

Explanatory guide to DNB's policy statements

1. Supervisory regulation

A supervisory regulation, such as the DNB Regulation on Sound Remuneration Policies, for example, is a generally binding regulation. It is a legal instrument that is generally applicable and binding on all parties concerned, including DNB itself. We have the power (and an obligation) to impose and enforce the provisions of a supervisory regulation. Our power to draw up supervisory regulations is derived from an explicit legal basis. Supervisory regulations are published in the Government Gazette and on the Open Book on Supervision section of our website (Open Boek Toezicht – OBT).

Supervisory regulation	
Status	A generally binding regulation, which means it is binding on all parties concerned, both DNB and the supervised institutions.
Legal basis	Explicit legal basis.
Publication in the	Government Gazette and on OBT

2. Policy rule

The law often gives administrative authorities a degree of discretion. This may be policy discretion whereby an administrative authority itself can determine whether to use a certain power, but also discretion for the administrative authority when assessing facts and interpreting the relevant legislative framework with a view to the (potential) application of specific powers. In order to ensure that this discretion is used consistently, a policy rule can be drawn up setting out how DNB exercises this power. One such example is the Policy Rule on Fitness.

A policy rule does not require an explicit statutory basis in the relevant supervisory laws and regulations, but the law or regulation must allow DNB sufficient discretion to draw up a policy rule. Policy rules can only be binding on DNB and not on the supervised institutions. However, these institutions can interpret the way in which DNB further specifies and applies a certain power from the policy rule and take this into account. Unlike a supervisory regulation, a policy rule does not include binding supervisory standards for the further specification of 'higher' laws and regulations. DNB shall apply the policy rule that is relevant for the exercise of a certain power, unless an assessment of interests shows that application of the policy rule would be disproportionate in a specific case (Section 4:84 of the General Administrative Law Act (*Algemene wet bestuursrecht – Awb*)). Policy rules are published in the Government Gazette and on OBT.

Policy rule	
Status	Section 1(4) of the <i>Awb</i> . In principle binding on DNB, provided that we may deviate from a policy rule in special circumstances. A policy rule is not, as such, binding on supervised institutions, but they can derive from it how we set up our supervision in practice, specifying and applying specific powers.
Legal basis	Interpretation of the discretionary power left by the law to DNB, based on the generic power in Section 4:81 of the <i>Awb</i> .
Publication in the	Government Gazette and on OBT

According to Section 1:3(4) of the *Awb* a policy rule is a general rule adopted in a decision (of DNB) not being a generally binding regulation, concerning a) the assessment of interests, b) the determination of facts, or c) the explanation/interpretation of legal provisions, in the exercise of a power of an administrative authority (such as DNB). A policy rule concerning the assessment of interests assumes that it is a discretionary power. For example, it may concern the fulfilment of our policy on granting exemptions from licensing and other legal requirements.

A policy rule concerning the determination of facts can be considered as an instruction for the way in which facts must be established in the context of decision-making. An explanation of legal provisions refers to the interpretation of legal requirements.

3. Q&A (interpretation)

A Q&A provides insight into our supervisory practice, for example as a result of practical implementation in the application of existing legislation or regulations or if there is a need to provide clarity on our interpretation of an open standard. Like policy rules, Q&As do not include binding supervisory standards. Q&As are binding on DNB in the sense that an institution that acts in accordance with the Q&A can, in principle, rely on the fact that DNB considers this implementation of the relevant requirement appropriate. If institutions apply the relevant laws or regulations in line with a Q&A, DNB cannot deviate from it without good reason. An institution can therefore be assured that DNB will exercise its supervision in line with a Q&A. On the other hand, a Q&A is not binding on institutions. An institution might therefore comply with the relevant laws or regulations in a way other than described in the Q&A. When doing so, they must be able to demonstrate and substantiate to DNB that they comply with the legislation or regulations. Unlike in case of a policy rule, DNB cannot substantiate a decision by only referring to the Q&A. Q&As are published on OBT and possibly also in DNB newsletters.

Q&A	
Status	Q&As are our interpretation of regulatory requirements, and indicate how we look at the implementation and application of these requirements. Institutions can comply with laws and regulations by other means. If they do so, they must be able to demonstrate to DNB that they comply with the legislation or regulations and substantiate this.
Legal basis	Further interpretation of regulatory requirements on the basis of which we exercise our supervision.
Publication on the	OBT and possibly also in news releases.

4. Good practice

Good practices describe observed or expected examples that can support institutions in complying with applicable regulatory requirements (deriving from e.g. laws, general administrative orders, ministerial regulations, or DNB's supervisory regulations). It should be noted that they are not presented as best practices, since some supervised institutions – depending on their particular circumstances – may have to apply the supervisory rules and regulations differently, and possibly more strictly.

Such institutions bear their own responsibility in this regard. Unlike a policy rule and a Q&A, a good practice is not used as a basis for our supervisory practice, as it is only a suggestion or recommendation for institutions. We explicitly leave open the possibility to implement laws and regulations in a different way. Good practices are generally published on OBT and possibly also in DNB newsletters.

Good practice	
Status	Suggestions or recommendations for supervised institutions. Supervised institutions are free to choose a different approach.
Legal basis	Further interpretation of legal standards on the basis of which we exercise our supervision.
Publication on the	OBT and possibly also in news releases.

5. European policy statements

Many policies are drawn up at European (EU) level, for example by the European supervisory authorities (ESAs) such as the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). The authority who is the 'owner' of the policy statements publishes them on its own website. Together with the other European authorities represented in the ESA's technical and decision-making bodies, DNB is involved in the development of these policy statements and will take them into account in its supervision where relevant. The most common ESA policy statements are guidelines and Q&A's. We will explain them below.

Guidelines

European supervisory authorities have the power to adopt guidelines to further supplement the provisions of European legislation. The purpose of these guidelines is to ensure consistent and uniform application of standards in European legislation in all EU member states. The guidelines are addressed to supervisors and, in some cases, also directly to institutions, but do not have the same status as binding European regulations. Guidelines provide guidance on the implementation and application of European regulations. Competent authorities and supervised institutions should make every effort to comply with these guidelines.

Guidelines are subject to a 'comply or explain' procedure, which means competent authorities such as DNB must indicate whether they comply with the guidelines in their supervision. On this [page](#) on OBT DNB specifies the guidelines DNB complies with.¹

European Q&As

In addition to guidelines, EBA, EIOPA and ESMA also publish Q&As, which contain interpretations of European laws and regulations. These Q&As are not legally

¹ In Dutch only: <https://wetten.overheid.nl/BWBR0033968/2014-01-16>

binding. EBA, EIOPA and ESMA all write on their website: "*The Q&As have no binding force in law*"². DNB supports the aim of the Q&As of the three ESAs, which is to create a level playing field in the European Union in the interpretation and application of European legislation and regulations. We therefore take these Q&As into account in our supervision, with their specific application in practice depending on all relevant facts and circumstances.

EBA Interactive Single Rulebook for banks

The EBA maintains an Interactive Single Rulebook on its website, which serves as a tool for searching European laws and regulations. The EBA website also contains Q&As setting out the EBA's interpretation of specific provisions.

² See for example: <https://eba.europa.eu/single-rule-book-qa>