

Relevant sections of the law for the application for a declaration of no-objection under Section 3:95 of the Financial Supervision Act (*Wet op het financieel toezicht – Wft*).

This document contains an overview of the relevant sections of the law governing applications for a declaration of no-objection (DNO) for the holding of a qualifying holding under Section 3:95 of the Wft.

DeNederlandscheBank

EUROSYSTEEM

Declaration of no-objection	Legal basis	Link to section of the law
<p>No party may, except after obtaining a DNO from De Nederlandsche Bank (DNB) or with respect to banks, not being the holders of an authorisation as referred to in Section 3:4, from the European Central Bank, hold, acquire or increase a qualifying holding or exercise any control attached to a qualifying holding to or beyond a limit as referred to in Section 3:102(1) of the Wft in:</p> <ol style="list-style-type: none"> a settlement agent with registered office in the Netherlands holding an authorisation issued by DNB as referred to in Section 2:3.ob(1) of the Wft; a bank with registered office in the Netherlands; a UCITS manager with registered office in the Netherlands; an investment firm with registered office in the Netherlands; a special purpose reinsurance vehicle; a premium pension institution with registered office in the Netherlands; or an insurer with registered office in the Netherlands. 	<p>Section 3:95(1) of the Wft</p>	<p>http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:95&z=2016-09-03&g=2016-09-03</p>
<p>DNB or, with respect to banks not holding an authorisation as referred to in Section 3:4, the European Central Bank, issues a DNO as referred to in Section 3:95(1) unless one or more exclusion grounds set out in Section 3:100(a) to (f) apply (discussed in greater detail below).</p>	<p>Section 3:100(1) of the Wft</p>	<p>http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:100&z=2016-09-03&g=2016-09-03</p>
Requirements	Legal basis	Link to section of the law
<p>The data as referred to in Section 3:95(2) of the Wft are as follows:</p> <ol style="list-style-type: none"> a statement of the size of the qualifying holding as referred to in Section 3:95 of the Wft; information enabling DNB to assess whether the provisions of Section 3:99 of the Wft are complied with, relating to the propriety of the applicant or holder of a DNO who might determine or co-determine or would determine or co-determine the policy of the institution concerned by virtue of the qualifying holding; and documents providing insight into the financial position and legal group structure of the applicant or holder of a DNO. 	<p>Section 138 of the Decree on Prudential Rules for Financial Undertakings (<i>Besluit prudentiële regels Wft – Bpr</i>)</p>	<p>http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=15&artikel=138&z=2016-04-01&g=2016-04-01</p>
<p>Propriety of policymakers and co-policymakers</p>	<p>Section 3:100(1) of the Wft</p>	<p>http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:100&z=2016-09-03&g=2016-09-03</p>

Requirements	Legal basis	Link to section of the law
<p>DNB will establish whether the propriety of the applicant for the DNO, based on that person's intentions, acts and antecedents, is beyond doubt.</p>	<p>Section 5 of the <i>Bpr</i></p>	<p>http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=2&artikel=5&z=2016-04-01&g=2016-04-01</p>
<p>In establishing propriety as referred to in Section 5 above, DNB in any event considers:</p> <ol style="list-style-type: none"> the criminal-law antecedents referred to in points 1 and 2 of Annex A to the <i>Bpr</i>; the financial antecedents referred to in point 3 of Annex A to the <i>Bpr</i>; the supervision antecedents referred to in point 4 of Annex A to the <i>Bpr</i>; the tax/administrative law antecedents referred to in point 5 of Annex A to the <i>Bpr</i>; and the general antecedents referred to in point 6 of Annex A to the <i>Bpr</i>. 	<p>Section 6 of the <i>Bpr</i></p>	<p>http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=2&artikel=6&z=2016-04-01&g=2016-04-01</p>
<p>DNB gains insight into the intentions, acts and antecedents referred to in Section 5 on the basis of:</p> <ol style="list-style-type: none"> data and intelligence supplied by the person concerned; police data supplied by the National Public Prosecutor; data from the records referred to in Section 1(b) of the Legal Entities Supervision Act (<i>Wet controle op rechtspersonen – Wcr</i>); data and intelligence received from the Tax and Customs Administration; data and intelligence obtained from Dutch or foreign public agencies or from Dutch or foreign government-appointed agencies responsible for the supervision of financial markets or of persons active in these markets; official reports by the Public Prosecutor's Office; intelligence obtained from referees named by the person concerned; data from public sources; intelligence obtained from receivers or administrators in cases of bankruptcy, suspension of payment, debt restructuring, administration orders or emergency regulations involving the person referred to in Section 5 above; intelligence obtained from organisations of current or former co-professionals of the person concerned; or data and intelligence obtained from other sources to be designated by ministerial regulation. 	<p>Section 7(1), of the <i>Bpr</i></p>	<p>http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=2&artikel=7&z=2016-04-01&g=2016-04-01</p>
<p>If the data or intelligence obtained in accordance with Section 7(1) of the <i>Bpr</i> give DNB grounds to perform further investigations, DNB may make enquiries with or obtain data from persons or institutions not referred to in that subsection. In that case, DNB will inform the person concerned in advance, and in writing, of:</p> <ol style="list-style-type: none"> the grounds for making further investigations; the persons or institutions that will be approached for further data or intelligence; and the nature of the further data or intelligence. 	<p>Section 7,(2) of the <i>Bpr</i></p>	<p>http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=2&artikel=7&z=2016-04-01&g=2016-04-01</p>

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<p>The propriety of a person as meant in Section 5 is not deemed to be beyond doubt if the person:</p> <ol style="list-style-type: none"> has been convicted in a final judgement of a criminal offence as mentioned in point 1 of Annex A, the final conviction dating back less than eight years; has been convicted of a criminal offence as mentioned in point 1 of Annex A, the conviction being open to appeal or, if final, dating back eight years or longer; has been convicted of an offence against Section 69 of the General State Taxes Act (Algemene wet inzake de rijksbelastingen) or Section 65 of the Collection of State Taxes Act 1990 (Invorderingswet 1990), the sentence being imprisonment or a fine; or has been fined a negligence penalty in excess of EUR 62,500 for an offence referred to in point 5 of Annex A, the said negligence penalty having become final or having been upheld by at least the court of first instance. 	Section 8 of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=2&artikel=8&z=2016-04-01&g=2016-04-01
<p>In establishing propriety as referred to in Section 5 above, DNB considers:</p> <ol style="list-style-type: none"> the interrelationship between the action or actions underlying an antecedent and the other circumstances of the case; the interests which the Act seeks to protect; and the other interests of the institution and of the person in question. 	Section 9 of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=2&artikel=9&z=2016-04-01&g=2016-04-01
Fitness of policymakers	Section 3:100(1)(b) of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:100&z=2016-09-03&g=2016-09-03
Applicant's financial soundness	Section 3:100(1)(c) of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:100&z=2016-09-03&g=2016-09-03
Prudential rules	Section 3:100(1)(d) of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:100&z=2016-09-03&g=2016-09-03
Anti-Money Laundering and Anti-Terrorist Financing Act (<i>Wet ter voorkoming van witwassen en financieren van terrorisme – Wwft</i>)	Section 3:100(1)(e) of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:100&z=2016-09-03&g=2016-09-03
Section 3:95(1), opening words and under c, does not apply to acts regarding which a DNO was issued pursuant to Section 3:95(1), opening words and under a, or Section 3:96(1).	Section 3:98(1) of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:98&z=2016-09-03&g=2016-09-03
Furthermore, Section 3:95(1), opening words and under c, does not apply to acts regarding which a DNO is not required pursuant to Section 3:96(1), opening words and under a or b.	Section 3:98(2) of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:98&z=2016-09-03&g=2016-09-03
Section 3:95(1), opening words and under c, does not apply if pursuant to Section 5:32d(2) a DNO was issued for a qualifying holding in a market operator which also operates a multilateral trading facility.	Section 3:98(3) of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:98&z=2016-09-03&g=2016-09-03

Requirements	Legal basis	Link to section of the law
Sections 3:95 and 3:103 do not apply to qualifying holdings held by investment firms or banks as a result of providing investment services, if the ensuing voting rights are not exercised or used otherwise to exercise control over the issuing institution and if the qualifying holding concerned is transferred within a year of acquisition.	Section 3:108 of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:108&z=2016-09-03&g=2016-09-03
Provision of inaccurate information by the applicant	3:100(1)(f) of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.11&paragraaf=3.3.11.1&artikel=3:100&z=2016-09-03&g=2016-09-03