Fintech Outlook 2023

The Netherlands

1 Introduction of DORA signaling importance of (IT) governance

Regulators are expected to further center their focus on governance, procedures and control environments in their supervision of the financial sector. This is specifically relevant for the fintech space, as a response to (i) years of focus on growth; (ii) major governance failures in the sector in the past two years(e.g. the collapse of FTX and Wirecard); and (iii) the contemplated entry into force of the Digital Operational Resilience Act (**DORA**), which is expected to start applying in late 2024. Note that DORA will not only be relevant for fintech companies, but for the financial sector at large.

In the field of governance one of the key focus areas of Dutch regulators continues to be cyber security and sound IT governance. DORA aims to further enhance this by requiring fintechs and regulated players alike to start with their compliance assessment and implementation early on.

4 Further scrutiny in respect of Buy Now Pay Later solutions and potential for litigation

Buy-now-pay-later (**BNPL**) options are increasingly common in the payment system. A wide range of fintech companies offers BNPL options, enabling consumers to buy a product now and to delay payment in part or in full. BNPL links payment services to lending activities, which is increasingly scrutinized by Dutch legislators and regulators.

In November, the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*, the **AFM**) warned consumers for the risks of Buy Now, Pay Later (BNPL) products. In another publication, the Dutch Central Bank (**DNB**) warned that BNPL product can make budget management more difficult, increasing the chance that people will get into financial difficulties.

We expect BNPL products to see considerable pullback in 2023 and to become subject to further scrutiny by the AFM and DNB.

Moreover, we see potential for litigation against offerors of BNPL options. Some of the major players in the space have already been involved in disputes over issues involving consumer protections. Klarna has been hit with multiple class actions after plaintiffs claimed that it had deceived users about the true risks associated with the service. We expect an uptick in litigation or class action suits against BNPL offerors alleging that these offerors failed to appropriately or fully disclose to customers unfavorable loan terms, and the risk of incurring significant fees if customers fall behind on payments.

6 ESG in fintech

The growing trend of increased regulatory scrutiny on environmental and climate change, coupled with the increased demand for sustainable manufacturing methods, products and new business models, led to increased focus from the tech world on these ESG issues.We expect to see significant growth in Greentech and Cleantech, as well as ESG elements in the fintech space in 2023.

2 Turmoil in the crypto asset markets is leading to increased regulatory scrutiny

The European Markets in Crypto Assets Regulation (**MiCAR**) will provide for a comprehensive and far-reaching regulatory framework for crypto assets. MiCAR will regulate a broad range of digital assets and activities. It will introduce regimes for issuance, crypto asset services, market abuse and will complement and enhance the anti-money laundering framework.

MiCAR is expected to enter into force in 2023, after having been finalized last year. Stablecoins will be subject to MiCAR first, following a 12 month transition period. Other provisions will take full effect 18 months after MiCAR will have entered into force.

5 Increased risk-based supervision and enforcement of integrity and AML risks with Fintech

Compliance by fintech with ethical business operation generally, and AML requirements specifically continues to be a key point of attention of the Dutch regulators.

Against the background of Wirecard and FTX, DNB and the AFM may lose their patience with non-compliant fintechs. DNB has announced that it will launch an investigation into the ethical business operations by certain fintechs that have grown considerably in recent years. Moreover, DNB has shown to be focused on this topic in 2022 by issuing a new round of fines to Dutch broker De Giro and online Bunq Bank for alledgedly failing to meet AML requirements. These developments make sound governance structures and regulatory compliance an early necessity as well as a primary condition for long-term growth.

Simultaneously, technological and legal developments open up new (digital) methods of complying with AML regulations for fintechs. In revolutionary legal proceedings between Bunq Bank and DNB, the highest Dutch competent court ruled (among other things) that AML regulations may be complied with using innovative, digital, and risk-based methodologies. Closely before this ruling was issued, DNB published a report that it will take a more risk-based approach in its supervision of AML compliance.

7 Macro market headwinds impact the sector

Winners are starting to emerge from the series of fintech start-ups as these fintechs, and the broader markets reach maturity and mainstream adoption. The maturing market will likely attract additional financing to maturing start-ups, may spark the decline of those fintechs that are lagging, and further promote takeovers within and outside the industry.

The current trend of market consolidation among start-ups and existing players is likely to continue as well, in light of ever-increasing cost-cuts and the drive for profitability and macroeconomic headwinds.

In light of lower valuations and a challenging loan finance market, we may see more interest and activity in fintech by institutional investors and strategic acquirers.

3 Further tightening of the Dutch remuneration regulations clashing with a run for talent

The Financial Enterprises Further Remuneration Measures Act (*Wet nadere beloningsmaatregelen financiële ondernemingen*, the **Wnbf**) entered into force on 1 January 2023. The Wnbf will tighten the possibility to make use of the 'non-collective labour agreement exemption' from the Dutch 20% bonus cap, limiting the possibilities for Dutch fintechs to pay variable remuneration in excess of 20% of the fixed compensation to specific staff members.

Until 1 January 2023, the Dutch remuneration regulations provided for an exception to the Dutch 20% bonus cap. This exception was available for employees in the Netherlands when their remuneration is not exclusively based on a collective labour agreement (the **CLA exception**). Variable remuneration exceeding 20% of the fixed remuneration was allowed, provided that (i) the average variable pay awarded to all employees in the Netherlands was no more than 20%, and (ii) the bonus awarded to the individual employee is no more than 100% of their fixed remuneration.

While it was explained that this exemption was for exceptional cases only, various financial undertakings used this exemption to award higher bonuses. Upon a review of the Dutch remuneration regulations, the legislator concluded that the exception was applied too broadly and not as originally intended by the legislator.

The Wnbf codified that the CLA exception can only be used in exceptional cases, and may no longer be used for employees in internal control functions or employees directly involved in the provision of financial services to clients.

Tightening the CLA exception will make it more difficult for Dutch fintech to attract and retain talent, and existing employment agreements will need to be reviewed or even amended.

Under the Wnbf, financial undertakings must inform the competent regulator (DNB or the AFM) on their use of the CLA exception annually. Undertakings must motivate which exceptional circumstances justify the use of the exception, allowing DNB and the AFM to supervise the use of the CLA exception more effectively.

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