NEWSFLASH
CRDVI Implementation

A concise overview of the Dutch implementation proposal

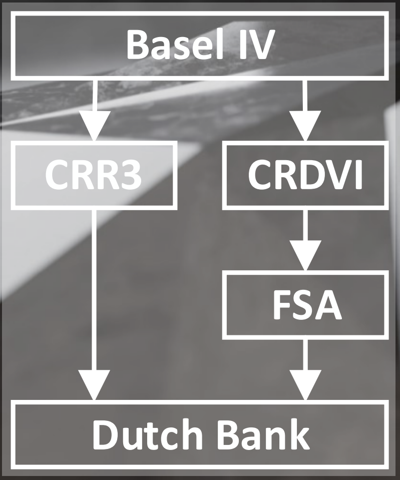
RegCounsel Financial Services

Background

On 30 April 2025, the Dutch Ministry of Finance launched a public consultation to seek views on a proposed Dutch Capital Requirements Implementation Act 2026 (*Implementatiewet kapitaalvereisten 2026,* "**DCRIA**"). The DCRIA is set to implement the sixth Capital Requirements Directive ("**CRDVI**") into Dutch law. The DCRIA is one of the key elements of the European implementation of Basel IV (in addition to the third Capital Requirements Regulation ("**CRR3**") that was published in the Official Journal on 31 May 2024). Together, the CRR3 and CRDVI seek to complete the banking regulatory reform agenda initiated after the Great Financial Crisis of 2008-2009. In this Newsflash, we cover the main aspects of the DCRIA, specifically focussing on the Dutch legislature's treatment of the Member State options.

What is Basel IV?

Basel IV (also referred to as Basel 3.5 or Basel III-finalization) is the latest update to the standards developed by the Basel Committee on Banking Supervision (BCBS), aimed at strengthening the resilience and comparability of banks' capital requirements. Building on Basel III, it introduces more risk-sensitive approaches, tighter capital floors, and revised calculations for credit, market, and operational risks. The first part of Basel IV was implemented in the EU by means of CRR/CRDV in 2019.



Third-Country Branches

CRDVI contains a fundamentally reworked third-country branch ("**TCB**") regime, replacing the pre-existing (only slightly harmonised) national authorisation regimes for TCBs. In the Netherlands, this regime is currently included in art. 2:20 and 2:21 of the Dutch Financial Supervision Act (*Wet op het financieel Toezicht,* "**FSA**"). Apart from introducing a whole new set of enhanced prudential rules that TCBs must meet to be authorised in the Netherlands, the revised TCB-regime also strictly limits the activities of authorised TCBs to the Netherlands (see the proposed art. 2:21(4) FSA). Crucially for the market, the DCRIA indicates the intention of the Dutch legislature to not implement the Member State option of art. 48a(4) CRDVI to apply the full banking regime (i.e., CRR and CRDIV) to TCBs, instead applying the 'regular' revised TCB-regime.

Fit-and-proper requirements for key function holders

CRDVI expands the fit-and-proper requirements that already applied to executive and non-executive board members, to so-called key function holders (*sleutelfuncties*). Though it was already standing practice in the Netherlands to test so-called *second echelon* employees, the DCRIA widens this scope to all key function holders (not just those impacting the risk profile of the bank) through two new articles, art. 3:9b and 4:10a FSA. The details of the fit-and-proper assessment of these persons, as included in art. 91a(2) to (7) CRDVI, will be set out in secondary regulation. The (limited) Member State option of art. 91(1a) second sub-paragraph CRDVI to test certain persons *ex-post* (i.e., after entering into function) is proposed not to be implemented, as the Dutch legislature wishes to adhere to a strict *ex ante* approach.

Revised rules on supervisory approval for corporate actions

The DCRIA strengthens the Dutch Central Bank's *(De Nederlandsche Bank,* "**DNB**") supervisory authority over banks' significant prudential activities, such as major investments, asset/liability transactions, and (de)mergers. While a similar system already exists under art. 3:96 FSA, requiring a 'declaration of no objection' (*verklaring van geen bezwaar,* "**VVGB**") for actions exceeding 1% of a bank's own funds, the DCRIA raises this threshold to 15% and slightly expands the relevant instances requiring a VVGB, thereby reducing the number of required VVGB approvals. The changes will be reflected in newly proposed art. 3:96a to 3:96e FSA.

Enhanced inclusion of ESG risks

CRDVI aims to improve the understanding and management of Environmental, Social, and Governance ("**ESG**") risks by both banks and supervisors. Art. 87a CRDVI requires banks to:

1. Have strategies and procedures ensuring that the size, composition, and distribution of internal capital reflect both current and future risks, including ESG risks over the short, medium, and long term;
2. Implement effective procedures to identify, monitor, and manage ESG risks;
3. Develop concrete **prudential transition plans** to address financial risks arising from ESG issues in the short, medium, and long term that take into account EU climate regulation and international accords such as the *Paris Agreement*.

These requirements are, however, far from new for banks as they have been faced with increasing supervisory expectations from the European Central Bank and DNB for several years now. Nevertheless, including ESG risks in, for instance, art. 3:111a(2)(n) FSA, enhances the ability of the supervisor to impose measures to combat the prevalence of (unmitigated) ESG risk.

Strategy review periodicity

The Dutch legislature intends to apply the full measure of proportionality allotted in the Member State option in respect of risk strategy reviews, only requiring a review once every two (2) years for all banks.

Expected implementation timeline & next steps

The consultation of the DCRIA closes on **28 May 2025**, with CRDVI having to be implemented ultimately by **10 January 2026**. This puts a considerable time constraint on the implementation of the DCRIA, requiring it to pass into law <u>within eight (8) months</u> after the consultation's ending. Banks should assess whether the DCRIA contains any relevant changes compared, or in addition to CRDVI, paying specific attention to the exercise of the Member State options by the Dutch legislature.

Jan Jans | **Tel:** +31 6 83 50 49 27
Partner | **E-mail:** jan.jans@recofise.eu

Jan Jans is a Dutch qualified lawyer specialized in financial regulatory law. He has a strong focus on the regulatory framework covering investment firms, banks, insurance companies, payment service providers, crypto-asset service providers and investment funds. Prior to joining Regulatory Counsel | Financial Services as Partner in 2022, Jan worked as a financial regulatory lawyer at Linklaters and other (international) law firms in the Netherlands. He successfully defended his PhD thesis on the level playing field between banks and non-banks in the European market for electronic payments in 2023.

Jan-Jouke van der Meer | **Tel:** +31 6 13 50 73 91
Managing Associate | **E-mail:** janjouke.vandermeer@recofise.eu

Jan-Jouke van der Meer is a Dutch qualified lawyer specialized in financial regulatory law. He advises clients on the full range of Dutch and EU financial regulatory laws, licensing issues, corporate governance (including integrity and suitability assessments), compliance and integrity-related issues (including AML and sanctions) and dealing with financial regulators. Prior to joining Regulatory Counsel | Financial Services, Jan-Jouke worked as a financial regulatory lawyer at Linklaters.

Maarten Mol-Huging | **Tel:** +31 6 29 90 96 29
Junior Associate | **E-mail:** maarten.mol-huging@recofise.eu

Maarten Mol-Huging is a Dutch qualified lawyer specialized in financial regulatory law. He advises on financial regulatory issues with regards to banks, investment firms, insurers, payment service providers and FinTech (e.g., digital asset services providers), with a particular focus on prudential aspects. Maarten graduated with distinction from the prudential regulation-oriented EBI Master in Banking Regulation in 2024. Before, he graduated cum laude at the VU Amsterdam in International Business Law in 2022.