dutch Civil Code or Sections 5:25c (2), (4) or (5), 5:25d (2) or (4) to (10), 5:25e, 5:25v (1), or 5:25w of the Wft. This further explanation must be provided within a reasonable deadline to be set by the AFM.

2. The AFM must maintain confidentiality with regard to the request referred to in Subsection 1 and the further explanation provided on the basis thereof.

2a. Subsection 2 does not apply with respect to other divisions of the AFM which are in charge of the supervision pursuant to other supervisory laws.

3. Subsection 1 does not apply in relation to the auditor's report referred to in Section 393(5) of Book 2 of the Dutch Civil Code or the report by the auditor referred to in Section 5:25c(4) of the Wft or the report or assessment by the auditor referred to in Section 5:25d (3) of that Act.

4. Subsection 1 and Sections 3 and 4 do not apply to collective investment schemes as referred to in Section 1:1 of the Wft whose units of participation are redeemed or repaid out of the assets, directly or indirectly, at the request of the unit-holders.

5. The provisions of this Section and Sections 3 and 4 apply *mutatis mutandis* to annual accounts or financial statements, management reports, and the information of an issuer to be appended thereto that has been made public in accordance with Section 394 (2) of Book 2 of the Dutch Civil Code.

6. Sections 5:13 and 5:20 of the *Algemene wet bestuursrecht* (General Administrative Law Act, hereinafter Awb) apply *mutatis mutandis* to the provisions of this Section.

7. The AFM is authorised to apply *mutatis mutandis* Section 5:20 Awb, Subsection 3 to the further explanation, referred to in Subsection 1.

Section 3

1. The AFM may, once the further explanation referred to in Section 2(1) has been obtained, notify the issuer in writing that the financial reporting or a part thereof does not comply with the regulations referred to in Section 2(1). The AFM may furthermore issue the notification referred to in the first sentence if the further explanation referred to in the first sentence is not received within the deadline the AFM has set.

2. The notification referred to in Subsection 1 may be accompanied by a recommendation to the issuer to publish a press release within a reasonable deadline to be set by the AFM and to file this press release with the AFM, in which the issuer:

- a. explains how the regulations referred to in Subsection 1 will be applied in future and the consequences thereof for its financial reporting; or
- b. explains which parts of the financial reporting are not in compliance with the regulations of Section 3 of the IAS Regulation, Title 9 of Book 2 of the Dutch Civil Code or Sections 5:25c (2), (4), or (5), 5:25d (2) or (4) to (10), 5:25e, 5:25v (1) or 5:25w of the Wft and describes the consequences thereof for its financial reporting.

3. The AFM is obliged to maintain confidentiality with regard to the notification referred to in Subsection 1 and the recommendation referred to in Subsection 2. The AFM may, in derogation from the first sentence, provide the data obtained through performing its duties in accordance with this law to other divisions within the AFM which are in charge of other duties.

4. By Decree, rules may be imposed in relation to:

- a. documents to be added to the press release referred to in Subsection 2, and
- b. the manner in which and the deadline by which the press release referred to in Subsection 2 must be published and filed with the AFM.

Section 4

1. The AFM may issue a request as referred to in Section 452 of Book 2 of the Dutch Civil Code if an issuer has not adequately responded to the request referred to in Section 2(1) or Section 5:20 of the Awb.
2. The AFM may, after sending a notification as referred to in Section 3(1) to an issuer without making a recommendation as referred to in Section 3(2), issue a request as referred to in Sections 447 or 454 of Book 2 of the Dutch Civil Code in the interests of correct operation of the securities markets or the position of investors in such markets.
3. The AFM may issue a request as referred to in Sections 447 or 454 of Book 2 of the Dutch Civil Code if the issuer does not adequately respond to the recommendation referred to in Section 3(2) or the provisions of Section 3(4).
4. The AFM will disclose publicly the fact that it has made a request as referred to in Sections 447, 452, or 454 of Book 2 of the Dutch Civil Code once it has provided the issuer with the opportunity to disclose publicly within a reasonable time period the fact that the AFM has issued a request as referred to in Sections 447, 452, or 454 of Book 2 of the Dutch Civil Code and the issuer has failed to do so. If the AFM discloses publicly the fact that a request has been made, it will state on such occasion the name of the issuer, the date on which the request was made, the statutory basis for the request, and, if the request is one referred to in Subsections 2 or 3, the respect in which the financial reporting requires revision according to the request.
5. Section 2(2) and (2a) apply *mutatis mutandis* to data and information originating from a further explanation provided to the AFM on the basis of an order issued under Section 452, Subsection 4 of Book 2 of the Dutch Civil Code and to requests as referred to in this Section.

6. The AFM may, in requests as referred to in this Section, include data or information originating from a further explanation which has been provided to it under Section 2(1), or on the basis of an order under Section 452(4) of Book 2 of the Dutch Civil Code.

[...]

Besluit toezicht financiële verslaggeving (Financial Reporting (Supervision) Decree, hereinafter Btfv)²

Section 2

1. An issuer will make an announcement as referred to in Section 3(2) of the Act generally available in accordance with Section 5:25m (1), (2), and (5) of the *Wet op het financieel toezicht* (Financial Supervision Act, or Wft). The announcement referred to in the first sentence will be made generally available in a separate statement.
2. The reasonable deadline to be set by the AFM for the announcement to be made generally available will be at least 10 working days from the day of receipt of the recommendation referred to in Section 3(2) of the Act.

[...]

Wet op het financieel toezicht (Financial Supervision Act, hereinafter Wft)

Section 5:25a

1. For the purposes of this Section, the following terms will, to the extent necessary, in derogation from Section 1:1, have the following meaning:
 - a. shareholder: a party that, whether or not for its own account, directly or indirectly holds shares or depositary receipts for shares in an issuer;
 - b. auditor: an auditor as referred to in Section 393(1) of Book 2 of the Dutch Civil Code or, if an issuer has its registered office in another Member State, an external auditor who, under the laws of that Member State implementing Section 34 of the Annual Accounts Directive, is qualified to audit the annual accounts;

² Originally translated as 'Decree on the Act on the Supervision of Financial Reporting' on the Ministry of Finance website.

- c. home Member State: home Member State as referred to in Section 2 (1)(i) of the Transparency Directive;

Section 5:25m

1. An issuer will make regulated information generally available in a non-discriminatory manner. In doing so, the issuer will make use of media that may reasonably be assumed to guarantee a fast and effective distribution of the regulated information in all Member States.
2. The general availability referred to in Subsection 1 will take place by means of a press release that is issued simultaneously in the Netherlands as well as in each of the other Member States where the financial instruments issued by the issuer have been admitted with its consent to trading on a regulated market or where the admission of those financial instruments to trading on such a market has been requested with its consent.

[...]

5. The issuer will send the regulated information simultaneously with the general availability to the body referred to in Subsection 4, as well as, if it has not been designated as such, to the AFM.

[...]

Besluit transparantie uitgevende instellingen Wft (Decree on Implementation of the Directive for Issuer Transparency under the Wft)

Section 5

[...]

4. Regulated information is made available by the issuer in full and unedited and in such a manner that:
 - a. It is made clear that it concerns regulated information;
 - b. It is possible for the public to make a correct and timely assessment of the information;
 - c. The identity of the issuer is clear;
 - d. The subject of the regulated information is clear; and
 - e. The time and date of the press release is clear.

[...]

Burgerlijk Wetboek Boek 2 (Dutch Civil Code Book 2)

Section 447

1. At the request of those who are authorised to this end under Section 448, the Enterprise Chamber of the Amsterdam Court of Appeal may order a legal entity or company as referred to in Section 360 to which this Title applies, an issuer with its registered office in the Netherlands in accordance with its articles of association as referred to in Section 1(b), of the Wtffv, or an collective investment scheme as defined in Section 1:1 of the Wft to draw up the annual accounts, the management report, or the data that are to be added to the annual accounts or the report, as referred to in Section 392a in accordance with instructions it issues.
2. The request may be made only on the basis that the requestor is of the opinion that the documents referred to in Subsection 1 do not comply with the regulations imposed under or pursuant to Section 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243), this Title, or the Wft, respectively. The request will indicate the respect in which the documents require revision.
3. A request does not relate to the report of the auditor as referred to in Section 393(5).

[...]

Section 449

1. The request referred to in Section 447 must be submitted within two months from the date on which the annual accounts are adopted or the report, as referred to in Section 392a, is filed with the Dutch Trade Register. If the request referred to in Section 447 is made with regard to an issuer as referred to in Section 1(b) of the Wtffv, the period referred to in the first sentence is nine months, on the understanding that the period of a request that refers to the report, as referred to in Section 5:25e of the Wft, starts at the moment that the report in accordance with Section 5:25m (1) of the Wft is made generally available.
2. The request concerning annual accounts that have not yet been adopted may be made up to two months or, in the case of an issuer as referred to in Section 1(b) of the Wtffv, nine months after the date on which the annual accounts are filed with the Dutch Trade Register. If, after the day of filing, the annual accounts are adopted, the period ends two months or, in the case of an issuer as referred to in Section 1(b) of the Wtffv, nine months after the date on which the adoption of the annual accounts is made known, either from the filing of a notification or from the filing of the annual accounts.

3. If a press release as referred to in Section 3(2) of the Wtffv is made generally available, the period ends two months after the date on which this press release is made generally available in the manner stipulated under or pursuant to that section, but no earlier than the end of the periods referred to in Subsections 1 and 2.
 4. With regard to defects that are not evident from the documents, the period ends two months or, in the case of an issuer as referred to in Section 1(b) of the Wtffv, nine months after the date on which the person making the request could no longer reasonably be unaware of these defects, but at the latest two years after the end of the period set forth in the preceding Subsections.
- [...]

Section 450

1. The Enterprise Chamber of the Amsterdam Court of Appeal will treat the request as referred to in Section 447 with the utmost urgency. The case will be heard behind closed doors; the verdict will be pronounced in public.
2. When setting the date on which the treatment will start, the Enterprise Chamber will also set a period within which the legal entity, company, issuer or collective investment scheme, as referred to in Section 447(1), to which the request relates, may submit a statement of defence.
3. Without prejudice to Subsection 4 to 8 other interested parties than the legal entity, company, issuer or collective investment scheme, as referred to in Section 447(1), to which the request relates, are not summoned and they cannot submit a statement of defence.
4. If the request is made in respect of an issuer as referred to in Section 1(b) of the Wtffv and the request is not submitted by the AFM then they will be given the opportunity to be heard about the subjects mentioned in the request and if Section 194 of the *Wetboek van Burgerlijke Rechtsvordering* (Dutch Code of Civil Procedure) has applied be given the opportunity to express its opinion to the Enterprise Chamber about the expert's opinion.
5. The Enterprise Chamber will not judge before having given the auditor charged with the examination of the annual accounts the opportunity to be heard about the subjects mentioned in the request. This does not apply to a report as referred to in Section 392a.
6. The Enterprise Chamber will not judge if the request relates to an insurer or a bank as referred to in Section 1:1 of the Wft without having given *De Nederlandsche Bank N.V.* (the Dutch Central Bank) or the European Central Bank, if this institution is authorised to exercise supervision based on Sections 4 and 6 of the Regulation on Banking Supervision, as referred to in Section 1:1 of the Wft, the opportunity to be heard about the subjects mentioned in the request.

7. The Enterprise Chamber will not judge if the request relates to an investment firm as referred to in Section 1:1 of the Wft without having given *De Nederlandsche Bank N.V.* (the Dutch Central Bank) or the AFM the opportunity to be heard about the subjects mentioned in the request.
8. The Enterprise Chamber will not judge if the request relates to a collective investment scheme as referred to in Section 1:1 of the Wft without having given *De Nederlandsche Bank N.V.* (the Dutch Central Bank) or the AFM the opportunity to be heard about the subjects mentioned in the request.

Section 451

1. The Enterprise Chamber will, if it grants the request as referred to in Section 447, order the legal entity, company, or issuer the manner how the annual accounts, the management report and the other data appended thereto, or the report, as referred to in Section 392a, must be drawn up. The order will include precise instructions to do so.
2. The legal entity, company, or issuer is obliged to draw up the documents in compliance with the order and insofar it relates to the annual accounts to decide upon the adaption.
3. The Enterprise Chamber can, even ex officio, judge that the order relates in addition to one or more future documents or only to those.
4. If the order pertains to the annual accounts to which the request relates, the Enterprise Chamber can decide to annul the adoption of the annual accounts. The Enterprise Chamber can mitigate the consequences of the cancellation.
5. At the request of the legal entity, company, or issuer, the Enterprise Chamber can, due to changes of circumstances, withdraw its order insofar it relates to future documents. The decision is not taken after having given the person who requested the order has been given the opportunity to be heard.

Section 452

1. At the request of the AFM, the Enterprise Chamber of the Amsterdam Court of Appeal may order an issuer with a registered office in the Netherlands as referred to in Section 1(b) of the Wtffv to provide a further explanation to the requestor concerning the application of the regulations under or pursuant to Section 3 of Regulation (EC) No 1606/2002 of the European Parliament and the Council of the European Union of 19 July 2002 on the application of international accounting standards (OJ L 243) this Title, or the Sections 5:25c (2), (4) or (5), 5:25d (2) or (4) to (10), 5:25e, Section 5:25v (1) or Section 5:25w of the Wft in the financial reporting as referred to in Section 1(d) of the Wtffv.

2. The request is supported by reason and may, in compliance with the provisions of Section 2 to 4 of the Wtfv, be submitted until nine months after:

- a. The date of sending to the AFM of the documents as referred to in Section 1(d), under 1°, 2° and 3° of the Wtfv, based on Section 5:25o (1) and (4) of the Wft.
- b. The date of sending to the AFM of the documents as referred to in Section 1(d), under 4° to 8° of the Wtfv, based on Section 5:25m (5) of the Wft.
- c. The date on which the financial statements have been made publicly available, as referred to in Section 394 (1), if it concerns an issuer with its registered office in the Netherlands whose securities are only admitted to trading on a system comparable with a regulated market from a state that is not a Member State.

3. Subsections 1 and 2 of Section 450 apply *mutatis mutandis*. Other parties concerned than the legal entity, company, issuer or collective investment scheme, as referred to in Section 447(1), to which the request relates, will not be summoned and cannot file a defence.

4. If the Enterprise Chamber allows the request, it may issue an order to the issuer regarding the manner in which the issuer provides a further explanation concerning the application of the regulations referred to in Subsection 1. The issuer is obliged to provide this further explanation subject to this order.

5. The Enterprise Chamber can decide that if and as long as the issuer fails to comply with the order the issuer incurs a penalty to the AFM which is imposed by the Enterprise Chamber. Sections 611a to 611i of the *Wetboek van Burgerlijke Rechtsvordering* (Dutch Code of Civil Procedure) apply *mutatis mutandis*.

[...]

Section 453

1. The registrar of the Enterprise Chamber will file a copy of the decision of the Enterprise Chamber at the offices of the Commercial Register. If the decision relates to an issuer as referred to in Section 1(b) of the Wtfv the registrar of the Enterprise Chamber will also provide a copy of the decision to the AFM. Copies of decisions which may not be implemented provisionally will be filed as soon as they have become final and binding.

2. Authorised to further appeal against the decisions of the Enterprise Chamber under this Title are, in addition to the persons referred to in Section 426(1) of the *Wetboek van Burgerlijke Rechtsvordering* (Dutch Code of Civil Procedure), the legal entity, company, or issuer with respect to which the Enterprise Chamber has made a decision, irrespective of whether this party has appeared at het Enterprise Chamber.

Section 454

1. At the request of the AFM, the Enterprise Chamber of the Amsterdam Court of Appeal may order an issuer as referred to in Section 1(b) of the Wtfv to make generally available a press release as referred to in Section 3(2) of the Wtfv.
2. The AFM may submit the request solely on the basis that the financial reporting as referred to in Section 1(d) of the Wtfv does not comply with the regulations of Section 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of the European Union of 19 July 2002 on the application of international accounting standards (OJ L 243), this Title, or the Sections 5:25c (2), (4) or (5), 5:25d (2) or (4) to (10), or Section 5:25v (1) of the Wft. The request indicates the respect in which the financial reporting as referred to in the previous sentence is not in compliance.
3. The request does not relate to the report by the auditor referred to in Section 5:25c(4) of the Wft.
4. The request can be made until nine months after:
 - a. The date of sending to the AFM of the documents as referred to in Section 1(d), under 1°, 2° and 3° of the Wtfv, based on Section 5:25o (1) and (4) of the Wft.
 - b. The date of sending to the AFM of the documents as referred to in Section 1(d), under 4° to 8° of the Wtfv, based on Section 5:25m (5) of the Wft.
 - c. The date on which the financial statements have been made publicly available, as referred to in Section 394 (1), if it concerns an issuer with its registered office in the Netherlands whose securities are only admitted to trading on a system comparable with a regulated market from a state that is not a Member State.

Subsections 3 and 4 of Section 449 apply *mutatis mutandis*.

5. Subsections 1-3 and 5-7 of Section 450 apply *mutatis mutandis* to the treatment of the request by the Enterprise Chamber.

[...]