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# The Legal 500 Country Comparative Guides

## The Netherlands

# FINTECH

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This country-specific Q&A provides an overview of fintech laws and regulations applicable in The Netherlands.

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# THE NETHERLANDS FINTECH



## 1. What are the sources of payments law in your jurisdiction?

Payments law in the Netherlands generally derives from EU regulations and directives:

- The Interchange Fee Regulation and the Single Euro Payments Area (SEPA) Regulation, which both have direct effect in the Netherlands.
- The second Payment Services Directive (**PSD2**), the second E-Money Directive (**EMD2**), and the Payment Accounts Directive (**PAD**), which are implemented in the Netherlands in (mainly):
  - the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) and delegated acts, which contain financial regulatory requirements for financial undertakings involved in the payment chain; and
  - the Dutch Civil Code (*Burgerlijk Wetboek*), which contains private law requirements for those involved in the payment chain, including consumer protection requirements.

Regulatory requirements for payment processing service providers (*Afwikkelondernemingen*; **PPSPs**) are not based on EU law. PPSPs typically contract with (regulated) payment service providers (**PSPs**) instead of consumers. Requirements for PPSPs are (partially) based on the 'Principles for financial market infrastructures' as published by the Bank for International Settlements (BIS).

Regulated undertakings in the payment chains, which are active in the Netherlands, further need to comply with:

- the fifth Anti-Money Laundering Directive (AMLD5) as implemented in the Dutch Act on the prevention of money laundering and financing of terrorism (*Wet ter voorkoming*

*van wittwassen en financieren van terrorisme*); and

- sanctions laws and regulations.

Dutch regulatory authorities typically follow all EBA guidance regarding EU payments law to avoid divergence in supervisory practices across EU member states.

The main regulator for parties involved in the payment chain is the Dutch Central Bank (*De Nederlandsche Bank*), which is responsible for issuing licences and ongoing (prudential) supervision of payment institutions and electronic money institutions.

## 2. Can payment services be provided by non-banks, and if so on what conditions?

In the Netherlands, payment services may be provided by:

- Credit institutions (banks)
- Payment institutions, including:
  - Payment service providers that are exempt from PSD2
  - Service providers that can rely on an exclusion from the scope of PSD2
- Electronic money institutions, including:
  - Issuers of electronic money that are exempt from EMD2
  - Service providers that can rely on an exclusion from the scope of EMD2 (and PSD2)

European banks, payment institutions and electronic money institutions licenced in a European member state, can provide their services in all EU member states based on the so-called EU passport regime. Non-EEA payment service providers will need to setup an EU office to obtain a licence to provide their services in the EU.

There is no such EU passporting regime for undertakings that rely on statutory exemptions or exclusions to the

licence requirement for payment service providers. Consequently, in case such undertakings wish to obtain market access in various EU member states, they will need to obtain the required authorisation with national competent authorities in each jurisdiction (insofar as no exemption or exclusion is available in these jurisdiction).

The Dutch Central Bank pursues a policy of active enforcement. Providing payment services without the required licence may lead to enforcement actions such as cease and desist orders and administrative fines. Furthermore, it also constitutes a criminal offence under the Economic Offences Act, which the Dutch Central Bank may report to the public prosecutor.

### 3. What are the most popular payment methods and payment instruments in your jurisdiction?

Payment behaviour in the Netherlands is changing rapidly. Existing trends have been reinforced by COVID-19 as shown by research conducted by, amongst others, the Dutch Central Bank.

In physical stores the use of cash is declining rapidly. In 2020 79% of transactions were electronic payments (2019: 67,5%) and 21% cash transactions (2019: 32,5%). The majority of electronic payments in stores are contactless. This makes the Netherlands a frontrunner in digital payments.

The use of mobile payments via wallet apps has increased from 116 million in 2019 to 516 million in 2020. Most of these apps are based on Mastercard and VISA payment schemes.

For online payments, iDEAL remains the most popular payment method (67% in 2020). iDEAL, a joint initiative of the largest Dutch banks, redirects payers to their online banking environment. Creditcard payments accounted for 9% of transactions, PayPal 4%, and 18% of transactions were based on other methods, including giftcards and AfterPay.

### 4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

PSD2 is a legal enabler of open banking in the EU, including the Netherlands. PSD2 includes access to

account (XS2A) provisions that facilitate the possibility for third party providers, including Account Information Service Providers (**AISPs**) and Payment Initiation Service Providers (**PISPs**), to get access to online available payment accounts administered by account servicing payment service providers, upon explicit consent by the account holder. This means that banks must provide dedicated interfaces (APIs) to fintechs.

In practice, the Netherlands has witnessed a relatively slow start of open banking following the introduction of PSD2. The most heard reasons include the late implementation of PSD2, privacy concerns, data security and the fact that the Netherlands was already leading in digital payment solutions.

More recently, open banking is picking up speed in the Netherlands and, while open banking evangelists initially focused on retail banking, we see Dutch market players expanding their efforts to include SME lending.

### 5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

The processing of data in itself is not regulated in the Netherlands. The processing of personal data in the Netherlands is regulated through the EU General Data Protection Regulation (**GDPR**) as applicable in all EU Member States. The Dutch GDPR Implementation Act (*Uitvoeringswet Algemene Verordening Gegevensbescherming*) contains, within the limits allowed by the GDPR, certain specific elements of the GDPR for the Netherlands. The Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) is the supervisory authority.

The GDPR applies both to companies that determine the purpose and the means of processing personal data (controllers), such as financial services providers, and to companies processing personal data on behalf of the controllers (processors), such as cloud service providers. Defining the appropriate roles and (joint) responsibilities under the GDPR for fintech businesses can be especially challenging but is important as it is directly linked to applicable obligations, enforcement risks, liability and litigation exposure.

The GDPR adopts a principle-based approach to personal data protection. The general principles that must always be observed require that companies:

1. Process personal data lawfully, fairly and in a transparent manner;

2. Process personal data only for specified, explicitly defined and legitimate purposes;
3. Collect only personal data which is adequate, relevant and limited to what is necessary for those purposes;
4. Keep personal data accurate and up-to-date;
5. Store personal data no longer than required for the purpose of the processing;
6. Ensure the security of personal data; and
7. Adopt and maintain appropriate measures to ensure and be able to demonstrate compliance with the GDPR.

The GDPR restricts transfers of personal data outside the EEA, which is only allowed if the recipient country is deemed by the EU Commission as having an adequate level of personal data protection or if appropriate protection measures are in place, such as standard contractual clauses.

In practice, we see fintechs struggling with GDPR compliance when they have not developed their products and services based on the principle of 'privacy by design'. Matters such as profiling and 'automated decision making' are complex and require a joint effort between legal and the business. The restrictions around international data transfers also pose practical challenges.

Along with the GDPR, PSD2 regulates the processing of personal data within the framework of payment services. PSD2 requires that banks grant third-party payment service providers access to information about users' payment accounts, which constitutes personal data. Under PSD2, payment service providers may only access, process and retain personal data necessary for the provision of their payment services with the explicit consent of the account holder. The European Data Protection Board has explained that this consent should be viewed as contractual consent of the account holder to the payment service provider.

The Dutch Central Bank and the Dutch Data Protection Authority maintain a cooperation protocol which sets out how they will jointly oversee the personal data protection obligations set out in PSD2 and the GDPR. Data breaches usually have to be reported to the Dutch Central Bank. Recently, the Dutch Data Protection Authority and the AFM published a statement indicating that they will work together more closely in order to strengthen oversight of digital and online activities, with a specific focus on digitalisation in the financial markets.

In addition to the GDPR, IT and cybersecurity requirements apply to fintechs. These follow from sectoral legislation (such as MiFID II, PSD2, etc.) and more specific legislation, such as the (Dutch

implementation of the) EU Cybersecurity Directive.

## 6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

The Dutch financial regulatory framework is rooted mostly in European legislation, making it similar to the frameworks of other EU member states. Supervision of the financial sector is carried out by the Dutch Central Bank and the Dutch Authority for the Financial Market (*Autoriteit Financiële Markten*, the **AFM**). The Dutch Central Bank focusses primarily on prudential supervision (ensuring the soundness of financial undertakings and the stability of the financial system) and the AFM on market conduct (promoting fair and transparent financial markets).

The Dutch supervisory authorities and policymakers have been receptive to new, innovative technologies and developments in the financial sector. Both the Dutch Central Bank and the AFM expect the financial sector to use new technologies and practices to best serve their customers and to ensure their financial soundness. The Netherlands is also one of the few EU member states that have both an innovation hub and a regulatory sandbox that can count on involvement from supervisory authorities from multiple sectors (financial, privacy, competition). The innovation hub provides support to fintechs with questions about the application of existing regulation to innovative financial products and services. The regulatory sandbox provides for alternative interpretations of open standards within the existing legal framework or formal dispensation from specific legal requirements for, inter alia, fintechs developing innovative products, services or business models.

The Dutch Central Bank also launched the iForum in 2019, which offers a platform for an ongoing dialogue between the Dutch Central Bank and market parties operating in the financial sector regarding the impact of technological innovation on the sector. Part of the iForum initiative is the iPanel in which market trends and developments in the area where technological invocation and supervision meet, are discussed. iPanel members are representatives of the Dutch Central Bank, the AFM, the Dutch Ministry of Finance and branches within the financial sector, such as banks, insurers and payment service providers. The iPanel provides strategic advice to the iForum.

The Dutch Central Bank is further taking on a leading role in the development of central bank digital

currencies in the EU, and the development of guidelines for the responsible use of artificial intelligence in the financial sector.

## 7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

The Netherlands has been recognised as a global frontrunner in fintech for years. It is host to Money20/20 Europe and ranked as the world's ninth most innovative country in Bloomberg's 2021 Innovation Index (up four places compared to 2020). This is the result of a combination of factors ranging from public policy, a strong financial sector, good education, central location and high-quality digital infrastructure. So far COVID-19 seems to have only accelerated fintech growth (as it has accelerated digital penetration). Although there are no imminent risks for the growth of the Dutch fintech market, labour shortages are increasingly becoming an issue in all sectors (like elsewhere in Europe). In addition, the very high level of digital services in some sectors (such as payments) may be an entrance barrier for foreign fintechs looking for expansion.

## 8. What tax incentives exist in your jurisdiction to encourage fintech investment?

From a tax perspective, the Netherlands is an attractive hub for investing in or expanding fintech businesses in Europe. The following tax incentives are available to fintech businesses.

### Innovation box

If certain conditions are met, the innovation box regime provides that profits derived from certain qualifying self-developed intangibles, such as software, are taxed at a reduced corporate income tax rate of 9% in 2021 (compared to the regular rate of 25% for profits exceeding EUR 245,000).

### R&D tax credit

This regime intends to provide businesses with an incentive to invest in research and development (R&D). If certain conditions are met, the R&D tax credit provides for a substantial reduction of the wage tax and national insurance contributions due in connection with R&D activities performed by employees. In case of a startup, the tax credit may amount to EUR 14.50 per R&D employee per qualifying R&D hour in 2021.

The following R&D activities generally qualify for the

R&D tax credit:

- The development of technologically new software (or parts thereof);
- Technical scientific research; and
- The development of technologically new physical products or physical production processes (or parts thereof).

In addition to the reduction of the wage tax and national insurance contributions, the R&D tax credit also constitutes an 'entrance ticket' to the 'Innovation Box' (see above).

### 30% ruling

Qualifying expats in the Netherlands are entitled to a substantial income tax exemption of up to 30% of their income from employment for a maximum period of five years, resulting in only the remaining 70% being subject to Dutch income taxes.

### Further reduced corporate income tax rate for small companies

As of 2022, the Dutch corporate income tax rate will be reduced to 15% for profits up to EUR 395,000 (2021: EUR 245,000) and 25,8% for profits in excess of EUR 395,000 (2021: EUR 245,000).

The Dutch tax regime has the following additional beneficial features:

- Dutch companies are fully exempt from corporate income tax on dividends from, and capital gains on, qualifying shareholdings in subsidiaries. The participation exemption is generally subject to the condition that the shareholding is at least 5% in the share capital of the subsidiary. There is no subject to tax requirement for subsidiaries with active operations.
- Capital contributions in Dutch companies can be made free of capital contribution tax or registration fees.
- The Netherlands has concluded tax treaties with more than 80 countries. These treaties are often more favorable than treaties between those countries and other jurisdictions.
- As the Netherlands is an EU Member State, companies based in the Netherlands can enjoy the benefits provided by EU law. For example, dividends, interest, and royalties from EU-based subsidiaries can, subject to limited conditions, be paid to a Dutch parent company free of withholding tax.



- The Netherlands has an extensive network of around 100 Bilateral Investment Treaties (“BITs”), including a large number of investor friendly BITs that offer direct access to international arbitration as opposed to being obliged to exhaust proceedings with a local court first. The Dutch BITs generally offer protection for indirect investments made by a Dutch (holding) company through local subsidiaries.

### 9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

In the first six months of 2021, global investments in fintechs amounted to USD 98 billion, which is a significant increase compared to the total USD 121 billion over 2020. Also in the Netherlands, Fintechs are getting traction in nearly all ‘corners’ of the financial sector at a fast rate. Investments range from (pre-)seed investments (Supafin), Series A (CarePay), Series B (Wonderflow) and Series C (Mollie, MessageBird) to IPOs (Adyen, CM.com). For starting fintechs, the Netherlands also has various start-up incubator and accelerator programmes, including Rockstart, Startupbootcamp and Antler Amsterdam.

### 10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

The Netherlands has a great investment and business climate for fintechs, mainly due to a combination of the following factors:

- The thriving fintech community throughout the Netherlands, with Amsterdam (financial sector), Rotterdam (international trade) and Delft and Eindhoven (technical universities) as main hubs. Each within a short driving distance from each other.
- A strong financial sector, that has gained importance and size since Brexit in combination with a mature fintech environment, that includes “traditional” fintech businesses (such as payments, asset management, credit provision), like Adyen, Mollie and Bunq and more specialised innovators developing blockchain applications (such as DeFi, NFT gaming, NFT ticketing), artificial intelligence solutions (such as risk modelling) and robotics.
- The current economic growth, which

contributes to a favourable investment climate and availability of capital from both national and international investors.

- A highly educated and skilled labour force (98% English fluency), strategic location and well-developed digital infrastructure and logistics (availability of high-speed internet, modern highways, harbours, and airports).
- Professional regulators, who welcome innovation in the financial sector and take a collaborative approach (see question 6).
- Attractive tax climate, which features several incentives to stimulate innovation and business activities (see question 8).

### 11. Access to talent is often cited as a key issue for fintechs - are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

Employees from EEA countries and Switzerland do not need a work or residence permit to work in the Netherlands. This increases the potential work force significantly.

As a general rule, a Dutch company must first recruit from within the EEA or Switzerland. A company should be able to prove that it cannot find any suitable employees within those countries before it can recruit from other countries. However, this requirement does not apply for hiring highly skilled migrants (and spouses), which would typically be the kind of employees working for fintechs. This would require a fintech to be recognised as a sponsor by the Immigration and Naturalization Service.

We refer to question 8 for the 30% income tax exemption for qualifying expats.

### 12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

In addition to the existing framework referred to in question 11, the Dutch Fintech Action Plan, which was presented by the Minister of Finance to the House of Representatives in 2020, explicitly recognised the

importance of access to talent for fintechs and mentioned enabling access to talent as one of the main objectives in support of the Dutch fintech sector.

The Fintech Action Plan aims to achieve that Dutch fintechs can attract and retain the right talent by:

- Developing a residence scheme for key personal of startups;
- Developing a branding strategy and information page focused on retaining and attracting international talent in salaried employment together with certain regions and national partners;
- Informing fintechs on the possibility to participate in MKB!dee, which subsidises investments from SMEs in the education and development of current and future employees; and
- Making it more attractive to grant stock option rights to employees as part of their salary.

### 13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

In terms of intellectual property rights, it is appropriate to distinguish between the technology exploited by a Fintech company (for instance code that is inherently part of the service it provides) and any other potential IP assets (such as its trade name, website, application and branding assets).

In terms of registered intellectual property rights, Dutch trademark law is likely to be relevant. Fintech companies may protect their trademark under a Benelux or European trademark. A trademark is a sign by which a company distinguishes its products or services from other products. A trademark is only protected if it has been filed as such. In general, this will concern a verbal or written form of a brand, for instance a word mark such as 'Legal500'. Also common is the registration of a figurative trademark: for example, the logo in the top left-hand corner of this website.

Only in exceptional situations will patent rights be relevant for a Fintech company. One of the conditions is that the invention has to be new and inventive. However, in addition, it must offer 'technical effect': a technical solution, for a technical problem. The latter criterion of 'technical effect' can be met if the software makes the computer itself work better. Examples are device drivers, audio/video playback solutions, and recording or communication software.

More commonly, the product and/or service provided by the Fintech will be protected under copyright law because the (source) code and the graphic interfaces of applications and websites are protected by copyright under the Dutch Copyright Act (*Auteurswet*). This protection arises by operation of law, and as such it does not require any registration. Copyright is an important aspect to keep in mind during development, and any Fintech company would do well to make adequate agreements with all parties involved so that it obtains/retains full control over the technology it develops.

Under the Dutch Act on the protection of trade secrets (*Wet bescherming bedrijfsgeheimen*), business information or knowledge can, under certain circumstances, enjoy protection as a 'business secret' under three conditions: (i) the information is secret in the sense that it is not generally known or easily accessible, (ii) the information has commercial value due to the fact that it is secret. (iii) reasonable measures have been taken to keep such information or knowledge confidential. If a Fintech wants to be able to invoke such protection in the future, it is important to have a good internal confidentiality policy and to actively conclude NDAs with involved parties.

### 14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

Regardless of its technical qualities as a cryptocurrency that is transferable via blockchain technology, specific rights and qualities can be attached to it. Such specific rights and qualities determine how a cryptocurrency is treated – regardless of whether a token is named a utility, security or payment token. This principle is no different from any other type of instrument, in any digital or paper form. For example, a token's qualities can be such that it qualifies as a participation right in a collective investment undertaking, which might trigger a license or registration requirement under the implementation of AIFMD for the issuer. Alternatively, a token could have certain profit and voting rights attached to it, making that it qualifies as a security. This could mean that a prospectus should be published for its issuance (unless a statutory exemption applies) and that services related such token may be regulated. However, as explicitly confirmed by the AFM, the majority of cryptocurrency issuances is not subject to its supervision. Most cryptocurrencies do not qualify as a financial instrument or otherwise regulated instrument.

As per May 2020, 'virtual currencies' did become partly regulated, through the implantation of the fifth EU AML

Directive into the Dutch Act on the prevention of money laundering and financing of terrorism. Virtual currencies are in brief defined as i) a digital representation of value, ii) accepted as a means of exchange, iii) not issued by a public authority and iv) which can be transferred, stored and traded electronically. This definition includes for examples Bitcoin, Ether, and certain platform specific tokens. Both the exchange of virtual currencies against fiat currencies (government of central bank issued) and providing custodian wallet services in relation to virtual currencies (whereby the private keys of the blockchain address are kept with the service provider) are subject to a registration procedure with the Dutch Central Bank. In addition thereto, the crypto service provider concerned will need to comply with ongoing requirements, primarily relating to AML obligations, such as client due diligence and transaction monitoring. As it concerns a registration and not a license, no EU passport is available. Any qualifying crypto service provider offering its services in or to the Netherlands shall therefore needs to register with the Dutch Central Bank, regardless of any license or registration elsewhere in or outside the EU.

Finally, also issuers of cryptocurrencies must be mindful of applicable general legal requirements, such as liability for any false or misleading claims about the nature and risks of the token or platform.

Note that the first large-scale regulation of cryptocurrencies is expected to be effective as of 2024, when the EU Regulation on Markets in Crypto-assets (MiCA) is expected to enter into force. The draft legislation includes a license requirement for several services relating to cryptocurrencies, such as the exchange and brokerage thereof. It also includes requirements for issuers of cryptocurrencies as well as specific requirements for 'e-money tokens' and stablecoins.

### **15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?**

See paragraph 14 above for a general overview of regulation of cryptocurrencies, including the issuance thereof.

In brief, if a cryptocurrency qualifies as a certain (conventional) regulated instrument, such as a security, regulation may apply to the issuance. If not, the issuance is subject to general legal requirements, including that no false or misleading statements may be provided regarding the token. In addition, it is generally advisable to implement certain KYC standards in the context of the

issuance, as this may be beneficial for the issuer, for example, in the context of obtaining (and retaining) a bank account.

The European Commission has proposed a Regulation on Markets in Crypto-Assets (MiCA) which is expected to enter into force in 2024. MiCA regulates crypto-assets not covered elsewhere in European financial services legislation, including a wide range of crypto-asset service providers. MiCA also regulates certain initial coin offerings and contains market abuse rules in relation to crypto-assets, which may be of relevance upon issuance.

### **16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?**

There are many blockchain projects in the Netherlands, not necessarily concentrated in a single area. Currently much activity takes place in the field of NFT art and NFT gaming platforms, as well as decentralized finance platforms. One interesting and globally widely adopted use case is an application that uses blockchain technology to regulate the sale of digital tickets (represented by NFTs) for events. It enables the reselling of tickets in a closed environment, enabling smart tickets while combatting fraud and unwanted ticket resales.

Other interesting blockchain projects are still in development phase. Protokol is a blockchain firm that spawned from the ARK blockchain platform and is dedicated to finding the right blockchain solution for different business challenges. Animo is an entity focused on Self Sovereign Identity (SSI). Amongst their projects, they have a partnership with Rabobank, for whom they developed plugins to further extend their existing SSI network. NorthChain is a scale-up that uses the Corda/R3 private blockchain platform to design, optimise and implement business processes. Finally, Linksight uses secure multi-party computation (MPC) to provide a decentralised data-analysis platform.

### **17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?**

We see a steep growth curve in the development and use of AI applications by and within the financial sector. Fintechs and incumbents alike are working hard on developing AI-driven solutions for old and new challenges. AML/CFT & fraud detection, asset



management and credit scoring are just a few of the many fields where AI is deployed.

In recent years we have seen a development of increasing regulatory expectations with regard to the use of AI. We believe that European and national policy, laws and regulatory expectations will encourage further use of AI.

In the Netherlands the financial supervisory authorities, the Dutch Central Bank and AFM have included the use of AI and big data in their top priorities for the coming years. Already in 2019, the Dutch Central Bank published its 'SAFEST' principles on the responsible use of AI in an effort to start a dialogue with the sector. Together with the AFM it published guidance for the use of AI in, for example, the insurance sector.

Both the Dutch Central Bank and the AFM underline the potential benefit of AI for the financial sector and even expect market parties to use the potential of AI for the benefit of their organisation (for example to enhance AML/CFT efforts and improve internal models) and for the benefit of their customers (better service and better products, while no unfair use).

The EU has declared AI an area of strategic importance and aims at a human-centric approach. The recently proposed EU regulation on artificial intelligence will impose new regulatory requirements on firms across the financial sector when they use, provide, import or distribute computer software for biometric identification, human capital management or credit assessment of individuals. It will also prohibit the deployment of software exploiting subliminal techniques or vulnerabilities due to age or disability and impose transparency obligations on providers and users of other software. Compliance with the new requirements will be challenging because of the difficulty of determining the exact scope – especially given its extraterritorial application – and what software will be treated as an 'artificial intelligence system'. However, the requirements under this regulation are aimed at maintaining trust in the financial sector and we do not believe that financial undertakings can risk not investing in AI even when they have to comply with sometimes complicated rules and regulations.

EU institutions such as the ECB, EBA, EIOPA and ESMA are also more and more raising their voices with regard to regulatory expectations of AI.

### **18. Insurtech is generally thought to be developing but some way behind other**

### **areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?**

Insurtech in general seems to be developing at a slightly different pace. In the Netherlands this may be partly due to the public function of insurers and the accompanying responsibility taken by insurers to proceed with care when developing new products and services for consumers. However, we do see some interesting developments around the use of artificial intelligence in the insurance market. For example, with regard to prevention, fraud detection and internal modelling.

### **19. Are there any areas of fintech that are particularly strong in your jurisdiction?**

We see interesting developments in insurance products that can be 'switched' on/off instantly and shared with friends and family, for example when using each other's car. Furthermore, we see insurers using AI to detect customers that may in the future get into some sort of trouble, allowing insurers to reach out before this happens. AI is also deployed for fraud detection, mostly in the non-life insurance sector.

### **20. What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?**

Fintechs and incumbents compete or collaborate, depending on their business model, shareholders, market share and other individual circumstances.

Some fintechs with well-established market leading positions like Adyen are on the edge of becoming incumbents themselves. Other fintechs collaborate in varying degrees with incumbents like banks, insurers, asset management companies and investment firms.

- PSD2, that provides for access to accounts (XS2A) for fintech payment service providers requires some level of collaboration between banks and fintechs, although this is typically seen as unwanted competition and risk increasing by incumbent banks.
- More specialized fintechs focussing on blockchain infrastructure or AI enabled services tend to work together with incumbents either by providing them internal services and/or software solutions or because they need their customer base to scale their

products.

- Incumbents also tend to have their own innovation labs and collaborations with incubators. Often a change in mindset of their employees is an intended side product of these initiatives.
- Finally, like in many other sectors, incumbents are also actively looking for fintech takeover or investment opportunities, albeit with varying degrees of success (including in the implementation phase after a successful takeover).

## 21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

The largest Dutch banks and insurers have their own

innovation labs/ acceleration programs. Many have fintech undertakings and spinoffs (e.g. New10, Peaks, Gripp, Gappie, KasHedge). Some of the largest financial institutions also work together on blockchain projects within consortia, like R3's Corda and Linux' Hyperledger.

## 22. Are there any strong examples of disruption through fintech in your jurisdiction?

Payment service providers like Mollie and Adyen have taken over the role of main payment processors for businesses from banks. Several online/mobile only brokers are gaining market shares due to their commission-free models. We also see many successful initiatives around alternative financing, mainly focussed on SMEs and mortgages (both residential and buy-to-let). These initiatives are often platform based.

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