

REPORT

**External evaluation of the assessment
procedure performed by
the AFM and DNB**

BY THE OTTOW COMMITTEE

COMMISSIONED BY

The Netherlands **A**uthority for the **F**inancial **M**arkets and **D**e **N**ederlandsche **B**ank

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Title	External evaluation of the assessment procedure performed by the AFM and DNB
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LIST OF ABBREVIATIONS

AFM	Netherlands Authority for the Financial Markets (<i>Autoriteit Financiële Markten</i>)
Awb	Algemene wet bestuursrecht (<i>General Administrative Law Act</i>)
CBb	College van Beroep voor het bedrijfsleven (<i>Netherlands Trade and Industry Appeals Tribunal</i>)
Dlt	Doorlooptijden (throughput times – TPT)
DNB	De Nederlandsche Bank
EBA	European Banking Authority
ECB	European Central Bank
ECT	Expertisecentrum toetsingen (Expert Centre on Fit and Proper Testing)
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
FAP	Fit and proper
FCA	Financial Conduct Authority
IMAS	Information Management System
JST	Joint Supervisory Team
JZ/JUZA	Juridische Zaken (Legal Affairs department)
LITER	Acronym for the five principles of supervision: Legality, Independence, Transparency, Effectiveness and Responsibility
MoU	Memorandum of understanding
SI	Significant Institution
SSM	Single Supervisory Mechanism
T-class	DNB supervision class
Vvgb	Verklaring van geen bezwaar (Declaration of no-objection – DNO)
Wft	Wet op het financieel toezicht (Financial Supervision Act)

SUMMARY

By commission of the AFM and DNB, the Ottow Committee between May and end November 2016 evaluated the way in which the two supervisory authorities perform their assessment procedures. The two supervisors both perform fit and proper assessments as part of their statutory mandate, in order to contribute towards facilitating sound and ethical business operations at financial institutions. The key objective of this evaluation is to shed light on the structure of and approach to the process of fit and proper assessments as performed by DNB and the AFM.

The Committee's evaluation includes both initial assessments and re-assessments. At the start of its assignment, the Committee formulated a number of specific evaluation questions, centering on a review of the current process as well as the improvements already initiated by the two supervisors.

Summarising, the Committee finds that the two supervisors have organised the structure of and approach to the process of fit and proper assessments of managing and supervisory directors of financial institutions to the effect that, generally speaking, they adequately fulfil their statutory duties in this respect, but that specific parts of the process require adjustments and may and must be improved upon in order to comply with the statutory mandate even better. This report includes a number of specific recommendations made by the Committee to the AFM and DNB.

The Committee based its examination on a broad range of data. First, a broad range of public and non-public written sources on the assessment procedure (from the AFM, DNB and the ECB) were perused. The Committee held various interviews (with assessment staff, the executive and supervisory board of the AFM and DNB's governing board and supervisory board in order to learn more about the assessment procedure pursued by the two supervisors. In addition, the Committee studied 25 assessment files, and asked the AFM and DNB for additional information on several cases.

The main component of the Committee's work consisted of 54 interviews with a total of 85 respondents. These included talks with candidates (a total of 30 prospective managing and supervisory directors), Members of Parliament, the Ministry of Finance, and non-domestic supervisory authorities. The Committee also attended an information session that DNB organised on behalf of the sector, and it studied external sources including scientific research reports. And finally, the Committee exercised hear and be heard with both supervisors, by presenting its draft report to them with a request for response and giving them the opportunity to respond to factual inaccuracies.

The results show that candidates are outright positive on assessment as an instrument used by the supervisors that ensures that quality of managing and supervisory directors is embedded and increases the learning capacity of the sector. At present, the vast majority of assessments concerns paper procedures that are taken not to require personal interviews. This group of assessed individuals notices relatively little of the assessment procedure. The sector also found that process improvements have been made following previous criticisms – these improvements concern the

supervisors' treatment of candidates, information supply (also online) and the deployment of senior staff.

At the same time, especially when the procedure includes one or more interviews, the process is not felt to be transparent in all respects. In this context, the Committee distinguishes between the "internal" and the "external" process. Although the internal process is clear to the supervisors themselves and all stages of the assessment procedure have been described and laid down on paper in a broad range of procedural agreements, process descriptions, handbooks, manuals, assessment frameworks, guidelines and authority matrices, the external procedure for individuals under assessment and financial institutions is difficult to access and information is very scattered. This lack of clarity especially applies to assessment criteria in relation to interviews (what is being assessed exactly?) and the throughput time of the process (how long does the procedure take, and when can I expect to hear the end result?).

Many candidates do not have a clear picture of the assessment criteria beforehand. In addition, the Committee finds that the sector is under the strong impression that the supervisors mainly (and increasingly) assess candidates' financial expertise. It looks as though this makes it more difficult for candidates with a non-financial background to pass the assessment, which in turn leads to these candidates not being nominated, or less often. The assessed individuals also find it unpleasant to be presented with a negative result over the telephone.

The candidates themselves (i.e. not the institution) are in a vulnerable position throughout, as the formal procedure is between the supervisory authority and the institution, due to the administrative law system in force. Based on the General Administrative Law Act (*Algemene wet bestuursrecht – Awb*), individuals under assessment have no formal legal status, but this does not detract from the fact that their personal reputation is at stake. In this respect, the Committee also finds that the opportunities for objection and appeal against an intended decision are seldom used – in case of intended negative decisions, the usual course of action is that the institution withdraws its application before the official decision is taken. This is largely due to the fear of reputational damage, but there are also negative perceptions in the sector about the independence of the objection procedure. Virtually all candidates experience the gesture made by the supervisory authorities to the candidate to bring a representative to the interview and offer the possibility to record the interview as ill-conceived, and they do not believe that this offers a solution to strengthening the candidate's position.

The Committee finds that both the AFM and DNB have done a great deal to speed up the assessment procedure. This is reflected in decreasing throughput times, although some assessments still miss their statutory deadlines. This is partly attributable to the institutions' deficient preparatory work, causing files to be incomplete, which slows down the assessment process. This slowdown is sometimes also caused by additional questions that the supervisors have with respect to candidates,

which may lead to additional interviews being needed. Candidates frequently find throughput times too long and have voiced a need for shortening the process throughput time further.

The Committee also examined the division of roles between the AFM and DNB, and their relationship with the ECB. It has concluded that the two supervisory authorities work well together, know how roles are divided, and are aware of each other's responsibilities and powers. The roles played by the AFM and DNB are less evident to outsiders, however, specifically in dual access (AFM and DNB) assessments for banks and insurance companies. In addition, the role played by the AFM during the assessment process is relatively obscure to individuals undergoing assessment. Since the launch of the Single Supervisory Mechanism (SSM), operated by the ECB, the cooperation between the AFM and DNB for significant institutions has become more complex, also and primarily because the ECB has designated DNB as the national competent authority in the Netherlands.

And finally, where re-assessment is concerned, the Committee notes that candidates question the factual difference between supervision and assessment by the supervisor. This is among other things caused by the fact that often the same staff members of the supervisory authorities decide on (i) whether there are reasonable grounds for re-assessing a candidate, (ii) the examination of the supervision incident, and (iii) the final decision on the candidate's fitness in re-assessment procedures. Consequently, supervision, assessment and decision-making are closely interwoven in these cases. DNB and the AFM must structure the procedure so as to effectuate clearer functional segregation.

This report includes conclusions and recommendations for the supervisors and the sector itself.

1. The assessment procedure will benefit by improving clarity and transparency. Suggestions include a) define and communicate the different stages of the procedure sharply beforehand, and b) inform candidates throughout about the stage of the process that they are in (including the relevant time frames). The Committee proposes that candidates and institutions be given the opportunity to track the progress of their own assessment process digitally.
2. The independence of the procedure can be strengthened in different ways by including "external parties". This can be done at various stages of the procedure. As was done in the UK, the function of senior adviser could be introduced. In addition, a confidential adviser could be instigated who would be available during the entire assessment procedure in case of procedural conflict or a complaint about treatment of the candidate. At DNB, following the AFM's example, an external chair could be added to the appeals committee in DNB's objection procedure.
3. The candidate's position must be better protected. The Committee recommends that an intended negative decision is no longer communicated by telephone, but by letter offering candidates the option of receiving more information in a personal meeting. It would of course be in the candidate's interest to bring a representative to this meeting.

4. In the specific case of re-assessments, the Committee advises to create a clear functional segregation between the staff members deciding whether there are reasonable grounds for re-assessment and those deciding on the outcome of the re-assessment itself.
5. The cooperation between the AFM and DNB may be made more efficient by developing a joint intake for the assessment procedure. The Committee wants to suggest to the two supervisory authorities that they unify the process and create a single and joint point of access and procedure, whereby the two parties retain their own responsibilities and roles, but have a uniform procedure. The Committee also recommends that the two supervisory authorities regularly evaluate cases together (and after completing assessment cases). Finally, the Committee advises the AFM to arrange that a memorandum of understanding with the ECB is put in place, ensuring that the AFM occupies a formal position not only with respect to DNB but also vis-à-vis the ECB.
6. The sector should come to view submitting a good quality file as its own responsibility. This will benefit the ease and speed of the assessment procedure at the supervisory authorities.
7. The sector has the strong impression that the supervisors assess candidates primarily on financial expertise with much less attention for other knowledge, e.g. in the area of IT, HR, etc. We would advise the supervisors to not only emphasise financial expertise in their assessment procedures, but also have an eye for diversity of knowledge within management and supervisory boards.
8. The Committee believes that the assessment procedure could be substantially improved if financial institutions were to share a clear-cut document with the supervisors at regular intervals that not only includes the direction and strategy (plus risk analysis) of the institution, but also analyses the consequences that this has for the occupancy of management and supervisory board positions. Based on such a document, financial institutions would be able to explain for each vacancy why they are nominating a particular candidate. This makes it easier for supervisors to strike a balance between financial knowledge and experience on the one hand and other essential competencies on the other, so as to promote diverse knowledge on company boards. This also enables the supervisor to assess the collective of management and supervisory boards better.
9. For institutions that have this process "in order", the Committee would suggest that the supervisors use a "light" version of the assessment procedure, to ensure that the primary responsibility for adequate management is transferred to where it belongs.
10. And finally, the Committee wants to mention that both the AFM and DNB have shown a learning and a reflective attitude with respect to the questions it asked them in the course of its evaluation. This has led to improvements being made to the assessment procedure during the evaluation. Both supervisors went to great lengths to give the Committee, the sector and the candidates better access to information on assessment procedures.

1. INTRODUCTION

1.1 Background

Well-functioning financial institutions and service providers¹ are the lubricants of society. They take on risks that parties in the social and economic sphere are not prepared or unable to bear; they attract savings and convert them into loans, which facilitate funding of economic and other activities that improve the standard of living and well-being; they manage pensions and private wealth and invest them in productive assets, and they support market participants with advice and guidance to help them make the appropriate decisions and identify risks. Consequently, sound financial institutions are crucially important to the economy and society. The 2008-2009 financial crisis revealed that the financial system was not functioning adequately and that financial institutions were often exposed to excessive risks. In addition, several cases of misconduct occurred due to inappropriate or unethical behaviour that have dented confidence in the financial system. Several evaluative studies into the 2008 financial crisis (including the Scheltema, De Wit, and Maas Committees in the Netherlands) showed that the management and supervision of financial institutions was in need of improvement.

The Act Introducing Suitability Requirements, which came into effect on 1 July 2012, and its elaboration into the Policy Rule on Suitability 2012 (on 1 January 2011 preceded by the roughly comparable Policy Rule on Expertise) have reinforced the legal basis of assessments.² The members of internal supervisory bodies (supervisory boards) were brought under the scope of fitness assessment, and the legislature decided that the then current supervisory board members would be subjected to assessment retroactively, beginning with the four largest banks and the four largest insurance companies in the Netherlands (known as the 4+4 assessments).

The AFM and DNB perform these assessments as part of their statutory duties.³ These assessments are intended to contribute towards promoting sound and ethical business operations at financial institutions. The Policy Rule on Suitability 2012 details the AFM and DNB's statutory duties with respect to fit and proper assessments. With respect to propriety, the performance of the task has been legally anchored in the Decree on Prudential Rules for Financial Undertakings and the Decree

¹ The term financial institutions in this report is taken to include financial service providers.

² The following laws were also amended: the Financial Supervision Act *Wet op het financieel toezicht – Wft*), the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft – Bpr*), the Management and Supervision Act (*Wet bestuur en toezicht – Wbt*), and the Pension Fund Governance (Further Measures) Act (*Wet versterking bestuur pensioenfondsen – Wvbp*). The reliability of auditors has since 2016 been further detailed in a separate policy rule based on the Audit Firms Supervision Act (*Wet toezicht accountantsorganisaties – Wta*).

³ Since the launch of European banking supervision (the Single Supervisory Mechanism), the ECB has held the ultimate responsibility for fit and proper assessments of managing and supervisory directors of significant banks. The national supervisory authorities are still closely involved in the preparation of decision-making, however, and they have remained responsible for less significant banks. In some cases this involves material decisions that must be notified to the ECB, and on which the ECB can give its input.

on Business Conduct Supervision of Financial Enterprises (*Besluit Gedragstoezicht financiële ondernemingen – Bgfo*).⁴

The Minister of Finance on 13 November 2014 asked the AFM and DNB for an evaluation of the effects of fit and proper assessments.⁵ The AFM and DNB responded by letter of 25 June 2015.⁶ In a memorandum attached to the letter, the AFM and DNB explain how they perform these assessments, what their decision-making processes looks like, their calculated results in 2013 and 2014, and their main reasons for rejecting candidates. The two supervisory authorities also announced their intention of having their assessment procedure evaluated by an external party in 2016. The Minister forwarded this letter to Parliament on 3 July 2015.⁷

Fit and proper assessments by the AFM and DNB were again discussed at the legislative consultations of the Standing Finance Committee on 7 September 2015.⁸ Various points of criticism with respect to the assessment procedure were discussed and several Members of Parliament emphasised the necessity of commissioning an external evaluation as soon as possible. The Minister then promised to do his best to speed up the launch of an external examination.⁹

The AFM and DNB have performed internal evaluations and launched several improvement processes since the summer of 2015. In early 2016, after the assessment backlog had been cleared, the two supervisors started establishing an external evaluation committee. The intention of appointing the Committee, and its time frame for 2016, was announced by letter of June 2015 to the Minister.

At end-2015, all assessments of current supervisory directors of financial institutions who had not been assessed before had been completed (referred to as catch-up assessments). In addition, at the end of 2015 and in early 2016 several improvements were made to the AFM and DNB's assessment procedure, and DNB has made further progress in risk-based assessment.¹⁰ This marked a new phase for the assessment procedure, which is why DNB and the AFM decided it was time to commission the external evaluation.

On 18 May 2016, the AFM and DNB announced to have appointed the Ottow Committee to perform the evaluation. The Committee consists of chair Annetje Ottow and members Jan Hommen and Janka

⁴ The propriety of auditors has been further arranged in Policy Rule 06-01 on the integrity of individuals based on the Audit Firms Supervision Act and the Audit Firms Supervision Decree (*Besluit toezicht accountantsorganisaties – Bta*). The Policy Rule on Integrity Screening (*Beleidsregel betrouwbaarheidstoetsing*) also applies to trust and money transaction offices.

⁵ Prompted by a general consultation on accountancy with the Standing Finance Committee where the possibility of introducing fit and proper assessments for top management of Dutch audit firms was also discussed (Parliamentary Papers II 2014/15, 33977, 5).

⁶ *Parliamentary Papers II* 2015/16, 124733.

⁷ *Parliamentary Papers II* 2015/16, 32648, 9.

⁸ *Parliamentary Papers II* 2015/16, 34208, 11.

⁹ *Parliamentary Papers II* 2015/16, 34208, 11, p. 18.

¹⁰ The AFM has always performed risk-based assessment.

Stoker (see Annex VI). It is supported by its self-appointed project secretary Marie-Jeanne Schiffelers and her assistant Daniëlle Arnold.

The Committee represents three specialist areas: academic and practical knowledge of the financial world, assessment practices and supervision. The Committee also has methodological knowledge and practical experience of qualitative policy evaluations.

The Committee functions independently and forms its judgement independently. This means that it was completely free to develop and structure its evaluation as it saw fit and to form its own judgement. In addition, the members of the Committee agreed to participate in the commission independently of each other. The members had direct access to all institutions and individuals that could contribute towards performing its assignment.

1.2 Context and history

The instrument of assessment and the manner in which it is deployed – in addition to the range of other instruments and tightening of rules with respect to capital, liquidity and business operations – has clearly been prompted by the financial crisis. The two supervisors were already assessing the expertise of proposed managing and supervisory directors before 2008, but the test was less elaborate. The legislature endeavoured to prevent a new crisis by supplementing and tightening rules and regulations. The regulatory pendulum¹¹ swung in the direction of rule-based supervision driven by a strong belief that regulation and supervision provided the necessary answer to the crisis, amid waning confidence that the sector would put its own house in order. The assessment procedure must be seen in this light. The instrument of assessment is one of the legal instruments that the financial supervisory authorities have at their disposal to boost the stability of financial institutions. This makes assessment an integral part of the range of supervisory instruments.

By means of assessment of managing and supervisory directors, the legislature and the supervisory authorities aim to exercise control on the professional quality of policymakers at financial institutions. This is a delicate instrument as the impression may be given that the supervisor takes the driver's seat at an institution, i.e. assessment *before* appointment about *who* will be at the helm of the institution. This is an intensive assessment procedure, which not only tests candidates' financial expertise, but also their attitude and behaviour, and whether they are fit for a specific position, taking into account the board dynamics at the time of testing. Not only is the *individual* relevant, but also his or her place and function in the *collective* of the management or supervisory board.

Not only has the instrument fundamental consequences for the financial institutions involved, but it may also have profound consequences for the candidates themselves. The assessment procedure may in fact have far-reaching implications as candidates may be found unsuitable for the proposed

¹¹ See also Ottow 2015 and Sparrow 2000.

position, or (in case of propriety) they may be banned from holding policy-making positions. For the candidates involved, this means that they are always subjected to a critical process in which their reputation is at stake. This makes this supervision instrument exceptional and sensitive, as it not only pertains to supervised institutions, but also to natural persons who are not yet involved in the management or supervision of a financial institution (new candidates), or who already hold the position of managing or supervisory director at the financial institution in question (in case of re-assessment). These special features should be taken into account when developing procedures for fit and proper assessments, and evaluating the application of this instrument.

1.3 Purpose statement

1.3.1 Objective

The key objective of this evaluation is to shed light on the structure of and approach to the process of fit and proper assessments as performed by the AFM and DNB.¹² So it first and foremost concerns a *process* evaluation, of the procedure of initial assessment and that of re-assessment. Where necessary, content elements have been included for the sake of performing a comprehensive evaluation. Separate process components have been evaluated on the extent to which the assessments comply with the General Administrative Law Act and the statutory duties of the two supervisors. The Committee will not provide an opinion on the outcome of board member assessments or what these mean in terms of policy content.

1.3.2 Focus of study

Also at the request of the AFM and DNB, the following questions will pass in review.

Central evaluation question:

Does the present structure of the assessment process for managing and supervisory directors in terms of fitness and propriety and the resulting operating methods that De Nederlandsche Bank (DNB) and the Netherlands Authority for the Financial Markets (AFM) apply, ensure adequate performance of the tasks imposed on them by law?

A definition of the term "adequate" in this respect is included in the details to the conceptual framework underlying this evaluation (see section 2). The central evaluation question breaks down into the following subquestions.

- Is the assessment procedure professional, objective and transparent?
- Have the assessment procedure and the decision-making process of the AFM and DNB been enhanced in terms of professionalism, objectivity, and transparency, thanks to the recent

¹² The evaluation focuses on the execution of the assessment procedure by DNB and the AFM. The extension of the assessment procedure to testing of second-tier management is outside the scope of this evaluation. DNB has evaluated this process itself, and the AFM has no assessment procedure in place for second-tier management.

measures included in DNB's action plan and the AFM's internal evaluation effort? Which further improvements may be made?

- Does the addition of more senior staff and external expertise to the process benefit the position of candidate policymakers?
- Does the staff segregation in place at the AFM and DNB between the decision and, where relevant, objection and appeal comply with the relevant requirements of the General Administrative Law Act?
- Do the present objection and appeal procedures provide adequate safeguards for independent review of a decision?
- What is the state of cooperation and division of roles between the AFM and DNB? Are duties, authorities and responsibilities clear to all concerned, both internally and externally?
- How is the increasing convergence from the European Banking Authority (EBA) and the Single Supervisory Mechanism (SSM) influencing the AFM and DNB's assessment procedures? What can we learn from the way the supervisory authorities in the United Kingdom have set up their assessment procedures?¹³

Specific questions relating to the AFM

- To what extent have the assessment procedure launched in 2012 and subsequent improvements made since 2015 contributed towards
 - elucidating the assessment process, the decision-making process and the opportunities for objection and appeal, including increasing transparency, providing information about progress of the assessment process, criteria and quality guarantees?

Specific questions relating to DNB

- To what extent have the assessment procedure launched in 2012 and subsequent improvements made since 2015, as described in the action plan, contributed towards
 - elucidating the assessment interview and increasingly involving DNB's senior management in assessment interviews;
 - elucidating the assessment procedure, decision-making and opportunities for objection and appeal;
 - increasing transparency and providing information about the assessment procedure, the progress of the assessment process, criteria and quality guarantees?

This evaluation reviews both the assessment and re-assessment procedures at the AFM and DNB. DNB earlier commissioned an examination of the assessment procedure from research agency Motivaction that focused on initial assessments, and left re-assessments out of scope.

1.4 Evaluation method

¹³ This among other things includes the concept of involving external seniority to assess to what extent this contributes towards the perceived quality of the assessment procedure.

This paragraph briefly describes the methodology used in this evaluation. A more detailed version of the methodological justification is provided in Annex I. The Committee based its evaluation on a broad range of data. In order to evaluate the assessment procedure, the following sources were studied and the following steps were taken.

1.4.1 Perusal of AFM and DNB documentation

The Committee had access to a broad range of public and non-public written sources on the assessment procedure from DNB, the AFM and the ECB. Some examples of these sources include the Policy Rule on Suitability, information on websites (Open Book on Supervision), internal information on the structure of the assessment process at DNB and the AFM, information on assessments that fall under the ECB's responsibility, and additional sources that the AFM and DNB made available to the Commission at the time of the evaluation (see Annex VII for a full list of sources received). The Committee used these sources to describe and gain an understanding of the assessment process that the AFM, DNB and, where applicable, the ECB apply.

1.4.2 Meetings with the AFM and DNB

A series of meetings were held with the AFM and DNB. The Committee met with assessment staff and members of DNB's Governing and Supervisory Board and the AFM's Executive and Supervisory Board to learn more about the assessment procedure (see Annex I for an overview of these meetings). At these meetings with assessment staff and executives, the assessment procedures of the AFM and DNB were explained and the Committee asked them to further elucidate the process in those areas where it was insufficiently clear. DNB and the AFM prepared several memos in response to the Committee's questions. Some of these memos will be converted into public documents that the two supervisory authorities will make available to the sector in order to make the assessment procedure more transparent. In the interviews with DNB's Governing and Supervisory Board and the AFM's Executive and Supervisory Board, the Committee addressed a number of supervision dilemmas emerging from the evaluation.

1.4.3 Assessment files and case studies

Several meetings were held at which the Committee was given 25 actual assessment files to study (15 AFM and 10 DNB files), in order to get a feel of the practical implementation of the assessment and decision-making procedures at the AFM and DNB.

At the Committee's request, the AFM and DNB also further clarified several assessment cases to explain specific considerations on their part. One of these concerned a re-assessment (Delta Lloyd) and another involved an assessment as part of the issue of a declaration of no-objection for a takeover subject to a time limit (assessment of new policymakers at VIVAT at the time of the takeover by Anbang). Also in response to these file reviews and case descriptions, the Committee put forward several additional questions to both the AFM and DNB for further clarification of the assessment procedure.

1.4.4 Information meeting with DNB

The Committee's project secretary and assistant attended an information session that DNB organised on behalf of the sector to learn more about how DNB informs the sector about the assessment procedure.

1.4.5 External sources

The Committee studied available external sources on the assessment procedure applied by DNB and the AFM, including articles published in a range of different media. And finally, it consulted literature on supervision and assessments to be able to relate the findings to broader theoretical notions (see Annex VIII for a list of these external sources and literature).

1.4.6 Interviews with stakeholders

The Committee held 54 interviews, of which 14 were held with several respondents at the same. It talked to 85 respondents in total to consider the assessment procedure from different perspectives (see Annex II for a detailed list of the interviewed candidates). Based on these interviews, the different perceptions of the assessment procedure were outlined. The Committee spoke to the following stakeholders.

- *Candidates and sector organisations*

In order to get an understanding of the sector's perceptions of the assessment process, the Committee spoke to a total of 30 assessed managing and supervisory directors active in different financial subsectors. Some candidates came to the Committee on their own initiative, some names were suggested by the AFM and DNB and others were invited by the Committee. The Committee took account of the differences between the segments of the financial sector – for instance banks, insurance companies and pension funds on the one hand and small consultancy firms and intermediaries on the other – by interviewing representatives from each segment. The vast majority of candidates are individuals employed at larger institutions like banks and insurance companies, in part because many of the signals received beforehand had been sent by these parties. Moreover, as many assessed individuals in the "small institutions" population (mostly assessed by the AFM) only underwent a relatively simple paper assessment procedure and were not interviewed, they were not able to provide any input on the interview part of the process, so there was not much point in selecting large numbers of respondents from this group.

The candidates that the Committee interviewed had mostly undergone one or more assessment interviews. This means that the Committee got a clear picture of assessment procedures where interviews were deemed necessary, but did not get a detailed impression of how paper assessments are perceived. The Committee also spoke to representatives from various financial sector organisations (11 respondents from seven different organisations).¹⁴

¹⁴ Dutch Association of Insurers, Adfiz, Federation of the Dutch Pension Funds, VV&A, Dufaz, Dutch Banking Association and Holland Quaestor.

- *Members of Parliament and Ministry of Finance*

The Committee spoke to four Members of Parliament who were selected based on their past parliamentary questions on the assessment procedure. In addition, the Committee spoke to the Financial Markets Director of the Ministry of Finance.

- *Non-domestic supervisory authorities*

The Committee also spoke to representatives of the ECB and EIOPA in Frankfurt, the FCA, the Bank of England (PRA) and EBA in London, and ESMA in Paris. The purpose of the meeting at the ECB (Single Supervisory Mechanism) was to get an understanding of the assessment procedure to which significant institutions (SIs) have been subjected since November 2014. The other interviews held provided the Committee with a good impression of assessment procedures abroad, which could be used to evaluate the assessment procedure in the Netherlands (section 6 has more information on the Committee's experiences in the UK).

1.4.7 Hear and be heard

During the time of its evaluation, the Committee once shared some general findings with DNB's Governing Board and the AFM's Executive Board – only in broad terms. The Committee submitted several more specific preliminary findings, relating to specific cases, to the relevant staff at the AFM and DNB, which allowed the two supervisors to compare their own perspective to that of the relevant stakeholders.

1.4.8 Triangulation

The findings generated from the different methods were evaluated by means of triangulation. This means that the information obtained from the different sources mentioned above was compared. By taking several steps, the Committee gained a detailed understanding of the course of the assessment process and the different perspectives that stakeholders have on the assessment procedure. The tapped sources in combination with the Committee's own expertise in respect of supervisory practices and financial sector developments have enabled it to arrive at a balanced opinion on the assessment procedures applied by the AFM and DNB.

1.5 About this report

This report includes the findings made by the Ottow Committee between May 2016 and November 2016. It discusses the following three topics. Section 2 describes the conceptual framework underlying the Committee's evaluation of the assessment procedures pursued by the AFM and DNB. Section 3 briefly depicts the assessment procedures in place at the AFM, DNB and the ECB, and section 4 includes the improvements made to these procedures. Section 5 discusses the perceptions of the assessment procedures prevailing in the financial sector. Section 6 includes the Committee's insights gained from the visits to the FCA and the Bank of England that may be relevant for supervision in the Netherlands. Section 7 analyses the findings made in the light of the conceptual

framework described in section 2. The report concludes with section 8 where the Committee presents its conclusions and recommendations with respect to the AFM's and DNB's assessment procedures, i.e. this section of the report also provides answers to the questions pivotal to the Committee's evaluation.

The Committee wants to make the following comments here.

Improvements made during the time of the evaluation

A first observation that the Committee made when starting its evaluation process was that the information relating to the assessment procedure was often incomplete and fragmented, due to which it took some time before it had a clear understanding of the structure of the assessment procedure. Partly due to the Committee's observation, both the AFM and DNB made efforts after the evaluation was launched to clarify the assessment procedure (see section 4 for the details of improvements made during the time of the evaluation). This means that the available public and non-public information on the assessment procedure was in a state of flux, even in the course of the evaluation.

Learning capacity

So the second observation that the Committee wants to make here is that its evaluation came to be a learning process, whereby both the AFM and DNB demonstrated their learning capacity based on regular feedback given and questions asked by the Committee.

2. CONCEPTUAL FRAMEWORK

2.1 Introduction

This section depicts the conceptual framework underlying the evaluation. First, the different perspectives from which assessments should be observed are described. Subsequently, various supervision dilemmas are discussed that should be borne in mind when evaluating the AFM and DNB's assessment procedures. And finally, the five components of the LITER principle that serves as the theoretical framework for the evaluation of the assessment procedure are elucidated. These principles are discussed again in section 7 Analysis.

2.2 Perspectives in the assessment procedure

There are three parties involved in fit and proper assessment procedures: the supervisory authority, the financial institution, and the candidate. The internal supervisor (the Supervisory Board) is also involved, as it appoints managing and supervisory directors. This makes the assessment procedure a complex process. The following factors must be taken into account:

1. the need for supervision of the financial sector;
2. the interests of the financial institution seeking to appoint a fit and proper candidate (referred to below as "the institution"), and
3. the personal interests of the candidate under assessment (referred to below as "the candidate").

Needless to say, these interests are often not in harmony with each other, and may even be detrimentally opposed in certain situations. The supervisory authority must take account of these different interests and strike the right balance when weighing up the interests of the different stakeholders. This means that the Committee's evaluation of the assessment procedure cannot be performed from one perspective only, but must involve the three perspectives referred to above.

If the procedure is evaluated solely from the instrumental perspective of effectiveness of supervision based on the statutory mandate, aspects of legal protection (guaranteeing the interests of the institution and the candidate) will be neglected. And conversely, if the focus of the evaluation of the assessment procedure is directed fully at the legal protection of the individuals and institution involved, there would not be sufficient attention for the objectives and effectiveness of supervision. The distinction made between the instrumental function and the guaranteeing function of supervision law has been recognised in the literature and in case law, and also plays a role in this report.¹⁵ The appropriate balance must be found between effectiveness of supervision on the one hand and the protection of the private interests involved (institution and candidate) on the other.

2.3 Dilemmas in supervision

¹⁵ See also Ottow 2015, pp. 49-50.

Striking the appropriate balance between these interests confronts supervisory authorities with various dilemmas when exercising supervision. This also applies to the assessment procedures in place at the AFM and DNB. What are these dilemmas (from the perspective of assessments) exactly?¹⁶

2.3.1 Transparency vs confidentiality

When exercising their tasks, supervisors are expected to be open and transparent. Supervisors are required to account for their decisions and procedures and to provide a full motivation for their actions and interventions. At the same time, confidentiality may also be required to prevent the private interests of the candidate or the financial institution involved from being harmed. In fact, the latter aspect plays a big role in assessment procedures: if the decision is negative, this may have profound consequences for (the reputation of) the candidate in question, and it may have big repercussions on his or her future.¹⁷ This demands a large degree of diligence and due care from the supervisor during the assessment process. This is where the conflict between the instrumental function of supervision (openness and transparency to the largest possible degree) and the guaranteeing function of supervision (protection of individual interests) particularly occurs.

In other words, a conflict between public (supervision) and private interests. These dilemmas become even more complicated due to the three parties involved in the assessment process, where both the interests of the financial institution in question and the personal interests of the candidate involved play a role, which are not always in sync. The supervisor must take account of all interests at stake in the relationship between the three parties involved in the assessment procedure and consider them carefully.

2.3.2 Effectiveness vs duty of care

In addition to the dilemmas surrounding transparency, the speed of supervision should also be considered. Effective supervision benefits from quick procedures that offer clarity within a reasonable period of time. This is in the interest of both the financial institution and the candidate involved. However, the protection of the candidate may for instance necessitate additional investigations, more facts need to be examined, or an extra round of hear and be heard must be held. This means that extra time, which may considerably slow down the assessment process. This raises questions like: "How much extra care needs to be taken?", "When do we have an overkill of care?", and "When is duty of care at the expense of an effective assessment procedure?"

2.3.3 Confidence vs no-confidence

Supervision implies control, but how much control is necessary? The legislative authorities have decided that financial sector supervisors must assess proposed managing and supervisory directors

¹⁶ See Ottow 2015, pp. 5-8, for more details on the various types of dilemmas.

¹⁷ It should be noted, however, that a negative decision on fitness strongly depends on the situation. A candidate who is found to be unsuitable or not yet suitable for a large bank may be eligible for a comparable position at a smaller bank or firm.

before they are appointed. Assessment before appointment implies lack of confidence as it is based on the apparent assumption that the financial sector is unable to ensure by itself that sufficiently fit and proper candidates are appointed. However, leaning completely on the supervisor, without allocating sufficient responsibility to the institutions involved, potentially creates a moral hazard¹⁸ and offloading of risks on the supervisor. Joint responsibility of the sector is necessary in order to prevent that the supervisor takes the driver's seat at institutions, and to also embed responsibility for curbing risks into the sector itself.

2.3.4 Regulatory dilemma

As soon as a crisis unfolds, there are calls for more supervision. When "quiet" periods then dawn without incidents, calls for less supervision or fewer interventions again emerge. The supervisor must resist strong calls for more or fewer interventions, and must consequently contemplate the necessity of each intervention. Based on their own, argued assessments, supervisors must decide whether intervention is necessary. There can be a question of *under-enforcement* (Type I error) or *over-enforcement* (Type II error).¹⁹ If the AFM and DNB are too strict in their fitness assessments, this may lead to a shrinking circle of eligible candidates, ending in a one-dimensional range of candidates. If they are not sufficiently strict, this may lead to weak management and supervisory boards, resulting in poorly managed financial institutions.

2.3.5 Diversity vs risk aversion

In line with the regulatory dilemma, the financial crisis has also led to a dilemma with respect to the need for diversity. Diversity means ensuring a variety of competencies and professional experience among company directors, demanding other expertise in addition to financial knowledge within management and supervisory boards. The financial crisis has brought home the necessity of diversity on company boards, as it may contribute towards the quality of decision-making, owing to the introduction of different perspectives, which may prevent tunnel vision or groupthink.²⁰

The financial crisis has prompted amendments to the law with respect to diversity in management boards. Article 91, paragraph 1, of Directive 2013/36/EU stipulates that

"Members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the management body shall reflect an adequately broad range of experiences."

This envisaged range of expertise is non-voluntary as the same Article (paragraph 10) stipulates that organisations must have a diversity policy in place:

"Member States or competent authorities shall require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting"

¹⁸ R.J. Hoekstra & J. Frijns, *Het rapport van de Evaluatiecommissie Nationalisatie SNS Reaal*, Amsterdam: Balans 2014, p. 275.

¹⁹ See also Ottow 2015, pp. 199-200.

²⁰ Hillman, *Corporate Governance* 2015/23, issue 2, p. 104.

members to the management body and for that purpose to put in place a policy promoting diversity on the management body.”

So financial institutions are required to have diversity policies in place, which the supervisor then monitors. The latter is also confirmed by Article 91, paragraph 11:

“Competent authorities shall collect the information disclosed in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013 and shall use it to benchmark diversity practices. The competent authorities shall provide EBA and ESMA with that information. They shall use that information to benchmark diversity practices at Union level.”

Yet, research has shown that the effects of a crisis on institutions can also go the other way: organisations become increasingly risk-averse, revert to old routines and ways of working, and are not open to new perspectives (in accordance with the "threat-rigidity hypothesis"²¹). Not all competencies and experiences are equally important, some may become more important than others, or temporarily so. This dilemma may also occur at the supervisory authorities, as they now have an extra legal stipulation at their disposal to promote diversity on management and supervisory boards of financial institutions. At the same time, threat-rigidity induced reactions are not illogical to supervisors as they of course aim to reduce risks, which may lead to requirements being imposed on financial expertise that may be tightened following a crisis, as supervisors do not want to take any risks in this respect.

2.3.6 The European context

A new complicating factor since November 2014 has been the launch of joint European banking supervision, the Single Supervisory Mechanism, a European system of banking supervision that comprises the ECB and the national supervisory authorities, including DNB. Institutions known as significant institutions are under direct supervision of the ECB with day-to-day supervision being performed by joint supervisory teams, staffed by the ECB and the national supervisory authorities. This has significantly restricted DNB's room for manoeuvre.

In case of dual access assessments, DNB and the AFM work together as prescribed by law. In case of a dual access assessment on behalf of an institution that is under direct supervision of the ECB, the AFM is formally left out of the equation, based on European legislation.²² Formally speaking, the ECB is entitled to deviate from the AFM's advice, but this has not happened to date.

²¹ Staw, Sandelands & Dutton, *Administrative Science Quarterly* 1981/26, issue 4, p. 502.

²² The SSM is operated by the ECB in cooperation with the relevant national competent authorities. In the Netherlands, DNB has been designated as the sole national competent authority based on Article 2(1) of the Decree implementing EU Regulations on Financial Markets. The duties allocated to the ECB under the SSM, however, partly overlap with duties falling under the responsibilities of DNB and the AFM in the Netherlands. Fit and proper assessments are a case in point. In case of dual access assessments on behalf of an institution falling under the SSM, DNB and the AFM work together under Dutch national law in preparation of the ECB decision. The means that the AFM has an indirect link with the ECB. A direct link could be arranged in a memorandum of agreement.

The ECB's assessments differ from assessments performed in the Netherlands in several respects. In the past two years, the SSM has been under rapid development, with the mechanism establishing its approach step by step based on experience gained. A great deal of attention has been devoted to alignment and coordination between the European and the national supervisory authorities. With regard to the ECB's supervision, it must be borne in mind that the ECB combines different supervision cultures from various EU Member States and continues to look for the right note in its supervision. The ECB is being faced with different national supervision systems in the EU Member States, with systems funded ex ante like that in the Netherlands and systems funded ex post in most other countries.

Assessments under the SSM are based on the same European rules, guidelines and criteria. The assessment procedure is based on an established framework that is to a large extent based on the Dutch approach. DNB was closely involved in the concept and development of the European framework. On 14 November 2016, the ECB launched a public consultation on its draft guide to fit and proper assessments.²³ This guide explains the policy outlines, practices and procedures that the SSM pursues in evaluating the fit and proper standing of a candidate for a position on the management or supervisory board of a financial institution.

2.3.7 The interplay with internal supervision

As mentioned in the introduction to this report, an institution's internal supervisory body, its Supervisory Board, plays an important role next to the triangle of supervisor-institution-candidate. The financial crisis has among other things led to tightening of external supervision, as the legislative authorities clearly thought that internal supervision had failed. But the crucial question of course remains which form of supervision turns out to be the most effective in contributing towards well-functioning organisations. Opinions differ in academic literature: on the one hand, research shows that external supervision definitely leads to growing attention for the interests of customers,²⁴ but studies also reveal that strict supervision may undermine cooperation, and may induce managers to come up with all sorts of strategic justifications for their decisions.²⁵ It also remains to be seen whether tightening of external supervision really has an effect on the decisions that top managers take.²⁶ Although research into the relationship between internal and external supervision is still in its infancy,²⁷ results of the first studies seem to indicate that in the end, internal supervisors have a bigger influence on decision-making than external supervisors do.²⁸

2.4 Assessment framework LITER principles

²³ <https://www.bankingsupervision.europa.eu/press/pr/date/2016/html/sr161114.nl.html>.

²⁴ Lerner & Tetlock, *Psychological Bulletin* 1999/125, issue 2, p. 270.

²⁵ Mulder & Nelissen, *Journal of Business Ethics* 2010/95, p. 69; Frink & Ferris, *Human Relations* 1998/51, issue 10, p. 1259.

²⁶ Tihanyi, Graffin & George, *Academy of Management Journal*, 2014/57, pp. 1535-1543.

²⁷ See F. Rink, Monitoring top executives: internally or externally? (NWO Vidi award), <http://www.nwo.nl/en> (type Vidi Awards 2015 in the search box).

²⁸ De Waal, Rink & Stoker 2015, pp. 1-37.

In order to assess whether supervisors take due care in performing supervision in accordance with their assigned duties, an assessment framework was developed based on five principles.²⁹ These principles are: L (Legality), I (Independence), T (Transparency), E (Effectiveness), R (Responsibility), also known by the LITER acronym. The principles of legality, independence, transparency, effectiveness and responsibility form the basis of good supervision. The LITER principles serve as the assessment framework of this evaluation report. They can be summarised as follows.

2.4.1 Legality

A supervisor is required to act from a legal basis (the principle of legality). The principles of the law are relevant here and may serve as a means of explaining the statutory requirements and the supervisor's duties. An all too strict interpretation of the applicable legal framework may cause supervisors to take an excessively legalistic stance, meaning that they may adopt a restrained approach.

2.4.2 Independence

The supervisor must act independently of both market operators and the political environment. This must be assessed based on rights as well as facts. Independence also implies that sufficient professional knowledge and sector expertise is in place: the supervisor's professional assessments must be based on sufficient expertise (objective, verifiable information). In terms of independence, a relevant question for market supervisors is also whether examination and sanctioning may be in the hands of the same party. And a question that is relevant in the context of this evaluation, is whether supervision and fit and proper assessments or re-assessments may be combined. The question whether there is a sufficient level of independence in re-assessments of fit and proper decisions should be seen in the light of the independence principle.

2.4.3 Transparency

Transparency is the third of the LITER principles. A supervisor's procedures must be fair, open, and accessible, not only must decisions be sufficiently motivated, but stakeholders must also be heard or consulted and the public must be sufficiently informed. Transparency about the supervisor's actions increases legitimacy and clarity about the rules and the application of rules and may contribute towards increasing compliance. The literature is increasingly discussing the question whether transparency under all circumstances actually increases confidence in supervision and whether transparency as a supervision instrument (e.g. providing information on investment risks) actually helps consumers take better decisions.³⁰

2.4.4 Effectiveness

²⁹ A.T. Ottow, *Market & Competition Agencies. Good Agency Principles*, Oxford: Oxford University Press 2015.

³⁰ F. de Vries, *Leidt transparantie tot meer vertrouwen in de toezichthouder?* (Does transparency increase the trust that we have in regulatory authorities?) (inaugural speech Groningen) 29 March 2016.

Supervision must be effective: the regulatory objectives must be attained within the margins of the legal framework and using the available instruments. The allocated instruments and resources play an important role in supervision. The call for more supervision has not always gone hand in hand with increasing (human) resources, which requires supervisors to set priorities. The main risks must, however, be identified and effective instruments must be deployed to mitigate market problems. Risk identification and the selection of the appropriate instruments are among the biggest challenges that supervisors encounter in their daily work.

2.4.5 Responsibility

Supervisors are responsible for the appropriate performance of the duties imposed on them. Their approach should not be repressive only, but they should also emphasise prevention and compliance. They may work together with the relevant sector or with supervised institutions (shared responsibility). In some cases problems occurring in the sector may be approached by co-regulation or self-regulation. This approach ensures that institutions take their own responsibilities, and take their own measures to monitor emerging risks. Supervisors can tune their policies towards achieving this, but it does demand cooperation from the sector.

3. DESCRIPTION OF THE PROCEDURE

3.1 Introduction

This section outlines the assessment procedure based on sources provided by DNB and AFM. See Annex IV for a more detailed description of the procedure. Neither DNB nor the AFM have to date published a similarly detailed description, nor made one available online. During the Committee's evaluation, information about the exact course of the assessment procedure was unavailable, or only available in fragmented form. The Committee therefore repeatedly asked DNB and AFM for additional information, which they provided. It cost the Committee some time and effort to distil the relevant information from the plethora of documents supplied by DNB and the AFM.

3.2 Initial and re-assessments

The assessment process is outlined in Section 3.3, while Annex IV(A) provides an extended description of a standard assessment process. In exceptional circumstances – such as when there is a change in facts and circumstances – DNB and the AFM may again assess whether prospective managing or supervisory directors are fit and proper for their position. There is a separate process for these re-assessments, due to the far-reaching consequences this can have for both the institutions and the individuals concerned, as they already occupy the position. Section 3.7 describes this re-assessment procedure.

3.3 The initial assessment in five stages

For the purpose of providing a clear description, the assessment process has been broken down into five stages. Both DNB and the AFM divide the process in a similar way on their websites.³¹ This description relates to the initial assessment for which DNB or the AFM bear ultimate responsibility. Other procedures apply for significant institutions within the SSM (see Section 3.6 and Annex IV(B)).

The Committee identifies the following five stages.

1. Receipt of notification of a candidate for prospective appointment and file compiling
2. Preliminary assessment and file contents review
3. Interview with candidate if relevant
4. Decision-making and announcement of primary decision to institution and candidate
5. Possibility for objections, lodging an appeal with the Rotterdam Court, and lodging a further appeal with the Trade and Industry Appeals Tribunal

³¹ See <https://www.afm.nl/nl-nl/professionals/onderwerpen/toetsing-proces> en <http://www.toezicht.dnb.nl/4/2/16/50-232612.jsp>. (Dutch only)

3.3.1 Stage 1: Receipt of notification of candidate for prospective appointment and file compiling

At both DNB and the AFM, the assessment procedure starts when notification of a candidate for prospective appointment is received. The time limit for the procedure starts to run from this date. After the notification of a candidate for prospective appointment is received, the supervisors verify whether all the required documents have been sent in and all forms have been filled in completely. The processing time for the assessment can be suspended until the file is complete. In practice this only occurs if the file is very incomplete (such as missing key documents). Of only minor inadequacies are detected, the required information will be requested and the time will continue to run. The AFM confirms receipt to the institution immediately after receiving the application online. DNB provides confirmation of receipt to the institution within two weeks of receiving the notification of a candidate for prospective appointment. If the application is incomplete or inadequate, the confirmation will also tell the institution what it still needs to submit to complete the application. The confirmation also provides details of the consideration period.

3.3.2 Stage 2: Preliminary assessment and file contents review

After the file is complete and missing information has been requested, both DNB and the AFM conduct a preliminary assessment.³² This preliminary assessment at DNB is conducted by an analyst, and at the AFM by supervisory support staff, and if necessary a case manager. The preliminary assessment comprises various aspects.

- Request information from the other supervisory authority.
- If relevant, ask for information from the relevant foreign supervisory authority.
- Consultation of various public sources, including Graydon (a private company providing business information) and the Chamber of Commerce, as well as non-public sources such as the Public Prosecutor's Office, the Tax and Customs Administration and where necessary the Fiscal Intelligence and Investigation Service (FIOD). This information is also used for vetting.
- Establish whether candidates hold any secondary positions, and check to see whether their CVs reflect this. Also assess candidates' time commitments.
- Compare the expertise and capabilities matrix with the candidate's CV to verify whether it reflects the scores filled in.
- Conduct reference checks. The AFM conducts reference checks in almost all cases, DNB does this sometimes.
- Consult internal databases, such as the directors' monitor, which contains details of measures taken against institutions and the directors involved. Also consider any issues from previous fit and proper assessments.

The complete file is assessed on content after the preliminary assessment is completed. At the AFM, the case manager is primarily responsible for this, while at DNB the staff member from its Expert Centre on Fit and Proper Testing (ECT) who handles the case has this responsibility. DNB and the AFM conduct a fitness assessment to determine whether the candidate's fitness for the position is

³² Even if the file is not complete, DNB and the AFM start conducting the preliminary assessment as far as possible.

beyond doubt. The fitness assessment is used to determine whether the candidate meets the requirements of the Policy Rule on Suitability 2012. Under the Policy Rule on Suitability 2012, the following aspects are considered:

- the position that the candidate will hold;
- the institution's type, size, complexity and risk profile, and
- the composition and functioning of the board that the candidate will join.

After analysing the file, the supervisors make a provisional assessment of whether the candidate is fit and proper to occupy the position. The ECT case manager or staff member establishes whether it is sufficiently clear from the file that the candidate is fit and proper. If the file presents a clear picture, a positive decision is given without the need for an interview. This is also referred to as a "paper assessment". The supervisory authorities then make the decision and inform the candidate (as described further in 3.3.4). A paper assessment only takes place in case of a positive decision.

If the ECT case manager or staff member is unable to obtain a clear view, they can decide to invite the candidate for an assessment interview. At the AFM, the case manager, sometimes in consultation with the supervision department, the manager or a senior staff member can suggest inviting the candidate for an assessment interview. At DNB the ECT supervisor decides, after consulting with colleagues the operational supervision department, whether there are grounds for an assessment interview. This may for example be the case if, based on the file, there are still uncertainties about any of the aspects referred to above. An interview may then be required to further probe the items from the file that were unclear. The significance of the position or the circumstances at an institution may also provide grounds for an interview. Finally, there may be other issues at stake, such as whether it is a new appointment, a specific role for the candidate, or a change within the sector where the candidate will be working.

3.3.3 Stage 3: Interview with candidate if relevant

If an assessment interview is deemed necessary, the interviewers will be selected according to the "assessment interview matrix", which is used to determine whether the presence of senior management is required at the assessment interviews. DNB distinguishes five supervision classes:³³ the higher the class, the greater the impact of serious problems or failure at an institution and the more intensive the risk analysis. DNB and the AFM both make a distinction between initial assessments and the re-assessments and between standard and complex assessments. The AFM applies escalation criteria for classifying an assessment as complex and for involving senior management and members of the board in an assessment interview. The AFM also has separate agreements in place with respect to dual access assessments. Annex IV(a) includes DNB's and the AFM's matrices and the escalation criteria and explains the interrelation between classes of supervision (*Toezicht klassen* - "T-classes") and the distinction between standard and complex

³³ See https://www.dnb.nl/binaries/Focus_tcm46-271614.pdf.

supervision at DNB, and the distinction between the types of assessment and escalation criteria at the AFM.

The assessment interviews have a maximum duration of one and a half hours at both the AFM and DNB. The assessment interview may focus on both the propriety and fitness of the candidate. Regarding fitness, during the interviews the candidates are asked questions about knowledge, competencies and what they already know about the board as a whole and how it functions. If there are any doubts after the first interview, or if there is still insufficient insight for making a substantiated decision, a second interview is planned. The candidate is then contacted by telephone and given feedback on the first interview. The reasons for planning a follow-up interview are explained, and DNB and the AFM inform the candidate of the main topics for discussion in the second interview. The second interview is conducted by the coordinating case manager and another supervisor than in the first interview. More senior members of AFM and/or DNB management are usually present at the second interview.

3.3.4 Stage 4: Decision-making and announcement of primary decision to institution and candidate

After the assessment interview, or after assessment of the file without an interview being necessary, the assessment officers compile their intended decision. The intended decision regarding fitness and propriety is made based on a decision-making matrix, which determines the management level at which the decision is made. As with the assessment interview matrix, here, DNB also makes a distinction between various supervision classes and standard and complex assessments. DNB also applies escalation criteria. The AFM also makes a distinction between initial assessments, re-assessments, and dual access, and also applies escalation criteria. Annex IV(A) contains the authority matrices for decision-making, as well as the criteria for DNB's complex assessments and DNB's and the AFM's escalation criteria.

DNB always informs the candidate and the institution about its intended decision by telephone. If the decision is positive, written confirmation is then provided. In the event of a positive decision, the AFM always informs the institution involved in writing and sometimes by telephone. Contacting candidates by telephone to inform them of the decision varies from case to case. If the intended decision is negative, the AFM informs both the candidate and the institution by telephone, with the candidate being contacted first. If an intended negative decision is given, the institution may withdraw the application, if it (or the candidate) does not wish to continue the application.

3.3.5 Stage 5: Possibility for objections, appeal to the Rotterdam Court, and to lodge a further appeal with the Trade and Industry Appeals Tribunal

In the event of an intended negative decision, both the institution and the candidate can submit their views orally or in writing. The people considering these views are different to the ones involved in the assessment. When taking a decision, DNB and the AFM consider the arguments put forward.

If the decision is negative, it is then possible to submit an objection and then to lodge an appeal or a further appeal.

If the institution objects to the primary decision, then staff from the legal affairs departments of both DNB and the AFM who were not involved in making this decision deal with this objection. The objection can be explained both orally and in writing. Appeal hearings at the AFM are chaired by an external independent officer. If the negative decision is upheld, the candidate and the institution can appeal to the court. Objections relating to assessments can be lodged with the Rotterdam Court. The ruling of the Rotterdam Court can be appealed at the Trade and Industry Appeals Tribunal.

These hearings are public in principle. In individual cases this principle can be deviated from, and this also sometimes happens in cases relating to assessments, which are then held behind (semi) closed doors. In its 2016 annual legislative letter,³⁴ DNB advocated holding all appeals relating to assessments behind closed doors, unless otherwise requested by the party concerned. DNB believes that this would ensure the legal protection of the assessed management and supervisory board members.

3.4 Dual access

Fitness assessments for banks and insurance companies are subject to what is known as "dual access", meaning that they are subject to cooperation between DNB and the AFM as laid down by the law.³⁵ The AFM can also indicate that it wishes to attend the assessment interview and it is also involved in decision-making. Although DNB and the AFM strive to reach consensus, if either DNB or the AFM make a negative assessment, then the ultimate assessment decision is also negative. Except for the AFM's presence at the assessment interview and its involvement in decision-making, the procedure for dual access assessments is the same as for the standard assessments described in Section 3.3. The detailed process description in Annex IV(A) explains exactly how the procedure for dual access assessments differs from the standard one.

3.5 Assessments involving the ECB

Since 4 November 2014, further agreements have been in place that govern institutions subject to direct ECB supervision, known as Significant Institutions (SIs) (see Section 2.3.6). The ultimate responsibility for these assessments rests with the ECB. DNB cooperates closely with the ECB and leads the process. DNB and the ECB perform these assessments together, with DNB being involved at all stages of the assessment process. 1) The institution notifies DNB about a candidate for prospective appointment. 2) DNB maintains contact with the institution and is responsible for gathering the required information. 3) DNB's Expert Centre on Fit and Proper Testing – after consultations with the AFM – prepares the provisional decision proposal. 4) The Joint Supervisory

³⁴ Parliamentary Papers II 2015/16, 401646.

³⁵ Sections 1:47c and 1:49 of the Financial Supervision Act.

Team (which DNB is part of), together with the ECB's Authorisation Division prepares a definitive decision proposal. 5) The Supervisory Board, as the ECB's internal body, prepares the draft decision to be submitted to the Governing Council for final decision-making.

If an interview with the candidate is required, the AFM can also attend. The ECB can also decide to attend the interview, but it takes a risk-oriented approach. The ECB will generally attend interviews with the chair of a management or supervisory board of one of the major SIs, but will not generally do so for subsidiaries of SIs. Annex IV(B) gives a detailed description of the process involving the ECB.

The ECB's involvement has led to further harmonisation of policies, procedures and practices regarding fit and proper assessments within the SSM, with of the objective of achieving consistent supervision. In the case of SI assessments, this has led to DNB placing more emphasis on certain criteria such as "experience", "time commitments" and "conflicts of interest". The ECB may also attach conditions to approval. These conditions may for example require candidates to undergo additional training or resign from other positions to free up sufficient time to fulfil their new responsibilities, or to prevent conflicts of interest.

3.6 Group assessments

The above description assumes that the assessment process relates to individual candidates. There can also be group assessments at both DNB and the AFM, with all board members being assessed at the same time, to verify whether they collectively have the required knowledge and experience.³⁶ These assessments are often conducted for the purpose of issuing a declaration of no-objection, application for authorisation, or when a completely new supervisory or management board is composed subject to an authorisation requirement, or there is a significant change in the board's composition.³⁷ The assessment of insurance company Vivat's new policymakers following its acquisition by Anbang in 2015 is an example of a group assessment.

Group assessments that DNB performs independently, or in cooperation with the AFM (dual access) start with an interview with all board members together. The items on the agenda at these interviews include the division of tasks, the manner of cooperation and group dynamics. Individual interviews are conducted on the same day as the group interview, with either the key function

³⁶ For each individual assessment (unless the individual has single responsibility), DNB and the AFM assess both the individual and the board as a whole. The difference is that in such assessments, the individual is the central focus against the background of a pre-existing collective, while this section deals with the situation in which the board as a whole is assessed at once.

³⁷ Another recent example is the AFM's collective assessment of crowdfunding platforms with dispensation from the prohibition on acting as an intermediary in inviting repayable funds. Fit and proper requirements were introduced for this group on 1 April 2016. For existing crowdfunding platforms, the investors' collective was assessed at once. No group interviews were held.

holders or all candidates.

When the AFM assesses the group as a whole for the purpose of an application for authorisation, then no interview is held with all board members together. Individual interviews can be conducted if necessary. Group assessments can therefore be conducted "on paper", without the need for any interviews.

3.7 The re-assessment procedure

3.7.1 Preliminary examination

The re-assessment procedure at DNB begins when the supervisor sees reason to do so. Supplementary investigations are often required, which are often carried out by the department that came up with the reason for re-assessment. Based on these findings, the ECT prepares an assessment memorandum and then in collaboration with the Legal Affairs Department and/or the Expert Centre on Intervention and Enforcement, judges whether there are reasonable grounds for initiating a re-assessment. This memorandum is always submitted to the Prudential Supervision Council for a decision. This is an internal consultative body within DNB in which the two executive directors of supervision and divisional directors of supervision meet to prepare the decision. The memorandum is also submitted to the ECB in the case of a Significant Institution.

At the AFM, the supervision department involved or the Market Integrity and Enforcement Department starts an investigation when a signal for possible re-assessment comes in. The investigators record the results of the investigation in a memo. A meeting to discuss fitness and propriety of the individual is then convened to judge whether there are reasonable grounds for re-assessment. A memo is then prepared with a recommendation that is presented to the head of the department involved in order to make a decision. If escalation criteria apply, the department head explains the decision to an individual director. The individual director can then present the decision for re-assessment to the entire board.

3.7.2 Actual re-assessment

After the decision for re-assessment has been made, the candidate concerned is first informed by telephone. A letter is then sent to him or her and to the institution explaining the grounds, nature and context for re-assessment, including the legal safeguards and the details of the re-assessment procedure. A re-assessment interview is always part of the procedure. The candidate involved is informed about the topics that will be discussed, the areas that the re-assessment will cover, who will participate in the meeting, that the candidate is allowed to bring an authorised representative to the interview, and how long the procedure will take. This is first communicated by telephone and then confirmed by letter. The first interview is conducted two weeks after the announcement letter was sent, provided it fits the candidate's schedule. Operational supervision staff are involved with the preparation and the decision-making, but not is not present at the interview itself. If a second interview is required, then both DNB and the AFM change the interviewers, and there is a further escalation in accordance with the authority matrix presented in Annex IV(A).

3.7.3 Decision-making about the outcome of re-assessment

After one or more interviews have taken place, DNB's ECT assesses the individual's fitness and/or propriety together with the Legal Affairs department, the Expert Centre on Intervention and Enforcement (ECIH) and operational supervision. The ECT prepares a recommendation on the outcome of the re-assessment. This recommendation is always submitted to the Prudential Supervision Council for approval.

At the AFM, the head of the department concerned (Market Integrity and Enforcement Department, or Account Supervision) judges the outcome of the re-assessment. If one of the escalation criteria is met, the AFM's Executive Board is also involved in the assessment. The decision is a joint one taken by the department of Legal Affairs and the department concerned.

3.7.4 External communication

After the decision has been made, the candidate is informed by telephone by the head of DNB's ECT (for institutions in categories T1-T3) or by the division director or governing board member concerned (T4-T5). In the same week, a meeting is planned with the candidate to clarify the outcome of the assessment. The candidate is also informed about the follow-up procedure based on the standard procedure under the General Administrative Law Act for presenting views and lodging objections and appeals.

At the AFM, the senior supervisor or his or her superior informs the candidate about the outcome of the re-assessment. At the AFM, too, the candidate is informed about the follow-up process based on the procedure under the General Administrative Law Act for submitting views, objections and appeals.

4. IMPROVEMENTS ALREADY MADE BY THE SUPERVISORS

4.1 Introduction

Since mid-2015, DNB and the AFM have taken various measures to enhance the assessment procedure. The measures followed from internal evaluations of the assessment procedure, based on criticisms heard from the media and the sector. The Committee's evaluation must therefore be seen as the capstone of the improvements that to date have been made by both supervisory authorities. This section describes the measures taken based on the information supplied by the two supervisory authorities. The adjustments can largely be divided into three themes: increasing transparency; injecting greater seniority into the assessment procedure, and strengthening the perceived legal certainty and legal protection.

4.2 Increasing transparency

DNB and the AFM have taken various steps to make the assessment process more transparent. For example, in February 2016 DNB reviewed and adjusted the information in its Open Book on Supervision, including the addition of anonymous case studies.³⁸ In August 2016 published a special page on its website containing relevant information on assessments of individuals, including a full description of the entire assessment procedure, a simplified diagram of the process and an explanation of when an interview is part of the assessment.³⁹ The two supervisors have also made minor adjustments to the information on the website on an ongoing basis.

Holding information meetings about the assessment process is a second measure to increase transparency. On 9 March 2016, DNB held a round table meeting, and in March also began organising regular information meetings for candidates and other parties involved in assessments. The AFM has planned information meetings and workshops in the first two quarters of 2017 for the new group of policymakers of audit firms that serve public interest entities (PIEs).⁴⁰

A number of more minor measures have also be taken in this respect. For example, DNB reviewed all standard written communications concerning the assessment process in February 2016.⁴¹ DNB also published a new information brochure for candidates. Both DNB and the AFM now send invitations for assessment interviews by email, providing information about the interviewers and how candidates can prepare for their interview (referring them to the website). DNB has done this since February 2016; the AFM since May 2016. In October 2016, DNB also posted a short introductory film about the assessment procedure on its website.

³⁸ See <http://www.toezicht.dnb.nl/en/4/2/16/50-229347.jsp>

³⁹ See <https://www.afm.nl/nl-nl/professionals/onderwerpen/toetsing-bestuurders>. (Dutch only)

⁴⁰ Fitness requirements for managing and supervisory directors of these audit firms are expected to enter into force in July 2016.

⁴¹ At the AFM, it is standard practice to send dedicated letters to the various target groups concerned.

4.3 Adding seniority to the assessment process

Since the third quarter of 2015, DNB has involved more senior interviewers in the assessment interviews. The AFM started doing this in April 2016. Both supervisory authorities do this on the basis of an assessment interview matrix, presented in Section A of Annex IV. Since 2015, DNB has also involved senior management in ongoing and forthcoming assessments by means of the regular management reports.

4.4 Amplifying the perceived legal certainty and protection of legal interests

A third overarching theme of the measures that DNB and the AFM have taken is underpinning the perceived legal certainty and legal protection. In this context, DNB and the AFM have made efforts to improve the re-assessment procedure. Since October 2015, DNB has done this by always submitting the decisions on re-assessments to the Prudential Supervision Council for approval. In its new decision-making matrix of April 2016, the AFM states that decisions relating to re-assessments must be made at department head level, with the option of escalating to board level.⁴²

The following two measures to strengthen the perceived legal certainty and legal protection relate to the assessment interview. Since the end of 2015, DNB has informed candidates that they have the option of bringing a representative to the assessment interviews. The AFM has always permitted candidates to bring representatives, but has only explicitly communicated this option for re-assessments since August 2016. In early 2016, DNB also launched a pilot scheme for offering candidates the option of making an audio recording of the assessment interview. The AFM awaits the findings of this pilot scheme. In the context of strengthening the candidate's perception of legal protection for candidates in assessment-related matters, DNB and the AFM advocate holding legal hearings behind closed doors. DNB communicated this in its legislative letter to the Ministry of Finance of 28 June 2016. The request is currently with the Rotterdam Court.⁴³

4.5 Other measures

A measure that does not fit in with the overarching themes, but which has been introduced for the purposes of strengthening the assessment process is the stepping up of cooperation between DNB and the AFM. The two supervisory authorities have been holding regular joint policy meetings since 2013. Bilateral meetings are also held between the heads of responsible departments, and the shared digital platform is being discussed.⁴⁴ Since 2016, DNB also started conducting more risk-

⁴² See <https://www.afm.nl/nl-nl/over-afm/werkzaamheden/bevoegdheden>.

⁴³ Parliamentary Papers II 2015/16, 401646.

⁴⁴ The AFM already has its own digital platform, while DNB is constructing one.

based assessments, partly as a result of a reduction in staff available for assessments. The AFM's assessments have traditionally been risk-based. As a result, it only interviews candidates when considered necessary based on the risk assessment.

A smaller measure is DNB's improvement of parking space and meeting room facilities in the last quarter of 2015 and communications to institutions and candidates about these facilities.⁴⁵ Another more minor measure introduced at the beginning of 2016 is that DNB now contacts candidates by telephone to inform them of negative as well as positive decisions. The AFM has done this since April 2016 for large financial enterprises and high-impact assessments, but does not yet do this for small financial service providers.

⁴⁵ At the AFM, the availability of a suitable meeting room and parking space has never been an issue.

5. PERCEPTIONS OF THE ASSESSMENT PROCESS

5.1 Introduction

This section of the report describes the perceptions of the assessment process that the Committee took down based on the interviews it held with candidates. Interviews were held with managing and supervisory directors from different segments of the financial sector who were assessed by DNB and the AFM in the past years. The opinions and perceptions of interviewed representatives of seven sector organisations and Members of Parliament and Ministry of Finance staff have also been included (see Annex II for a full list of interviews held). This means that the findings include both the first-hand experiences of the assessed candidates and more indirect signals based on the narrative heard on the assessment process.

The context of the assessment procedure has changed profoundly in the recent years. Managing and supervisory directors at significant institutions (SIs) have for instance been subjected to the ECB procedure since November 2014. In addition, both the AFM's and DNB's fit and proper assessment procedures have undergone various improvements in the past eighteen months (see section 4). This means that the assessment procedure is in a state of flux with changes being implemented even during the course of the Committee's evaluation. Many of these improvements are of a recent or very recent date. Candidates have not yet had the opportunity to experience the effects of the latest improvements.

The insights are arranged according to the different stages of the procedure (section 3 provides a full process description).

1. Receipt of prospective appointment notification form and file compiling
2. Preliminary assessment and file contents review
3. Interview or interviews with the candidate if relevant
4. Decision-making and notification of primary decision to institution and candidate
5. Opportunity for objection, appeal to the Rotterdam District Court

We will first discuss the overall experiences and perceptions that the candidates have of the assessment procedures performed by the AFM and DNB. It should be noted here that the bulk of these experiences was obtained from larger financial institutions (dual access) (see Annex I point 5). A small number of candidates interviewed only had experience of the AFM's (written or oral) assessment procedure.

By way of illustration, the account of experiences includes anonymised quotes from interviewed candidates. The quotes included represent broadly held opinions. Where it concerns the opinion of one person only, this is explicitly stated. The quotes are stated in italics and quotation marks. For the sake of readability, only a small number of quotes has been included for each theme. At the start of each paragraph a separate text box has been added with a short summary of the key content.

5.2 Overall appreciation of assessments

None of the candidates doubts that assessments are necessary. Their criticisms are primarily related to the assessment procedure and were provided by candidates who were interviewed at least once. At present, the vast majority of assessments is performed by means of a paper procedure where personal interviews are assumed unnecessary. The majority of candidates notices relatively little of the assessment process.

Candidates, politicians, and representatives of sector organisations are virtually all positive on assessment as an instrument. Well-reasoned assessment is endorsed and perceived as an important instrument to enhance the sector's learning capacity. The necessity of assessment is therefore not or hardly questioned. Candidates say:

- *"It forces us to think about the institution's own role."*
- *"I can see the effects that assessments are having. People now think much better about the composition of a supervisory board."*
- *"At our own institution, it helps to communicate that DNB sets rules that we must abide by. This is also used internally to reject people respectfully."*

A few respondents doubt the necessity of the current ex ante assessments.

Some of the interviewed candidates are also seeing that assessment is used as an instrument to avoid taking responsibility. Pension funds for instance nominate candidates from a pool of employers and employees. Sometimes notifications of candidates to DNB are even accompanied by a message: *"It's no big deal if this person is not appointed."*

There are also questions on the fact that the current assessment system primarily looks at new positions to be filled. This poses the risk of "grandfathering", whereby a person occupying a position can remain in function based on an old assessment.

- *"There are people embarking on their third term of office in the same role, and people like me, who are assessed three times within a short period of time."*

As the necessity of the assessment instrument is beyond doubt to virtually all candidates, their comments almost all relate to the *whats* and *hows* rather than the *whys* of the assessment process. Their appreciation of the structure of the procedure is much less even; it varies between very positive responses: *"it has helped me reflect on my position and it was a meticulous process."* and fairly negative ones: *"the wrong and sometimes naive questions are being asked; I felt ill-treated; it felt more like being interrogated, and I had no idea where it was going."*

The series of catch-up assessments launched in 2012 met with particularly critical feedback. These negative feelings are in part still resounding in the current appreciation of the assessment process. Meanwhile, the process is in transition and both the AFM and DNB have made considerable progress with process improvements (see section 4). These improvements are increasingly being noticed by the sector.

- *"I'm very pleased that so many of our signals are being taken seriously."*

A large proportion of assessed candidates has no overt opinion about the assessment procedure. A survey held among members of the Dutch Association of Insurers before the latest round of process improvements shows that one third of respondents were positive on DNB's assessment procedure, one third was neutral, and one third held a negative opinion. The last group characterised the process mainly as slow and unpredictable. The majority of candidates who went through the AFM's assessment procedure reported that they noticed relatively little of the proceedings. The majority of assessments concerns paper ones, whereby candidates are approved based on the information submitted without having to be interviewed. As a representative of one of the sector organisations put it:

- *"Since occupying my position here, I have actually not heard one single member talk about the assessment procedure. So it is not an issue here."*

A representative from another sector organisation confirmed this feeling and also indicated that the AFM's assessment process is not weighing heavily on the sector.

It is important to note here that the points below must be viewed in the light of the positive fundamental attitude taken towards the instrument of assessment, and the quiet majority that notices relatively little of the assessment procedure. In addition, the candidates interviewed were specifically asked after possible points for improvement in the procedure. The findings below reflect this context.

5.3 The candidate's position

First of all, the majority of candidates believes that their legal status is problematic. The procedure is mainly performed between the supervisor and the institution. Based on the applicable laws and regulations, the individual has no formal legal status during the process. This leads to a feeling of uncertainty among candidates about their legal status as they may fall between two stools legally speaking. In the candidates' perception, the assessment procedure as it is currently performed has insufficient guarantees in place.

- *"You're very vulnerable as an individual, the assessor can make or break you."*

- *"We find objectivity and legal protection crucially important, which we have also told the Members of Parliament."*

Consequently, the entire procedure has heavy connotations for individual candidates with pressure being applied by both the supervisor and the institution. The candidate is in between these two forces.

- *"You really feel victimised, very dependent on the institution and the supervisor."*
- *"It feels like you're taking a test."*

The candidates' vulnerability is reflected in their uncertainty about both the content and the course of the assessment procedure. They first of all had a great deal of questions about the criteria used, and about the exact course of the process – from notification to decision – as will be elucidated below. There is one thing that all candidates agree on and that is that the position of individual candidates must be protected better.

- *"You must protect the individual. No matter how understanding we can be about the context, I find this point to be crucially important. Some people are marked for life. After this, I doubt whether I actually want to be appointed as supervisory director of a financial institution in the Netherlands."*

5.4 Supervision vs assessment

Exchange of information between supervision and assessment is accepted and even perceived as beneficial. However, it is important that information is exchanged transparently, and that it is clear how supervisors segregate their functional roles, especially where re-assessments are concerned.

A second common point for improvement that emerges from many interviews is the alignment of and segregation between supervision and assessments. How supervision information is included in the assessment process is still not sufficiently transparent to most candidates.

- *"If there is one point of friction, it is the semblance of independence of the supervisor and the blurred boundaries between assessment and supervision."*
- *"One of the things we're frequently up against is that supervisors use the assessment instrument as a means of putting pressure on the directors involved."*

Chinese walls are often mentioned in this respect. There are two types of Chinese walls: those between supervision and assessments and between assessments and possible objections against assessments. As one of the candidates put it: *"Nobody believes that these Chinese walls actually exist."*

The question of course is whether such a stringent segregation between departments and functional roles has to be in place at all. The candidates have different opinions about the desirability of exchange of information between supervision and assessment. Some of them believe the two should be strictly separated.

- *"You have to rely on an assessor not involving the context, although they are aware of it."*

The majority of candidates, however, believes that should be no problem and it is even important to include supervision information in the assessment, as long as the supervisors are transparent about what they are doing.

- *"Of course supervision and assessment should be linked."*
- *"Assessments become far less relevant if you don't include information from supervision. What exactly are you assessing if you don't?"*

Many candidates do not know how information is exchanged exactly.

- *"With a lack of full Chinese walls, you have to guarantee that the assessor performs independent assessments. Which is a difficult issue."*

Candidates mentioned several examples where supervision and assessment were improperly intermingled; this seems to apply to re-assessments mostly.

- *"I have heard too often that supervisors 'threaten' candidates with re-assessment. To my mind, this is an argument in favour of educating supervisors better. I'm all for transparency."*

A candidate who was assessed for three positions within a fairly short period of time says:

- *"As the interviews quickly followed on each other, it was clear to me that the previous files had also been included in the later assessments. In my case, this had a positive effect as I was given the opportunity to explain something from an earlier interview, but it may of course also pan out negatively."*

Several candidates emphasised that function segregation is especially relevant during re-assessments.

- *"We believe that it would be better to have the supervisor propose re-assessment, but to have the actual re-assessment performed by an independent institution."*

The Committee's interviews explored the boundaries in the use of supervision information. Most candidates believe that the best results can be achieved with the possible addition of an external "third party".

- *"A constructive dialogue in discussing supervision files must certainly be possible, but you have to signpost more clearly at which point you move from one thing to the other (from supervision to assessment and the other way round). It would be good to have an independent third party present."*

Candidates have also indicated that it is important for supervisors to be transparent about a) the presence or absence of Chinese walls between supervision and assessment, b) the situations where supervision information is involved in assessments, and c) how this is done.

Besides the uncertainty about the what and how of exchange of information between supervision and assessment, several candidates voiced concerns about the different roles played by financial supervisors in the sense of "developing rules", "monitoring rules" and "imposing sanctions".

- *"The separation of powers at this independent public body (DNB) is few and far between. Everything is in one hand."*
- *"The AFM wields power through the different roles that it occupies."*

Several candidates also voiced their concerns about the influence that politicians and the Ministry of Finance have on the functioning of the supervisors.

- *"It sometimes seems as if assessments, re-assessments in particular, are being used for political purposes, which isn't right of course."*
- *"You sometimes have the idea that the Ministry has a certain opinion, which DNB then acts on, and in some cases uses assessments as an instrument."*

But another candidate says:

- *"A certain degree of intermingling is inherent to supervision and the role of the supervisor. I have never heard of intermingling going too far and assessment being used as a political pressure instrument."*

5.5 Spectrum of competencies

Candidates find it very important to have different competencies installed on boards of financial institutions. They feel that the assessment procedures, particularly those of DNB and the ECB, still emphasise the search for financial expertise too much, while knowledge of different kinds, (HR, IT, legal) is becoming increasingly important for financial institutions. Candidates also find that the supervisors are still emphasising the independence of individual executives too much. In both cases, more attention should be paid to the management body as a whole. The sector itself should also take more responsibility in emphasising diversity. It is still acting too hastily on the assumed expectations of the supervisor.

Another recurring theme in the interviews with former candidates and sector organisations is the way in which DNB in particular approaches the required knowledge and competencies and the scope that is left for diversity on management and supervisory boards.

5.5.1 Focus on financial expertise

Candidates have the impression that the assessment process puts heavy emphasis on financial knowledge and leaves little room for other competencies and knowledge.

- *"I believe that DNB's scope is too one-dimensional. Intrinsic financial knowledge weighs very heavily at DNB."*
- *"It focuses completely on financial knowledge."*
- *"They tell you that it is important to have knowledge of other disciplines on boards, and then someone who has not been nominated because of his financial knowledge is asked after details on Solvency II."*
- *"This feels as if they are saying: we want diversity but we want to turn people into bankers as quickly as possible."*

The ECB's procedures are perceived in the same way.

- *"Although the ECB says that it values diversity, what we are actually seeing is that organisations are having more trouble convincing the ECB of the concept of diversity."*

5.5.2 Board dynamics

Several candidates believe that the AFM and DNB do not always have sufficient understanding of board dynamics. They think that the two supervisors are under the impression that board meetings are often not sufficiently "challenging". These candidates think that the supervisors are still too often drawing the unfounded conclusion that supervisory directors do not challenge managing directors enough.

- *"You have the constant impression that the supervisors believe that there is one effective management style only and that providing opposition plays an important role. To my mind, there is not one single approved template for good management, but there are several possible leadership styles. Not that you get to see the template, but you do get the impression during the assessment interview that it exists somewhere."*

- *"I was told that every supervisory director must be able to take all decisions independently. I have never taken a decision by myself, so I think that this is incorrect. It is not that I don't agree with the commitment of increasing pluriformity, but you must then also change the assessment procedure to this end. I also think that candidates' learning capacity should be tested. That's what I missed."*
- *"DNB's assessments will definitely not establish whether a candidate has an 'independent mindset'."*

DNB's current approach is to the detriment of diversity, candidates believe.

- *"Diversity is drying up."*
- *"DNB preaches that it wants to achieve diversity, but the assessment centres on insurance."*
- *"Our new HR manager, who has nothing to do with Solvency II, had a bit of a fright as he didn't know what to expect. This creates unrest and sometimes induces people to withdraw. The supervisor should be made aware of this."*

At the same time, candidates and institutions anticipate what they believe that the supervisor wants to see. This means that the sector may allow itself to be discouraged too quickly from emphasising diversity.

- *"Institutions themselves pre-select candidates that they believe will be successful."*
- *"The organisation already had relatively strong expertise in place on typical points for supervisory directors, so this candidate would actually be a good addition from the perspective of diversity. But we decided not to seek confrontation with DNB as we may live to regret it."*

Institutions on their part should realise that nominating candidates from other fields demands extra explanation to the supervisor. Just filling in the competency matrix is not enough in these cases. The AFM and DNB then also want to know the underlying motivation.

- *"The file included a very detailed description of how our company sees the candidate, which the AFM highly appreciated."*

The AFM and DNB find that too often such meticulous explanation and preparation are still lacking. The sector recognises that it could do a better job at preparing the application. Insufficient attention is for instance still being given to the composition of the entire management body and the motivation for the choices made.

Various candidates said that the assessment process needs to reflect the rapidly changing financial sector more.

- *"This demands a different set of requirements. The current procedure still reflects the situation in 2007/2008 far too much."*
- *"I am positive about DNB's basic attitude to diversity, which is positive, but its assessment procedure must be aligned better with this."*

5.5.3 Group assessments

Candidates believe that the supervisors do not yet have sufficient eye for the management body as a whole, the collective of individuals.

- *"I am much more in favour of a kind of "group assessment": how does the board operate as a collective, what is its management style, etc. I don't know to what extent this has to be given attention in the assessment procedure, maybe it can be better achieved through supervision and interviews."*
- *"It is important to look at the complete composition of a board rather than at fixed profiles."*
- *"There must be 'agreed understanding' (between DNB and institutions) about the composition of the Supervisory Board. This should be arranged on about two standard pages. This will prevent a lot of grief during the process."*

5.6 Responsibility of the sector

Many candidates feel that the supervisory authorities are increasingly taking the role of internal supervisor. This increases the danger of moral hazard. Various suggestions were made for returning the responsibility for their own management bodies to the sector itself. Financial institutions that are investing in proper preparation of candidates are reaping the benefits.

The sector's own responsibility is discussed from various angles in the interviews. Many candidates feel that the supervisory authorities are taking the role of internal supervisor too much. The question presents itself what the role of the internal supervisor is if the supervisory authority increasingly takes it over. The candidates interviewed regularly referred to the risk of moral hazard: institutions adopt a calculating attitude and shift responsibilities to the supervisor.

- *"The supervisors are at the bank every day, and if you don't watch out, they know much more than a simple supervisory director. They interfere with everything really."*
- *"I think that much more responsibility should lie with internal supervision and if that does not perform up to standard, it's the end of the line. Now the Supervisory Board gets away with more without being sent away."*
- *"There is a great danger of management bodies tuning their decisions to what they think the supervisory authorities want to hear. This means that lots of things are not dealt with because of the tunnel vision that has been adopted."*

The feeling that the supervisory authorities are increasingly taking the role of the internal supervisor has in the eyes of some candidates led to the position of supervisory director no longer being attractive.

- *"We are hearing more and more that people are reluctant to join supervisory boards as the manoeuvring room that these boards have is shrinking further due to the growing influence of the supervisory authorities and strict rules being imposed."*

Many candidates therefore recommended returning responsibility in the assessment process to the sector more and have given suggestions as to how this may be done.

- *"You are looking at what DNB is doing, but I personally believe that 60% of the effort to appoint fit and proper management should come from the sector itself. We are seeing a new type of pension fund manager emerge, who is much more aware of the role that pension funds play in society."*

The sector also has a big own responsibility to ensure that it facilitates the assessment process. The AFM and DNB indicated that institutions that prepare their candidates meticulously have the least problems during the assessment process. Candidates fully agree:

- *"We have an exceptionally conscientious process, we have never had a candidate rejected. The preparation on Solvency II alone takes at least several days for each candidate. I think it takes a full week in total. I see meticulous preparation mainly as a good investment, it is part and parcel of your appointment."*
- *"The information that I got from my organisation was quite superficial, and that is where it went wrong. I had insufficient knowledge of what was needed for the interview with DNB."*

5.7 Small companies

Candidates have a mixed picture of how DNB and the AFM approach small companies. On the one hand, they get the impression that the supervisors' attention for small companies is waning, but on the other, they believe that small companies have bigger inherent risks, while risk-based assessment seems to focus mainly on larger companies.

Several candidates felt that special attention for small companies is needed. The assessment of small companies among other things brings up the question of proportionality.⁴⁶

⁴⁶ Proportionality is defined in part 1.3 of the Policy Rule on Suitability 2012, which stipulates that assessments must take account of the institution's type, size, complexity and risk profile.

- *"You have to prevent assessments from being used as a means of getting rid of small companies. DNB has made no secret of its opinion that small parties present risks. So this line of thought is certainly entertained by the supervisor."*
- *"Small companies are slowly pushed out, or being subjected to complex procedures. The AFM is asking for Ferraris, but forgetting that there are also Volkswagen Polos on the road."*

Some other comments heard include:

- *"The quality of management of small pension funds is a real concern. Their funding ratios fell from 150 to 95%. The larger ones have much better ratios. The question then is, what is risk-based. If you classify risk incorrectly you've got a problem. This is also very important where scoring is concerned: small parties take up much more of the internal supervisors' time."*
- *"I went through several interviews and the quality of what is being discussed reflects the size of the institution. Attention faded when smaller institutions were concerned, while risks are often bigger as they do not have the resources."*

The possible consequences of negative assessment decisions are very different for smaller companies as there is a closer link with their authorisation.

5.8 Duration of the procedure

The time it takes to move through the assessment process remains a point for attention, although it has already been reduced. In addition, candidates want to be informed about the different stages of the assessment procedure, including timelines and the different steps taken by DNB and the AFM as the process unfolds.

Candidates' findings with respect to the time span of the procedure will be described below, and their appreciation of the various stages of the procedure will be amplified.

The time that the procedure takes is considered very important. Although throughput times have been reduced both at the AFM and at DNB since the assessment procedure was introduced (see Annex V), the perception is that assessments still take too long to complete, and they sometimes also miss their statutory deadlines. This is partly due to incomplete files, and partly because additional information is needed. Sometimes the process progresses smoothly, and sometimes it takes inconceivably long in the eyes of candidates.

- *"Timelines are a real problem: the process is price and reputation sensitive."*
- *"Sometimes people are left dangling for 13 weeks, and sometimes everything is wrapped up within one week, and no-one knows why. This unpredictability is not a good thing."*
- *"The process seems to run smoothly for candidates with financial knowledge; any deviation from the standard causes problems."*

- *"Preparing candidates also takes time, especially if they have a somewhat different profile. We found a new candidate before the summer holidays, and we hope to have her officially appointed by December. Her name is already known, so she is exposed to some risk. As an organisation, you organise everything around the assessment. You might call this the gross time that the assessment claims, besides the net time that it takes to perform the assessment procedure itself."*
- *"DNB runs its process and takes little account of general meetings of shareholders. It did take account of this at the third interview. Others also told me that DNB had become more flexible in this respect, so that has certainly improved."*

In addition to the time it takes to complete the assessment procedure, stakeholders also have some criticisms on the transparency of the different stages in between. Candidates made the following comments:

- *"In the run up to the interview, a lot of things were unclear. For a long time, I didn't hear when it was scheduled. I heard about the date of the interview less than three weeks before it was scheduled to take place. Communications were also pretty vague throughout the process. I'm used to quick and clear responses in the commercial world."*
- *"People should be informed about what they can expect, but I have to say that the DNB staff involved did stick to their appointments without fail. After you have finished your interview, you receive full support, but before that time contacts went through secretarial staff, and we were not adequately informed."*

5.9 Receipt and assessment of the file

Candidates are often in the dark as to how the process unfolds after their files have been submitted. Many of them also do not know the exact significance nor the details of the assessment criteria. DNB and the AFM have some discretionary leeway in their interpretation of the policy rule, which leads to uncertainty among candidates.

At this stage of the process, the institution notifies the supervisor of its nomination for appointment, and the institution and the candidate compile the underlying file together. The candidate and the institution also fill in the expertise and capabilities matrix at this stage. A few respondents found this a laborious exercise, as it was unclear to them what the classes of "high", "medium" and "low" exactly referred to, as no clear criteria had been provided. It was left to the candidate and the institution to come up with their own interpretation. So some candidates and institutions filled in the matrix conservatively, while others were more certain of themselves and others.⁴⁷

⁴⁷ Since the start of 2016 the AFM has had a new expertise and capabilities matrix in place that specifies the particulars of the "high", "medium" and "low" categories.

Candidates and representatives of sector organisations are also under the impression that institutions and candidates are required to submit an increasing load of information, e.g. expressed in competencies with examples. This is often not sufficiently known to institutions, who then submit incomplete files that slow down the process. This may lead to institutions and candidates blaming the AFM for the delay, whereas this is not the AFM's responsibility. Several candidates indicated that they would welcome more information on how to compile the file correctly.

After submitting the file to the supervisor, candidates lose sight of what happens to it. The process then unfolds mainly between the institution and the supervisor. The candidate feels this as the start of a process that is frequently characterised as a "black box". The supervisor contends that the institution is responsible for keeping the candidate informed about the progress of the procedure. It depends heavily on the institution whether this is actually done. This means that the candidate is in a vulnerable position throughout the process.

Many candidates also experience the assessment stage as a "black box". Candidates are often unclear about how the criteria that the supervisor uses are defined, e.g. "experience in the financial sector".⁴⁸ Candidates believe that the supervisor stretches or restricts definitions as it sees fit. This leads to the perception that the AFM and DNB are too subjective. One of the candidates indicated the need for more transparency about what is meant exactly by "more banking experience". The assessment criteria are insufficiently transparent in this respect for both the candidate and the institution.⁴⁹ Candidates made the following comments:

- *"The interpretation of the policy rule is unclear. The criterion of demonstrable experience of a given number of years for instance cannot be found. Neither does the questionnaire tell you what the supervisor finds important."*
- *"An important point is that it is not sufficiently clear what is being assessed exactly and which points will be addressed. Behaviour, knowledge, competencies? It would be nice if stakeholders were to get more guidance on these things."*

Candidates also find that DNB and the ECB have different assessment strategies. DNB is characterised as more "principle based" and the ECB is more "rule based".

Some candidates commented on the criteria that the AFM uses.

- *"The AFM is our supervisor and assesses policymakers in our sector. In our sector, we do not know how the assessment procedure is conducted, and which assessment criteria are used."*

⁴⁸ For assessments concerning institutions in groups B and C, this has actually been specified in the Policy Rule on Suitability, see paragraph 2.4.1 and following.

⁴⁹ For assessments on behalf of institutions in groups B and C (see section 3) there are criteria in place about the number of years of experience (see paragraph 2 and following of the Policy Rule on Suitability 2012).

- *"People with little relevant knowledge have been approved and people who do have the necessary knowledge have been rejected."*

5.10 Interview or interviews with the candidate

The majority of assessments concerns paper assessments (see Annex V for a detailed overview). The proportion of paper assessments is growing as DNB has been increasing its number of risk-based assessments since early 2016; DNB's aim is to actually interview a maximum of 20% of candidates. So for the majority of candidates the supervisor does not see the necessity for an interview. The candidates that the Committee interviewed had mostly undergone one or more assessment interviews.

The interview stage breaks down into two sub-stages: the preparation for the interview and the actual interview itself. This section of the report also discusses the perceptions that the candidates have with respect to the themes of seniority and professionalism of the assessors, the option of recording the interview and bringing a representative, the concept of dual access, and the assessment interview at the ECB for SIs.

5.10.1 Preparations for the interview

In order to prepare themselves adequately for the interview, candidates need to receive clear information on both the structure of the process and the content of the assessment from DNB and the AFM and from their own institutions.

The AFM and DNB are committed to making the process more transparent by organising informative sessions, issuing brochures, and providing information on their websites. It is unclear to what extent the most recently assessed candidates are already experiencing the effects of these efforts. Various candidates have expressed their uncertainty about the content of the assessment interview. The comments quoted below relate to interviews held at DNB and the ECB.

- *"We all have questions as to what you can expect, who will attend and in which role, but apart from the invitation there was no guidance whatsoever."*
- *"It feels as though you're preparing for an exam without having any idea what the requirements are."*

Improvements are being seen in this respect, however, judging by the experiences of the most recently assessed candidates.

The interviews held by the AFM also left candidates with mixed feelings. Some of them would have appreciated being informed better about the objective and the setting of the interview, while others said that they were informed adequately beforehand. There seems to be a discernible difference

between the candidates interviewed before the supervisors' improvement efforts, and those who were interviewed after these improvements had been made.

- *"The brochure had already made clear that it would benefit your performance in the interview if you know what's going on at your company. The AFM's assessors were transparent about what I could expect. The person leading the interview sent me an email with detailed information about the objective beforehand. Based on this information, I went to the institution to ask for input."*

DNB is also providing more and more information on the assessment procedure, also in the form of informative sessions. The need for additional information from DNB was nevertheless voiced regularly.

- *"There was hardly any difference between my first assessment (before the improvements) and my second and third assessments (after the improvements) in how DNB prepared me for the interview."*

That said, it should primarily be the institution itself that prepares its candidate for the assessment interview. Institutions on their part clearly hesitate to inform candidates beforehand of company-sensitive information as long as it is uncertain whether the candidate will pass the assessment.

Several candidates have voiced their dissatisfaction with the short term on which the interview is scheduled.

- *"My interview was scheduled two weeks in advance, which leaves you with little time to prepare yourself adequately, which doesn't do regular work schedule any good."*

5.10.2 The interview

The assessment interviews often gave the candidates the feeling of having to take an exam. As long as they are aware of the requirements that they are supposed to meet this is acceptable, but they get annoyed if the objective and the direction of the interview remains unclear.

Content-wise, various candidates indicated that they are satisfied with the interviews they had with the supervisor as part of the assessment procedure.

- *"The content and standard of the interview with DNB and the ECB were very good. The questions asked were in the right register and they were relevant."*
- *"I can call myself an expert as I was assessed three times for different positions. All interviews were satisfactory, with all of the teams I spoke to. The content of the interviews was more or less the same; we talked about the responsibilities attached to the position and about whether*

I had sufficient expertise to perform my proposed role. I can imagine that the level of detail I was subjected to in my interviews can be rather intimidating for less experienced candidates.”

- *“I had the feeling that I could be open about the dilemmas that you face as a CEO, and what the difficulties that you encounter in the relationship between the management board and the supervisory board. I had a very satisfactory interview about this.”*

Candidates often said that they find the questions asked very detailed.

- *“What are the differences between Solvency I and Solvency II? Why this level of detail, and why is this relevant for a supervisory director?”*
- *“These detailed questions also suggest that you need the same level of detailed knowledge to perform this role. They do not seem to subscribe to the fact that knowledge can be easily updated.”*

In addition, candidates reported that they are quite frequently asked questions that do not make sense to them, or are not the sort of questions you may expect based on their competencies.

- *“I was asked what was going on at my institution and what my role in it would be. I wonder whether it's really fair to blame a candidate for not knowing what the current situation is at a bank where he doesn't work yet. I think that it is important to ask a different kind of questions: what can I contribute to an organisation, will I be a suitable match for that organisation and do we share the same values, and what is your future perspective.”*

Some candidates spoke of impertinent questions.

- *“For instance whether the current management board is fit and proper. It turned out that the supervisors had a clear opinion about the capabilities of the supervisory board.”*
- *“Letters from DNB or the ECB asking us to tell them which candidates from outside the company we approached for a seat on the board. I don't think that the ECB is allowed to ask this, as these are very sensitive matters that the people in question want to keep to themselves.”*

The interviews were also judged differently on process. Many candidates felt positive about the atmosphere during the interview.

- *“It was more of a talk than an interview. That felt good.”*
- *“The atmosphere during the interviews was really good. They knew what they were talking about.”*
- *“It felt like a pleasant introductory meeting. They were fairly clear about who would be there and what they wanted to know. There was special attention for institutional asset*

management, which is why they wanted to talk to me. It was a pleasant talk, mainly because I was clearly informed about the subjects that would be emphasised."

Others felt the interviews were intrusive and not very pleasant. Candidates frequently spoke of feeling like they were taking an exam. This feeling is amplified by the fact that at SIs interviews are held in English.

- *"I felt like an orange being squashed. But it was respectfully done."*
- *"Interviews were especially intrusive during 2012 and 2013. It's a lot better now."*
- *"There are a couple of supervisors present now. You can't really challenge them as you will see them again. You should be able to play rugby and have a beer afterwards, but that is not really possible."*

Candidates had the following to say about follow-up interviews.

- *"When you're invited for a second interview, you know something is not right."*
- *"You have to take a re-sit and you don't know what you will be tested on."*
- *"I was suddenly invited for a second interview and told I could bring someone with me. All of a sudden, the interview was all about integrity, without any introduction."*

And finally, candidates have a feeling that their referees were hardly consulted before the interview.⁵⁰ One candidate said:

- *"I would recommend doing this much more often. You can't get a full picture with just one talk."*

5.10.3 Seniority and professionalism

Criticism about seniority and professionalism has all but died down after both DNB and the AFM took mitigating measures. That is not to say that the problem has now been completely solved. Sometimes candidates are still having problems with the limited knowledge that their assessors have on particular themes, or a tone that is felt to be not sufficiently professional.

The original criticisms heard about the seniority of assessors have largely died down. The AFM and DNB took the criticism to heart by developing an authority matrix that facilitates quick upscaling

⁵⁰ "The AFM usually speaks to at least one and sometimes two or three referees." Referees tend not to be called if it concerns a "career appointment" (someone has worked for the institution for more than five years). For assessments in group C, referees tend not to be consulted as these positions only require one year of management experience or higher vocational qualifications.

(see Annex IV, part A). This makes it easier to ensure that the required level of seniority is employed. Candidates are really noticing this.

- *"Between my first and third assessment, the seniority of the assessors increased, fewer junior assessors."*
- *"I had the impression that the AFM people were capable. There was also someone present who had really researched our institution. He knew a lot. The other person was definitely trained in interviewing techniques."*
- *"DNB is back to where it came from, in the good sense of the word. DNB's wishes are the bank's command. They have much more authority, but they also understand the institution's position."*

Some candidates still have comments to make on the seniority or professionalism of the assessors, or both. Some of these comments refer to the situation before the improvements were made, but some of them are also based on the current situation.

- *"You are still being faced with inexperienced people. They resort to power play more often to compensate for their lack of knowledge."*
- *"In the Netherlands, I was assessed by DNB staff who did not know anything about asset management in general, and asset management at pension funds in particular. The interview took an increasingly unpleasant turn, as I said things that they couldn't place as they did not know how things work between a pension fund and a fund administrator. As a result, the first interview was very unpleasant for me. The level of discussion partners in the second interview was quite different. The interaction was definitely better, we were a better match for each other."*
- *"The people conducting the interviews still don't know what to do with the behavioural component. I know that this isn't easy, which is why it is important to formulate clear criteria for behavioural assessments. Not formulating criteria is an unprofessional thing to do. There are no criteria, or at least they are not explicit."*
- *"Governance prescribes what you can and cannot do. The Supervisory Board supervises a pension provider. Your role as supervisory board is an advisory one; you cannot take the decision, the management board is responsible for taking the decision. You cannot force anything, which is what DNB is hinting at."*
- *"The interviews were of sufficient standard and professionalism and I was given the green light, but when we were talking afterwards, and I said that I had found the assessment unpleasant, I was told that that was the intention."*

5.10.4 Representative and recording

<p>The vast majority of candidates finds that bringing a representative to the interview or making a recording of the interview is not the way forward.</p>

Only one or two candidates see the recent development where DNB explicitly offers the option of bringing a representative or recording the interview as an improvement.⁵¹ The vast majority of the candidates spoken to finds bringing a representative or making a recording undesirable as it makes candidates feel that they are under suspicion even before the interview has started, which leads to further unwanted judicialisation.

- *"No thank you. It puts the process on edge. I advise candidates against doing this."*
- *"This is an impoverishment, you're on the road to judicialisation."*
- *"The formal invitation startled me: I was allowed to bring a legal adviser, and the interview could be recorded. I was a bit shaken; I thought I should just have faith in the procedure."*
- *"I'm not in favour of recordings myself. You want the interview to be transparent between the two parties in a pleasant atmosphere."*

5.10.5 Cooperation between DNB and the AFM in case of dual access

The division of roles between DNB and the AFM in the dual access process is not clear to a large number of candidates involved. Candidates find that the AFM is relatively invisible. This is also because DNB still has the lead.

The "dual access" procedure is a special element of the fit and proper assessments. This means that the AFM and DNB cooperate closely during the assessment procedure. If one of them has a negative opinion about the fitness and propriety of a managing or supervisory director, this negative opinion is decisive. Candidates who went through the dual access procedure were frequently unclear about the division of roles between the two supervisors.

- *"You don't know who from DNB and the AFM is involved in what."*
- *"I had two interviews, both times with three people. It was not clear to me who had which role. I had the impression that they hadn't yet decided that themselves. The interview was about behaviour and prudential supervision. The interview with the AFM was mainly about compliance, DNB took a different angle, we talked more about capital, etc. DNB took the lead in one interview and the AFM in the other."*
- *"The AFM was not present at the first interview, if I remember correctly, but they were there at the second and third though. I had the impression that this was DNB's party with the AFM only asking one or two questions. They did not explain how roles were divided among them, and it was still unclear to me after the interview" (in the words of a candidate who was assessed for three different roles under the dual access procedure).*

⁵¹ The AFM always used to offer the option of bringing a representative, but only highlights this option to candidates undergoing re-assessments.

Quite a few candidates mentioned that the AFM has an invisible role in the dual access procedure. It should of course be borne in mind here that this may be partly attributable to the division of roles between the AFM and DNB in the dual access procedure. DNB is the formal process leader and initiates and maintains contact with the institution.

- *"The AFM is a bit more invisible in the assessment procedure. They do play a role, but are mainly in the background."*
- *"The AFM was not present at my interview while there are now various files at issue that are mainly in the AFM's area of authority."*
- *"This is why behavioural aspects were hardly discussed, only when I brought them up myself."*
- *"The AFM ought to guarantee criteria with respect to an independent mindset. There is always someone present who does not say anything. I haven't noticed that this leads to different insights or perspectives."*

5.10.6 SSM procedure

Candidates need more clarity about the criteria used in the SSM procure and the division of roles between DNB and the ECB. They can tell that this process is still very much in a state of flux.

Various candidates have been interviewed as part of the SSM procedure. A number of them found the interview agreeable.

- *"The procedure was very pleasant, with DNB coordinating and I was not in direct contact with the ECB."*
- *"I was treated very correctly from a procedural point of view. The meeting was confidential, and they arranged it to suit my time schedule."*
- *"It was efficient to have a single meeting with DNB and the ECB."*

The duration of the procedure is, however, mentioned repeatedly.

- *"Querying referees took them quite long."*
- *"DNB should work faster, so that the ECB can decide sooner."*

The interview was also perceived as rather intrusive.

- *"The ECB acted like a bit of a terrier, asking things like 'What do you believe to be the most important, and what do you look out for?' These questions are relevant, but you should be wary of taking the driver's seat."*
- *"The interview with the ECB was quite compelling, while DNB and the AFM were more easy-going (good cop/bad cop)."*

- *"We used to be subject to horizontal supervision, with trust and nudging playing a role. Those signals used to be picked up. This has changed into more vertical supervision, under the ECB's influence among other factors."*

A few candidates perceive the fact that interviews are held in English as a barrier. It is not clear to everyone that candidates have the option of being interviewed in their own language.⁵²

- *"It turned out we needed to have a second interview because I was not prepared for the English terminology used in the first one. We discussed this immediately after the first interview, and we agreed to have the second interview in Dutch and discuss specific aspects in a bit more detail."*

Some candidates are still uncertain about the procedure.

- *"I was the first one from my institution to be assessed by the ECB. Many things were unclear about the ECB's procedure. I prepared myself for a discussion about my position in the group, and out of the blue two joint supervisory team members turned up for my interview. That came as a bit of a surprise to me."*
- *"The division of roles between DNB and the ECB is completely unclear to me."*
- *"I would like to have a clearer picture of the criteria applied."*
- *"The guide to the FAP (fit and proper) assessment should clarify the criteria. For example, the ECB makes many inquiries into availability."*

At the same time, they acknowledge that the SSM is still very much under construction.

- *"The SSM is still new, and many issues still need to crystallise."*
- *"They have to deal with one change after the other, which of course makes it difficult to communicate clearly."*

5.11 Decision-making

Candidates experience the process of decision-making as a "black box". They would really appreciate being given more insight into the course of the procedure, and the decision-making criteria used. This is even more relevant in case of intended negative decisions. Candidates are informed by letter or by telephone. Candidates believe that DNB could use the instrument of a conditional decision more often, whereby the candidate is required to meet the set conditions by an agreed deadline.

⁵² The ECB developed a methodology for the interviews. Candidates are free to communicate in their preferred language. See paragraph 6.4. of the ECB's draft guide to fit and proper assessments.

The decision-making phase largely occurs out of sight of the candidates. As a result, candidates are left in the dark about this stage of the procedure.

- *"After the interview, a 'black box' period started."*
- *"You want them to be more transparent about decision-making, but you can't really pin down what motivates them."*
- *"What I heard was: if they call you, it's not good. And then I got the call, which shook me a bit."*

5.11.1 Provisional decision

In some cases candidates are provisionally approved; this means that they are for instance recommended to acquire specific knowledge within a specified time limit. The ECB does this more often than DNB or the AFM, candidates believe. Various candidates believe that the instrument of provisional decisions could be used more often, specifically by DNB, especially in the light of increasing diversity on management and supervisory boards.⁵³

- *"The letter I got from DNB before the interview said something along the lines of 'that it was not possible to boost knowledge after the interviews'."*
- *"The ECB does offer this opportunity, but DNB does not issue provisional decisions."*
- *"They should concentrate more on what your competencies are, what you are being interviewed for. And of course you must keep your basic knowledge up to date. Why not incorporate this as a kind of condition in your decision?"*

5.11.2 Negative decision

Intended negative decisions are regularly communicated to candidates by telephone, after which they withdraw from the process based on the telephone call. This is done without the candidate getting any further information on the decision in writing.

- *"You get the feeling of being fobbed off."*
- *"I found a telephone conversation of this kind very intimidating. You are given the feeling that you should withdraw."*
- *"You're called and told: Your assessment has had a negative result: so be wise and withdraw your application. This looks like a friendly gesture, but it isn't because the decision cannot be verified this way. This is a form of abuse of power."*

Several candidates indicated that they would appreciate negative decisions being motivated in writing.

⁵³ The AFM sometimes uses its privilege to impose a requirement. These usually are requirements relating to the size of the board, or attending a compliance training course within a specified time limit.

- *"It is unacceptable that the decision is not motivated in writing."*
- *"I think that duty of care demands that you motivate your opinion and present it to the institution in writing. To my mind, this can still be done in an informal setting. This gives the candidate the opportunity to digest everything that has happened and to take a considered decision whether to withdraw from the process or object to the decision."*
- *"A draft decision that explains the decision-making process to you would have been nice. Of course you want to know why this particular decision has been taken."*

That said, not everyone agrees about a draft decision having to be communicated in writing: having the decision presented face to face instead of being told over the telephone would already be a big improvement.

- *"Why not invite the candidate to a personal meeting? This will give more scope to exchange opinions. So you must be able present your arguments clearly."*
- *"Making a telephone call is not the best way to inform someone of an intended negative decision on their assessment. It would be better to do this face to face. After a meeting, rejected candidates can take some time to think about whether or not they want to object to the decision. Presenting an intended decision in writing does not seem like a good idea."*

But all candidates want to receive a clear motivation of a possible negative decision.

- *"If they reject me, I want clear arguments, feedback about the whys and wherefores."*
- *"There are 20 points in the policy rule. I think that 18 is a pretty good score. My question to the AFM: where on these 20 points does my knowledge fall short? They couldn't decide. It seemed as though they had been ordered to reject me, but they were looking for arguments to do so."*
- *"As the supervisory authority you must make clear where the limits are. DNB sometimes makes its own life difficult, by not showing things. To give an example: if in a public interview you say that you believe that a managing director is not good enough and you leave this person in place for more than a year after making your statement, you are applying double standards. This causes a great deal of uncertainty."*

5.12 Objection and appeal

The opportunity for objection and appeal is hardly used. This is largely attributable to the fear of reputational damage, and the sector's negative perceptions with respect to the independence of the objection procedure. Suggestions for improvement mostly entail involving one or more external parties in the process.

Candidates believe that the objection procedure is often not used because most institutions or candidates, or both, have withdrawn their application by then. Institutions and candidates are afraid of taking the risk, and the chance of success is considered not to be worth the effort.

- *"When talking about objection and appeal, we must be aware that there is an asymmetrical risk. We also have a culture of 'don't fight your regulator' because you stand no chance of winning."*
- *"If you object to DNB they only evaluate the process, which is usually in order."*
- *"Candidates now often opt for 'voluntary' withdrawal, but this should not happen. People are too afraid of their reputation being damaged."*
- *"After being rejected, you are sent back to the butcher who inspected the meat in the first place. This is why most people do not embark on the objection procedure."*
- *"Even if you win, it continues to be an issue in the supervision of your institution."*

Several candidates mentioned that the objection procedure has a high barrier to entry. As legal proceedings generate publicity about rejected candidates, they reflect negatively on the institution involved. And candidates are afraid of reputational damage.

- *"No-one goes to court; people are afraid. It would be a good thing if court sessions were no longer public."*
- *"Assessment procedures are hardly put before the court, also because of the public sessions. In the meantime, these sessions can also be held behind closed doors."*
- *"I think we're a bit too afraid of that. If you have genuine objections, it should be possible to file an objection. You have the right to appeal straight away and skip the objection phase."*

Various options were mentioned for addressing the problems experienced with objection and appeal, e.g. by involving a third independent party (confidential adviser) in the process to monitor whether the procedure has been followed correctly and the correct decision has been taken.

- *"At the AFM this is known as the General Counsel, which is an independent body that they use in case of complaints."*
- *"The ECB also has a committee of wise persons. This could also be put in place at DNB. It would also fit within the law and would take away a lot of objections,"* in the words of a sector organisation representative.
- *"The ECB has an escalation procedure in place in case of disagreements. Scaling up to senior management does not solve the problem that the same institution deals with issue. They have a completely independent body for this. This is fundamentally different at DNB, where the in-house Legal Department deals with complaints."*
- *"If you place this outside of DNB and the AFM, you must ensure confidentiality, or it will not happen."*

Possibly, an independent committee could be installed, which could critically review every negative opinion. Several interviewed candidates suggested that these committees be peopled by independent members who have nothing to do with the banking sector.

- *"A possible composition may be: a member with banking knowledge, a member with behavioural knowledge, and someone who is not afraid of taking decisions (former CEO, not necessarily from the banking sector)."*

With respect to re-assessments, respondents are in favour of slowing down the pace of the process.

- *"If you file an objection or appeal, the decision must be suspended. Unless a serious offence is at stake. This suspensory effect is important in case of re-assessment decisions."*
- *"It is true to say that it only concerns a couple of cases, but it will help in increasing open-mindedness."*
- *"The objection proceedings must be handled confidentially and quickly. The process is now too slow, which increases the risk of information leaks."*

5.13 Monitoring after the end of the assessment procedure

Candidates would like to see that assessments are viewed as a learning experience most of all. To this end, it is important to formulate learning points, and to keep monitoring them.

Several candidates indicated that assessments may become more valuable to the supervisor if points for development are given during the assessment procedure, and these points are then monitored throughout.

- *"The circle is not closed now. You must formulate clearly in advance which criteria you want a candidate to meet, and you should revert to this at the end."*
- *"You would like to hear more about your points for development. Then it would have added value. DNB's role is much more black and white: yes or no and nothing on how you may improve yourself."*
- *"Inform the CEO about the outcome of the interviews and the decision. This will create learning capacity."*

However, this should not be deployed as an additional pressure instrument, candidates believe.

- *"When I was approved, I was told that I would be interviewed again in twelve months' time. This feels like a heavy burden."*

Candidates say that there is hardly any noticeable follow-up to interviews.

- *"It looks more like the supervisor is preoccupied with covering its back than making this a learning experience. The learning effect is not sufficiently addressed. That one moment and that one person is all you're getting."*
- *"I noticed that the strategic issues were given a lot of attention, and the nature of boardroom dynamics was queried a lot. This can be improved by providing better feedback after the interview, so that you can learn something from it."*

5.14 Conclusions

The value of assessments is broadly acknowledged. They have increased the sector's cleansing and learning capacity. The sector also welcomes the attention that the AFM and DNB have given to the assessment procedure and the fact that the supervisors are willing to continue monitoring it.

The concerns that stakeholders have about the assessment procedure are specifically related to the vulnerable position that the candidate is in, the still too limited attention for diversity in competencies and expertise, the duration and transparency of the assessment procedure, and the options for objection and appeal.

In addition, the assessment procedure is still quite stressful for candidates. Many of them felt like they were taking an exam. It is important to ensure that the process of assessment and decision-making is made clear to candidates, and candidates must be properly prepared by the nominating institution.

Candidates crave information beforehand on the criteria that they are supposed to meet, how long the interview will take, etc. This definitely also applies to the timelines, which are often still being perceived as a thorny issue.

And finally, candidates would welcome more explicit attention for the learning objective of the assessment procedure. This requires that learning points are made explicit and the learning circle is closed by means of feedback and monitoring.

6. LESSONS LEARNED IN THE UNITED KINGDOM

As part of the evaluation, the Committee paid a working visit to the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) of the Bank of England to see how these authorities organise their fit and proper tests and to hear about their experiences. It is beyond the scope of this report to describe their procedure in detail,⁵⁴ which is why this section outlines its principal aspects.

6.1 Joint online submission system

Both financial supervisors use the jointly operated online submission system to receive applications for assessment from financial institutions. While both supervisors remain responsible for their own assessment procedures, this has made the application procedure a lot simpler for institutions and candidates.

6.2 Basic attitude is positive

During our working visit, our discussion partners stressed that the FCA's basic attitude towards a candidate is positive as a rule. One of the FCA's senior advisers told us: "We take a constructive attitude towards the application process, we want candidates to apply and to put their best foot forward". The FCA also seeks to strike a constructive tone when inviting a candidate to their first or second interview. Everything is geared to approaching a candidate in a constructive manner.

6.3 Transparency

The "Fit and Proper test for Approved Persons" handbook is available on the FCA's website.⁵⁵

Interviews are based on a standardised format with predefined elements (structured interview). The main assessment criteria are known to candidates, and the handbook lists examples of specific relevant matters.⁵⁶ Should any issues remain outstanding or matters need to be clarified following the first interview, these are described in a written report, and the candidate is invited for a second

⁵⁴ More information about the fit and proper test can be found on the websites of the Financial Conduct Authority and the Bank of England: www.fca.org.uk/ and www.bankofengland.co.uk (search for approved persons).

⁵⁵ <http://www.handbook.fca.org.uk/handbook/FIT.pdf>.

⁵⁶ Sections 2.1 to 2.3 of the handbook describe the main assessment criteria and provide examples. They serve as guidance for candidates, according to section 1.3.3. In addition, seven "Statements of Principle for Approved Persons" have been defined, which a candidate must meet. The "Code of Practice for Approved Persons" provides practical examples to accompany the Statements of Principle. See: <https://www.handbook.fca.org.uk/handbook/APER/> and PRA supervisory statement SS28/15 <http://www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss2815update2.aspx>.

interview. This means a candidate knows in advance which matters will be discussed during the interview.⁵⁷ A second interview is held in exceptional cases only.

The candidate is always sent a written report of the interview, and the procedure ultimately results in a written decision. As in the Netherlands, an application is withdrawn in most cases if the supervisory authority indicates that it intends to issue a negative decision.

6.4 The senior adviser's role

Senior advisers play an important role in interviews. Usually, they are individuals with ample experience gained in the financial or corporate sector who work for the authority on a part-time basis. Their role is defined broadly, and they can be asked to provide advice in a wide range of matters, such as in assessing the fitness and propriety of candidates. Except during interviews, they are not in direct contact with a candidate, although they are formally team members. They clearly have authority in a team, and their autonomy and outside perspective enable them to assess and adjust the assessment process and provide their opinion on a candidate's skills.

6.5 Functional segregation between review and decision-making

In the United Kingdom, the review procedure and the intended or ultimate rejection decision are strictly segregated procedures in the fit and proper assessment process. This is prescribed by law.⁵⁸ If the team that performed the assessment arrives at a negative outcome, it submits that outcome to the Regulatory Transaction Committee (RTC), whose members are senior FCA officials. If the RTC considers an individual unfit, it sends a Warning Notice, stating its reasons. A Warning Notice is similar to the intention to issue a negative decision, which DNB and the AFM set out in a letter before taking a formal decision. As soon as the Warning Notice is sent, the file is handed over to the Regulatory Decisions Committee (RDC), which is a separate FCA Board Committee.⁵⁹ The applicant has 14 days to contest the proposed refusal by making representations to the RDC, a period that is often extended in practice. The RDC then considers whether the candidate is definitively rejected and issues a Decision Notice.

6.6 Enforcement rather than re-assessment

There is no such thing as re-assessment in the United Kingdom. Should a supervision incident occur that can be traced back to an individual that was approved before taking up their post, the individual is not invited for a re-assessment interview. If a lack of knowledge or some sort of undesirable

⁵⁷ If doubts remain following the first interview, the candidate is invited to a "second interview". If time has run out or more information is needed following the first interview, the follow-up meeting is referred to as "interview part B".

⁵⁸ Section 395(2) of the FSMA provides: "The procedure must be designed to ensure, among other things, that the decision which gives rise to the obligation to give any such notice is taken by a person not directly involved in establishing the evidence on which that decision is based."

⁵⁹ The RDC Chair is employed by the FCA, whereas the other members are outside experts.

behaviour is found, the FCA may impose a condition or set a time period for the institution to rectify this. In the event of a more severe supervision incident, however, the supervision department may issue instructions to the enforcement team. In that case, all procedural safeguards apply that are prescribed for enforcement, including the Chinese wall if a sanction is imposed. The enforcement team investigates and considers the sanctions most appropriate for the supervisory incident, after which the RDC (see paragraph 6.5) issues a Warning Notice and a Decision Notice. One of the options is to withdraw the relevant individual's approval.⁶⁰

6.7 Objection and appeal procedures

An objections procedure only occurs in a few cases. The objection procedure is handled by an external committee, referred to as the Upper Tribunal, which has formal status under English administrative law. Its decision is open to appeal before the court in public proceedings. The candidate has an autonomous legal position, even if the financial institution has withdrawn the application.

⁶⁰ In addition, the Senior Managers Regime was introduced in the United Kingdom in March 2016. It requires supervised institutions to assess the fitness and propriety of their policymakers on an annual basis. Should any matters come to light that could potentially give the supervisory authority reason to withdraw its approval, an institution must notify the supervisory authority.

7. ANALYSIS

7.1 Overall appreciation and learning capacity

Some of the perceptions discussed in Section 5 are important signals that emerged before in the past few years, and DNB and the AFM have looked into them more closely by means of in-house review and an independent research agency. This has resulted in DNB preparing an action plan⁶¹ and the AFM developing an improvement process aimed at strengthening the process (see Section 4). Nevertheless, once obtained, perceptions may continue to play an important part in the sector, and some of the perceptions we gained clearly suggest there is room, and a need, for improvement. The assessment process must continue to be developed. This section sets out the themes which the Committee believes are key areas for further improvement, based on the perceptions described in Section 5, the theoretical notions discussed in Section 2 and the insights gained as laid down in Section 6.

The Committee has found during the entire evaluation process that both the AFM and DNB demonstrated an attitude of learning and self-reflection in response to preliminary presentations we held. Both supervisors went to great lengths to provide the Committee, the sector and the candidates with improved access to information on assessment procedures.

7.2 Due care in the procedure

7.2.1 Transparency

An important signal that emerges from Section 5 is that transparency is a key concern of all those involved, institutions and candidates alike. Transparency is seen as desirable with respect to both the assessment process and the assessment criteria. We find that both elements show room for improvement, even though both supervisors seek to provide as much information as possible through their websites, documents and even information meetings (DNB).

We found in Section 5 that information about the assessment process and criteria were, and may sometimes still be, difficult to find or only available in fragmented form. Having said that, we also found that both supervisors have meanwhile worked to improve the situation, for example through their websites. Both the AFM and DNB now tell a candidate, in the letter confirming an interview, who the interviewer will be (i.e. name and position) and how long the interview will last. Candidates told us that more information could be provided in advance about the division of roles. This is an important aspect, particularly in a dual access approach, in which the ECB is also involved in assessments.

⁶¹ <http://www.dnb.nl/en/news/dnb-nieuwsbrieven/nieuwsbrief-banken/nieuwsbrief-banken-november-2015/dnb334204.jsp>.

A continuing area for attention is transparency about the criteria used in the assessment. The DNB and AFM websites list a number of specific questions and practical examples of how fitness and propriety are assessed for the various target groups.⁶²

It has become apparent from the interviews, however, that many candidates do not have a clear picture in advance of the criteria they will be assessed against. The situation in the United Kingdom is the opposite. The core principles that underlie fit and proper testing are clearly explained in advance (see Section 6). This raises the question of whether the supervisors should go further than just explaining the criteria in broad outline and merely referring to the Policy Rule on Suitability 2012⁶³. On its website, DNB lists the aspects it considers in the assessment process⁶⁴, but these are general characteristics mentioned in the Policy Rule. While the candidates understand these general criteria, they are not provided with any specific guidance as to what the interview will be about. This is true in particular of first interviews for initial assessments. When DNB and the AFM arrange a second interview, they let the candidate know which aspects require more clarification, given that this is the reason for the interview in the first place. Even so, candidates have told us this still gives them insufficient information about the second interview.

Seeing that it is becoming increasingly common in society to define unambiguous criteria and standards prior to holding assessment interviews, such as in the education sector, it might be worth considering providing candidates with more information in advance about specific points to be addressed in the interview, given the context (e.g. organisation and team composition) for which the candidate will be assessed. After all, before the interview the supervisor will consider the competencies listed in the Policy Rule and check the file to see which specific elements are relevant. At the same time, the supervisor should be at liberty to address specific criteria in a more in-depth manner during the interview, should information obtained during the interview give it reason to do so. Likewise, the institution must play an important role, as it is responsible for ensuring the candidate is well-prepared for the interview.

7.2.2 Treatment of the candidate

"Treatment" was a regular subject of discussion during our interviews, in particular because it is an aspect frequently covered by the media in recent years. Our information shows that the supervisors have consistently addressed this subject, in terms of both the logistics of the candidate's reception (e.g. a reserved parking space) and the seniority of the assessment staff. In addition, more attention is devoted in communications and standard letters to information that is relevant to the candidate, such as descriptions of the process, the interviewers and consideration periods. Using what is termed an authority matrix, DNB and the AFM have ensured that more seniority is available during assessment interviews, and senior management is involved at an earlier stage in the interviews.

⁶² See <https://www.afm.nl/nl-nl/professionals/onderwerpen/toetsing-bestuurders> (Dutch only) and <http://www.toezicht.dnb.nl/2/50-235525.jsp> (Dutch only)

⁶³ See <http://wetten.overheid.nl/BWBR0031740/2016-04-06> (Dutch only).

⁶⁴ <http://www.toezicht.dnb.nl/en/4/2/16/51-229353.jsp>.

Interviewees confirmed that their impression was that seniority levels among assessment staff had been raised. This also applies to the AFM. Candidates told us that, previously, they had been assessed by academics who lacked any practical knowledge or experience.

A number of candidates have suggested having an experienced outside assessor attend interviews. This would be in line with practice in the United Kingdom, where senior advisers play a role in fit and proper testing (see Section 6). Section 7.3.1 discusses the role of external senior advisers in the various phases of the process. Overall, candidates perceive the interviews as professional and mostly feel respectfully treated, an aspect which they told us they value.

The overall setting and atmosphere of the interview is a point of criticism, however. Candidates feel as if they are sitting an examination (see Section 5). As mentioned in Section 5, most candidates did not find this a pleasant experience. An effective assessment interview could also be conducted in the form of an in-depth substantive conversation, with the shared interest of achieving expert and ethical management in the financial sector. This implies that institutions carefully select nominees and present DNB and AFM with a compelling case, explaining why the candidate is fit and proper and clearly adds value to the institution.

7.2.3 Time limits

Exercising due care with respect to the time limits applied and realised is of vital importance, both to the candidate and to the institution, as well as to the supervisors. Maximum consideration periods differ under the laws that apply to each sector, but in most cases the statutory consideration periods are 13 weeks.⁶⁵ DNB and the AFM try to complete the assessment process within six weeks.

The Committee's review shows that the information provided on this subject is not always clear, such as the difference between trying to complete the process within six weeks and applying a statutory maximum period of 13 weeks. The information provided by both supervisors, which can be found in paragraphs 2.5 and 3.5 of Annex V, shows that the period of 13 weeks is usually observed. It also shows that processing times tend to go down. In spite of this positive trend, the interviewees clearly expressed the wish for even shorter lead times. They believe the entire process definitely takes too long. We note that the EBA and ESMA have started consultations about a new version of the Suitability Guidelines on 28 October 2016, which mention a maximum period of four months. The period used in the United Kingdom is 90 days.

Candidates have mentioned that the period between the interview and the moment of communicating the decision is a key area for attention. That period can be anything from one day and several weeks, with candidates having no choice but to wait and see what will happen. They experienced this as a "black box" period. Although there may be valid reasons for this, we recommend that due care is exercised and more specific information is provided about this at the end of an assessment interview.

⁶⁵ See the first paragraph of Annex III for a detailed overview of the various statutory consideration periods.

Overall, the Committee concludes that it would be useful if the supervisor told the institution and the candidate in which phase the process was, such as receipt of candidate application, file completeness check, file contents review, interview and finalisation. The Committee also believes the process can be expedited, provided the institution provides correct documents (see also our conclusions and recommendations in Section 8).

7.2.4 Feedback in interview

First and foremost, the interviews we conducted revealed that candidates were unsure about the meaning of a telephone call following their assessment. Many assessed candidates were given the impression that a phone call meant "bad news". However, all candidates were called, both in the event of an intended negative decision and if there was "good news", namely that they were found fit and proper.⁶⁶ This had not been clear to all candidates, which means it should be told more clearly during the interviews

It always informs candidates of an intended negative decision by telephone. The AFM and DNB told us they inform candidates about the outcome and potential follow-up steps by telephone⁶⁷. In their view, the phone call aims to inform a candidate in advance, i.e. before an intended negative decision is recorded, as well as to allow the candidate and the institution to consider any follow-up to the procedure, taking into account any personal and company interests and reputational issues. The candidates, after having received the phone call, felt "fobbed off" or "steamrollered", as mentioned in Section 5. Making a telephone call is not the most careful way of informing someone of an intended negative decision, and discussing the matter face to face could provide more room for explanation. This would allow both the institution and the candidate to take some time and consider whether they wish to withdraw the prospective appointment or submit a statement of opinion to present their views.

In the present situation, a candidate is informed by telephone that the supervisor intends to issue a negative decision. During the Committee's interviews, candidates mentioned that it was emphasised and suggested during the call that the institution might wish to withdraw the prospective appointment. This is something the institution can do, but not the candidate. The preliminary or intended decision is not issued in writing, but only communicated orally to the institution and the candidate. If the candidate and the institution proceed with the nomination, DNB and the AFM send the institution and the candidate their substantiated intended negative decision. If the institution decides to withdraw the prospective appointment, nothing is recorded. Many candidates told us they would have liked to receive the intended decision in writing first. This would have allowed them to decide, based on that information, whether to withdraw or proceed.

⁶⁶ DNB has called candidates since early 2016, also if its decision was positive. The AFM has done so since April 2016, but only for major financial institutions and high-impact assessments, and not yet for smaller financial service providers.

⁶⁷ <http://www.toezicht.dnb.nl/en/4/2/16/51-229363.jsp>.

7.2.5 Presence of a representative and recording of interview

A major finding from the Committee's interviews is that a candidate's position is too weak. DNB's action plan is designed to improve the candidate's legal certainty and legal protection. Accordingly, it started a pilot project in February 2016, allowing interviews to be recorded. This contributes to accurate minute-taking and allows subsequent reproduction. In addition, it imposes discipline on both the candidate and DNB, and creates the option of subsequent assessment, independent or otherwise. It could also serve to educate the institution and potential legal counsel and help them prepare for future interviews. Conversely, the candidate may feel put under pressure or hampered during the interview, which may create a less open atmosphere. To weigh up these aspects, DNB started this changed approach as a pilot project. Participation in this pilot scheme is appreciated but not compulsory. If the candidate or institution does not wish to participate, it does not affect the assessment.

Almost all candidates we interviewed were negative about the option of bringing a representative and recording the assessment interview. While some believe this to be an improvement, the large majority think it is ill-conceived. The option is scarcely used in practice. DNB started the pilot project with a view to the candidate's legal protection, but it has the effect of making candidates feel as if they are "a suspect" or "guilty", which was why they should bring a representative. They consider this undue judicialisation of the assessment process. The AFM has always offered candidates the option of bringing a representative, but only explicitly indicated this in the event of re-assessment. In practice, the option is not used very frequently for initial assessments at the AFM.

7.3 Independence of the procedure and segregation of functions

The independence principle has a bearing on various aspects of the assessment process. It does not primarily concern the supervisor's independence towards market parties or the political arena but, most of all, how a judgement about the candidate in question is formed. A sufficient number of safeguards must be in place as part of the assessment process to ensure the ultimate decision about the candidate is robust, objective and well substantiated. Additional steps in the process should prevent bias. Enforcement bias may cause teams that are overly focused on finding non-compliance to develop tunnel vision, which may be prevented by bringing in a fresh pair of eyes from outside. At the same time, too many procedural safeguards may come at the expense of effectiveness of supervision, due to additional workforce requirements or long processing times. Again, the right balance will need to be struck.

A clear distinction is made between procedures in place for initial assessment and for re-assessment. Initial assessment is for a candidate who has not been previously appointed. Re-assessment is for an individual previously appointed where a change in facts and circumstances give a supervisor reason to conduct a re-assessment. In the latter case, due care and proportionality are more significant requirements, as re-assessment may result in a managing or supervisory director's dismissal, potentially with far-reaching personal consequences.

The Committee concludes that independence could be strengthened in various ways throughout the process, from the notification through to the objection procedure. The interviews we held with candidates and sector organisations and discussions we had with other supervisors, as well as literature, show that this is one of the main criticisms of the process in its current form. Also, insights gained from the working methods used by the supervisory authority in the United Kingdom may result in potential improvements. Below, we will describe elements of the current process that we believe may be improved in terms of supervisor independence.

7.3.1 Lack of external expertise

Based on the interviews we held in London, the added value of having an expert bring an outside perspective clearly emerged. Such a senior adviser could mitigate the risk of excessive "supervisory focus", as well as contributing his or her practical experience. The AFM or DNB do not currently use the services of such an adviser. DNB had incorporated a similar proposal in its improvement plan, but deferred implementation pending the present report. Neither of the two Dutch supervisors use outside expertise in its decision-making. Appointing a senior adviser would address criticism of too little outside expertise being involved in assessing candidates' fitness and propriety. A senior adviser would increase a supervisor's professionalism and broaden public support for the outcome of the assessment process. This strengthens independence and hence the legitimacy of that outcome.

In the United Kingdom, the involvement of these individuals is broadly accepted. They have gained experience in the financial or any other relevant sector, but are no longer directly involved in a financial institution. They also contribute their expertise in other areas. It must be possible to find suitable advisers in the Dutch context as well. They do not necessarily need to be recruited from the financial sector, as experience gained in a different sector may be highly relevant if a wider perspective is sought, and supervisory boards must have more diverse membership.

7.3.2 Insufficient de-escalation

The Committee has taken note of a few sensitive cases, such as Delta Lloyd, which involved intense debates between the supervisor and the financial institution and the candidate. The question arises as to whether such debates must always be so intense and whether such a confrontational situation could not be de-escalated at an early stage with the help of a confidential adviser. This involves such aspects as treatment, tone, and hearing and being heard. A confidential adviser, appointed by the supervisor, could intervene as soon as the situation escalates and consider whether the process could be re-balanced by getting the parties to agree on process-related arrangements.⁶⁸ This helps prevent procedures from becoming unnecessarily lengthy or communications becoming blurred. Allowing the candidate to vent his or her dissatisfaction during the process to a dedicated staff member employed by the supervisor may help adjust the direction of the process and prevent further

⁶⁸ The AFM's general counsel is unrelated to the direct supervision departments or the Legal Affairs department. Complaints about supervision and assessment can be submitted to the legal counsel, and this happens in practice.

escalation. The supervisor's general counsel or another confidential adviser specifically charged with this duty could fulfil this role.

7.3.3 *Assessment vs supervision*

An aspect repeatedly cited by candidates is the fact that assessment and supervision were mixed. Supervision staff possessing specific knowledge of the financial institution are present during assessment interviews. The prevailing sentiment expressed during our interviews was that candidates valued expertise about the financial institution being represented during the interview. It shows that the supervisor's staff know what they are talking about, and questions which the candidate may have about the institution or supervision issues may be answered. However, supervisory staff may not outnumber assessment staff during interviews, nor may candidates be expected to know everything about all supervision issues at the financial institution in question. The assessment experts must lead the interviews and form an opinion about the candidate's fitness and propriety, rather than about his or her knowledge of the specific supervisory issues at the institution.

In some of the interviews we held, we were told that re-assessments had been used to verify supervision issues and bring about behavioural change in supervised institutions. Likewise, candidates suggested that the threat of re-assessment was used to force a financial institution to change its behaviour (abuse of power). The Committee is unable to verify whether these situations have actually occurred, but the interviewees were so adamant that we found their reports hard to ignore. The Committee discussed them with the supervisors but is unable to verify objectively whether abuse of power was involved. The AFM and DNB have confirmed they believe such situations to be undesirable and inappropriate, and the Committee wholeheartedly supports this position.

7.3.4 *Re-assessment*

Re-assessment requires a careful procedure, as the managing or supervisory director is already in office and the outcome may have major ramifications. As well as the outcome, the decision to start a re-assessment in the first place also requires due care. Such a decision may not be the result of regular supervision. Both supervisors have adjusted their procedures such that the decision-making process features more seniority and escalation. A full description of the re-assessment procedure can be found in paragraph 3.7. Decisions about starting a re-assessment and the level of the re-assessment are now taken at the highest possible level.

As a result, decisions on (i) whether there is reasonable ground for starting a re-assessment, (ii) the investigation into the supervision incident (iii) fitness and propriety following from the re-assessment are usually taken by the same individuals. Consequently, supervision, assessment and decision-making are closely interwoven in these cases. The Committee finds this undesirable as it impairs independent judgement during re-assessment. The procedure must incorporate more elements aimed at preventing bias. In the Delta Lloyd case, for example, the court did not rule that the re-assessment process had been careless, nor can it be inferred from the *Wft* that a different procedure must be adhered to for re-assessment purposes. Nevertheless, the Committee believes re-assessment procedures must be tightened. Not only may the outcome of a re-assessment process

have major ramifications, meaning that more stringent due care and proportionality requirements apply, our interviews have revealed specific criticism of the interconnectedness between supervision and assessment in re-assessment cases.

Given that the Dutch supervisors do not consider re-assessment to be a punitive sanction, the requirements of Article 6 of the European Human Rights Treaty do not apply. By contrast, in the United Kingdom re-assessment is explicitly considered an act of enforcement, which means that the team carrying out the fit and proper test is not involved in the re-assessment. Furthermore, special procedural rules apply to imposing sanctions, i.e. Chinese walls between examination and decision-making. In the Dutch situation, this would mean that a team with an identical composition to the team that decided to start a re-assessment based on reasonable grounds and the facts cannot decide on the outcome of that re-assessment. Following examination, the case would have to be transferred to a different team for re-assessment. This would require adjustments to DNB's and the AFM's procedures. It would prevent individuals involved in the ultimate decision from already having formed an opinion about the case because they performed or led the earlier examination. It would also allow clearer procedures to be defined for this decision-making process, with hearing and being heard clearly distinguished and the entire decision-making process made fully transparent, including clearly segregated functional roles of those involved.

7.3.5 *Objection and appeal*

The quantitative data listed in Annex V show that only in a few cases an objection procedure resulted in the objection actually being declared well-founded. It must be noted that, according to DNB, a number of objections were withdrawn after a solution had been reached between the parties. Nevertheless, from Section 5 the overall perception emerges that there is little point in filing an objection as part of an assessment procedure. We note the rather high number of applications withdrawn in the primary assessment phase as listed in Annex V and the tables below.

DNB assessments with negative outcome in 2015	2011	2012	2013	2014	2015
Number of formal negative decisions	3	13	20	2	6
Number of applications withdrawn	91	108	145	101 ⁶⁹	72
Total number of assessments with negative outcome	94	121	165	103	78
Total number of assessments	1312	1242	1178	1737	1949

AFM applications withdrawn	2012	2013	2014	2015	2016
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⁶⁹ A further 131 assessment applications were withdrawn for reasons other than an intended negative decision, e.g. withdrawn applications for authorisation.

Audit firms ⁷⁰	10	14	20	13	5
Financial service providers	66	60	52	77	42
Investment funds	9	23	8	-	2
AIFM	-	-	5	4	1
Investment firms	18	16	7	4	1

Those that withdrew their applications could have decided to proceed and file an objection following a negative decision but chose not to do so.

The question arises as to whether having more independent or outside elements in the process would cause more applicants to proceed and make use of the objection option rather than withdraw their application. On the one hand, our respondents told us they considered their chances to be slim in an objection procedure for an assessment case, as "the fox is allowed to guard the hen house" (see paragraph 5.12). This would seem to suggest that a more independent and outside objection procedure might encourage more objections. On the other hand, the situation in the United Kingdom shows that having an objections committee in place that has many independent and outside elements does not necessarily result in more objections (see paragraph 6.5).

The AFM's appeals committee already has an external chair. The experiences gained are positive. As an independent expert, the chair can adjust the direction of the process and play a well-defined role in explaining the proceedings. The interviewees we talked to clearly confirmed this. The ECB does not have an outside objections committee but an Administrative Board of Review, which issues an opinion on the ECB's intended decision. In this way, the ECB has contributed outside expertise to the *primary* decision-making process.

This could even be taken a step further by ensuring that the objections committee has outside members only.⁷¹ This is the case at the FCA, from whose decisions an objection may be lodged at the autonomous Upper Tribunal. Research on the external objection procedure used by the Netherlands Competition Authority shows that having an outside committee increases the number of reconsidered objections.⁷² Data made available to the Committee by the FCA, however, do not show this effect for the United Kingdom. Objections are filed in exceptional cases only, even though there is an outside objections committee. This makes the situation similar to that in the Netherlands. Apparently, the reputation risk alone keeps those involved from filing an objection. Interviewees confirmed this. This makes the situation incomparable with that of competition cases, which involve firms rather than individuals.⁷³ It has also become apparent from our interviews that institutions are

⁷⁰ Audit firm withdrawals that relate to assessments only concern propriety assessments.

⁷¹ An objections committee with outside members only will require a legislative amendment. Under Section 7:13 of the General Administrative Law Act, however, it is a statutory possibility for an outside advisory committee to be involved in the objections phase. It will still be up to DNB or the AFM to take the decision.

⁷² Jans & Outhuijse, *SEW* 2013, issue 1, p. 7.

⁷³ This was the case when Jans & Outhuijse performed their research. The Authority for Consumers & Markets can now also impose a penalty on individuals who effectively perform management functions. The Committee does not have any further information about this.

not very keen on opposing a supervisory authority ("don't fight your regulator", see paragraph 5.12), because they prefer to preserve a good relationship with their supervisor. This is a further complicating factor.

Given these considerations, the question is whether having more outside or independent elements in the objection phase will increase the number of objections and reduce the number of withdrawals. In the Committee's opinion, the objection and appeal procedures satisfy the statutory independence requirements. Nevertheless, DNB could appoint an outside chair to its appeals committee, like the AFM. Also, the AFM and DNB should strengthen their primary decision-making process by adding independent elements, as described above.

A further important aspect of our evaluation of the objections and appeals procedure must be mentioned. Individual candidates cannot file an objection or appeal if the institution decides to withdraw the application following an intended negative decision. This is because there is no formal negative decision against which an objection and appeal can be filed under the General Administrative Law Act. This is a consequence of the Dutch administrative law system. This problem does not exist in the United Kingdom, because the candidate has an autonomous legal position. Accordingly, in the United Kingdom, a candidate will always have the right to file an objection or appeal against an assessment decision, even if the institution withdraws the application. The Committee recommends that the Dutch legislator follows that example to address this weakness in the candidate's legal protection.

In conclusion, the question arises whether appeals should be heard behind closed doors, precisely because of the reputation aspect. In its legislative letter to the Ministry of Finance, DNB expressed this wish.⁷⁴ During our interviews, doubts were expressed as to whether this would prevent reputation risks, with concerns remaining about matters becoming exposed. Even so, hearings behind closed doors could clearly mitigate this risk.

7.4 Composition of management board and supervisory board

A great many rules and regulations have been introduced since the crisis of 2008/2009, for example in the areas of solvency and liquidity, new capital products, the banking union, the new deposit guarantee scheme, break-up scenarios, stress tests and new actuarial interest rates. Also, the world has become increasingly complex, with new business models, IT system, fintech firms, etc. Financial institutions face the huge challenge of adapting to the new economy. In this complex environment, it is only natural for supervisors to insist that there are highly capable financial experts on management and supervisory boards. Experienced and well-educated financial specialists are particularly scarce on supervisory boards.

⁷⁴ Parliamentary Papers II 2015/16, 401646.

At the same time, and for the same reason, well-balanced management and supervisory boards, with members possessing complementary knowledge and experience in a variety of fields, are of vital importance if those boards are to be prepared for the sweeping changes they are facing.

Section 5 sets out the views held in the sector of how supervisors try to promote diversity in competencies and experience. What we heard from the sector was the following:

- The prevailing perception is that the supervisors are predominantly risk-averse, attaching greater importance to subject-matter expertise than to other competencies.
- Another perception is that financial expertise is very critically assessed.
- The supervisors stress that those who have no financial expertise are required to meet a minimum threshold⁷⁵, but the candidates still perceive this threshold to be very high.
- Interviewees also had the impression that the ECB applied even more stringent requirements as regards financial expertise.

These perceptions result in institutions refraining from nominating particular candidates in the first place to avoid the chance of rejection.

This does not help to achieve diversity in terms of competencies and experience in the institutions concerned.

This report draws not only from the information we obtained from our interviews, but also from the quantitative results from the [benchmark report](#) which the European Banking Authority (EBA) issued on 8 July 2016. The report compares diversity policies in the EU Member States and presents the diversity data obtained. The figures from this report,⁷⁶ in combination with the perceptions on diversity referred to in Section 4, lead the Committee to conclude that the supervisors insufficiently put into practice their objective to encourage diversity in terms of expertise and experience, although they are under a statutory obligation to do so, as mentioned in Section 3.3 (pursuant to Article 91 of the Capital Requirements Directive, 2013/36/EU).

A further question is whether financial institutions themselves are making a sufficient effort in stimulating diversity on their management and supervisory boards (see also paragraph 6.5 on the responsibility of the sector). The financial institutions suspect that supervisors are biased against candidates who lack a financial background. On their websites, both supervisors present examples

⁷⁵ For example, crowd funding platforms holding dispensation from the prohibition on acting as an intermediary in inviting repayable funds are subject to the minimum financial expertise threshold that at least one individual in the board must possess demonstrable general and specific subject-matter expertise. See Section 2.7, subsection 1, under c, and subsection 4, of the Policy Rule on Suitability 2012.

⁷⁶ Functional expertise among managing directors is as follows: 59% have financial sector expertise, while 53% have management expertise. Among supervisory directors, it is as follows: 55% have financial sector expertise, and 46% have academic experience. Diversity in educational backgrounds is greater among supervisory directors than among managing directors. Female directorships declined in 2014 compared with prior years. Among managing directors, the percentage fell from 19.6% to 14.3%, with the share of female supervisory directors dropping from 21.7% to 21.1%. The age distribution among managing directors is as follows: <40: 5.4%, 40-60: 88%, and >60: 6.5%. Among supervisory directors, the age distribution is as follows: <40: 0%, 40-60: 52%, and >60: 48%.

of candidates they found fit and proper even without a financial background (see DNB's example below of "Added value for the board as a whole").

DNB and the ECB have stated that it is desirable for institutions to nominate candidates who contribute to diversity. DNB recommends that institutions clearly list, in their nomination, the specific expertise which the candidate contributes, the activities undertaken to acquire financial knowledge and the induction or training programmes attended, and that they describe how the lack of knowledge is compensated by others on the board.

Ample experience abroad

A prospective managing director of an insurance company with ample experience at various foreign insurance companies was asked for his view of the Dutch insurance market. His answer came as a pleasant surprise and showed that he had come to the interview well-prepared. He knew the Dutch insurance market, outlined the company strategy, and was able to explain clearly how he would approach his role as member of the management board. The international perspective that this candidate brought to the board delivered definite added value to the board as a whole. The candidate was approved.

Added value for the board as a whole

A candidate's CV evidenced organisational and managerial skills, but did not present proof of factual knowledge of pensions. The candidate was invited to an assessment interview. From the start, she took the initiative and confidently answered questions on organisational policies and fund-specific characteristics. During the interview, the candidate clearly explained what could be improved and how she saw her role. Her lack of factual knowledge of pensions could be (temporarily) compensated for by other members of the board. The candidate was approved.

Unfamiliar with the sector

A candidate from abroad with a background in non-regulated, but publicly quoted institutions during the first interview did not appear transparent when answering questions. As a result, it was unclear how she considered different interests when making decisions. During the second interview, she did answer the questions directly and she was considered fit for the proposed position.

The difference between the two interviews was discussed with the candidate afterwards, and she said that it had not been clear to her beforehand what the relationship with the supervisory authority entails. This meant that she did not know what was expected from her in the interview, which is why she had restricted herself to giving general answers to the questions posed to her in the first interview.

However, despite these examples, the perception in the sector persists that such nominations are not very likely to succeed. This is also due to a lack of transparency about the importance of the various criteria. There is too little clarity in sector about the *relative* importance of the criteria and how they are applied. This is true both of DNB and the ECB. The perception is that financial

knowledge and expertise are indispensable, with diversity being of minor importance. Clearly, this lack of transparency is prompting institutions to play it safe and avoid taking risks by heavily preselecting candidates. This does little to achieve diversity in management and supervisory boards.

Financial institutions acknowledge the supervisor's dilemma outlined in Section 2 between encouraging diversity and avoiding risks associated with financial knowledge and expertise in the boards. As a result, institutions tend to nominate the same type of candidates who above all meet the financial expertise criterion, and are hesitant to propose candidates who have a different profile.

7.5 Responsibility of the sector

Our discussions with managing and supervisory directors in the financial sector have clearly revealed virtually unequivocal support for the supervisors' assessment procedures. Using that support, it should be possible for the assessment process to be designed such that the sector assumes greater responsibility for its correct execution. A significant first step could be improving the quality of the files submitted upon nomination, allowing the supervisor to perform its examination faster. Ultimately, the sector and the financial institution involved benefit most from appropriate appointments of senior managing and supervisory directors.

Likewise, having diversely composed managing and supervisory boards is primarily the responsibility of the institution in question. It would appear that some institutions have given little thought to the desired composition of their supervisory boards, failing to formulate explicitly how the nominated board member matches the profile. This does not change the fact that a supervisor also can – and should – make a proactive contribution in this regard. First of all, institutions should be sure to devote attention to this aspect when drawing up the profile for the vacancy and selecting candidates. In addition, the supervisor should promote diversity, if only because of its statutory responsibility under Article 91 of the Capital Requirements Directive, 2013/36/EU. We recommend that parties act in concert in this respect and refer to our recommendations set out in Section 8.

7.6 Resources and priority setting of the supervisor

Paragraphs 2.6 and 3.6 of the quantitative overview of the assessment process laid down in Annex V includes tables which illustrate DNB's and the AFM's respective staff capacity devoted to assessments. They show that DNB's staff capacity dropped sharply in 2016. This can be explained mainly by the fact that it completed its catch-up assessments. In addition, DNB has started to make its assessments more risk-based, setting its priorities more strictly, in common with the AFM. This means that more assessments are completed without interviewing candidates. The AFM's staff capacity devoted to assessments has remained broadly unchanged over the past few years. During our interviews, DNB told us that its current staffing levels are tight, but not yet insufficient. The AFM

informed us that, given the present priority setting, staff levels are adequate, and they will be increased once new tasks have been added effective from 1 January 2017 (audit firms).⁷⁷

Risk-based assessments mean that a supervisor needs to make choices. Generally speaking, the larger the financial institution, the greater the financial risks. Assessments also involve other aspects, however, such as preparatory work performed by the institution, the candidate's knowledge and experience as evidenced by the file, and the consumer's interests. Potential risks in terms of fitness and propriety are considered in setting priorities. The prioritisation model is based on the presumption of a correct risk assessment and the close matching of priority setting and staff capacity. This system carries the risk, however, of risks being incorrectly qualified and smaller financial service providers being overlooked.⁷⁸ It is precisely those providers that sometimes lack high-quality management or internal supervision.⁷⁹ Priority setting using risk-based supervision therefore has inherent limitations and warrants regular reviews. Similarly, when new tasks are added, the adequacy of staff capacity must to be critically assessed, for example when the AFM is given new tasks with respect to audit firms. In addition, *ad hoc* file selection must be possible outside the prioritisation model.

The Committee believes there is an additional possibility for working with lower staff capacity besides priority setting based on risk-based assessment. The AFM and DNB could improve their efficiency by combining the assessment process or parts thereof. For example, supervisors in the United Kingdom operate a shared digital platform, with large parts of the process being handled electronically. Likewise, the AFM already receives 96% of the applications through a digital platform. The general efficiency of the entire assessment could be increased by taking digitisation a step further, which will obviously require additional IT investments from both supervisors, and sharing staff capacity for other elements, such as the written assessment of documents. A viable option may be to operate a joint expert centre, with assessments being conducted by joint experts. This would leave segregation of responsibilities under the statutory duties of both supervisors intact while leveraging combined assessment expertise. Such combined expertise will also contribute to enhanced process efficiency. In addition, closer collaboration and further process digitisation could make the assessment procedure more transparent and effective.

⁷⁷ The fit and proper requirements for managing and supervisory directors of audit firms serving public interest entities (PIEs) are expected to enter into effect in July 2017.

⁷⁸ The Policy Rule on Suitability 2012 contains less stringent requirements for undertakings in categories B and C that employ fewer than six staff members. See the Policy Rule's paragraphs 2.2 (explanatory notes) and 2.8. In addition, the institution's type, size, complexity and risk profile are always considered as variables for assessment purposes (paragraph 1.3 of the Policy Rule).

⁷⁹ Fitness and propriety requirements are much lower in this category, which is "C small". For this category, the Policy Rule on Suitability specifically provides that candidates upon first appointment must either hold a relevant graduate diploma, hold any graduate diploma and have at least two years' relevant work experience, or have at least ten years' relevant work experience. These requirements are a less stringent variant of those applying to large financial service providers in the C category, which are already lower than those in the B and A categories.

7.7 Cooperation between the AFM and DNB

7.7.1 Cooperation in the procedure

As described in Section 3, the AFM and DNB cooperate mainly in dual access situations. Whereas both supervisors have expressed their satisfaction about their cooperation and the division of roles, the latter aspect in particular is perceived differently by the candidates that were assessed. They are unsure about the division of roles and of questions and subjects. Also, assessed candidates told us the AFM had not been clearly visible during assessment interviews. This may of course be due to the fact that DNB is formally responsible for the process and maintains contacts with the institution and the candidate. In addition, some of the consultations between the supervisors are behind the scenes, and are therefore not visible for the institution and the candidate. It could be worth also mentioning the AFM in communications with both the candidate and institution, and explaining more clearly during the interview who are attending on behalf of the supervisors and how their roles have been divided.

7.7.2 Cooperation in relation to the ECB

The introduction of the single supervisory mechanism (SSM) has made the cooperation between the AFM and DNB more complex. The SSM is put into practice by the ECB in cooperation with the national competent authorities and the national designated authorities. In the Netherlands, only DNB has been designated as the national competent authority and the national designated authority.⁸⁰ This has affected the AFM's position, as the ECB communicates with DNB only. As a result, the relationship between DNB and the AFM has not changed in the Dutch context, including as regards their respective powers, but with the ECB having joined the process, the AFM effectively has a different position in a European context.

In practice, therefore, assessments of significant institutions involve three parties: DNB, the AFM and the ECB. This has made the process more complex and may cause delays. Furthermore, the three parties may in theory have three different opinions on a candidate. DNB submits a draft decision to the ECB, incorporating the AFM's recommendation. Under the dual access system, a negative opinion of either supervisory authority is decisive. The ECB may then depart from the draft decision taken by DNB and, hence, the AFM. It may be assumed that the ECB will not just disregard a negative opinion on a candidate's fitness and propriety, but it does have the power to do so. The question also arises as to how the ECB will want to act in terms of the different procedures in the EU in the longer run.

If it should wish to harmonise procedures in this area, this may affect the AFM's role.

7.7.3 Cooperation as part of learning and development

⁸⁰ Van Gelder & Teule, *Tijdschrift voor Financieel Recht* 2014, issue 11 p. 462.

Both supervisors demonstrate great willingness to take a critical look at their own functioning, learn from reviews and improve processes and procedures. This is reflected in our finding described in Section 3, that both the AFM and DNB have already implemented demonstrable improvements while our evaluation was still underway. It has also become apparent from our discussions that the supervisors assessed at least their own functioning in great detail after they had completed complex cases, some of which involved both the AFM and DNB, such as Delta Lloyd. Joint assessments are insufficiently performed, however. The Committee calls upon the supervisors to perform such assessments jointly. We believe they can learn a great deal from shared cases and from the processes and procedures they use and those which similar institutions outside the Netherlands apply.

7.8 Closing reflections in terms of LITER

7.8.1 Legality

Nearly all of our interviews show that our discussion partners find DNB's and the AFM's fit and proper assessments a suitable instrument which has proven its worth. Their power to use this instrument is no longer called into question. Likewise, they acknowledge that there must be some discretionary room for manoeuvre when assessing candidates' fitness and propriety. However, the procedures and the application of the criteria require further clarification (see below under "Transparency").

The law should be amended to ensure that a candidate has an autonomous legal position in objection and appeal procedures. Under the current system of the General Administrative Law Act, the candidate's legal position depends on the financial institution making the application. As a result, a candidate cannot institute legal proceedings if the financial institution withdraws the application. This is a flaw in the candidate's legal protection.

7.8.2 Independence

Supervisors are supposed to act independently of market operators and the political arena in their decision-making. Both supervisors do so, and they act with due care. A point for attention is the fact that the roles of the Dutch State, holding shares in financial institutions and bearing responsibility for DNB, must not be mixed, as a result of which DNB would be unable to perform its own fit and proper assessments.

Independence also means preventing bias in the decision-making process. DNB and the AFM have designed their decision-making processes so as to prevent this, and have increased seniority and professionalism. Nevertheless, we recommend that an additional independence and professionalism element is added during the primary decision-making process by appointing senior advisers, who could lend practical assistance to both supervisors in their role as experts and play a role during interviews. Furthermore, a confidential adviser could be instigated, who could fulfil a de-escalating role in the event of complaints about a candidate's treatment or with regard to other confidential issues during the assessment process.

Re-assessments are a weak spot, however, as they require even greater care and proportionality. In part because both supervisors have tightened the procedure and transferred decision-making to the highest level, roles and functions are mixed in this procedure. The individuals who decide on whether there are reasonable grounds for conducting a re-assessment also decide on its outcome. This is undesirable, given the independence principle. The Committee is of the opinion that the various functions must be segregated in these decision-making procedures, which requires adjustments to the AFM's and DNB's internal decision-making procedures.

In the Committee's opinion, the objections and appeals procedures satisfy the statutory independence requirements. Nevertheless, DNB could appoint an external chair of its appeals committee, like the AFM does. It could also set up an external objections committee. The question remains whether this will accommodate criticism in full. After all, the risk of reputational damage will continue to exist, which would appear to be the largest impediment to challenging a supervisor's decision in court. Having appeals handled behind closed doors, as advocated by DNB and the AFM, will mitigate this risk, but it will not be eliminated.

7.8.3 Transparency

The Committee's review has revealed that the transparency principle is considered one of the most important aspects. Almost all our discussion partners agree that the entire assessment process lacks transparency. The Committee also experienced difficulties in obtaining a clear picture of the entire procedure and gaining a full understanding of its phases. While both supervisors have made considerable efforts to clarify the process and communicate more clearly about it, matters are still excessively viewed from the supervisor's own perspective. Looking more closely at the entire process from the financial institution's and the candidate's perspective reveals the need for various improvements.

For example, communications could be clearer about the various phases of the procedure, the particular stage the procedure is in, exact processing times, the exact criteria, the questions asked during the interview, feedback after the interview and the final decision taken. In particular, additional care must be exercised in the event of an intended negative decision. The Committee believes that informing the candidate by telephone is utterly inadequate.

In addition, both supervisors should clarify their fit and proper criteria in a diversity context. While the websites provide examples to explain this, the prevailing impression in the sector is that only financial competencies matter. Our evaluation confirmed this impression. It is equally important that publications or instructions provide guidance about the financial knowledge required of candidates who lack a financial background and how they can still be found fit and proper, given their specific non-financial expertise.

Similarly, we recommend that both supervisors design a special procedure for emergency or other exceptional situations, explaining clearly under what circumstances such a procedure may be used and what assessment criteria are applied.

7.8.4 Effectiveness

It has emerged from almost all interviews that fit and proper assessment is perceived as effective. The financial institutions have indicated that it causes them to look more critically at the candidates they wish to nominate. Similarly, the catch-up assessments have resulted in improvements in terms of management capabilities. A specific risk has been pointed out, however, which is that strict assessment may have a drawback in the longer run. Focusing too narrowly on financial expertise may cause too much homogeneity in management and supervisory boards, with selections being made from too small a pool of candidates. These times of far-reaching digitisation and of financial markets in a state of flux demand more diversity. Also, sufficient attention must be devoted to attracting candidates from outside the Netherlands.

Both supervisory authorities are professional organisations that have an eye for in-house staff capacity and priorities. Thanks to their risk-based priority setting they are capable of handling the large number of applications within the statutory time limits, barring a few exceptions. Nevertheless, both supervisors must make a greater effort to handle all files within the statutory time limits. DNB has made a major rationalisation effort by optimising the process starting 1 January 2016, which allowed it to scale back its staff capacity.

7.8.5 Responsibility

Fit and proper assessment involves shared responsibilities. While the financial institutions select nominees and prepare the files, the supervisors perform the assessment. As financial institutions perform more preparatory work themselves and increase the quality of their files, the supervisors' assessments become less complex and faster. It has become clear to the Committee, from its interviews and file inspections, that institutions can do better in terms of preliminary selections and file quality. Too frequently, improper candidates are selected or incomplete files submitted, causing delays in assessments, which requires additional effort from the supervisors.

Furthermore, the Committee believes that more systematic collaboration between the sector and the supervisors should be possible, with more preparatory work being performed by the institutions themselves. If a quality system is set up, as described in paragraph 8.10.2, which the institutions involved must observe, limited assessment by the supervisors (i.e. a "light" assessment variant) will often suffice. DNB and the AFM could initiate and design such a system in tandem with various parts of the sector. Working methods are too *ad hoc* at present. A standardised quality system will enable the supervisors to perform their assessments more efficiently, while the primary responsibility for selecting suitable candidates will lie with the institutions themselves.

8. CONCLUSIONS AND RECOMMENDATIONS

8.1 Introduction

This section of the report presents the Committee's conclusions and recommendations for each evaluation question. The response to the evaluation questions represents the outcome of the weighting of all the findings from all the different sources of information that the Committee consulted (see Section 1.4 and Annex I). When answering the evaluation questions, the Committee made a weighting between the sector's perspective and the supervisory authorities' perspective.

In responding to the evaluation questions, the Committee distinguished the process as structured by the supervisory authorities (also referred to as the "internal process") and the process that is visible to the candidates and institutions (also referred to as the "external process").

A further distinction must be made between initial assessments and re-assessments. The most sensitive cases mainly involve re-assessments, but these are relatively rare. Re-assessments can have profound consequences for both the candidate and the institution, and the Committee has therefore taken a particularly critical approach to reviewing the re-assessment procedure. The Committee's conclusions and recommendations devote special attention to re-assessments in sections 8.4 (influence of seniority and external expertise on the candidate's position) and 8.5 (staff segregation between decision, objection, and appeal).

8.2 Overall conclusion and evaluation

The central evaluation question is as follows.

Does the present structure of the assessment procedure for managing and supervisory directors in terms of fitness and propriety and the resulting operating methods that De Nederlandsche Bank (DNB) and the Netherlands Authority for the Financial Markets (AFM) apply, ensure adequate performance of the tasks imposed on them by law?

The Committee finds that the two supervisors have organised the structure of and approach to the process of fit and proper assessments of management and supervisory board members of financial institutions to the effect that generally they adequately fulfil their statutory duties in this respect, but that specific parts of the process require adjustments and may and must be improved upon to achieve even better compliance with the statutory mandate.

The sections below describe in which areas and to what extent the present assessment process ensures that the two supervisory authorities adequately perform the tasks imposed on them by law. This has resulted in 18 specific recommendations, which are linked to the evaluation questions.

The interviewed candidates and sector organisations are virtually unanimous in recognising the importance of assessments and the instructive effect that assessments have within the sector. The sector does not doubt the usefulness of assessments. Based on talks with candidates, sector organisations, members of Parliament, the Ministry of Finance, various Dutch and European supervisory authorities and supervisors in the United Kingdom, the Committee finds that assessments are an important and useful element in the range of instruments available to the supervisory authorities. The Committee has the impression that financial institutions' initial resistance to assessments has decreased. Furthermore, the sector has since obtained a clearer view of the assessment procedure, based on additional information provided by the supervisory authority and through its growing experience with the procedure.

8.3 Professionalism, objectivity and transparency

As evaluation questions 1 and 2 are closely related, they will be discussed together.

Evaluation questions 1 and 2:

Is the assessment process professional, objective and transparent, and to what extent has the assessment procedure been strengthened in terms of professionalism, objectiveness and transparency following the improvements that have been made? And which areas still require more attention?

8.3.1 Conclusions

Professionalism

In terms of professionalism, the Committee looked at the structure of the assessment procedure, the promptness, professional ability and seniority of the assessment officers, how candidates are approached, and the available staff resources.

➤ Structure of the procedure

It took some time before the supervisory authorities were able to provide the Committee with the full description of their assessment procedures. Now that the Committee has completed its work, it has established that all elements of the assessment procedure have been clearly and carefully documented, and that both DNB and the AFM have diligently organised the assessment procedure. The steps involved in the assessment procedure, including the content of the assessment criteria, time limits and powers have been described and recorded in a broad range of procedural agreements, process descriptions, handbooks, manuals, assessment frameworks, guidelines and authority matrices. This relates primarily to the "internal process" at the supervisory authorities themselves; the exact stages and interpretation of the "external process" are however not visible to the outside world (see subsection on transparency for further information).

It also struck the Committee that the assessment officers have a great deal of tacit knowledge. This is undocumented knowledge that is known to the assessment officers and is linked to culturally-related values, experiences and attitudes, and which is mainly transferred through interactions with other assessment officers, in which learning processes are important.⁸¹ The operational procedures surrounding the assessments are strongly formalised to prevent undesirable variation and possible arbitrariness as much as possible. At the same time, assessment officers have the discretionary power to conduct assessments based on proportionality and the situation at hand.

The combination of formalised procedural agreements, discretionary powers and tacit knowledge contributes towards ensuring that the assessment process runs smoothly, while at the same time ensuring sufficient space for context and proportionality. This view is confirmed by the file reviews that the Committee conducted at both the AFM and DNB. However, the fact that many of the considerations that assessment officers make are undocumented and arise through consultation means it is difficult for the outside world to get a clear picture of this, which of course affects transparency.

➤ Promptness

The Committee finds that both the AFM and DNB have done a great deal to ensure the assessment procedure runs according to the agreements made. This is also reflected in the decreasing throughput times, (see Annex V: 2.5 and 3.5).

However, some assessments still fail to meet their statutory deadlines. This is partly due to the institutions' deficient preparatory work, resulting in incomplete files, which means the assessment process is delayed due to the institution's own actions. In these cases, the total throughput time increases. That is to say the gross total duration of the entire procedure from the institution's selection and preparation of the candidate to the supervisory authorities' actual decision. Possible slowdowns are sometimes also caused by additional questions that the supervisors have with respect to candidates, which may lead to additional interviews being needed. This can also have an effect on the net throughput time, which is the time that the supervisory authorities spend on the assessment process. Candidates frequently find gross and net throughput times too long. That said, this by no means suggests that the statutory consideration times were indeed exceeded in these cases.

There are actually cases where the supervisory authorities fast-track the process owing to general public interest (such as in the case of Vivat). The Committee considers this is altogether justifiable in view of the social function that the supervisory authorities are also obliged to fulfil. However, in these cases the supervisory authorities must make every effort to ensure that these assessments are conducted according to the same high standards.

⁸¹ Baumard, 1999.

- Assessment officers' professional ability and seniority
During the first phase of assessments (until mid-2014), candidates experienced different problems, mainly relating to the assessment officers' seniority. As a result, the aspects of professional ability and seniority have come in for heavy criticism from the sector. Assessment officers were regularly evaluated as incompetent and inexperienced. The supervisory authorities have responded to this criticism by making various improvements. For example, both the AFM and DNB prepared authority matrices, which have enabled smoother and faster escalation of complex cases. The interview is escalated based on the nature of the institution and the candidate, and the stage that the process is at.

Based on the Committee's interviews with candidates, these measures have obviously had a positive effect. The criticisms relating to professional ability and the seniority of the assessment officers have been largely addressed by prompter escalation to senior staff. Some candidates still have doubts about the assessment officers' knowledge and skills in certain areas, although they are mainly regarded as proficient and competent.

Escalation and involving more senior officers is particularly important where re-assessments are concerned – the improvements that the supervisory authorities have made here are also being acknowledged (see 7.4 for further details).

- Approach to candidates
Most candidates felt that they were approached in a proper and professional manner, both prior to and during the assessment. At the same time, we observed that many of them still felt that they were "taking an exam."

DNB's website now has the following information: *during the interview you will not be asked any "exam questions" to which there is only a "yes" or a "no" answer. We intend to conduct the interview as an open dialogue.*⁸² This specific wording aims to change candidates' perception, although their feeling of being subjected to an examination still persists. This also relates to the basic idea underlying the assessments (see Section 6.2: Positive fundamental attitude). The Committee believes that the fundamental take on assessments should be more of a positive, yet critical attitude towards candidates, with the aim of making this a learning experience for the institutions.

Candidates also appreciate simple changes such as reserving a parking place for them when they attend interviews at the supervisory authorities' offices. This makes the assessment process more comfortable for candidates. Candidates are now also informed of positive decisions over the telephone, which they appreciate.

⁸² <http://www.toezicht.dnb.nl/en/4/2/16/50-229367.jsp>.

➤ Available staff resources

Partly as a result of reduced staff resources, DNB has taken a more risk-based approach to supervision since early 2016. This involves making more selective choices about which candidates are actually invited for an interview. DNB aims to actually speak to only 20% of all assessed candidates. Assessments at significant institutions under the SSM are an exception, with candidates often being interviewed as part of the process. The AFM's assessments have traditionally been risk-based. This means that the lion's share of its assessments are paper assessments - and this will happen more and more in the future. Precisely in view of the available staffing, the move towards more risk-based assessments makes sense. However, some attention must be paid to the definition of "risk": it now looks as though institutions are being designated as high-risk if their size or complexity requires escalation. The Committee advises to not only base risk levels on size or financial risks, but also on the fact that certain "managerial risks" at small enterprises call for more intensive assessment.

Objectivity

The sector is concerned about the fact that at both the AFM and DNB, one single party is responsible for the interpretation and enforcement of rules and regulations. There are also concerns about the way in which information from supervision is being used for assessment purposes. The majority of candidates finds that it is acceptable to include information from supervision in assessments, provided that the supervisors clearly explain how they do this.

In initial assessments, both DNB and the AFM take an integral approach in which supervision is included in the assessment. It is however important that the supervisory authorities clarify their approach to the sector. A re-assessment may only be conducted if there are reasonable grounds to do so, and it may not be used to achieve another supervision-related objective. Re-assessments may not therefore be used to effect behavioural changes at a financial institution.

Concerns about the degree of objectivity are fuelled by stories that some candidates breeze through the process, while others (for reasons unknown), are given a much harder time.

The Committee believes that there is a lot to be gained if the supervisors clarify to candidates how they include supervision information in the assessment process, and how they arrive at their decisions (see also Section 7.5). Objectivity therefore involves transparency.

Transparency

The transparency of the procedure is a regularly recurring theme in the Committee's talks with candidates. Comments about transparency relate both to the structure of the process and to the assessment officers' substantive considerations. The AFM and DNB have taken a series of measures to clarify the course of the assessment process and to communicate which criteria candidates are

required to meet (see Section 4). These initiatives started in the middle of 2015 and were continued into 2016 (when the Committee was already performing its evaluation). The effects of these initiatives were therefore often not yet being felt by the candidates that the Committee spoke to.

Some of the criticism heard may therefore have been addressed by the steps that the supervisory authorities have taken, but recently assessed candidates nevertheless continue to experience the assessment process partly as a black box. It is abundantly clear from the Committee's interviews that candidates found the assessment process very difficult to comprehend.

The Committee actually felt the same way: it was no easy task to get a good grasp of the whole process, even with the help of all the available information. This is partly due to the multitude of documents and the different procedures involved for the various positions, sub sectors and types of institution. This is partly because the assessment process is structured on the basis of tacit knowledge. Although the "internal process" may therefore be clear, this does not apply to the "external process" as experienced by the assessed candidates and the institutions.

In other words, both the AFM and DNB have introduced several improvements to strengthen professionalism. The sector regards these changes as improvements, but it is as yet too early to determine their exact effect. The Committee saw that both organisations were making efforts to introduce improvements, and it observed improvements in response to its questions and suggestions while performing its evaluation. The Committee therefore finds that both organisations have demonstrated a capacity for learning and are prepared to act on external signals.

8.3.2 Recommendations

- The Committee recommends ensuring that the assessment procedure is made completely clear while it is under way. This includes a) clearly defining and communicating the different stages of the process beforehand, and b) informing candidates throughout the process on the stage that they are in (including the relevant time frames and subsequent steps). The Committee proposes that candidates and institutions be given the opportunity to digitally track the progress of their own assessment process. The AFM already offers a digital portal. We recommend that the AFM and DNB continue down this path and facilitate and monitor the process together on a completely digital basis.
- The intake procedure can also be digitised and therefore further standardised and optimised in terms of effectiveness and efficiency. This is already under way at the AFM.
- Similarly, the Committee recommends increasing transparency before the actual assessment procedure begins by providing clear information about what candidates can expect. This includes matters such as: what is the objective of the assessment and possible interview? What does the assessment procedure look like? How long will it take? What does the decision-making process involve? Which representatives from the supervisory authorities will attend the interview? What is the division of roles, and what are the options for objection and appeal?

Although the two supervisory authorities already do this to some extent, the Committee considers that there is room for improvement in several areas.

- It is important that the sector itself regards the quality of the files submitted as its own responsibility. Several organisations have already acknowledged this, which has made the process much easier for them, and all parties concerned are very pleased about this. It is essential to specify the profile required for the position and how the candidate fits this profile, also in the light of the composition of the management or supervisory board as a whole.
- In the context of risk-based assessments, it is also important to review priorities at regular intervals, to prevent risks from being overlooked in a rapidly changing environment.
- Finally, both the net and the gross throughput times of the assessment process must be reduced to ensure that experienced candidates will continue to be attracted to supervisory and management functions within the sector. This can for example be achieved through harmonising intake, setting up a digital platform, and by involving institutions more and assigning them with responsibility for submitting better and more complete files.

8.4 Influence of seniority and external expertise on the candidate's position

Evaluation question 3:

Have the measures to add greater seniority and external expertise to the process contributed towards strengthening the position of prospective policymakers?

8.4.1 Conclusions

The assessment procedure can potentially have profound effects for the candidates. It is important that the AFM and DNB interviewers have the right experience and level of professionalism to correctly assess the candidates' fitness. Accordingly, DNB and the AFM have taken several measures in the area of seniority and external expertise. Senior management at both organisations is now more closely involved with the daily implementation of assessments. Both supervisory authorities have made different classifications, which depending on the profile and the risk level of the institution or the candidate require that more senior officers are involved in interviews with candidates as well as in decision-making.

Representatives and audio recordings

Since the end of 2015, DNB has explicitly informed candidates that they have the option of bringing a representative to the assessment interview. The AFM has always permitted candidates to bring a representative, and has been explicitly communicating this option for re-assessments since the end of August 2016. In early 2016, DNB introduced a pilot scheme to allow recording of assessment interviews. The AFM is anticipating the findings of this pilot scheme. Virtually all of the candidates that the Committee spoke to were negative about the current option for recording the interview and being able to bring a representative. This has the effect of making candidates feel as if they are under suspicion, and it contributes to judicialisation of the assessment process. The Committee considers that the option of allowing candidates to bring a representative and recording the interview

must continue to be available on request. However, the Committee also suggests that candidates should not be explicitly offered this option in advance, as it puts them ill at ease rather than making them feel comfortable.

Lastly, DNB advocates holding hearings relating to assessments behind closed doors. DNB communicated this in its legislative letter to the Ministry of Finance of 28 June 2016. The request is currently with the Rotterdam Court. The AFM supports DNB's request. The outcome of this request is not yet known, although it does have the strong support of the assessed candidates that the Committee spoke to.

8.4.2 Recommendations

- To strengthen candidates' position, it is not a good idea to explicitly inform them that they may bring representatives to the interviews or have recordings made. However, the Committee does see other possibilities for strengthening the position of individual candidates. The Committee recommends that an intended negative decision is no longer communicated by telephone, but by letter offering candidates the option of receiving more information in a personal meeting. In these cases it may of course be productive to allow candidates to bring a representative, and candidates should be explicitly informed of this option.

8.5 Staff segregation between decision, objection, and appeal

Evaluation question 4:

Does the staff segregation at the AFM and DNB between decision-making and, where applicable, handling the objection and appeal satisfy the requirements laid down in the General Administrative Law Act (Algemene wet bestuursrecht – Awb)? Do the present objection and appeal procedures provide adequate safeguards for an independent review of a decision?

8.5.1 Conclusions

The objections and appeals procedure meets the statutory requirements. At the same time, the sector perceives there is no point in objecting to the supervisory authority's decision, as it is the supervisory authority itself that deals with the objection. This situation gives candidates the impression that independence is insufficient. People also see little point in filing an appeal, as they consider the risk of reputational damage to be too big (due to the public nature of the proceedings).

The Committee wants to note that re-assessments require special attention in this respect. Some candidates informed the Committee that re-assessments had been "used" to verify supervision issues and bring about behavioural change at supervised institutions. Likewise, candidates suggested that the threat of re-assessment was used to force a financial institution to change its behaviour (abuse of power). Although the Committee is unable to verify whether these situations have actually occurred, the interviewees were so adamant that the Committee found their reports hard to ignore. The Committee discussed the examples given with the supervisors, but was unable to verify

objectively whether abuse of power was actually involved. The AFM and DNB have confirmed that they believe such situations to be undesirable and inappropriate, which the Committee wholeheartedly supports.

8.5.2 Recommendations

- The Committee has the following suggestions to improve independence and enhance the procedure.
 1. Following the example set by the United Kingdom, the Committee recommends establishing a senior advisor function for the benefit of the assessment procedure (see also section 6).
 2. In addition, a confidential adviser could be introduced who would be available during the entire assessment procedure in case of procedural conflicts or a complaint about treatment of the candidate. A confidential adviser (appointed within the supervisory authority, but with an independent role) can fulfil a de-escalating role and/or intervene in the process.
 3. In the case of re-assessments, the Committee recommends creating a clear functional segregation between the staff members deciding whether there are reasonable grounds for re-assessment and those deciding on the outcome of the re-assessment itself.
 4. The Committee recommends adding an external chair to the appeals committee in DNB's objection procedure. It is not absolutely necessary for the objections committee to comprise external members only. Should the two supervisory authorities take steps to strengthen the independence of the primary decision-making process, as described above, a fully external objections procedure will not be necessary.
 5. In conclusion, the question arises whether appeals should be heard behind closed doors, precisely because of the reputation aspect. DNB has expressed this wish in its legislative letter to the Ministry of Finance. During the Committee's interviews, candidates expressed doubts as to whether this would prevent reputational risks, as they continue to fear that matters will get into the open regardless. Even so, hearings behind closed doors could clearly mitigate this risk.

8.6 Cooperation and division of roles between the AFM and DNB

Evaluation question 5:

What is the state of cooperation and division of roles between the AFM and DNB? Are tasks, authorities and responsibilities clear to all stakeholders, both internally and externally?

8.6.1 Conclusions

The AFM and DNB cooperate well on dual access assessment files. They have also stepped up collaboration on a more general level. For example, since 2013 the two authorities have held regular joint policy meetings, and the heads of departments concerned regularly hold bilateral meetings. They are also considering introducing a digital platform.

The internal division of roles between the AFM and DNB is clear, but this is less so where the external process is concerned. For example, candidates often do not know how roles are divided between the AFM and DNB during assessment interviews. In addition, the AFM is often not very visible to candidates during the dual access assessments, meaning that it is not usually clear to candidates who has which role.

There are many similarities between the assessment procedures at DNB and the AFM. However, each supervisory authority has basically developed its own process and primarily evaluates its own process. The two supervisory authorities are already taking steps towards jointly developing and learning from the process, but the Committee believes that these efforts could be stepped up further.

8.6.2 Recommendations

- A joint intake process for DNB and the AFM would increase efficiency. The Committee therefore suggests to the two supervisory authorities that they unify the process and create a single and joint point of access and procedure, whereby the two parties retain their own responsibilities and roles, but have a uniform procedure. This could be considered as offering a shared service, while retaining their own responsibilities and identity in terms of content and decision-making.
- Furthermore, the Committee recommends that the two supervisory authorities exchange any lessons learned at all levels on a regular basis, or in any case after concluding important cases.

8.7 Influence of EBA and SSM on the AFM and DNB screening process, and insights gained from the UK

Evaluation question 6:

How does the increasing convergence initiated by the European Banking Authority (EBA) and European banking supervision (SSM) affect the screening procedures that the AFM and DNB apply? Which insights can be gained from the way the supervisory authorities in the United Kingdom have set up their screening procedure?

8.7.1 Conclusions

Significant banks are subject to joint European banking supervision, which means that the ECB sits in on interviews conducted by DNB and, if circumstances require, an AFM officer may also join. Since the ECB's procedure took effect, the division of roles between the different supervisory authorities has become less transparent to candidates.

DNB and the AFM have also become less autonomous in assessing managing and supervisory directors of significant institutions, which especially affects the AFM's position in the process. While agreements and a division of roles between the AFM and DNB are of course in place, the AFM does not fulfil any formal role in decision-making from the ECB's perspective. This also makes it unclear whether or how the AFM's interests are considered. Sometimes, assessed candidates are unaware

of the AFM's involvement, which is understandable to some extent, given the division of roles in which the ECB has ultimate decision-making powers, but if this happens too often, it may harm the AFM's image.

Both according to DNB and the ECB, the ECB's procedure is largely based on the procedure developed by DNB. Even so, the ECB and DNB apply different criteria. For example, the ECB puts a much stronger emphasis on "available time" on the part of the relevant managing or supervisory director. In addition, the ECB is more rule-based and seems to attach even greater value to financial expertise, which perhaps puts more pressure on the aim of achieving diversity.

The Committee also noted that the ECB's assessment criteria are very easy to understand. The ECB also more clearly communicates its recommendations for further development or training, which it communicates to candidates by letter. The ECB is therefore takes a more rule-based approach, which makes its procedure more transparent than DNB's.

The lessons learned in the United Kingdom are set out separately in section 6. In a nutshell, they are:

- use of a joint online submission system;
- adopting a positive basic attitude towards the candidate, which assumes a positive outcome;
- communicating as transparently as possible the areas for attention and the assessment criteria, based on a standard format made available to candidates. It is therefore important to communicate possible remaining concerns prior to holding the second interview;
- inviting a senior advisor to the assessment interview, whose autonomy and outside perspective enables him or her to assess the process;
- securing the strict segregation between the review as part of an assessment process and the ultimate decision;
- if a supervision incident occurs, engaging the supervision department's enforcement team, which has the authority to cancel the approved fitness as a potential sanction;
- including the external chair in the appeals committee in the objections phase of the assessment procedure.

8.7.2 Recommendations

- With regard to the ECB's procedure, the Committee recommends that the division of roles between the supervisory authorities (AFM, DNB and ECB) is communicated clearly to candidates.
- DNB could learn from the ECB's procedure in terms of communicating screening criteria clearly to candidates and making recommendations for further development.
- Although the AFM has for some time been engaged in preparing a MoU with the ECB, it is important to expedite this process in order to not only establish a formal position for the AFM vis-à-vis DNB, but also towards ECB.

- The supervisory authorities could also learn a great deal from the United Kingdom's FCA with respect to their tone of voice, attitude towards candidates and written communications, and the role of external advisers. We recommend that these aspects are given serious consideration when making further adjustments to the assessment process. Please refer to section 6 for a detailed discussion.

8.8 The effect of the enhancements made to DNB's assessment procedure

Evaluation question 7:

To what extent have the assessment procedure launched in 2012 and subsequent improvements made since 2015, as described in the action plan, contributed towards:

- a. elucidating the assessment interview and increasingly involving DNB's senior management in assessment interviews;*
- b. providing further insight into the assessment process, decision-making and opportunities for objection and appeal;*
- c. providing more transparency and information about the assessment process, criteria and quality safeguards.*

8.8.1 Conclusions

Re a: Elucidating the assessment interview and involving senior management

DNB has taken various steps to clarify the course of the assessment interview. For example, as of February 2016 candidates have received invitations for assessments by email, providing information about the interviewers and details about how they can prepare (including referring them to the website where they can download the brochure "*You're going to be screened: What does that mean? What should you expect?*" and where they can watch a short introductory film). The supervisory authority's senior management will be involved in interviews at an earlier stage. Steps have therefore been taken to address the critical points relating to insufficient insight into the objective and the structure of the interview, and insufficient involvement of senior officers. Candidates are noticing and appreciating the fact that senior assessment officers, including senior management, are increasingly involved in assessment interviews. Candidates had not really noticed any effect of the steps taken to explain the course of the assessment interview better.

The increased involvement of senior management since the beginning of 2016 has contributed towards improving professionalism at DNB. There is fewer staff available for assessments, but at the same time the sector has experienced a positive effect in terms of knowledge and experience that the assessment officers involved bring to the table.

Re b: Transparency of the assessment process, decision-making and opportunities for objection and appeal

While the internal process is clear, there is still room for improving insight into the external process and manner of decision-making (including the assessment criteria and their weighting). During the Committee's evaluation, DNB already made efforts to improve the process, partly following repeated requests from the Committee for more information. However, these recent improvements (such as new website texts, an instruction video and a flyer) were of course not yet recognised in the Committee's interviews with candidates. Further insight into the assessment procedure should be provided to external stakeholders, as described in the responses to evaluation questions 1 and 2.

Two specific aspects emerged in terms of decision-making. Candidates have a negative perception of being informed of an intended negative decision by telephone. This telephone conversation is frequently interpreted as an urgent recommendation to withdraw from the procedure. And in the event that the candidate or the institution decides to withdraw, there is no written explanation of the intended decision. This means that there is no learning effect for the candidate and the institution.

There are still many negative perceptions surrounding objections and appeals. The chance of an objection or appeal succeeding is considered to be very small, so the sector is therefore very reluctant to even allow it to get to that stage. The likelihood of reputational damage is seen as too high.

Re c: More transparency and information about the assessment process, criteria and quality safeguards

As stated under evaluation question 2, there is still room for further process enhancement, in spite of the steps that have already been taken.

8.8.2 Recommendations

- The Committee believes that the appeals and objections procedure will be sufficiently strengthened if various elements of independence are incorporated into the primary process, and an external chair is present for objections (see recommendations for evaluation question 4).
- The Committee's most important recommendation is to further develop a digital (track and trace) instrument in order for candidates to see what stage their assessment process is at.

8.9 The effect of the enhancements made to DNB's assessment procedure

Evaluation question 8:

To what extent have the screening process initiated in 2012 and the improvements made to that process since 2015 contributed towards:

- a. offering more insight into the assessment process, the decision-making process and the opportunities for objection and appeal, including increasing transparency, providing information about progress of the assessment process, criteria and quality guarantees?*

8.9.1 Conclusions

Approximately 10% of the AFM's assessments include an interview. The majority of the assessments that the AFM conducts are therefore paper assessments, which do not require an interview to decide on the approval of a candidate. According to various sector organisations, these paper assessments go by largely unnoticed. It is a relatively painless process that the sector is satisfied with.

Candidates who underwent interviews that involved the AFM only had mixed feelings about the extent to which they felt sufficiently informed before the interview. Particularly with respect to the most recent interviews, candidates felt the AFM had thoroughly informed them beforehand about the objective of the interview, the names of the interviewers, and topics they could expect.

Moreover, the AFM is making every effort to further digitise the assessment process, which will immediately give candidates better insight into which stage of the assessment process they are at.

As is the case at DNB, the weighting of the various decision-making criteria is relatively unclear to candidates. During the dual access process, the AFM is less visible to assessed candidates, partly because of the roles that DNB and the AFM have. DNB coordinates the dual access process, and candidates only communicate with DNB. In addition, the AFM's position in the assessment process has not exactly benefited from the arrival of the ECB.

The AFM offers candidates the opportunity to present objections to an objections committee, and they may submit appeals to an appeals committee which has an external chair.

8.9.2 Recommendations

- In the case of dual access assessments, it is important for the AFM to clarify its role and take a more solid position in interviews, to ensure it can thoroughly safeguard the role it plays in society.
- It is important to expedite the process that is intended to result in a Memorandum of Understanding (MoU) between the AFM and the ECB, so that the AFM not only has a formal position towards DNB, but also towards the ECB.

8.10 Additional conclusions and recommendations

This last section of the Committee's report discusses two themes – diversity and the sector's own responsibility – which also merit attention in addition to the above recommendations.

8.10.1 Diversity

The financial sector is witnessing major changes worldwide, and the financial system needs further digitisation. This calls for more knowledge about and more applications of new technologies such as internet, mobile communications and blockchain, each with their own languages and conventions, but also knowledge about change management and staffing policies. Financial institutions will

increasingly become IT companies, and will continue to employ large numbers of staff. The management and supervisory boards of these institutions will require staff who also have knowledge of IT, e-commerce, cultural change and social orientation.

Moreover, society increasingly calls for financial institutions to provide a different type of service and take a different form of involvement. The industry should be more customer-oriented, but also supportive in achieving objectives such as cutting carbon emissions, sustainability and transparency.

This is why it is important that in addition to knowledge of banking, insurance and investments, executives and supervisors should also have knowledge of society's new requirements and technology, and to translate these elements into policies.

This in turn requires supervisors to assess prospective directors not only to ensure they have sufficient financial knowledge, – such as the most recent Basel banking regulations, Solvency II for insurers, etc. – but also that managing and supervisory boards have a healthy diversity in terms of their knowledge areas, age range, gender, cultural background, etc. Above all at the ECB, and to a lesser extent at DNB, candidates for managing and supervisory boards are still being too much assessed on their knowledge of the institution's financial performance.

8.10.2 Own responsibility

The Committee considers that supervisors must beware of taking on too many tasks, meaning that they assume part of the responsibility for implementing the financial institutions' policies.

The Committee considers that the sector should increase the degree of its own responsibility. This could be achieved, for example, if financial institutions provide a clear description of the following for the benefit of the overall supervision process:

- their mission;
- their strategy and long-term vision;
- their operational plans and short-term objectives, including
- a clear analysis of the most important risks the financial institution is exposed to, broken down by magnitude and predictability

This could be supported with an analysis of the following:

- the current and future composition of the management board, in terms of its competencies and experience, as well as envisaged additional knowledge or experience;
- the current and future composition of the supervisory board, in terms of its competencies and experience, as well as envisaged additional knowledge or experience.

It would be useful if this process could be repeated at regular intervals, ideally once every three or four years, to update this information.

This information could then be shared with the supervisory authority on a confidential basis. Using this information as a basis, for each vacancy on both the management and the supervisory board, the financial institution could easily clarify why the proposed appointment is important, and how it fits in with the wider picture, and with the organisation's long and short-term perspectives. This could also address one aspect of criticism from the sector that the supervisory authorities primarily consider financial knowledge and experience and that their assessments do not take sufficient account of other competencies.

Additionally, for every proposed appointment, the sector must ensure it prepares a fully completed document that comprehensively describes who the candidate is and why he or she has been put forward for the appointment. This document should be submitted digitally to the supervisors. This is particularly crucial in the case of candidates with a non-financial background. For key appointments, and proposed appointments that are publicly sensitive, the institution can and will inform the supervisory authority in advance and at the appropriate level about the proposed appointment. This does not mean that the supervisory authority automatically grants approval, but it simplifies the process and can shorten the throughput time. This provides the supervisory board with a much clearer picture of the collective of management and supervisory board.

For institutions that have a procedure of this kind in place, and that are able to demonstrate a clear relationship between the organisation's strategy and the competencies required in this respect, the supervisory authority could apply a less stringent assessment regime (light assessment). More importantly, financial institutions themselves will benefit as they will more diligently consider the candidates they propose for appointment and will propose better candidates, which will then be approved more quickly by supervisors. A thorough procedure like this will also clearly increase the supervisory authority's confidence in the institution's ability to appoint the appropriate candidates. The Committee has observed that several institutions have already made progress in establishing more solid appointment procedures.

ANNEXES

ANNEX I - ACCOUNT OF METHODOLOGY

This examination primarily involved a process evaluation with a view to drawing lessons for the future of the fit and proper assessments performed by the AFM and DNB. The AFM and DNB sought to gain an insight into whether the present assessment process and the resulting working methods ensure the adequate performance of the tasks imposed on them by law. To understand the different perceptions and obtain useful tools to continue optimising the process, the Committee used qualitative examination methods, including document analysis and in-depth interviews. These methods allowed it to comprehend opinions as well as the underlying motives. The main drawback of qualitative examinations is the limited number of selected stakeholders that can be interviewed. Given the many different categories of stakeholders and large numbers of candidates assessed each year, the Committee therefore talked to only a small proportion of them. All candidates questioned by the Committee had been invited to one or more assessment interviews. The vast majority of candidates are from larger institutions like banks and insurance companies. Another large proportion of the interviewed candidates are in the group assessed jointly by DNB and the AFM (in dual access assessments), in part because many of the signs received beforehand had been sent by these parties. Moreover, as many assessed individuals in the "small institutions" population (mostly assessed by the AFM) only underwent a relatively simple paper assessment procedure and were not interviewed, they were not able to provide any input on the interview part of the process, so there was not much point in selecting large numbers of respondents from this group.

The Committee obtained a clear picture of the assessments in the context of which interviews were deemed essential, but has little idea about how paper assessments are perceived.

To prevent this limitation from jeopardising the validity of the findings, the Committee used a broad combination of examination methods, including document analysis, reviewing files on assessed candidates, and a round of interviews among a varied group of the parties involved to identify their perceptions of the assessment procedure (see items 1 to 7 below for a description of the individual information sources).

Findings were fed back to the AFM and DNB on a regular basis to link the various perceptions and ensure that those involved had the opportunity to hear and be heard (see item 8).

The Committee subsequently related the results from the various examination methods to one another by means of triangulation, i.e. comparing information obtained from the various sources referred to above. To clarify the concept of "adequate" performance of the assessment process, this term was translated to the operational level in greater detail at the start of the evaluation. The criteria to assess adequacy were formulated on the basis of a conceptual framework and the underlying scientific literature on supervision (see section 2). This evaluation considers the findings on the assessment process against the LITER good agency principles defined in section 2.

1. Document analysis

The Committee had access to a broad range of public and non-public written sources on the assessment procedure from DNB, the AFM and the ECB. These included the Policy Rule on Integrity Screening (*Beleidsregel betrouwbaarheidstoetsing*), the Open Book on Supervision pages on assessments, the ECB's policy stance, and additional sources that DNB and the AFM provided to the Committee in the course of the evaluation (see Annex VII for an exhaustive overview). The Committee used these sources to describe and gain an insight into the assessment process that DNB, the AFM and, where applicable, the ECB apply.

2. Meetings with DNB and the AFM

The Committee met with the AFM and DNB several times.

DATE	TYPE OF MEETING	SITE
17 May 2016	Meeting with DNB and the AFM	DNB and AFM offices in Amsterdam
30 May 2016	File review by DNB	DNB office in Amsterdam
7 July 2016	File review by the AFM	AFM office in Amsterdam
18 July 2016	Meetings with the ECB and EIOPA	Frankfurt
29 August 2016	Meeting with the AFM's Supervisory Board	Utrecht University
2 September 2016	Meeting with DNB's Governing Board	DNB office in Amsterdam
6 September 2016	File discussion and meeting with the AFM's Executive Board	AFM office in Amsterdam
13 September 2016	Meeting with DNB's Supervisory Board	DNB office in Amsterdam
26 September 2016	Visit of Ms Ottow, Chair of the Ottow Committee, to ESMA	ESMA office in Paris
5 October 2016	File discussion with DNB and the AFM	Utrecht University
12 October 2016	Meetings with the FCA, EBA and the Bank of England (PRA)	London
7 November 2016	Discussion of preliminary findings with DNB and the AFM	Utrecht University
22 November 2016	Discussion of report with DNB's Governing Board and the AFM's Executive Board	DNB and AFM offices in Amsterdam

The Committee met with assessment staff, DNB's Governing and Supervisory Board and the AFM's Executive and Supervisory Board to learn more about the assessment procedure (see table above for an overview of these meetings).

For instance, a one-day visit to DNB and the AFM was arranged at the start of the evaluation. On this day, the Committee spoke to staff members at the AFM and DNB. The purpose of these interviews was to collect information about the assessment procedure applied by the AFM and DNB, and the options to object and appeal. The interviewees included senior management, staff of DNB's Expert Centre on Fit and Proper Testing and staff of the department handling objections and appeals. At the meetings with assessment staff and executives, the Committee asked them to further elucidate the process in those areas where it was insufficiently clear. DNB and the AFM prepared several memos in response to the Committee's questions. Some of these memos will be converted into public documents that both supervisory authorities will make available to the sector in order to make the assessment process more transparent.

In the interviews with DNB's Governing and Supervisory Board and the AFM's Executive and Supervisory Board, the Committee addressed a number of dilemmas in supervision emerging from the evaluation.

3. Review of assessment files

Several meetings were held at which the Committee was given 25 actual assessment files to study (15 AFM and 10 DNB files), in order to get a feel of the practical implementation of the assessment and decision-making procedures at the AFM and DNB. The purpose of the file review was to reconstruct the different variations of the assessment process. It involved a study of examples of initial assessments and re-assessments, fit and proper assessments, and assessments in the various financial subsectors whose supervision is part of the AFM's and DNB's remit. The file review zoomed in on the steps taken in the assessment process, the time limits imposed and the decision-making criteria, taking decisions and policy rules as a basis.

At the Committee's request, the AFM and DNB also further clarified several assessment cases to explain specific considerations on their part. One of these cases was a re-assessment (Delta Lloyd) and another involved an assessment as part of the issue of a declaration of no-objection for an acquisition subject to a time limit (VIVAT Anbang). Also in response to these file reviews and case descriptions, the Committee put forward several additional questions to the AFM as well as DNB for further clarification of the assessment procedure.

4. Interview round

The Committee conducted **54 interviews**, of which 14 were with several respondents at the same time. It talked to **85 respondents** in total to consider the assessment procedure from different perspectives (see Annex II for a detailed list of the interviewed candidates). The purpose of these interviews was to collect the interviewees' individual perceptions of the assessments performed by the AFM and DNB and their perceived effects at different levels (on individuals, the organisation and the sector). The Committee spoke to the stakeholders listed below.

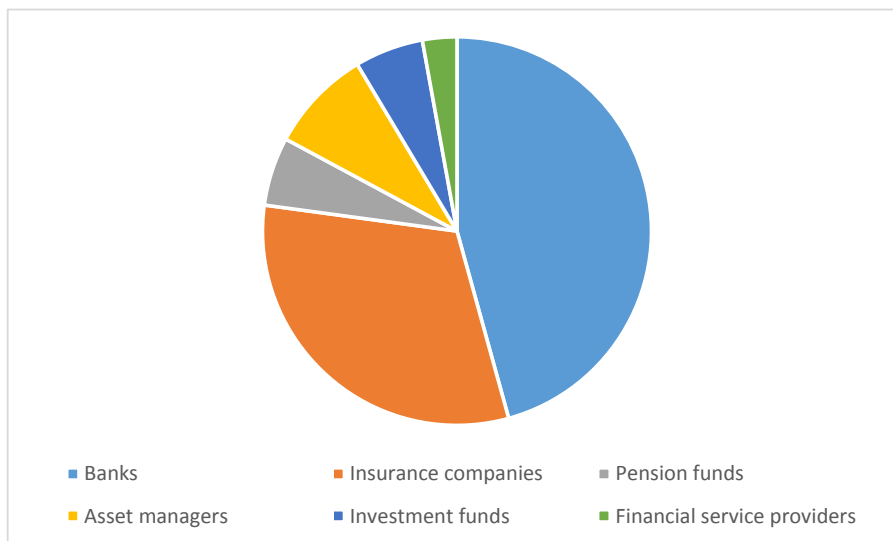
These interviewees were selected in part on the basis of the files and information on the present assessment process provided beforehand.

Candidates and sector organisations. The Committee interviewed 30 candidates, both managing and supervisory directors. The table below lists the numbers of managing and supervisory directors interviewed per sector.

Number of candidates	N=30
Bank	N=12
Insurance company	N=10
Asset manager	N=1
Investment fund	N=3
Pension administrator	N=2

Financial service provider	N=2
Number of executive directors	N=13
Bank	N=5
Insurance company	N=3
Asset manager	N=0
Investment fund	N=3
Pension administrator	N=1
Financial service provider	N=1
Number of supervisory directors	N=17
Bank	N=8
Insurance company	N=6
Asset manager	N=1
Investment fund	N=0
Pension administrator	N=1
Financial service provider	N=1

Some of the candidates reported to the Committee themselves, while others were nominated by either the AFM and DNB or the Committee. In order to obtain as broad a picture as possible of the perceptions prevalent among candidates, the Committee took account of the differences between financial subsectors – for instance banks, insurance companies and pension funds on the one hand and small consultants and intermediaries on the other – by interviewing representatives from each subsector. Nevertheless, the majority of candidates are officers at larger institutions like banks and insurance companies, in part because many of the signals received beforehand had been sent by these parties. The pie chart below shows the breakdown by sector.



All candidates questioned by the Committee had been invited to one or more assessment interviews. The Committee obtained a clear picture of the assessments in the context of which interviews were deemed essential, but has little idea about how paper assessments are perceived.

It also interviewed all sector organisations involved (11 representatives of 7 sector organisations).⁸³

Members of Parliament and Ministry of Finance. The Committee interviewed staff of the Ministry of Finance and various MPs. These MPs had been selected on the basis of their past parliamentary questions on the assessment procedure. In addition, the Committee talked to the Financial Markets Director of the Ministry of Finance.

Internal supervisory officers. The Committee interviewed members of DNB's Supervisory Board and the AFM's Supervisory Board to discuss various dilemmas in supervision.

European and UK supervisory authorities. The Committee talked to representatives of the SSM and EIOPA in Frankfurt, of the FCA, the Bank of England (PRA) and EBA in London, and of ESMA in Paris. The purpose of these talks was twofold: to gain an insight into the assessment imposed on significant institutions effective from November 2014 and to draw lessons from experiences abroad to benefit the process in the Netherlands.

5. Attendance of DNB sector information session

The Committee's project secretary and assistant attended an information session that DNB organised on behalf of the sector to learn more about how DNB informs the sector about the assessment procedure.

6. Reference to literature and other sources consulted

To conclude, the Committee studied available external sources on the assessment procedure applied by DNB and the AFM, including articles published in a range of different media. And finally, it consulted literature on supervision and assessments to be able to relate the findings to broader theoretical notions (see Annex VIII for a list of these external sources and literature).

7. Hear and be heard

The Committee submitted several more specific preliminary findings, in particular concerning a number of cases, to those involved at the AFM and DNB, which allowed the two supervisors to view their own perspective next to those of the stakeholders.

8. Triangulation

⁸³ Dutch Association of Insurers, Adfiz, Federation of the Dutch Pension Funds, VV&A, Dufas, Dutch Banking Association and Holland Quaestor.

The Committee connected the results from the various examination methods by means of triangulation, i.e. comparing information obtained from the various sources referred to above. By taking these steps, the Committee gained a deeper understanding of the course of the assessment process and the different perspectives on the assessment procedure. The tapped sources in combination with the Committee's own expertise in respect of supervisory practices and the developments in the financial sector have enabled the Committee to arrive at a balanced opinion on the assessment procedure applied by the AFM and DNB. It should nonetheless be noted that the assessment procedure is in a state of flux, with changes being implemented even in the course of the evaluation process. In other words, the process is constantly shifting.

9. Report

The Committee compiled a draft final report based on the results from the steps described above, which it discussed with the AFM and DNB at the beginning of November 2016. The purpose of this discussion was to check the report for any factual inaccuracies and confidential supervisory information, including information about current and former candidates, current and former DNB and AFM staff, and confidential supervisory information within the meaning of Section 1:89 of the Financial Supervision Act. The Committee used the remainder of November to prepare the final report.

ANNEX II - LIST OF CANDIDATES INTERVIEWED AND RESPONDENTS

Candidates (30)
<i>Current or former executive director (13)</i>
Geesje Boon
Isabel Fernandez
Vincent Germyns
Karl Guha
Niek Hoek
Petra van Hoeken
Rob van de Kamp
Ron van Oijen
Jelle Ritzerveld
Mark Stoffels
Paul Wessels
Corien Wortmann
Alex Wynaendts
<i>Current or former supervisory director (17)</i>
Rob van den Berg
Wout Dekker
Jacob Dijkstra
Jean Frijns
Petri Hofsté
Frederieke Leeflang
Mijntje Lückerath-Rovers
Jan Nooitgedagt
Ben Noteboom
Jan van Rutte
Hans Schoen
Marianne Sint
Edith Snoeij
Marjan Trompetter
Jeroen van der Veer
Peter Wakkie
Carla van der Weerd-Norder
Sector organisations (7 interviews, 11 respondents)
<u>Dutch Banking Association:</u> Chris Buijink and Hubert Schokker
<u>Dutch Association of Insurers:</u> Leo de Boer and Fred Treur
<u>Federation of the Dutch Pension Funds:</u>

Gerard Riemen
<u>Holland Quaestor:</u> Marleen van der Werff and Otger van der Nap
<u>Adfiz:</u> Enno Wiertsema and Ludger de Bruijn
<u>VV&A:</u> Theo Andringa
<u>Dufas:</u> Hans Janssen-Daalen
DNB/AFM stakeholders (8 respondents)
<u>Ministry of Finance:</u> Gita Salden
<u>Lower House of Dutch Parliament:</u> Wouter Koolmees Henk Nijboer Pieter Omtzigt Aukje de Vries
<u>AFM's Supervisory Board:</u> Diana van Everdingen Paul Rosenmüller Bart Koolstra
<u>DNB's Supervisory Board:</u> Wim Kuijken Jaap van Manen
International supervisors/supervisory authorities (6 interviews, 31 respondents)
SSM (DG IV and senior staff N=5)
EIOPA (senior staff N=6)
FCA (senior staff N=10)
EBA (Chairperson and senior staff N=5)
PRA (senior staff N=3)
ESMA (senior staff N=2)
Others (3 interviews, 5 respondents)
Christel Grundmann-Van de Krol (external chair of the appeals committee in the AFM's objection procedure)
ABDTOPConsult (N=2)
Netherlands Court of Audit (N=2)
Total number of interviews (54)
Total number of respondents (85)

ANNEX III - LEGAL FRAMEWORK

1. Legislation and time frames

Fit and proper assessments for positions at financial institutions *not* subject to direct ECB supervision are governed by at least one of the following legislative texts:

- Financial Supervision Act (*Wet op het financieel toezicht – Wft*)
- Pensions Act (*Pensioenwet – Pw*)
- Mandatory Occupational Pension Scheme Act (*Wet verplichte beroepspensioenregeling – Wvb*)
- Act on the Supervision of Trust Offices (*Wet toezicht trustkantoren – Wtt*)
- Audit Firms Supervision Act (*Wet toezicht accountantsorganisaties – Wta*)
- Financial Markets (BES Islands) Act (*Wet financiële markten BES – Wfm BES*)
- European Market Infrastructure Regulation (EMIR)
- Alternative Investment Fund Managers Directive (AIFMD)

AFM time frames

• Financial service providers

Section 103 of the Decree on Business Conduct Supervision of Financial Enterprises (*Besluit Gedragstoezicht financiële ondernemingen Wft – BGfo*): appointment of a policymaker, co-policymaker or member of a supervisory body

- a) Application complete → decision within six weeks after receipt of the notification
- b) Application complete in accordance with Section 103(4) of the *BGfo* but further information is required to come to a decision → request within two weeks after receipt of notification → decision within four weeks after receipt of further information, but no later than thirteen weeks after receipt of the notification

• Investment firms

Section 95 of the *BGfo*: appointment of a policymaker, co-policymaker or member of a supervisory body

- a) Application complete → decision within six weeks after receipt of the notification
- b) Application complete in accordance with Section 95(4) of the *BGfo* but further information is to come to a decision → request within two weeks after receipt of notification → decision within four weeks after receipt of further information, but no later than thirteen weeks after receipt of the notification

• Investment fund managers under the AIFMD

Section 88a of the *BGfo* in conjunction with Article 10 of the AIFMD: material change in the scope of the authorisation

- a) Decision within one month after receipt of the notification
- b) The competent authorities may extend this period by up to one month if they consider this to be necessary because of the specific circumstances of the case. If the AFM does not respond, the change takes effect by operation of law.

- **Investment fund managers under the UCITS Directive**

Section 89 of the BGfo: proposed amendment to registration document relating to day-to-day co-policy maker or member of a supervisory body of a manager or depositaries

- a) Application complete → decision within six weeks after receipt of the notification
- b) Application complete in accordance with Section 89(5) of the BGfo but further information is required to come to a decision → request within two weeks after receipt of notification → decision within four weeks after receipt of further information, but no later than thirteen weeks after receipt of the notification

- **Audit firms**

The Wta does not provide for specific time frames, so alignment with Section 4:13 of the General Administrative Law Act (Algemene wet bestuursrecht – Awb), which refers to a reasonable period of time. Section 4:13(2) of the Awb stipulates that a reasonable period of time in no event exceeds eight weeks. This implies that the AFM must come to a decision within eight weeks.

- **Market operators**

Section 5:29 of the *Wft* in conjunction with Sections 2 to 4 of the Decree on Regulated Markets (*Besluit gereguleerde markten Wft*)

- a) Application complete → decision within six weeks after receipt of the notification
- b) Application complete in accordance with Section 2, under I(2), and Section 3 of the Decree on Regulated Markets but further information is required to come to a decision → request within two weeks after receipt of notification → decision within four weeks after receipt of further information, but no later than thirteen weeks after receipt of the notification

- **Enterprises in the Caribbean Netherlands**

Section 2:9(3) of the Financial Markets (BES Islands) Decree (*Besluit financiële markten BES – Bfm BES*): within eight weeks after receipt of the notification.

DNB time frames

- **Wft**: Under the *Wft*, the statutory time limit for completion of an assessment procedure is six weeks.⁸⁴ The time limit within which the supervisor must decide on an application may be extended to thirteen weeks, provided that it announces the extension within two weeks.⁸⁵
- **Pw**: In respect of institutions subject to the *Pw*, the six-week time limit may be extended if the supervisor requests information or schedules an assessment interview within two weeks. In that case, the supervisor must decide within six weeks after receiving the information or the date of the assessment interview.⁸⁶
- **Wtt**: In respect of institutions subject to the *Wtt*, the supervisor must decide within eight weeks. The time limit is extended if the supervisor requests information or schedules an assessment interview. The days between requesting and receiving the information are added to the original eight-week time limit.⁸⁷

⁸⁴ Section 33(2)(a) of the Decree on Prudential Rules for Financial Undertakings (*Besluit prudentiële regels Wft – Bpr*).

⁸⁵ Section 33(2)(b) of the *Bpr*.

⁸⁶ Section 106(5)(A) of the *Pw* and Section 110c(5)(A) of the *Wvb*.

⁸⁷ Section 5 of the *Wtt* in conjunction with Section 4:15 of the *Awb*.

2. Further regulations and policy rules

The concept of propriety assessment is defined and detailed in multiple laws and regulations. In respect of the AFM, these are:

- **Financial service providers** (consultants and intermediaries, authorised and subauthorised agents, investment object providers and credit providers) - Section 4:10 of the *Wft* in conjunction with Section 12 to 16 of the *BGfo* in conjunction with Annex C to the *BGfo*
- **Investment firms** - Section 4:10 of the *Wft* in conjunction with Sections 12 to 16 of the *BGfo* in conjunction with Annex C to the *BGfo*
- **Investment fund managers under the AIFMD** - Section 4:10 of the *Wft* in conjunction with Sections 12 to 16 of the *BGfo* in conjunction with Annex C to the *BGfo*
- **UCITS managers** - Section 4:10 of the *Wft* in conjunction with Sections 12 to 16 of the *BGfo* in conjunction with Annex C to the *BGfo*
- **Audit firms** - Section 15(2) of the *Wta* in conjunction with Sections 5 to 7 of the Audit Firms Supervision Decree (*Besluit toezicht accountantsorganisaties – Bta*)
- **Market operators** - Section 5:29(2) of the *Wft* in conjunction with Sections 2 to 4 of the Decree on Regulated Markets
- **Enterprises in the Caribbean Netherlands** - Section 3:7 in conjunction with Section 3:4 of the *Wfm BES* in conjunction with Chapter 3.1 of the *Bfm BES*. Note: pursuant to Section 3.1(4) of the *Bfm BES*, officers are re-assessed for propriety every three years.

DNB's propriety assessment procedure is defined and detailed in Section 3:10 of the *Wft*, Sections 5 to 9 of the *Bpr*, Sections 4 and 5 of the *Wtt* and the Policy Rule on Integrity Screening.

The regulations for propriety assessments specify the antecedents taken into account and the interests weighed in the assessment procedure.⁸⁸

The AFM's fitness assessment is based on the following regulations:

- Section 4:3(4) of the *Wft* in conjunction with Section 2a of the *BGfo* (holders of dispensation from the prohibition on acting as an intermediary in inviting repayable funds, in particular crowdfunding platforms);
- Section 4:9(1) of the *Wft* (financial service providers, investment firms, investment funds, investment fund managers and depositaries);
- Section 5:29(1) of the *Wft* (market operators); and
- Section 3:7 in conjunction with Section 3:5 of the *Wfm BES* in conjunction with Section 3:4 of the *Bfm BES* (enterprises in the Caribbean Netherlands). The criteria relating to expertise are aligned with the Policy Rule on Suitability 2012 (*Beleidsregel geschiktheid 2012*). This provision is laid down in Section 2 of the AFM and DNB Policy Rule on the application and implementation of the *Wfm BES* and the Anti-Money Laundering and Anti-Terrorist Financing

⁸⁸ Section 9 of the *Bpr*.

(BES) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme BES – Wwft BES*). Note: pursuant to Section 3:4 of this Policy Rule, an institution's fitness for pursuing the business of intermediary in life and non-life insurance or authorised or subauthorised agent must be demonstrated by means of a certificate recognised by ministerial regulation, if necessary on conditions.

DNB's fitness assessment is based on the following regulations:

- Sections 3:8, 3:9, 3:100(1), under b, and 3:271 of the *Wft*;
- Section 106(3) of the *Pw*;
- Section 110(3) of the *Wvb*;
- Sections 14(3), 29 and 30 of the Decree implementing the Pensions Act and the Mandatory Occupational Pension Scheme Act (*Besluit uitvoering Pensioenwet en Wet verplichte beroepspensioenregeling – Besluit uitvoering Pw en Wvb*); and
- Section 4, opening words and under b, and Section 11(2) of the *Wtt*.

DNB's fitness assessment is defined and detailed in the Policy Rule on Suitability 2012. This Policy Rule classifies financial institutions as A, B or C⁸⁹:

- **Group A:** investment object provider, bank, occupational pension fund, clearing institution, special purpose reinsurance vehicle, financial holding company, mixed financial holding company or insurance holding company having its registered office in the Netherlands, financial institution, reinsurer, life insurance company, market operator, funeral expenses and benefits in kind insurer, small-scale mutual association holding a statement, pension fund, premium pension institution or non-life insurer;
- **Group B:** credit provider, investment fund manager, investment company, investment firm or depositary;
- **Group C:** payment institution, electronic money institution, financial service provider other than a group A or B financial service provider, holder of a dispensation within the meaning of Section 4:3(4) of the *Wft*, or trust office.
- Chapters 1 and 2 of the Policy Rule define and detail the fitness requirements applicable to group A and to groups B and C, respectively. In addition, officers of financial institutions in categories B and C may be assessed on the aspects listed in Part 1.2 of the Policy Rule if there are reasonable grounds. While the fitness assessment for group A is more principle based, the assessment for groups B and C is more rule based. The majority of DNB assessments is in category A of the Policy Rule. The majority of AFM assessments is in category C, a minority is in category A, and all remaining assessments are in category B of the Policy Rule.

Chapter 1 of the Policy Rule defines fitness as a combination of knowledge, skills and professional conduct. A policymaker's fitness should at least be clear from his or her education, experience and competences. Officers are assessed for fitness on four aspects:

⁸⁹ Part 1.1, under f to h, of the Policy Rule on Suitability 2012.

- A. **management, organisation and communication**, including managing processes, areas of responsibility and employees and enforcing generally accepted social, ethical and professional standards, including informing customers and supervisory authorities in a timely, correct and clear manner;
- B. **products, services and markets** in which the institution operates, including relevant legislation and regulations and financial (and actuarial) aspects;
- C. **sound and ethical business operations**, including administrative organisation and internal control, embedding suitability and professional competence within the institution, treating customers with all due care, risk management, compliance and outsourcing of activities; and
- D. **balanced and consistent decision-making**, in which the interests of customers and other stakeholders play a central role.⁹⁰

Fitness assessment takes account of the policymaker's position and the institution's type, size, complexity and risk profile.⁹¹ If the policymaker's position is part of a collective, the composition and functioning of the collective is taken into account.⁹² The supervisor assesses policymakers for fitness before they take office (initial assessment) or after they have taken office if facts or circumstances provide reasonable grounds (re-assessment).⁹³ The Policy Rule sets out what information is taken into account in fitness assessments and how it is weighted. In weighting the information, the supervisor looks at aspects including the gravity and age of the information and the policymaker's attitude towards or explanation of it.⁹⁴

As said, the requirements for the fitness of executive and supervisory directors of institutions in categories B and C set out in Chapter 2 of the Policy Rule are more rule based. Assessed officers of institutions in category B must have management and managerial experience as well as specific subject-matter knowledge or operational management expertise.⁹⁵ Policymakers and supervisory directors of institutions in category C need only have management or managerial experience.⁹⁶

3. European legislation

Financial institutions subject to direct ECB supervision are governed by the following regulations in terms of their fit and proper assessment:

- SSM Regulation (EU 1024/2013): Articles 4(1)(e) and 16(2)(m)
- SSM Framework Regulation (ECB/2014/17): Articles 93 and 94
- Capital Requirements Directive IV (2013/36/EU): Articles 13, 91, 115 and 121

⁹⁰ Part 1.2, first section, of the Policy Rule on Suitability 2012.

⁹¹ Part 1.3 of the Policy Rule on Suitability 2012.

⁹² Part 1.4 of the Policy Rule on Suitability 2012.

⁹³ Part 1.5 of the Policy Rule on Suitability 2012.

⁹⁴ Parts 1.6 and 1.7 of the Policy Rule on Suitability 2012.

⁹⁵ Parts 2.4 and 2.7 of the Policy Rule on Suitability 2012.

⁹⁶ Part 2.7 of the Policy Rule on Suitability 2012.

- EBA (CEBS): Guidelines on the assessment of the suitability of the management body and key function holders (EBA/GL/2012/06), Guidelines on internal governance (GL 44)
- relevant national law

Significant institutions, supervised within the framework of the Single Supervisory Mechanism (SSM), must notify changes in the composition of their management bodies to the national competent authority (NCA). The NCA – DNB in the Netherlands – then notifies the ECB, specifying the time limit within which the latter must decide on the basis of the applicable national law.⁹⁷

Pursuant to the CRD IV Directive, candidates must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform the duties of their position,⁹⁸ taking into consideration the knowledge, skills and experience of the current members of the management and supervisory boards as a whole.

As the title suggests, the EBA Guidelines on the assessment of the suitability of the management body and key function holders⁹⁹ provide guidance on the performance of fitness assessments. The Guidelines contain general assessment criteria, for instance the criterion that the nature, scale and complexity of the business of the institution should be taken into account.¹⁰⁰ They also set out specific assessment criteria relating to reputation, knowledge, experience and governance.¹⁰¹ Governance criteria include potential conflicts of interests, the ability to commit sufficient time, the overall composition of the management body, and the collective knowledge and expertise required.

⁹⁷ Article 93 of the SSM Framework Regulation (ECB/2014/17).

⁹⁸ Article 91 of the CRD IV Directive.

⁹⁹ EBA/GL/2012/06.

¹⁰⁰ See Section 5 of the Guidelines on the assessment of the suitability of the management body and key function holders (EBA/GL/2012/06).

¹⁰¹ See Sections 13, 14 and 15 of the Guidelines on the assessment of the suitability of the management body and key function holders (EBA/GL/2012/06).

ANNEX IV - PROCESS DESCRIPTION PART A

DESCRIPTION OF A STANDARD ASSESSMENT PROCESS (INITIAL ASSESSMENT)

The description in Annex IV(A) relates to the initial assessment for which DNB and the AFM bear ultimate responsibility. Other procedures apply to significant institutions governed by the Single Supervisory Mechanism (SSM) (see Annex IV(B)).

1. Stage 1: Receipt of the notification of a candidate's prospective appointment and file compiling

The assessment process at both DNB and the AFM starts when they receive the prospective appointment notification form and, if necessary, the integrity screening form. At DNB, the Information Services Department processes incoming notification forms, scanning and filing them in the digital archives. DNB allows institutions to initially submit the documents electronically but nonetheless requires them to send a complete form set with annexes in hard copy by post.¹⁰² The AFM receives prospective appointment notification forms via the digital portal or by post. At the AFM, the statutory time limit for completion of the assessment procedure starts on the date of receipt of the forms, whether by post or electronically. At DNB, the time limit starts on the date of receipt of the forms by post. DNB is currently developing a digital portal.

After notification of a candidate's prospective appointment is received, all the required documents are checked for adequacy and completeness. For category A assessments, the following forms and annexes must be submitted for a complete file:¹⁰³

1. the integrity screening form, unless DNB or the AFM has assessed the candidate for propriety and there have been no changes in the candidate's antecedents or other relevant facts since the date of the last assessment; and
2. the prospective appointment notification form with the following annexes:
 - a. a copy of an identity document
 - b. a curriculum vitae
 - c. an expertise and capabilities matrix¹⁰⁴
 - d. a description of the recruitment and selection procedure
 - e. a job profile
 - f. a description of the appointment decision-making process and considerations¹⁰⁵

¹⁰² Pension institutions are exempt from this requirement; for them, a digital application suffices.

¹⁰³ This list applies to category A assessments as referred to in the Policy Rule on Suitability 2012. Institutions in categories B and C are subject to different requirements. The AFM's digital portal and the fact sheet "Initial screening – how should institutions prepare?" on DNB's Open Book on Supervision provide a comprehensive list of documents to be submitted.

¹⁰⁴ An expertise and capabilities matrix must be completed only in the case of a collective (management board or supervisory board).

¹⁰⁵ Requirements c), d), e) and f) do not apply to pension funds, occupational pension funds, investment firms, investment funds, credit providers and other financial service providers.

At DNB, the Information Services Department processes incoming notification forms. It forwards the information to the Expert Centre on Fit and Proper Testing (ECT), which coordinates all assessments at DNB. DNB checks whether the file is complete. At the AFM a received file is allocated to a case manager, who then checks it for completeness. If an application is incomplete or of insufficient quality, the institution receives a letter by post or e-mail requesting it to provide additional information. The letter describes the consideration period and may state that the processing time for the assessment is suspended until the file is complete. The suspension of an application depends on the circumstances of the case. For instance, suspension is more likely if a document is completely missing than if a substantiation is incomplete. Before sending a letter requesting additional documentation, DNB and the AFM often contact the institution by telephone to explain the request. The AFM sends an institution a confirmation of receipt promptly after receiving its application via the digital portal. DNB sends an institution a confirmation of receipt once its application is complete and of sufficient quality. The confirmation also describes the consideration period.

2. Stage 2: Preliminary assessment and file contents review

After the file is complete, both DNB and the AFM conduct a preliminary assessment of the candidate. The first step of the preliminary assessment involves requesting information and advice from the Tax and Customs Administration, the public prosecutor's office and the other supervisory authority. DNB and the AFM inform each other,¹⁰⁶ indicating in their response whether they wish to be involved in conducting the assessment in an advisory capacity. Such involvement usually implies participating in the assessment interview, while at times it means reading the opinion of the supervisor conducting the assessment. In the vast majority of cases, however, the other supervisor does not want to be involved in the assessment and information is exchanged only by e-mail. As a rule, DNB and the AFM collaborate in fitness assessments for banks and insurance companies – dual access assessment – as prescribed by law.¹⁰⁷ If the candidate currently holds or previously held a policymaking or co-policymaking position at a foreign supervised institution, or has or has had a role suggesting that he/she is potentially known to a foreign supervisory authority, the preliminary assessment also comprises a request for information sent to the relevant foreign supervisory authority.

The next step in the preliminary assessment involves taking noteworthy points, if any, arising from earlier propriety or fitness assessments into consideration in the current fitness assessment. In the preliminary assessment, the AFM and DNB also consult various public and non-public sources, which – in addition to the Tax and Customs Administration and the public prosecutor's office mentioned earlier – include the Fiscal Intelligence and Investigation Service (*FIOD*), the Chamber of Commerce, and Graydon (a private company providing business information).¹⁰⁸ The preliminary assessment includes establishing whether a candidate holds any secondary positions and checking whether his or her CV reflects this. In the context of a propriety assessment, this part of the preliminary

¹⁰⁶ The exchange of information between DNB and the AFM on the propriety of candidates is based on Section 1:47c of the Financial Supervision Act (*Wet op het financieel toezicht – Wft*).

¹⁰⁷ This is laid down in Section 1:47c of the *Wft*. In respect of candidate propriety, DNB and the AFM collaborate on assessments of all financial institutions; in respect of candidate fitness, they collaborate on assessments of banks and insurance companies. The AFM and DNB have agreed to also collaborate on fitness assessments of institutions they both supervise.

¹⁰⁸ <http://www.toezicht.dnb.nl/en/4/2/16/50-232612.jsp>.

assessment comprises an examination of the candidate's history. In the context of propriety assessments, DNB and the AFM also consult internal databases, such as the directors' monitor, which contains details of measures taken against institutions and the directors involved.

The contents of complete file are reviewed after the preliminary assessment is completed. The purpose of a propriety assessment is to determine whether the candidate's integrity is beyond doubt. It focuses on the managing or supervisory director's intentions, actions and antecedents. The primary purpose of a fitness assessment is to check whether the candidate has sufficient general and specific subject-matter knowledge, as reflected in the file.¹⁰⁹ Findings from the source search and particulars in the candidate's CV are also scrutinised. The CV is compared with the expertise and capabilities matrix, and both are checked against the job profile. Another aspect weighed is the degree to which the institution nominating the candidate has substantiated its nomination of this particular individual. The next step is assessing whether the candidate meets the requirements of the Policy Rule on Suitability 2012 (*Beleidsregel geschiktheid 2012*), which differ according to the type of financial institution.¹¹⁰ The following aspects are considered:

- the position that the candidate will hold;
- the institution's type, size, complexity and risk profile; and
- the composition and functioning of the collective that the candidate will join.

It is evident from this list that a fitness assessment is strongly related to both the collective (management board or supervisory board) in place and the context of the institution. Consequently, the mere fact that a candidate achieves a poor or below-par result on certain elements of the expertise and capabilities matrix does not automatically lead to an intended negative decision. What matters is whether the candidate is a suitable match for the collective and the specific institution at the time of the assessment.

To conclude, a fitness assessment looks at whether the referees meet the requirements specified in the notification form. The AFM contacts referees in category C assessments if and when necessary to verify the candidate's stated work experience. As a rule, referees in category B assessments are always contacted. A potential exception to this rule is if a candidate for a director's position has worked for the nominating institution for more than five years. DNB contacts referees if there are grounds for doing so, for instance if following an interview it wants to have a clearer picture of the candidate's competencies.

¹⁰⁹ According to Part 2.4 of the Policy Rule on Suitability 2012, candidates of institutions in group B are not assessed for their general and specific subject-matter knowledge per se, but the extent to which that knowledge is evident from demonstrable experience. The extent to which the candidate has operational management knowledge and expertise is also assessed. As a rule, candidates of institutions in group C need only have management or managerial experience (see Part 2.7 of the Policy Rule). Only the group C institutions listed under c of that section must also demonstrate that the candidate has general and specific subject-matter knowledge.

¹¹⁰ Policymakers of small financial service providers (group C, fewer than six employees) may demonstrate their fitness upon taking office by submitting evidence of a higher professional education or university degree in a relevant field, or a higher professional education or university degree in combination with at least two years' relevant work experience, or at least ten years' relevant work experience. These requirements are a less stringent variant of those applying to large financial service providers. For this group, an assessment interview is seldom required.

Following analysis of the file, a provisional assessment is made about whether the candidate is fit and proper for the position. At the AFM the case manager submits the findings on the candidate to a second assessor, in accordance with the four-eyes principle. At DNB, the ECT examining officer submits the findings to the head of the ECT, establishing whether it is sufficiently clear from the file that the candidate is fit and proper. If the file presents a clear picture, DNB or the AFM gives a positive decision without the need for an interview. This is also referred to as a "paper assessment".¹¹¹ This concludes the assessment procedure and the candidate can take office.

If DNB or the AFM has not obtained a clear picture just yet, it may decide to request further information or to invite the candidate to an assessment interview. An interview may for example be necessary if, on the basis of the file, there are still uncertainties about any of the aspects referred to above. The interview may provide an opportunity to explore them in greater detail. The importance of the position or the institution may also provide grounds for an interview. Finally, there may be other issues at stake, such as whether it is a new appointment, a specific role for the candidate, or a change in the sector in which the candidate will be working.

At the AFM, the case manager, sometimes in consultation with the supervision department, the manager or a senior member of staff, can suggest inviting the candidate to an assessment interview. At DNB the ECT examining officer decides, after consulting account supervision colleagues, whether there are grounds for an assessment interview. In respect of larger institutions (T4 and T5), the head of account supervision is also involved in the decision-making process.

3. Stage 3: Interview or interviews with the candidate if relevant

If DNB or the AFM has not obtained a clear picture of the candidate, it will invite him or her to an assessment interview. Since early 2016 DNB has stated that the candidate may bring a representative to the assessment interview. The AFM makes that statement only in re-assessments, but nonetheless allows candidates to bring a representative to interviews at all times. In addition, DNB has launched a pilot project allowing interviews to be recorded on request. The aim is to indicate, within two weeks after completion of the file, whether or not an assessment interview is required.

The AFM applies several additional criteria for conducting assessment interviews with candidates. It conducts assessment interviews in the following cases:

- in the event of any issues relating to the candidate, for instance major antecedents;
- in the event of any conduct-of-business issues at the institution nominating the candidate; or
- in the event of any conduct-of-business issues at the institution at which the candidate worked previously and in which he or she may have been involved.

Aspects that the AFM takes into consideration in deciding whether or not to hold an assessment interview include:

- whether the institution has fewer or more than 50 employees;

¹¹¹ More than 90% of the AFM's assessments are paper assessments. At DNB, given the different composition and size of the institutions subject to its supervision, approximately 60% to 70% of the files are paper assessments.

- whether the institution nominating the candidate is sensitive to publicity; and
- whether the candidate is sensitive to publicity.¹¹²

DNB and the AFM then select the right interviewers according to the "assessment interview matrix". DNB distinguishes between five supervision categories (T1-T5): the higher the category, the greater the impact of serious problems or failure at an institution on DNB's supervision objectives and the more intensive the risk analysis. An institution's systemic importance is one of the main criteria for its supervision category. Other factors include solidity and integrity aspects not sufficiently reflected in the institution's financial stability score. Some institutions may well be virtually irrelevant to DNB's supervision objectives individually but highly relevant as a group of similar institutions.¹¹³ DNB also distinguishes between standard and complex assessments. The criteria that DNB uses for classifying assessments as "complex" are listed below the assessment interview matrix.

¹¹² For more assessment interview indicators (Dutch only), see <https://www.afm.nl/nl-nl/professionals/onderwerpen/toetsing-gesprek>.

¹¹³ *Focus! DNB's revised approach to supervision*, Amsterdam: De Nederlandsche Bank 2012, p. 15.

DNB's assessment interview matrix:

	examining officers - ECT - account supervision	head of department		division director		executive director of supervision
standard assessment T1, T2, T3	1 st interview					
complex* assessment T1, T2, T3	1 st interview	1 st interview	2 nd interview	2 nd interview (or other head of department)		
standard assessment T4, T5	1 st interview	1 st interview		1 st interview	2 nd interview	
complex* assessment T4, T5	1 st interview			1 st interview		2 nd interview (or other division director)

* DNB's indicators for a complex assessment:

- individuals who currently hold or previously held a prominent public position;
- an individual whose past performance must be examined because he or she had a decisive role in institutions that performed poorly or suffered bad press;
- T5 institutions (holding companies);
- the CEO, CFO, CRO, chair of the supervisory board, and chairs of the supervisory board's audit and risk committees of T4 institutions (holding companies);
- employment history at DNB or the AFM at division director level and up (including former members of DNB's Supervisory Board);
- any involvement in more serious antecedents (in a collective or on the candidate's part);
- a policymaker at an institution under closer scrutiny on account of specific problems (problem file);
- an institution receiving considerable current press coverage;
- a reassessment;
- other potentially high-risk assessments; and
- "common sense".

Example application of DNB's assessment interview matrix

If DNB performs an assessment of an institution in the T4 category and the criteria for a complex assessment have been satisfied, the matrix shows that the first interview is with an ECT examining officer, an account supervision examining officer and a division director. The second interview is attended by an executive director of supervision or, if this is impossible, by a division director other than the one attending the first interview.

The AFM distinguishes between initial assessments, re-assessments, and dual access assessments. The AFM also applies "escalation criteria" for the involvement of Executive Board members in assessment interviews. These criteria are listed below the assessment interview matrix.

The AFM's assessment interview matrix:

	manager	head of department	Executive Board
1. Initial assessment and complex assessment ¹¹⁴	1 st interview	2 nd interview	Escalation criteria*
2. Dual access	1 st interview	2 nd interview	Escalation criteria
3. Re-assessment		1 st interview	Escalation criteria

* The AFM's current escalation criteria are:

- individuals who currently hold or previously held a prominent public position;
- the appointment is at an institution or concerns an individual involved in significant governance-related supervision issues or receiving considerable current press coverage or both; and
- specifically for dual access requests: if the AFM and DNB disagree and consider a binding opinion.
- If a precedent effect or publicity is expected, the decision must be taken in consultation with a member of the Executive Board. In such cases, a member of the Executive Board is present at the second assessment interview, if any.
- The individual member submits the decision to the entire Executive Board if a substantial precedent effect or publicity is expected. The same applies if there is a risk of adverse effects, liability risk or major policy changes.
- These decisions are signed by the head of the department primarily involved together with a member of the Executive Board.

The interviewers then prepare the interview. At both DNB and the AFM, assessment interviews last ninety minutes at the most. At DNB the maximum number of interviewers is three: an MT member, an examining officer and an assessment expert.

If the AFM wishes to attend a DNB assessment interview, the interview is held with two interviewers from DNB and one from the AFM. Interviews conducted by the AFM are usually held with two, sometimes three, interviewers. AFM assessments of the G10 (the ten largest financial institutions),

¹¹⁴ At the AFM, complex assessments are on a par with assessments with ascending escalation criteria. "Complex" as referred to in this matrix in any event means assessments of the G10 (the ten largest financial institutions), stock exchanges and other capital markets and audit firms serving public-interest entities (PIEs).

stock exchanges and other capital markets and audit firms serving public-interest entities (PIEs) are attended by at least one senior officer or manager. The fitness-related questions asked during the interview cover the candidate's knowledge and competences, and the collective (management board or supervisory board as a whole). The interview starts off with a standard introduction and ends with a standard closing. In the closing, the interviewers agree with the candidate to notify him or her by telephone within two weeks after the interview of the decision or – if the decision has not yet been taken – of the date on which the decision may be expected.

After the first interview, if there are any doubts, or if there is still insufficient insight for taking a substantiated decision, a second interview can be planned. The candidate is then contacted by telephone and given feedback from the first interview. DNB and the AFM also explain the reasons for a follow-up interview and state the main topics to be discussed.

4. Stage 4: Decision-making and announcement of primary decision to institution and candidate

After conducting the assessment interview, or after reviewing the file without interviewing the candidate, the assessment officers jointly arrive at an intended decision. In the context of DNB assessments with involvement of the AFM, the relevant AFM officer informs DNB's ECT of the internal AFM decision-making consultations.

At both DNB and the AFM, the officer taking the decision regarding the candidate's fitness and propriety is selected using an authority matrix. As with the assessment interview matrix, DNB distinguishes between various supervision categories (T1-T5) and between standard and complex assessments. It also applies several escalation criteria. The AFM distinguishes between initial assessments, re-assessments and dual access assessments in both its decision-making matrix and its assessment interview matrix, and it applies escalation criteria.

DNB's decision-making authority matrix:

	head of department	division director (DD)	individual Executive Director of Supervision	the Executive Directors of Supervision on the basis of discussion in Prudential Supervision Council
standard assessment T1, T2, T3*	T1, T2, T3 (ECT)			
complex assessment T1, T2, T3**		T1, T2, T3 (account supervision and THI ¹¹⁵ DDs jointly)		
standard assessment T4, T5***		T4 (account supervision DD)	T5 (account supervision)	
complex assessment T4, T5				T4, T5
Decision to perform or on re-assessment				T1-T5

* *Decision-making escalation*: if ECT and account supervision staff members disagree, the head of account supervision is involved in the decision-making process. The head of the ECT is already involved, approving the ECT staff member's decision. It is now up to the head of the ECT and the head of account supervision to reach consensus. If they are unable to reach a consensus, the decision is escalated to the next level of authority, i.e. the division directors involved.

** *Decision-making escalation*: if no consensus is reached on the outcome of the assessment, the decision is escalated to the next level of authority, i.e. the division directors involved.

*** *Decision-making escalation*: if no consensus is reached on the outcome of the assessment, the decision is escalated to the next level of authority.

¹¹⁵ THI means Horizontal Functions and Integrity Supervision.

The AFM's decision-making authority matrix:

	manager	head of department	Executive Board
1. Initial assessment	standard assessments/institutions	institutions under account supervision and complex assessments ¹¹⁶	Escalation criteria*
2. Dual access	small banks and insurance companies	binding opinion ¹¹⁷ and G10 banks and insurance companies	Escalation criteria*
3. Re-assessment		Standard	Escalation criteria*

*The AFM's decision-making escalation criteria:¹¹⁸

- individuals who currently hold or previously held a prominent public position;
- the appointment is at an institution involved in significant governance-related supervision issues or concerns an individual or institution receiving considerable current press coverage; and
- specifically for dual access requests: if the AFM and DNB disagree and consider a binding opinion.
- If a precedent effect or publicity is expected, the decision must be taken in consultation with a member of the Executive Board. In such cases, a member of the Executive Board is present at the second assessment interview, if any.
- The individual member submits the decision to the entire Executive Board if a substantial precedent effect or publicity is expected. The same applies if there is a risk of adverse effects, liability risk or major policy changes.
- These decisions are submitted to the Executive Board and signed by the head of the department primarily involved.

Example application of the AFM's decision-making matrix:

If the AFM performs an initial assessment of a new chief risk officer (CRO) of a large financial institution, requiring specific attention to the risk function, the third escalation criterion applies. In that case there are "significant supervision issues" and, hence, the Executive Board is involved in the decision-making process.

In its assessments, DNB first notifies the candidate and then notifies the institution, in the case of a positive decision as well as in the case of an intended negative decision. Since early 2016, DNB has

¹¹⁶ At the AFM, the escalation criteria are an indication to qualify an assessment as complex.

¹¹⁷ A binding opinion is involved if, in a dual access assessment, the AFM and DNB disagree.

¹¹⁸ The escalation criteria are never watertight and therefore principle based.

made telephone appointments with candidates in the case of intended negative decisions and positive decisions alike. If the decision is positive, DNB informs the candidate that he or she has passed the assessment and lists the weaker points, if any.

In the case of an intended negative decision, DNB notifies the institution and the candidate of its findings. It is then up to the candidate and the institution to decide whether to withdraw or proceed. There are two scenarios. The institution can decide, in consultation with the candidate, not to proceed with the assessment. In that case, DNB confirms the discontinuation of the candidate's assessment procedure in writing, and there is no intention to issue a decision. Alternatively, the institution and the candidate can decide to proceed with the assessment. In that case, DNB sends the institution and the candidate a substantiated intention to issue a negative decision.

If the decision is positive, the AFM sends the relevant institution a letter of approval. If there are minor doubts, it may attach a requirement to the positive decision, for instance the candidate's successful completion of a training course. In the case of institutions not having a collective (management board or supervisory board) required by law, i.e. financial service providers, the AFM sometimes includes the requirement of a fitness re-assessment upon the departure of any member from the collective.¹¹⁹ In some cases, DNB or the AFM gives an oral account of a candidate's strong or weaker points, identifying aspects that the institution should pay attention to when appointing directors in the future. If the decision is positive, DNB and the AFM usually notify the candidate and the institution in question by telephone. Contacting candidates by telephone varies from case to case. If the supervisor decides to contact the candidate, it calls him or her first before contacting the institution.

When there are doubts about the decision, at the AFM the internal fitness and propriety consultation body is convened. These are extra consultations, outside of the decision-making authority matrix presented above. The fitness and propriety consultation body consists of permanent members of various departments who meet to formulate a recommendation. The case manager and the second assessor take the recommendation into consideration in the overall assessment. If the doubts remain in spite of these consultations, the decision is submitted to the Executive Board.

If DNB or the AFM intends to issue a negative decision on the basis of the file and one or more assessment interviews, if any, the supervisor's legal affairs department is involved in the finalisation of the assessment.¹²⁰ In evident cases, the AFM can arrive at an intended negative decision without interviewing the candidate, whereas DNB at all times conducts an assessment interview. In the event

¹¹⁹ If the statutory requirement of a two-headed management applies, upon a member's departure from the collective the AFM at all times assesses the fitness of the remaining members of the collective. If the departing member is succeeded by a new nominee, the fitness of the collective including the new candidate is assessed. If the collective does not meet the fitness requirements, the AFM consults with those involved. For instance, the institution can nominate another candidate instead of or alongside the nominated candidate, provided that the collective meets the requirements. DNB does not issue conditional decisions, i.e. decisions subject to requirements.

¹²⁰ On account of specific circumstances, the legal affairs department may be requested to monitor the assessment sooner.

of a negative decision, the legal affairs department forms an opinion of the assessment. If this opinion is identical to the opinion of the case manager and the second assessor, the AFM starts the rejection procedure. The case manager at all times notifies the candidate and the institution by telephone before drawing up the intended negative decision. The candidate is contacted first. If the institution or the candidate then decides not to proceed with the assessment, the institution withdraws the application.

If the institution decides to proceed with the application, both DNB and the AFM notify the institution of their intention to issue a negative decision. The notification gives the institution the opportunity to present its views either orally or in writing. If the institution's views prompt the ECT and Legal Affairs at DNB – or the case manager, the assessor and Legal Affairs at the AFM – not to carry out their intention to issue a negative decision, they notify the institution and the candidate accordingly. They then issue a positive decision. If the institution's views do not change the supervisor's opinion, a formal negative decision is prepared and presented, setting out the details of the objection procedure.

5. Stage 5: Possibility for objections, appeal to the Rotterdam District Court, and to lodge a further appeal with the Trade and Industry Appeals Tribunal

If the institution objects to the primary decision, at both DNB and the AFM staff from the legal affairs department not involved in the primary decision or the relevant decision-making process deal with the objection. The objection can be explained orally or in writing. If an institution lodges an objection, often a hearing is organised at DNB's or the AFM's offices. At such a hearing, the party lodging the objection can explain its views in greater detail. The appeals committee in the AFM's objection procedure has an external chair who has an affinity with the financial sector and is familiar with procedures under the General Administrative Law Act (*Algemene wet bestuursrecht – Awb*). If the negative decision is upheld in the objection procedure, the candidate and the institution may lodge an appeal in court. Appeals in assessment cases can be lodged with the Rotterdam District Court. The ruling of the Rotterdam District Court can be appealed at the Trade and Industry Appeals Tribunal. As a rule, appellate proceedings are public. In individual cases this principle can be derogated from, and this also sometimes happens in cases relating to assessments, which as a result are held behind closed doors. In its 2016 legislative letter,¹²¹ DNB advocated turning this around. DNB would prefer holding all appellate proceedings relating to assessments behind closed doors, unless otherwise requested by the party concerned. It is DNB's view that this would ensure the legal protection of the assessed managing and supervisory directors, which is essential given the special nature of the assessment procedure in which the opinion on the relevant candidate or the relevant collective may have a major impact on those involved.

¹²¹ Parliamentary Papers II 2015/16, 401646.

ANNEX IV - PROCESS DESCRIPTION PART B

DESCRIPTION OF AN ASSESSMENT PROCEDURE WITH INVOLVEMENT OF THE EUROPEAN CENTRAL BANK

Since 4 November 2014 detailed agreements have been in place that govern institutions subject to direct ECB supervision, known as Significant Institutions (SIs). The ultimate responsibility and final decision-making are with the ECB. DNB works closely with the ECB and coordinates the process.

When an institution proposes to appoint a managing or supervisory director, it must notify DNB in the same way as described above. Notification must be made with the same forms as in an assessment procedure with DNB involvement only, which are a notification form, an integrity screening form and the required annexes. The consideration period is the same (a maximum of thirteen weeks) and, as in the DNB assessment procedure, commences once the documents have been received by post.

After receiving an application, DNB notifies the ECB within five business days using the digital SSM portal, which automatically generates an application number and a digital file folder in which DNB can upload the received forms. A digital workflow system automatically allocates assessments to a staff member of the ECB's Authorisation Division and the responsible joint supervisory team (JST). In cooperation with the ECB, DNB is responsible for ensuring that the file is complete and for requesting any other required information.

The assessment procedure may involve an interview. If DNB plans an interview, the time limit for the assessment is interrupted until the date of the interview. The ECB can also decide to attend the interview, although it takes a risk-oriented approach. The ECB customarily attends interviews with the chair of the management and the chair of the supervisory board of the major SIs but does not attend those with subsidiaries of SIs. Practice has shown that the ECB chooses to hold an interview more often than DNB. In addition, it has decided to always hold an interview in the case of specific positions, such as chair of the management board and chair of the supervisory board. As a rule, interviews are conducted in English if the institution communicates with the ECB in English. Candidates may at all times choose to be interviewed in their own language. As a rule, assessment interviews are held in the Netherlands, at DNB's office, but they may also be held in Frankfurt depending on the candidate's position and the composition of the panel. A JST member and a national authority representative join both the preliminary meeting and the interview. To safeguard their consistency, interviews are always attended by a staff member of a horizontal division of the national authority or of the ECB. If the proposed appointment is for a managing or supervisory director of an SI, the AFM is also involved, given that the dual access procedure applies in the Netherlands. The collaboration with the AFM with respect to DNB's standard assessment procedure as described in Part A of Annex IV applies accordingly. As a result, an ECB assessment interview may involve interviewers from all four categories of stakeholders (national authority, JST, horizontal division and the AFM), i.e. two representing DNB, one representing the AFM and one representing

the ECB. Only if required on account of the specific circumstances of the case, a second assessment interview is held, usually in Frankfurt.

Having received and assessed all information, DNB/ECT prepares a preliminary decision proposal in consultation with the Authorisation Division and the JST, based on a standardised SSM template. This document is then uploaded using the digital SSM portal, and the relevant staff member of the ECB's Authorisation Division is notified of its receipt via the digital workflow system. If the ECB has any questions or requires further information, it promptly contacts DNB. Having received all information, the ECB prepares a final joint decision proposal, in close cooperation with DNB and the JST. The ECB's Supervisory Board and Governing Council then adopt the final decision under the non-objection procedure and notifies the SI of the decision. They jointly present it to the Supervisory Board and the Governing Council, which base their decision on the draft decision. In common with DNB and the AFM, the ECB may attach specific conditions to its approval, for example with respect to time spent or about brushing up on specific knowledge. Conditions may also concern the collective. The ECB forwards a copy of the letter it sends to the candidate to DNB's ECT.

ANNEX V - QUANTITATIVE DATA OF THE ASSESSMENT PROCEDURE**1. Introduction**

This annex quantifies the assessment procedure, distinguishing between DNB assessments and AFM assessments. As a rule, "dual access" assessments have been included in both the DNB figures and the AFM figures. Where these figures have not been included, this is explicitly stated. The figures do not include ECB assessments, unless explicitly stated.

As in other parts of the report, where possible this annex breaks down figures by the various sectors that DNB and the AFM distinguish in the assessment procedure.

2. Quantitative details of DNB's assessment procedure**2.1 Total number of assessments and breakdown into initial assessments and re-assessments**

The table below shows the total number of assessments performed by DNB from 2011 to 2015. The figures include both initial assessments and re-assessments.

	2011	2012	2013	2014	2015
Total excluding second-tier management	1,312	1,242	1,178	1,737	1,433
<i>of which banks</i>	252	185	166	224	189
<i>of which insurance companies</i>	335	256	337	404	461
<i>of which other institutions under the Wft</i>	100	162	124	151	157
<i>of which pension funds</i>	354	379	367	672	375
<i>of which payment institutions</i>	104	117	73	82	77
<i>of which trust offices</i>	167	143	111	118	151
<i>of which other institutions</i>				86	23
Second-tier management					516
<i>of which banks</i>					271
<i>of which insurance companies</i>					245
Total	1,312	1,242	1,178	1,737	1,949

Table 1. Total number of assessments performed by DNB, 2011-2015

The table shows that the total number of assessments excluding second-tier management dropped somewhat between 2011 and 2013, before increasing sharply in 2014. The increase can be explained first of all by the statutory inclusion of supervisory directors in the assessment procedure in July 2012 and the entry into force of the Pension Fund Governance (Further Measures) Act (*Wet versterking bestuur pensioenfondsen – Wvbp*) in August 2013. Pursuant to this Act, supervisory board members and members of pension fund stakeholder bodies qualify as policymakers and must

therefore be assessed by DNB. Second, between 2012 and 2015 DNB re-assessed all supervisory directors in office, performing the majority of assessments in 2014 and 2015.

The table below breaks down the total number of assessments into initial assessments and re-assessments from 2011 to 2015:

	2011	2012	2013	2014	2015
<i>Number of initial assessments</i>	1,310	1,238	1,157	1,719	1,933
<i>Number of fitness re-assessments</i>	1	4	8	11	2
<i>Number of propriety re-assessments</i>	1	0	13	7	8
<i>Number of fit and proper re-assessments</i>					6 ¹²²
Total	1,312	1,242	1,178	1,737	1,949

Table 2. Assessments: initial assessments and re-assessments

2.2 Number of assessments with negative outcome: formal negative decisions vs withdrawn applications

The total number of assessments can be broken down into assessments with positive outcome and assessments with negative outcome. The table below shows the number of assessments with negative outcome from 2011 to 2015, distinguishing between the number of assessments resulting in a formal negative decision and the number of assessments in which the application was withdrawn before a formal negative decision was issued.

¹²² In recent years, DNB registered fit and proper re-assessments either as fitness re-assessments or as propriety re-assessments. 2015 saw the introduction of the category fit and proper re-assessments.

	2011	2012	2013	2014	2015
Number of formal negative decisions	3	13	20	2	6
Number of applications withdrawn	91	108	145	101 ¹²³	72
Total number of assessments with negative outcome	94	121	165	103	78
Total number of assessments	1,312	1,242	1,178	1,737	1,949

Table 3. DNB assessments with negative outcome in 2015

A closer analysis of the 2015 figures reveals that approximately three-quarters of the cases with negative outcome was caused in full or in part by a lack of knowledge on the part of the candidate. This is particularly true for small pension funds' investment advisory committees.

2.3 Objection procedures

The table below shows the number of objection procedures processed by DNB in the past four years in general and, stated separately, in assessment cases.

	2012	2013	2014	2015
Number of objection procedures processed	83	105	75	85
of which assessments cases	3	3	7	3

Table 4. DNB objection procedure in general and in assessment cases

The table below breaks down the assessment objection numbers reflected above by outcome: inadmissible, unfounded, well-founded and withdrawn.

¹²³ A further 131 assessment applications were withdrawn for reasons other than an intended negative decision, e.g. withdrawn applications for authorisation.

Outcome of objection procedures in assessment cases	2012	2013	2014	2015
Inadmissible	0	0	1	0
Unfounded	3	1	5	0
Well-founded	0	1	0	0
Withdrawn	0	1	1	3

Table 5. Outcome of DNB objection procedures in assessment cases

2.4 Paper assessments vs assessments with interview

This section sets out the number of assessments conducted on paper versus the number of assessments involving an interview from 2014 to 2016. Table 6 reflects the figures for standard assessments, and Table 7 those for SSM assessments. The figures show that in recent years, DNB has started to make its assessments more risk-based. This means that a larger number of assessments are completed without interviewing candidates.

Paper assessments versus assessments with interview¹²⁴	2014	2015	2016 (Jan-Jun)	Total
Banks	211	29	44	284
Interview	132	9	17	158
Paper	79	20	27	126
BES institutions	43	9	9	52
Interview	12	0	9	12
Paper	31	9	0	40
Insurers	389	415	109	915
Interview	231	197	26	455
Paper	158	218	83	460
Other institutions under the Wft	37	57	16	112
Interview	26	18	5	49
Paper	11	39	11	63
Pension funds	674	380	238	1,297
Interview	287	142	56	487
Paper	387	238	182	810
Payment institutions	88	77	38	205
Interview	39	21	11	71
Paper	49	56	27	134
Trust offices	133	154	76	363
Interview	52	52	15	119
Paper	81	102	61	244
Other institutions	8	7	0	15
Interview	7	3	0	10
Paper	1	4	0	5
Total number of interview assessments	786	442	139	1361
Total number of paper assessments	797	686	391	1,882
Percentage of interview assessments	50%	39%	26%	42%
Total	1,583	1,128	530	3,243

Table 6. DNB standard assessments: paper versus interview from 2014 to 2016

SSM assessments: paper versus interview	2015	2016 (Jan-Jun)	Total
Banks	154	31	185

¹²⁴ The figures exclude assessments in the context of dispensations, declarations of no-objection, SSM and second-tier management. This also explains the difference between the data in Table 1 and those in Table 5.

Interview	90	16	106
Paper	64	15	79
Total	154	31	185

Table 7. DNB SSM assessments: paper versus interview from 2014 to 2016

2.5 Assessment file throughput times

The table below shows the average throughput time of initial assessments at DNB, expressed in weeks.¹²⁵ The table is followed by a chart showing that the average throughput time of initial assessments has been reduced for all types of institutions in recent years.

Table 9 breaks down the average throughput times for 2015 into paper assessments and interview assessments, distinguishing between standard assessments and catch-up assessments.

Type of institution	2012	2013	2014	2015	2016
Credit institutions	17	10.5	10	10.5	9.5
Payment institutions	6.2	18.4	15	13.2	9.1
Pension funds	9.0	9.1	9.1	8.5	7.6
Trust offices	11.3	9.5	15.8	12	7.2

Table 8. Throughput times of DNB assessments

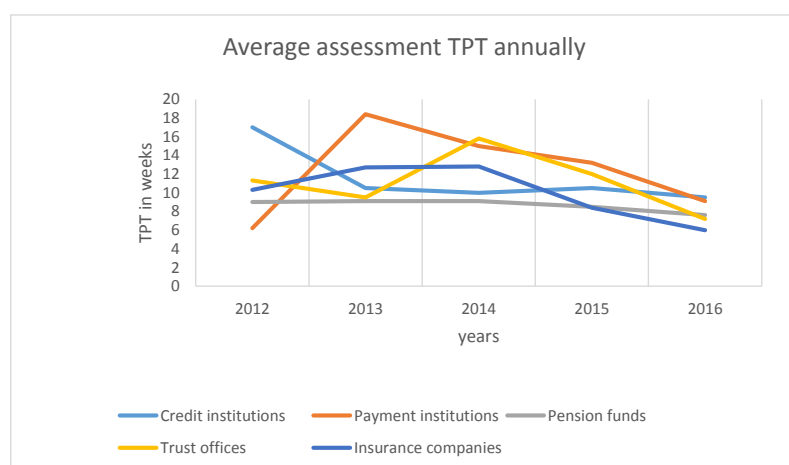


Chart 1. Throughput times of DNB assessments

¹²⁵ The numbers are exclusive of assessments in the context of a declaration of no-objection (DNO) or authorisation, given that the throughput time of the DNO or authorisation procedure is registered for these assessments.

Type of institution	SSM classification	Interview/Paper	Number of cases	Mean TPT in days	Mean TPT in weeks
Credit institutions	SI	Interview	29	106.1	15.2
	SI	Paper	29	57	8.1
	LSI	Interview	35	82.5	11.7
	LSI	Paper	23	49	7
	LSI – non-SSM	Interview	2	95.5	13.6
	LSI – non-SSM	Paper	9	59.4	8.5
Payment institutions		Interview	12	143	20.4
		Paper	31	74	10.5
Pension funds		Interview	93	94	13.4
		Paper	279	48.2	6.8
Trust offices		Interview	27	96.8	13.8
		Paper	43	76.4	10.1
Insurers		Interview	140	72.2	10.3
		Paper	174	48	6.8

Table 9. Throughput times of DNB assessments in 2015 - broken down into paper assessments and interview assessments

2.6 Staffing

The table below shows the staff numbers in FTEs of DNB's Expert Centre on Fit and Proper Testing (ECT) in the period from October 2012 to June 2016. The table shows that the ECT's staffing level dropped sharply over the past year. This can be explained mainly by the fact that DNB completed its catch-up assessments and has started making its assessments more risk-based, conducting more assessments on paper without interviewing candidates.¹²⁷

	Oct 2012	Jan 2013	Jun 2013	Jan 2014	Jun 2014	Jan 2015	Jun 2015	Oct 2015	Jan 2016	Jun 2016
Management	1.0	1.0	1.0	1.0	2.0	1.0	1.0	2.0	1.0	1.0
Secretary	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Expert examining officer	5.1	7.1	9.1	9.1	9.1	11.1	11.1	14.1	9.1	8.1
Administrative staff member	7.8	8.8	7.8	7.8	7.8	8.8	8.8	8.8	5.8	5.8
Business analyst	2.0	7.6	7.6	7.6	7.6	10.6	9.6	12.6	4.6	4.6
Total	16.7	25.3	26.3	26.3	27.3	32.3	31.3	38.3	21.3	20.3

¹²⁶ These throughput times relate to standard assessments and therefore do not include the catch-up assessments performed in 2015.

¹²⁷ See section 2.4.

Table 10. Staffing level of DNB's ECT from October 2012 to June 2016

3. Quantitative details of the AFM's assessment procedure

3.1 Total number of assessments and breakdown into initial assessments and re-assessments

The table below shows the numbers of fit and proper assessments performed by the AFM in recent years.¹²⁸ These are assessments of newly registered candidate policymakers of present authorisation holders and assessments of individuals ensuing from applications for authorisation. In other words, they involve one individual per assessment and do not include collective assessments. All assessments were performed by the AFM alone; the figures do not include dual access assessments. The figures in Table 11 do not include re-assessments. These are represented separately in Table 12. Table 12 also ignores dual access re-assessments (banks and insurance companies). It reflects re-assessments performed by the AFM alone.

Assessments conducted by the AFM (excluding dual access assessments)	2013	2014	2015
Investment firms	121	140	165
Investment funds (including AIFM)	139	450	238
Financial service providers	837	845	864
Crowdfunding	3	63	47
Enterprises in the Caribbean Netherlands	13	11	0
Stock exchanges and other capital markets	13	7	5
Total	1,126	1,516	1,301

Table 11. Total number of initial assessments conducted by the AFM from 2013 to 2015

Re-assessments conducted by the AFM (excluding dual access re-assessments)	2013	2014	2015
Number of fit and proper re-assessments started	6	3	6
of which dismissals	6	2	4

Table 12. Number of re-assessments conducted by the AFM from 2013 to 2015

3.2 Number of assessments with negative outcome: formal negative decisions vs withdrawn applications

¹²⁸ For this reason, the overview does not include assessments of audit firms, given that they are assessed exclusively for propriety. By way of information: the AFM assessed 233 individuals for audit firms in 2015.

The AFM has long adopted a case-oriented approach, which means that it processes applications submitted by market operators using the digital portal on a case-by-case basis.¹²⁹ All documents relevant to a case are compiled and stored in digital form. This methodology reduces the administrative burden for market operators and the AFM, and makes for efficient case processing. As one case may include multiple assessments of individuals, the number of pending cases is not equal to the number of individual assessments conducted by the AFM. Likewise, the number of withdrawn cases is not equal to the number of individuals withdrawn by institutions. Although a withdrawal may involve the withdrawal of multiple individuals, it is registered as one case and, hence, as one withdrawal. Moreover, the case repository is as yet unable to process all market operator applications.¹³⁰ Reports on cases withdrawn therefore do not accurately reflect the number of candidates withdrawn.

The table below shows only withdrawn cases of newly registered policymakers in the case repository by calendar year. These are withdrawals following a potentially negative outcome, but may include cases in which the applicant "accidentally" submitted an application and cases submitted twice (using the digital portal). Candidates withdrawn by the institution following the AFM's formal intention to reject them are registered as withdrawn candidates in the case repository.¹³¹

Assessments – applications withdrawn	2012	2013	2014	2015	2016
Audit firms ¹³²	10	14	20	13	5
Financial service providers	66	60	52	77	42
Investment funds	9	23	8	-	2
AIFM	-	-	5	4	1
Investment firms	18	16	7	4	1

Table 13. Withdrawn AFM cases of newly registered policymakers from 2012 to 2016

The case repositories for the calendar years in question include the following formal final rejections of newly registered policymakers.

Assessments – formal rejections	2012	2013	2014	2015	2016
Financial service providers	1	1	2	-	1

¹²⁹ The AFM provides services and forms for market operators on its [Digital Portal](#). The case repository (*zakenmagazijn*) is the internal system processing cases submitted via the digital portal, including assessments and applications for authorisation.

¹³⁰ 96% of all assessments is processed via the case repository. Assessments for stock exchanges and other capital markets, investment fund depositaries, enterprises in the Caribbean Netherlands and dispensations from the prohibition on acting as an intermediary in inviting repayable funds (crowdfunding) are not processed via the case repository. This is why these institutions are not included in the specific summaries from the case repository of withdrawn applications. The intention is to have all applications submitted via the digital portal effective from 2017.

¹³¹ This is because the final formal decision had not yet been taken at that time.

¹³² Audit firm withdrawals that relate to assessments only concern propriety assessments.

Investment funds	-	-	-	1	-
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Table 14. Formal AFM rejections of newly registered policymakers from 2012 to 2016

The two tables above do not include assessments of individuals ensuing from applications for authorisation. An application for authorisation is a separate case in the case repository that also includes the assessment of individual proposed policymakers. An application for authorisation may include one or more assessments of individuals. An application for authorisation may be withdrawn by the applicant in the course of its processing, as a consequence of which the assessments of policymakers are cancelled. Applicants sometimes withdraw or substitute proposed policymakers while their application for authorisation is being processed. The table below shows the applications for authorisation withdrawn in 2014 and 2015.

Applications for authorisation – withdrawn	2014	2015
Audit firms	2	1
Financial service providers	37	40
Investment funds	1	2
AIFM	8	0
Investment firms	10	3

Table 15. Withdrawn applications for AFM authorisation in 2014 and 2015

As a result of its case-oriented approach, the AFM is unable to provide exact percentages of rejected policymakers relative to the number of assessments performed. The AFM realises that to ensure the transparency of the outcome and the effectiveness of its assessments of individuals, it is essential to present an accurate picture. It has undertaken to adjust its administrative processes accordingly.

3.3 Objection procedures

The tables below show the objections to assessments processed by the AFM between 2012 and 2016, broken down by outcome: inadmissible, unfounded, well-founded and withdrawn.

Table 16. AFM objection procedures from 2012 to 2015

AFM objection procedures	2012	2013	2014	2015
Number of objections to levies processed ¹³³	157	368	74	135
Number of other objections processed	120	66	119	62
Number of objection procedures processed - total	277	434	193	197
of which assessments cases	4	3	5	1

¹³³ The AFM receives many objections to levies for continuous supervision. For more information (in Dutch only) see <https://www.afm.nl/nl-nl/nieuws/2013/juni/heffingen-financiele-ondernemingen>.

Outcome of AFM objection procedures in assessment cases	2012	2013	2014	2015
Inadmissible	2	1	0	0
Unfounded	1	2	4	1
Well-founded	1	0	1	0
Withdrawn	0	0	0	0

Table 17. Outcome of AFM objection procedures in assessment cases from 2012 to 2015

3.4 Paper assessments vs assessments with interview

The AFM determines on a case-by-case basis whether an interview is required.¹³⁴ If the file contains sufficient information to form an opinion, the interview is dispensed with. The majority of AFM assessments is conducted without an interview.¹³⁵ Candidates for positions of crucial importance at high-impact institutions are always interviewed.¹³⁶

To date, the AFM has not recorded for all performed assessments separately whether or not the candidate was interviewed. The table below was compiled based on a reconstruction of the diaries of the staff involved.

It must be noted that this table is not comparable with the table pertaining to DNB in paragraph 2.4. This is because DNB's interviews have been plotted against a selective number of assessments (some categories are excluded), while the table below plots the number of interviews against the total number of assessments performed. In addition, the number of assessments interviews held by the AFM is exclusive of the number of interviews held together with DNB as part of dual access assessment procedures.

AFM assessment interviews	2014	2015	2016
Number of assessment interviews	42	54	29

Table 18. Number of assessment interviews held by the AFM from 2014 to 2016

¹³⁴ The AFM interviews candidates in respect of the different groups of institutions it assesses, with fluctuating numbers of interviews. For financial service providers (group C), an assessment interview is held in between 1 and 2% of all cases. Interviews are hardly necessary for this group as only senior management and management experience needs to be demonstrated based on a rule-based standard. For group B (investment firms, investment funds and credit providers) around 6% of assessments needs and interview. In addition to senior management and management experience, this group is required to demonstrate general and specific knowledge and fitness with respect to operational management. As far as institutions in group A are concerned (at the AFM these are market operators and investment object providers) the majority of candidates is in fact interviewed in view of the principle-based standards applying to Group A institutions and the specific risks and professional knowledge required for these two types of institutions.

¹³⁵ Assessments of policymakers in small financial service providers (up to six staff members) can almost always be performed without interviews, as the fitness of these candidates can be proven by sufficient demonstrable work experience or relevant qualifications at least higher vocational education level or both. If candidates have been assessed previously for a comparable position at a comparable institution, interviews can often be foregone.

¹³⁶ For more information (in Dutch only) see <https://www.afm.nl/nl-nl/professionals/onderwerpen/toetsing-gesprek>.

3.5 Assessment file throughput times

The table below shows the average throughput time of assessment procedures at the AFM, expressed in weeks.

Average throughput time in weeks	2012	2013	2014	2015	2016 (1 st six months)	Mean
Notifications of (co-)policymakers at audit firms	2.6	2.7	2.4	2.4	1.7	2.4
Notifications of (co-)policymakers at alternative investment funds	-	-	7.7	6.9	6.4	6.9
Notifications of (co-)policymakers at investment funds	7.9	13.6	6.9	8.4	4.1	9.6
Notifications of (co-)policymakers at financial service providers	6	5	6	6.6	3.9	5.7
Notifications of policymakers at investment firms	5.9	10	5.6	6	5.6	6.7
Mean	5.6	6.3	5.3	5.6	3.6	5.6

Table 19. Average throughput time at the AFM from 2012 to 2016 (1st six months)

3.6 Staffing

The table below reflects in number of FTEs, the staff resources that the AFM spent on assessments each year.¹³⁷ It shows that staffing levels for assessments were reduced slightly in 2014 and 2015 as compared to 2012 and 2013.

The table shows that the assessments performed by the BOBI Authorisations (*Vergunningzaken BOBI*) department were transferred to the new Asset Management and Account Management (*Accounttoezicht*) departments. The BOBI Authorisations (until 2016), FD Authorisations (*Vergunningzaken FD*), and Asset Management (from 2016) departments are responsible for issuing authorisations in addition to performing assessments. Department staff, supervisors and senior officers working in these teams charge an average of 55% of their registered working hours to assessments. Team managers are involved in decision-making and interviewing candidates. Senior supervisors working in Account Management and senior managers at the AFM are available for assessment interviews, complex assessments and dual access assessments.

¹³⁷ The number of FTEs in the Efficient Capital Markets Supervision (*Efficiënte Kapitaalmarkten*) department dedicated to assessments was not included in the survey for instance. Neither were individual FTEs dedicated to re-assessments in the Market Integrity and Enforcement (*Marktintegriteit en handhaving*) department.

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Team	Position	2012	2013	2014	2015	2016
Authorisations investment firms and investment funds (incl. alternative investment firms)	Supervision staff member	1.75	1.75	1.75		
	Supervisor	4.00	4.00	4.00	6.00	
	Senior supervisor	1.89	1.89	1.89	0.89	
	Manager	1.00	1.00	1.00	0.53	
Authorisations Financial service providers	Supervision support staff member	7.11	6.11	7.02	6.28	6.27
	Senior supervision support staff member	5.08	5.94	3.88	4.80	5.85
	Supervision staff member	1.76	1.76	0.88	2.13	1.00
	Manager	1.00	1.00	1.00	1.00	1.00
	Temporary employee					1.00
Asset management	Supervision staff member					0.50
	Supervisor					4.00
	Senior supervisor					0.89
	Manager					1.00
Account supervision	Supervisor					1.00
	Senior supervisor					1.50
	Temporary employee					0.50
		23.59	23.45	21.41	21.62	24.51

Table 20. AFM staff resources engaged in assessments from 2012 to 2016

ANNEX VI - THE OTTOW COMMITTEE

Members of the Committee

The Committee consists of chair Annetje Ottow and members Jan Hommen and Janka Stoker. It is supported by its self-appointed project secretary Marie-Jeanne Schiffelers and her assistant Daniëlle Arnold.

Committee chair Annetje Ottow

Since September 2014, Professor Annetje Ottow has been Dean of the Faculty of Law, Economics and Governance at Utrecht University. She is Professor of Public Economic Law at this faculty specialising in market regulation and regulators, competition and European law. In 2015 she published a book by the title of "Market and Competition Authorities. Good Agency Principles" (Oxford University Press). She coaches several PhD students, including one from outside Utrecht University employed by DNB.

Annetje Ottow also occupies several supervision roles: until 1 September 2016, she was a member of the Supervisory Council of VU University Amsterdam, she is a non-executive director of the UK Competition and Markets Authority, and a member of the Supervisory Board of legal advice organisation *Het Juridisch Loket*. She is also a non-governmental advisor for the International Competition Network (ICN)), the international network of competition authorities. Between 2007 and 2013 she was a member of the governing council of OPTA, the Independent Post and Telecommunications Authority. Prior to this, she was employed in the legal profession for 15 years.

Committee member Jan Hommen

Jan Hommen has a long standing career in national and international business. His career saw him hold a range of executive positions at Alcoa in the United States, Royal Philips NV, ING Group and KPMG Netherlands. He was CEO and Chairman of the Board of ING Group from 2009 until October 2013, and at KPMG between June 2014 and October 2015. In his capacity as Chairman of the Supervisory Board, he supervised TNT, Reed Elsevier, ING, Tias Nimbas Business School, Maastricht Universitair Centrum and AHOLD and he was a member of the Supervisory Board at Campina and football club PSV.

Current positions:

- Vice-chair of the Supervisory Board of Ahold Delhaize
- Chair of the Supervisory Board of Brabantse Ontwikkelings Maatschappij
- Chair of Stichting Bestuur Tilburg University
- Member of the Supervisory Council of Royal Concertgebouworkest
- Chair of the Supervisory Board of United World College Nederland

Committee member Janka Stoker

Professor Janka Stoker studied Social and Industrial & Organisational Psychology at the University of Groningen, and obtained a PhD from the University of Twente. After obtaining her PhD she was employed as a senior management consultant at management consultant Berenschot, where she was involved in large change management projects and profit and not-for-profit organisations. She has been Professor of Leadership and Organisational Change at the Faculty of Economics and Business at the University of Groningen since 2003. She was vice-deacon on the faculty board of the same faculty between 2009 and 2014, responsible for the education portfolio (4 Bachelor programmes, 14 Master programmes, around 6,500 students). During her time of office, the faculty obtained two international accreditations (EQUIS and AACSB), owing to which the University of Groningen is now among the 1% of business schools worldwide being awarded with both accreditations.

Janka Stoker currently is director of the In the LEAD leadership institute at the Faculty of Economics and Business at the University of Groningen. This institute concentrates on research, education and advice in the area of leadership. Her research concentrates on themes like power, diversity, CEOs and top management teams, organisational change and middle management, culminating in national and international scientific and practice-based publications. She currently coaches external PhD students (at Ahold and De Nederlandsche Bank). In addition to her role at the University of Groningen, Janka Stoker also is a member of the Supervision Council of the University of Twente and chair of the Supervisory Council of Economic Board Groningen. She also takes a seat on external committees at regular intervals.

Project secretary Marie-Jeanne Schiffelers

Dr Marie-Jeanne Schiffelers is a senior advisor and research fellow. She has worked for USBO Advies, the advisory unit of the Utrecht University School of Governance, since 1998. In this role, she gained a great deal of experience in leading and performing research and policy reviews in the public sector. For instance, she led a project studying the risk-rule reflex among MPs commissioned by the Ministry of the Interior and Kingdom Relations, a stakeholder survey commissioned by the Ministry of Health, Welfare and Sport, and a comparative study of professional standards for the Council for the Judiciary (*Raad voor de rechtspraak*). She was also involved in the evaluation of the Ethics and Policy research programme commissioned by the Netherlands Organisation for Scientific Research (*NWO*), the evaluation of the Biotechnology with Animals Decree (*Besluit biotechnologie bij dieren*) commissioned by the Ministry of Agriculture, Nature and Food Quality, an evaluation of the crisis response organisation for the new H1N1 influenza (swine flu) for the Ministry of Health, Welfare and Sport, and an impact assessment for the recasting of a European directive for the Directorate-General for the Environment of the European Commission. She specialises in working with qualitative research methods, like focus groups and in-depth interviews. She recently finished her PhD research

into new testing techniques to replace, reduce, or refine the use of laboratory animals in risk assessment of materials and products.

Assistant to the project secretary Daniëlle Arnold

Daniëlle Arnold graduated from the Utrecht Law College of Utrecht University and is currently enrolled in a two-year Legal Research Master programme at the same university.

In addition to being involved in the Committee's project, Daniëlle Arnold is currently working for a research project commissioned by the European Commission, and for the policy department of the Faculty of Law at Utrecht University. Her research profile is Dutch administrative law, European law and the interface between the two. As a student, she gained management experience in international relations.

Independence

The Committee functions independently and forms its judgements independently. This means that it was completely free to develop and structure its evaluation as it saw fit and to form its own judgement. In addition, the members of the Committee agreed to participate in the commission independently of each other. The members had direct access to all institutions and individuals that could contribute towards performing its assignment.

Confidentiality

By accepting the commission and performing the evaluation, the members of the Committee, including its secretary and other supporting staff, are involved in the AFM and DNB's performance of their statutory mandate based on the Financial Supervision Act (*Wet op het financieel toezicht – Wft*). This means that the members of the Committee and all supporting staff are bound to the statutory duty of confidentiality prescribed by Section 1:89 of the *Wft* and are bound – with the exception of the final report – to secrecy about the confidential data and information that came into their possession as part of the evaluation.

ANNEX VII - SOURCE MATERIALS RECEIVED FROM DNB, THE AFM AND OTHER PARTIES

A. Public documents

DNB

Description	Type of document	Source
Policy Rule on Suitability 2012 (Dutch only)	Policy rule (further elaboration of legislation)	http://wetten.overheid.nl/BWBR0031740/2016-04-06
Letter from the AFM and DNB on the effects of assessments (Dutch only)	Letter to the Lower House of Dutch Parliament	Session year 2015-2016. Parliamentary Paper 32648, no. 9
Information of DNB's Open Book on Supervision	DNB's website on assessments	http://www.toezicht.dnb.nl/en/4/2/16/50-229347.jsp
Report of Lower House legislative consultations (Dutch only)	Lower House shorthand report	Session year 2015-2016. Parliamentary Paper 34208, no. 11
Slides of information meeting on assessments	Presentation	Presentation during information session (every three months).
DNB's "You're going to be screened" information brochure	Brochure	http://www.dnb.nl/en/binaries/toetsing_tcm46-340126.pdf?2016112222
Notes to Action plan on enhancing the assessment	DNB's website	http://www.dnb.nl/en/news/dnb-nieuwsbrieven/nieuwsbrief-banken/nieuwsbrief-banken-november-2015/dnb334204.jsp
Prospective Appointment Notification Form	Notification for assessment form on DNB's website	http://www.toezicht.dnb.nl/en/5/11/5/4/4/51-206428.jsp
Integrity Screening Form	Notification for assessment form on DNB's website	http://www.toezicht.dnb.nl/en/5/11/5/4/4/51-206424.jsp
Expertise and capabilities matrix	Document on DNB's website for the purpose of notification for assessment	http://www.toezicht.dnb.nl/en/binaries/51-226115.doc
EBA Report on Peer Review	Report	http://www.eba.europa.eu/documents/10180/950548/EBA+Peer+Review+Report+on+suitability.pdf
Initial fitness assessments - practical examples	Case descriptions (Dutch only)	http://www.toezicht.dnb.nl/2/50-235525.jsp
Article by M. Been and R. Miete "Van geschiktheid naar vertrouwen" (Dutch only)	Article	Compliance yearbook 2013
Article by G. Brugman "(Her)toetsing op geschiktheid als drukmiddel" (Dutch only)	Article	http://www.barentskrans.nl/wp-content/uploads/2016/06/GIBR-Compliance-11-15.pdf
Article by G. Roth and J. Roepnarain "De toetsing van bestuurders en	Article	Tijdschrift voor Compliance (Compliance Journal) – September 2015

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commissarissen door DNB en de AFM" (Dutch only)		
Evaluation of 4+4 assessments (Dutch only)	Letter from DNB to the Lower House of Dutch Parliament evaluating the fitness assessment of the supervisory directors of the four largest banks and the four largest insurance companies ("4+4 assessments")	http://www.eerstekamer.nl/eu/overig/20130301/brief_van_de_dnb_en_afm_inzale_de/document
Legislative letter from DNB and the AFM (Dutch only)	Annual letter to the Ministry of Finance containing a legislative wish list	http://www.rijksoverheid.nl/documenten/kamerstukken/2016/07/12/bijlage-2-wetgevingsbrief-dnb-2016
Letter submitting the Interim Report of the Ottow Committee to the Ministry of Finance (Dutch only)	Letter from DNB and the AFM	http://www.rijksoverheid.nl/documenten/kamerstukken/2016/07/06/bijlage-1-brief-dnb-en-de-afm-bij-tussenrapportage-externe-evaluatie-toetsingsproces
Article by staff of De Brauw Blackstone Westbroek (Dutch only)	De geschiktheids- en betrouwbaarheidstoets – zeven praktische tips	http://www.debrauw.com/nieuwsbericht/de-geschiktheids-en-betrouwbaarheidstoets-zeven-praktische-tips/#
Supervisory Statement by the Bank of England's Prudential Regulation Authority (PRA) – Strengthening individual accountability in banking	PRA policy document	http://www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss2815update2.aspx
Supervisory Statement by the Bank of England's Prudential Regulation Authority (PRA) – Strengthening individual accountability in insurance	PRA policy document	http://www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss3515update.aspx
Consultation Paper by the Bank of England's Prudential Regulation Authority (PRA) – Corporate governance: Board responsibilities	PRA policy document	http://www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp1815.aspx
EBA-ESMA suitability guidelines	EBA and ESMA consultation on Guidelines on the Assessment of the Suitability of the Members of Management Body and Key Function Holders	http://www.eba.europa.eu/-/eba-and-esma-consult-on-assessing-the-suitability-of-banks-and-investment-firms-members-of-the-management-body-and-key-function-holders
SSM Methodology	ECB public consultation on a draft guide to fit and proper assessments of board members	http://www.bankingsupervision.europa.eu/press/pr/date/2016/html/sr161114.en.html

AFM

Description	Type of document	Source
Policy Rule on Suitability 2012 (Dutch only)	Amended policy rule effective from 1 April 2016 following the introduction of fitness requirements for managing and supervisory directors of holders of dispensation from the prohibition on acting as an intermediary in inviting repayable funds (crowdfunding platforms)	http://wetten.overheid.nl/BWBR0031740/2016-04-06
Policy document 99-0004 by the Securities Board of the Netherlands (<i>Stichting Toezicht Effectenverkeer – STE</i>)	First AFM Policy Rule on Expertise (Dutch only)	https://zoek.officielebekendmakingen.nl/stcrt-1999-122-p24-SC19504.html
AFM mandate effective from 18 April 2016	The minimum decision-making and signing levels of a large number of decisions, including assessments	https://www.afm.nl/nl-nl/over-afm/werkzaamheden/bevoegdheden
Fees for one-off supervisory activities in 2015	Summary of assessment costs for institutions (Dutch only)	https://www.afm.nl/nl-nl/over-afm/kosten-tz
AFM expertise and capabilities matrix (Dutch only)	New expertise and capabilities matrix providing further insight into the managing or supervisory director's knowledge and experience	http://afm.m13.mailplus.nl/archief/ mailing-494045.html
AFM agenda for 2016-2018	Agenda setting out priorities in the AFM's supervision	https://www.afm.nl/~profmedia/files/afm/jaaragenda-begroting/agenda/2016/agenda-2016-2018-eng.ashx
Article by Annick van Gelder and Pepijn Teule – Gedragstoezicht en het SSM: op weg naar een nieuwe balans (Dutch only)	Article about the impact of European banking supervision on the AFM	https://www.afm.nl/nl-nl/nieuws/2015/feb/gedragstoezicht-ssm
AFM and DNB information bulletin on assessments (May 2012)	Joint bulletin providing information on developments in the assessment of individuals in the financial sector, the directors' monitor, and observations and points for improvement	https://www.afm.nl/en/nieuws/2012/mei/brochure-toetsingen

External evaluation by the Ottow Committee of the assessment procedure performed by the AFM and DNB

Information page on assessments of individuals (Dutch only)	Page on the AFM's website on the assessment of managing and supervisory directors	https://www.afm.nl/nl-nl/professionals/onderwerpen/toetsing-bestuurders
Flyer on the assessment procedure (Dutch only)	A step-by-step explanation of an AFM assessment	https://www.afm.nl/nl-nl/professionals/onderwerpen/toetsing-proces
Practical examples of how fitness is assessed (Dutch only)	Case descriptions on the AFM's website	https://www.afm.nl/nl-nl/professionals/onderwerpen/toetsing-bestuurders

Other

Description	Type of document	Source
Fit and Proper, report by ABDTOPConsult – evaluating housing association assessments (Dutch only)	An evaluation of the fit and proper assessment performed by the Netherlands Authority for Housing Associations (<i>Autoriteit Woningcorporaties – AW</i>) on the appointment of managing and supervisory directors of housing associations	https://www.ilent.nl/Images/Rapport%20Fit%20en%20proper%20ABDTOPConsult_tcm334-378265.pdf
Good practice for the appointment of individuals to be assessed by DNB	Brochure of the Dutch Association of Insurers	Sent to its members

B. Confidential documents

DNB

DNB provided the Committee with more than 30 internal documents for the purpose of performing the latter's commission to give the Committee insight into DNB's internal approach and procedures. DNB put these documents at the disposal of the Ottow Committee as part of the performance of its duties under the secrecy obligation of Section 1:89 of the *Wft*.

DNB also answered various questions that the Committee had by e-mail, providing additional information.

AFM

The AFM provided the Committee with more than 20 internal documents for the purpose of performing the latter's commission to give the Committee insight into the AFM's internal approach and procedures. The AFM put these documents at the disposal of the Ottow Committee as part of the performance of its duties under the secrecy obligation of Section 1:89 of the *Wft*.

The AFM also answered various questions that the Committee had by e-mail, providing additional information.

Other

- Letter from the Dutch Association of Insurers (follow-up to a meeting with the Committee)
- Insurers' opinions on supervision in 2015 – part of DNB assessments

ANNEX VIII - EXTERNAL SOURCES AND REFERENCE MATERIAL

Baumard 1999

P. Baumard, *Tacit knowledge in organizations*, London: Sage Publications 1999.

Focus! De vernieuwde toezichtaanpak van DNB 2012

Focus! DNB's revised approach to supervision, Amsterdam: De Nederlandsche Bank 2012.

Frink & Ferris, *Human Relations* 1998/51, issue 10, pp. 1259-1283

D.D. Frink & G.R. Ferris, Accountability, Impression Management, and Goal Setting in the Performance Evaluation Process, *Human Relations* 1998/51, issue 10, pp. 1259-1283.

Van Gelder & Teule, *Tijdschrift voor Financieel Recht* 2014, issue 11, pp. 462-468

A.A. van Gelder & P. Teule, Gedragstoezicht en het SSM: op weg naar een nieuwe balans, *Tijdschrift voor Financieel Recht* 2014, issue 11, pp. 462-468.

Hillman, *Corporate Governance* 2015/23, issue 2, pp. 104-107

A.J. Hillman, Board diversity: Beginning to unpeel the onion, *Corporate Governance* 2015/23, issue 2, pp. 104-107.

Hoekstra & Frijns 2014

R.J. Hoekstra & J. Frijns, *Het rapport van de Evaluatiecommissie Nationalisatie SNS Reaal*, Amsterdam: Balans 2014.

Jans & Outhuijse, *SEW* 2013, issue 1, pp. 2-11

J.H. Jans & A. Outhuijse, De afschaffing van de bezwaarfase bij boetebesluiten van de ACM, *SEW* 2013, issue 1, pp. 2-11.

Lerner & Tetlock, *Psychological Bulletin* 1999/125, issue 2, pp. 255-275

J.S. Lerner & P.E. Tetlock, Accounting for the Effects of Accountability, *Psychological Bulletin* 1999/125, issue 2, pp. 255-275.

Mulder & Nelissen, *Journal of Business Ethics* 2010/95, pp. 57-72

L.B. Mulder & R.M.A. Nelissen, When rules really make a difference: The effect of cooperation rules and self-sacrificing leadership on moral norms in social dilemmas, *Journal of Business Ethics* 2010/95, pp. 57-72.

Ottow 2015

A.T. Ottow, *Market and Competition Authorities. Good Agency Principles*, Oxford: Oxford University Press 2015.

Sparrow 2000

M.K. Sparrow, *The Regulatory Craft*. Washington D.C.: Brookings Institution Press 2000.

Staw, Sandelands & Dutton, *Administrative Science Quarterly* 1981/26, issue 4, pp. 501-524

B.M. Staw, L.E. Sandelands and J.E. Dutton, Threat rigidity effects in organizational behavior: A multilevel analysis, *Administrative Science Quarterly* 1981/26, issue 4, pp. 501-524.

Tihanyi, Graffin & George, *Academy of Management Journal*/57, pp. 1535-1543

L. Tihanyi, S. Graffin & G. George, Rethinking governance in management research, *Academy of Management Journal* 2014/57, pp. 1535-1543.

De Vries 2016

F. de Vries, *Leidt transparantie tot meer vertrouwen in de toezichthouder?* (inaugural speech Groningen) 29 March 2016.

De Waal, Rink & Stoker

M. de Waal, F. Rink & J. Stoker, *How Internal and External Supervisors Influence Employees' Self-Serving Decisions* (De Nederlandsche Bank Working Paper No. 464), 2015.