

Relevant sections of the law for the application for a declaration of no-objection under Section 3:96 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 3:96 of the Wft.

DeNederlandscheBank

EUROSYSTEEM

Declaration of No-Objection	Legal basis	Link to section of the law
<p>No bank having its registered office in the Netherlands may, unless it has obtained a DNO from De Nederlandsche Bank (DNB):</p> <ol style="list-style-type: none"> acquire or increase a qualifying holding in a bank, investment firm or insurance company having its registered office in a state that is not a Member State or in a financial enterprise which has not been issued a certificate of supervised status as referred to in Section 3:110 of the Wft if the balance sheet total of said bank, investment firm or insurance company at the time of acquiring or increasing the holding exceeds 1% of the consolidated balance sheet total of the bank referred to in the opening words; acquire or increase a qualifying holding in an enterprise not being a bank, investment firm, financial institution or insurance company having its registered office in the Netherlands, another Member State or a state that is not a Member State if the amount paid for this acquisition or increase, including the amounts paid for any earlier acquisition or increase of a holding in this enterprise exceeds 1% of the consolidated actual own funds of the bank referred to in the opening words; take over all or a major part of the assets and liabilities of another enterprise or institution, directly or indirectly, if the total amount of the assets or the liabilities to be taken over exceeds 1% of the consolidated balance sheet total of the bank referred to in the opening words; merge with another enterprise or institution if the balance sheet total of the enterprise or institution involved in the merger exceeds 1% of the consolidated balance sheet total of the bank referred to in the opening words; carry out a financial or corporate reorganisation; allow a managing partner to join the bank. 	<p>Section 3:96(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=3:96&z=2016-09-03&g=2016-09-03</p>
<p>DNB issues a DNO for an act referred to in Section 3:96(1) unless one or more exclusion grounds set out in Section 3:101(a) to (c) apply (discussed in greater detail below).</p>	<p>Section 3:101, 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=3:101&z=2016-09-03&g=2016-09-03</p>
Requirements	Legal basis	Link to section of the law
<p>Solvency requirements</p>	<p>Section 3:101(a) 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=3:101&z=2016-09-03&g=2016-09-03</p>

Requirements	Legal basis	Link to section of the law
All banks having their registered office in the Netherlands are sufficiently solvent.	Section 3:57(1) of the <i>Wft</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020368&titeldeel=3&hoofdstuk=3.3&afdeling=3.3.6&paragraaf=3.3.6.1&artikel=3:57&z=2016-09-03&g=2016-09-03
A bank is sufficiently solvent within the meaning of Section 3:57(1) and Section 3:58(1) of the <i>Wft</i> if its actual own funds meet the applicable capital requirements of Part 3 of the Capital Requirements Regulation (CRR).	Section 59(2) of the Decree on Prudential Rules for Financial Undertakings (<i>Besluit prudentiële regels Wft – Bpr</i>)	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=10&paragraaf=10.1&artikel=59&z=2016-04-01&g=2016-04-01
With prejudice to Section 59(1) to (4), the amount of the regulatory capital referred to in Section 59(1), (3) and (4) and of the own funds referred to in Section 59(2) must be at least equal to the minimum amount of own funds specified in Section 48 and the minimum capital requirement specified in Section 49, 49a or 49b, respectively.	Section 59(5) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=10&paragraaf=10.1&artikel=59&z=2016-04-01&g=2016-04-01
For the application of Section 59(1): 1. an institution's Common Equity Tier 1 capital as referred to in Article 50 of the CRR is fully recognised in the calculation of its regulatory capital; 2. an institution's Additional Tier 1 capital as referred to in Article 61 of the CRR is recognised in the calculation of its regulatory capital only up to one third of its Common Equity Tier 1 capital; 3. an institution's Tier 2 capital as referred to in Article 71 of the CRR is recognised in the calculation of its regulatory capital only up to one third of its Tier 1 capital; and 4. an institution may substitute its Tier 2 capital with Additional Tier 1 capital, provided that the provisions of subsections 2° and 3° are met.	Section 59(6) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=10&paragraaf=10.1&artikel=59&z=2016-04-01&g=2016-04-01
On a regular basis, at least once every three years, DNB assesses whether a bank within the meaning of the CRR that uses internal models to calculate its capital requirements in accordance with Part Three of the CRR meets the requirements set out in that Part. In its assessment, DNB specifically takes account of changes to the bank's operations and the application of internal models to new financial products and services.	Section 69(1) of the <i>Bpr</i> Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CRR)	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=10&paragraaf=10.2&artikel=69&z=2016-04-01&g=2016-04-01 http://eur-lex.europa.eu/legal-content/NL/TXT/?qid=1477304040200&uri=CELEX:02013R0575-20150118
If the assessment referred to in Section 69(1) of the <i>Bpr</i> reveals major risk mitigation shortcomings in an institution's internal model, DNB takes measures to remedy these shortcomings or other appropriate measures. In this context, DNB is authorised in any case to impose a higher multiplication factor as referred to in Article 366 of the CRR or to order the bank to have a higher amount of regulatory capital than is required pursuant to Section 3:57 of the <i>Wft</i> .	Section 69(1) of the <i>Bpr</i> Section 366 , of the CRR	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=10&paragraaf=10.2&artikel=69&z=2016-04-01&g=2016-04-01 http://eur-lex.europa.eu/legal-content/NL/TXT/?qid=1477304040200&uri=CELEX:02013R0575-20150118
If it is evident from a bank's frequent overshootings as referred to in Article 366 of the CRR that its internal market risk model as referred to in Article 455 of the CRR is not or is no longer sufficiently accurate, DNB withdraws the bank's authorisation to use the model in question or imposes measures to ensure that the bank promptly improves the model.	Section 69(3) of the <i>Bpr</i> Section 366 and 455 of the CRR	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=10&paragraaf=10.2&artikel=69&z=2016-04-01&g=2016-04-01 http://eur-lex.europa.eu/legal-content/NL/TXT/?qid=1477304040200&uri=CELEX:02013R0575-20150118

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If a bank no longer meets the requirements for the use of a specific internal model, DNB will give the bank the opportunity to demonstrate that its failure to meet the requirements is of minor importance or to draw up a plan based on which it will again meet the requirements in the reasonably foreseeable future. At its own discretion, DNB may demand that the bank improve the plan or set an alternative deadline for the bank's implementation of the plan.	Section 69(4) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=10&paragraaf=10.2&artikel=69&z=2016-04-01&g=2016-04-01
If DNB is of the opinion that a bank is unable to implement the plan referred to in Section 69(4) of the <i>Bpr</i> and has not demonstrated that its failure to meet the requirements is of minor importance, it will withdraw the bank's authorisation to use the internal model in question or limit the authorisation to the components in respect of which the bank meets the requirements or can meet the requirements in the reasonably foreseeable future.	Section 69(5) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=10&paragraaf=10.2&artikel=69&z=2016-04-01&g=2016-04-01
Sound and prudent business operations	Section 3:101(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=3:101&z=2016-09-03&g=2016-09-03
The institution must systematically analyse the integrity risks of its activities.	Section 10(1) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=3&artikel=10&z=2016-04-01&g=2016-04-01
The institution must ensure that the policy is translated into adequate procedures and measures.	Section 10(2) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=3&artikel=10&z=2016-04-01&g=2016-04-01
The institution must inform all relevant business units of said policy, procedures and measures.	Section 10(3) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=3&artikel=10&z=2016-04-01&g=2016-04-01
The institution is responsible for implementing and systematically testing the policy, procedures and measures.	Section 10(4) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=3&artikel=10&z=2016-04-01&g=2016-04-01
The institution must provide for independent supervision of the implementation of the policy, procedures and measures to safeguard ethical business operations and must have procedures in place to ensure that identified shortcomings or deficiencies are reported to the officers entrusted with that duty (independent compliance function).	Section 10(5) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=3&artikel=10&z=2016-04-01&g=2016-04-01
The institution must have procedures in place to ensure that identified shortcomings or deficiencies relating to ethical business operations are appropriately remedied under the supervision of the independent compliance function.	Section 10(6) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=3&artikel=10&z=2016-04-01&g=2016-04-01
The institution must have procedures and measures in place to prevent conflicts between its own interests or those of its customers and the private interests of: <ul style="list-style-type: none"> a. persons responsible for determining the financial institution's policy; b. group directors; c. members of the body responsible for supervising the institution's general course of business, or d. other staff members or individuals who permanently work for it at its request. 	Section 11(1) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=3&artikel=11&z=2016-04-01&g=2016-04-01
The institution must have procedures and measures in place for handling and recording incidents.	Section 12(1) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=3&artikel=12&z=2016-04-01&g=2016-04-01

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The institution must make a substantiated assessment of the propriety of any individual it intends to appoint to an integrity-sensitive position.	Section 13(1) of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=3&artikel=13&z=2016-04-01&g=2016-04-01
Undesirable development of the financial sector	Section 3:101(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=3:101&z=2016-09-03&g=2016-09-03
A corporation's liquid assets as referred to in Section 3:96(3) of the <i>Wft</i> are defined solely as: <ul style="list-style-type: none"> a. coins and banknotes on its premises; b. balances payable on demand; c. short-term receivables other than balances payable on demand; and d. assets other than short-term receivables that can be converted – in the very near future and without substantial losses – into coins, banknotes or balances payable on demand. 	Section 139 of the <i>Bpr</i>	http://wetten.overheid.nl/jci1.3:c:BWBR0020420&hoofdstuk=15&artikel=139&z=2016-04-01&g=2016-04-01
Section 3:96(1) of the <i>Wft</i> does not apply to qualifying holdings in corporations whose assets at the time of the acquisition of the qualifying holding by the bank consist of over 90% liquid assets. An order in council specifies which assets may be regarded as liquid assets.	Section 3:96(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=3:96&z=2016-09-03&g=2016-09-03
A qualifying holding as referred to in Section 3:96(1)(a) and (b) does not include the voting rights attached to shares that a bank may exercise by virtue of an obtained pledge on the shares or the voting rights to shares that custodians of shares cannot exercise at their own discretion.	Section 3:96(5) 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=3:96&z=2016-09-03&g=2016-09-03
Provisions specifically applicable to holdings outside the financial sector	Section 3:96(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=3:96&z=2016-09-03&g=2016-09-03
1. A qualifying holding, the amount of which exceeds 15 % of the eligible capital of the institution, in an undertaking which is not one of the following shall be subject to the provisions laid down in paragraph 3: <ul style="list-style-type: none"> a. a financial sector entity; b. an undertaking, that is not a financial sector entity, carrying on activities which the competent authority considers to be any of the following: <ul style="list-style-type: none"> i. a direct extension of banking; ii. ancillary to banking; iii. leasing, factoring, the management of unit trusts, the management of data processing services or any other similar activity. 	Section 89(1) of the CRR	http://eur-lex.europa.eu/legal-content/NL/TXT/?qid=1477304040200&uri=CELEX:02013R0575-20150118
2. The total amount of the qualifying holdings of an institution in undertakings other than those referred to in points (a) and (b) of paragraph 1 that exceeds 60 % of its eligible capital shall be subject to the provisions laid down in paragraph 3.	Section 89(2) of the CRR	http://eur-lex.europa.eu/legal-content/NL/TXT/?qid=1477304040200&uri=CELEX:02013R0575-20150118

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<p>3. Competent authorities shall apply the requirements laid down in point (a) or (b) to qualifying holdings of institutions referred to in paragraphs 1 and 2:</p> <p>a. for the purpose of calculating the capital requirement in accordance with Part Three, institutions shall apply a risk weight of 1250 % to the greater of the following:</p> <p>i. the amount of qualifying holdings referred to in paragraph 1 in excess of 15 % of eligible capital;</p> <p>ii. the total amount of qualifying holdings referred to in paragraph 2 that exceed 60 % of the eligible capital of the institution;</p> <p>b. the competent authorities shall prohibit institutions from having qualifying holdings referred to in paragraphs 1 and 2 the amount of which exceeds the percentages of eligible capital laid down in those paragraphs.</p> <p>Competent authorities shall publish their choice of (a) or (b).</p>	<p>Section 89(3) of the CRR</p>	<p>http://eur-lex.europa.eu/legal-content/NL/TXT/?qid=1477304040200&uri=CELEX:02013R0575-20150118</p>
<p>4. For the purposes of point (b) of paragraph 1, EBA shall issue guidelines specifying the following concepts:</p> <p>a. activities that are a direct extension of banking;</p> <p>b. activities ancillary to banking;</p> <p>c. similar activities.</p> <p>Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.</p>	<p>Section 89(4) of the CRR</p>	<p>http://eur-lex.europa.eu/legal-content/NL/TXT/?qid=1477304040200&uri=CELEX:02013R0575-20150118</p>
<p>1. Shares of undertakings not referred to in points (a) and (b) of Article 89(1) shall not be included in calculating the eligible capital limits specified in that Article where any of the following conditions is met:</p> <p>a. those shares are held temporarily during a financial assistance operation as referred to in Article 79;</p> <p>b. the holding of those shares is an underwriting position held for five working days or fewer;</p> <p>c. those shares are held in the own name of the institution and on behalf of others.</p>	<p>Section 91 of the CRR</p>	<p>http://eur-lex.europa.eu/legal-content/NL/TXT/?qid=1477304040200&uri=CELEX:02013R0575-20150118</p>
<p>2. Shares which are not financial fixed assets as referred to in Article 35(2) of Directive 86/635/EEC shall not be included in the calculation specified in Article 89.</p>		