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**Sent by email (to <[confidential]>)**

The Hague, 14 August 2024

Your reference : 74225/ABE/SCL/2779-5971-3289/1  
Our reference : ACM/UIT/622168  
Subject : Informal guidance regarding collaboration on ESG data

Dear [confidential],

On behalf of the Dutch Banking Association (NVB), you have asked the Netherlands Authority for Consumers and Markets (ACM) to carry out an informal assessment of a collaborative initiative. The NVB works together with several Dutch banks<sup>1</sup> with regard to data in the environmental, social, and governance domains (ESG<sup>2</sup> data). This is in part as a result of the Corporate Sustainability Reporting Directive (CSRD).<sup>3</sup> The CSRD is a directive that stipulates that from 2024, more and more businesses are required to report on their impact on environmental, social and governance aspects. The collaboration entails the creation of a digital platform for banks (also referred to as 'the data scheme'). Banks can find the following on this platform: how statutory ESG requirements can be interpreted, what calculation methods and data points can be used, and what data sources are suitable for this. At the moment, the collaboration is a pilot. This pilot consists of working out 53 quantitative ESG criteria for the transport, agricultural, and real estate sectors (the Initiative). The NVB is supported in this context by [confidential].

You have indicated that the Initiative is allowed under the competition rules. On behalf of the NVB, you have asked ACM whether it can follow that conclusion.<sup>4</sup> ACM has informally assessed the Initiative in accordance with its Policy Rule regarding ACM's oversight over sustainability agreements (the Policy Rule).<sup>5</sup> On that basis ACM agrees with you that, at the moment, the Initiative does not pose any risk to competition.

In the below sections, ACM will first provide a summary of the Initiative, after which ACM will explain its informal assessment of the Initiative.

<sup>1</sup> The following banks participate in the Initiative: ABN AMRO Bank N.V., ING Bank N.V., Coöperatieve Rabo bank U.A., De Volksbank N.V., Triodos Bank N.V., Nationale-Nederlanden Bank N.V., Nederlandse Waterschapsbank N.V. and BNG Bank N.V.

<sup>2</sup> ESG stands for environment (E), social (S), and governance (G).

<sup>3</sup> [Directive \(EU\) 2022/2464](#) of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, OJ L 322, 16.12.2022, p. 15–80.

<sup>4</sup> The NVB's self-assessment with reference ACM/IN/861869.

<sup>5</sup> ACM, 4 October 2023, [Policy Rule regarding ACM's oversight over sustainability agreements](#).

## The Initiative: the ESG data scheme

### *Obligation to report about sustainability*

More and more rules are introduced that oblige businesses to report about non-financial matters, such as sustainability. For example, the reporting obligations that apply (or will apply) to banks under the CSRD. In that context, they need to collect ESG data. For example on the volume of emissions of greenhouse gases, the extent to which renewable energy sources are used, the impact of business activities on biodiversity or water pollution. But also information about risks such as corruption and bribery. Not just with regard to the bank itself, but also with regard to suppliers, buyers, and/or clients. Exactly what data needs to be collected by banks depends on the criteria on which they need to report. Those criteria are laid down in the European Sustainability Reporting Standards (ESRS). By using ESG criteria, the businesses policies in this area become more measurable and comparable.

### *Need for unequivocal interpretation of ESG criteria*

According to the NVB, banks currently experience several challenges, including an unequivocal interpretation of ESG criteria (also called 'ESG data points') from the ESRS. For example, it is not always clear what the scope of a criterion is. For example, when reporting on distance traveled, should commuting distance also be included? And should the outcome be expressed in euros or kilotons CO<sub>2</sub>? Also, it is not always clear what calculation methods and data sources can be used to work out a criterion.<sup>6</sup>

At the moment, each bank tries to 'reinvent the wheel' itself. This carries the risk that the sector is not making sufficient progress with its sustainability ambitions. This has consequences for the management of the climate risks. Reports of the banks become incomparable due to different interpretations. In addition, there is a risk that bank customers will be swamped with requests for ESG data on the basis of different interpretations from each of the banks, according to the NVB.<sup>7</sup>

The Dutch Authority for the Financial Markets (AFM) confirms that there is room for interpretation of some of the ESG criteria. Sector-specific standards are expected to be introduced at the European level in the future, which will provide further explanations about the ESG criteria, and the way that they can be interpreted in particular by financial institutions. Such standards however do not yet exist, and will not be introduced in the near future either.<sup>8</sup>

### *Explanation of the ESG criteria in the data scheme*

In the first phase of the Initiative, 53 of the 343 quantitative ESG criteria are worked out in the data scheme.<sup>9</sup> In the data scheme, it is explained what the scope of a criterion is, what calculation methods can be used, and from what sources that data can be extracted.

In some cases, the answer follows directly from the law. In such situations, the interpretation that the law offers is included in the data scheme. In other situations, the explanation follows existing, objective standards. For example Net-Zero Data Public Utility, Energy Efficient Mortgages, Banking for Impact and Partnership for Biodiversity Accounting Financials. In addition, other objective sources are also used, such as Kringloopwijzer for the agricultural sector.<sup>10</sup>

For each interpretation the data scheme mentions the (external) source on which the interpretation is based. According to the NVB, for the interpretation of some criteria there are multiple reliable sources available, which sometimes offer different explanations. For example, different calculation methods may exist. If such is the case, all possibilities are mentioned in the data scheme. It is up to each bank individually to decide on the method to be used. It is possible that a certain method is more preferable (on the basis of objective sources). If so, that is also indicated in the data scheme. The data scheme is a 'living' framework.

<sup>6</sup> Minutes of discussion with reference ACM/UIT/621807, p. 3. Minutes of discussion with reference ACM/UIT/621506, p. 2.

<sup>7</sup> Self-assessment of the NVB with reference ACM/IN/861869, p. 4.

<sup>8</sup> Minutes of discussion with reference ACM/UIT/621506, p. 2.

<sup>9</sup> Self-assessment of the NVB with reference ACM/IN/861869, p. 13.

<sup>10</sup> Self-assessment of the NVB with reference ACM/IN/861869, p. 5-7.

It is adjusted every time there are new insights, calculation methods, or sources to work out a criterion. In that way, the data scheme is based on the latest knowledge and insights, according to the NVB.<sup>11</sup>

### ACM's informal assessment: no risk of restriction of competition

The Initiative entails a collaboration between Dutch banks, and therefore constitutes an agreement between competitors. As such, the cartel prohibition applies. The Initiative has a potential cross-border effect.<sup>12</sup> That is why the European competition rules apply to the Initiative, too.<sup>13</sup>

ACM has assessed whether the Initiative is a sustainability agreement<sup>14</sup>, and whether there is a risk of an appreciable restriction of competition.

#### *Sustainability agreement*

ACM agrees with the NVB that the Initiative is a sustainability agreement. The Initiative enhances the comparability of sustainability performances in the reports of banks. That allows others, for example investors, to take into account to a greater extent those sustainability performances in their decision-making. Therefore, the Initiative can contribute in a positive manner to the objectives of the CSRD and to sustainability in general.<sup>15</sup>

#### *Possible risks to competition*

In its own assessment, the NVB comes to the conclusion that the Initiative does not appreciably restrict competition. On the basis of the information submitted by the NVB, ACM follows that conclusion. In that context, ACM finds the following circumstances to be of importance, which are applicable at the time of this assessment:

- (i) The Initiative is open to (direct) competitors. Every Dutch bank<sup>16</sup> can participate. The only condition for participating in the pilot is that the bank pays a financial fee (and possibly a contribution in the form of employees getting the time to work on the Initiative). In that way, the conditions for participation are objective, transparent, and non-discriminatory. According to the NVB, the financial fee is not a barrier for other banks to participate.<sup>17</sup>
- (ii) Participation in the Initiative is on a voluntary basis. The ESG data scheme is a tool for banks when making their own sustainability reports. Banks are not required to use the data scheme. They are allowed to deviate from the interpretations suggested by the data scheme.
- (iii) There is no exchange of competition-sensitive information. The information that banks share is about the interpretation of the ESG criteria, calculation methods, or data sources. Each bank determines for itself in what way the ESG criteria are worked out in its own sustainability reporting. There is no exchange of customer information. In addition, customer data (or any other possibly competition-sensitive information) is not jointly requested or processed either.
- (iv) The Initiative does not seem to have any other negative effects on competition between banks, such as on price, quality, choice, or innovation. With regard to innovation, the Initiative could potentially have a negative effect if, for example, the banks would agree on a subjective interpretation of the ESG criteria. Banks could then possibly come across as more sustainable in the reports than they would have on the basis of objective criteria. As a result, banks would have fewer incentives to commit themselves to sustainability. When asked by ACM, the NVB assured

<sup>11</sup> Minutes of discussion with reference ACM/UIT/621807, p. 4.

<sup>12</sup> Minutes of discussion with reference ACM/UIT/621807, p. 6.

<sup>13</sup> Article 101 of the Treaty on the Functioning of the European Union.

<sup>14</sup> Policy Rule, recital 14.

<sup>15</sup> AFM follows this line of reasoning. Minutes of discussion with reference ACM/UIT/621506, p. 2-3.

<sup>16</sup> In the future, international banks or other businesses (in the financial sector) possibly may also be able to participate, but this is not the case for the pilot phase of the Initiative.

<sup>17</sup> Self-assessment of the NVB with reference ACM/IN/861869, p. 8. NVB's answers to ACM's questions with reference ACM/IN/879314.

ACM that this is not the case. For example, objective sources are used for the interpretation included in the data scheme. In addition, each bank individually decides about what criteria they will or will not report on the basis of the considerations of that bank. This also applies to what interpretation it will use. The Initiative is moreover limited to quantitative criteria: no collaboration takes place on the qualitative ESG criteria. Moreover, each bank will mention what interpretation and methodology is used. As a result, there is transparency regarding the basis that a bank uses for its ESG data. In that way, third parties, for example regulators, are able to see how interpretations have come about.

## Conclusion

On the basis of the information submitted to it by the NVB, ACM comes to the conclusion that it is plausible that, at the moment, the Initiative does not carry a risk of an appreciable restriction of competition. That is why ACM will not conduct a (further) investigation into the Initiative. ACM points out that this is an informal assessment. ACM assumes that the information submitted by the NVB is correct, and did not conduct an investigation of its own.

ACM may decide to investigate the Initiative in greater detail at some point in the future, for example, if ACM receives a complaint about the Initiative. After such an investigation, ACM may come to the conclusion that the Initiative is, in fact, at odds with the competition rules. In that case, ACM will not impose a fine if the NVB did inform ACM in good faith, and if the NVB cooperates with the subsequent adjustment process to bring the Initiative in line with said rules.

Your sincerely,

The Netherlands Authority for Consumers and Markets,  
on its behalf,

drs. D.I. Bos  
Director Competition Department