

Regulatory information requests: checklist

Regulators and other authorities at national, European and international level are adopting an increasingly active approach to supervision and enforcement. Consequently, companies are more frequently confronted with regulatory information requests. Although such requests may sometimes look like informal questions, they should be treated as formal requests and handled with consideration. What at first may seem a simple and straightforward request can ultimately lead to a complex cross-border investigation.

The checklist below provides you with pointers when dealing with regulatory information requests that may be received from various Dutch and foreign regulators and other authorities (eg DNB, AFM, ACM, IGZ, Fiod, FCA, SEC, DoJ). This checklist is not exhaustive. Deciding on a concrete approach to an information request requires an assessment of the specific circumstances of each case.

Handling the information request at receipt

- **Inform Legal/Compliance**
Immediately inform the Legal and/or Compliance department after receiving an information request. Also coordinate with the Legal and/or Compliance department before submitting the response to the request.
- **Addressee**
Check the addressee of the information request to determine which entity has to submit the requested information.
- **Sender**
Check the sender of the information request to determine which (national or international) regulator is requesting information. Is the information being requested (also) on behalf of other regulators or authorities?
- **Deadline**
Check the deadline for submission of the requested information and consider whether an (initial) extension of the deadline is necessary.
- **Contact person**
Appoint a contact person to ensure that questions and requests about/to/from the regulator are dealt with centrally. Provide the regulator with the contact person's name and contact details.

Key issues

- Handling the information request at receipt
- Determining the scope of the information request
- Preparing the response to the information request
- Interacting with the regulators requesting information

Determining the scope of the information request

■ Purpose of request

Assess the task performed by the regulator to establish whether the information request is part of ongoing supervision, or whether the request targets specific topics or issues.

■ Subject

Determine the subject of the investigation (the company, an employee, a third party), and establish whether the information request concerns another entity within the group.

■ Legal grounds

Check what legal grounds are set out in the information request to ensure the regulator has authority to request such information from the addressee. If legal grounds are not explicitly mentioned, assess if legal grounds apply.

■ Information content

Check the kind of information that is requested: financial information, client files, contracts, etc.

■ Form of information

Check the form of information that is requested: hardcopies, digital files, recordings of telephone conversations, etc.

■ Effort

Assess the amount of time, effort and costs involved in collecting the requested information and whether alternatives are available.

■ Reasonableness

Assess whether the information request is proportionate and reasonable in relation to the effort and costs it takes to collect and submit the requested information.

Preparing the response to the information request

■ Preserve information

Consider sending a (legal hold) notice internally to ensure preservation of documents and information that may need to be submitted.

■ Collection method

Consider the method to collect the requested information: eg using search terms to electronically make a first selection of documents and emails that could contain the requested information. Check whether the method should be discussed with and agreed upon by the regulator first.

■ IT support

Support from your IT department may be necessary to collect the requested information: eg searching email inboxes, coordinating with the regulator about the search of documents and potential transfer of digital data.

■ Document review

After making a first selection, carefully review the collected information on the basis of a review protocol (to be established) preventing that more information than requested is submitted and ensuring that you are aware of the information being submitted.

■ Research trail

Keep track of the process of collection and review of information: eg method and date of collection, type and custodians of collected information, the information being reviewed. Also keep track of missing information and the reasons why the information is missing.

■ Confidentiality

Ensure that there is no (contractual) duty of confidentiality regarding a client or other third party relating to the requested information for the entity addressed; prior consent may be required before submitting information.

- **Privilege**

If the requested information is privileged (eg client-attorney communication), there is usually no duty to submit such information.

- **Privacy**

If the information contains personal (sensitive) data it may need to be redacted prior to submission. In cross-border situations various data privacy rules may apply.

- **Company sensitive data**

In case of company sensitive data assess whether to ask the regulator not to distribute such information to third parties and whether to remove or redact documents containing such data before submitting these.

- **Informing third parties**

Determine whether there are internal policies, contractual obligations or other rules and regulations on the collection and treatment of information, eg informing employees/clients/third parties that documents are collected and provided to regulators. In this regard, check if and to what extent the regulator has requested you to keep the information request confidential.

- **Presentation**

Consider the presentation of your submission, for example sending only the requested documents or, if certain information is requested, setting out the information in tables and graphs. Also consider whether an accompanying cover letter or email with additional clarification is necessary.

- **Trigger for further request**

Beware that information that is submitted may trigger subsequent questions or investigations by the regulator relating to compliance with other rules and regulations.

Interacting with the regulator who requests information

- **Contacting the regulator**

Consider contacting the regulator, for example, if the information request is not clear, to narrow down the scope of the request, to request an extension of the deadline, to ask for a written confirmation of an oral information request, to coordinate the method of collecting information.

- **Additional requests from the regulator**

Beware that the regulator can also contact you by telephone, letter, email for any additional requests or comments during any of the above described stages. Ensure that the appointed contact person receives and deals centrally with these requests and comments.

- **Mutual assistance**

Regulators, both national and foreign, may exchange information amongst themselves. Foreign regulators may specifically ask national regulators to request information from companies, and vice versa.

- **Administration**

Keep copies of the information submitted to the regulator.

- **Duty to cooperate**

In general there is a legal duty to comply with regulatory information requests. However, this does not entail that automatically everything as requested should be submitted; the information request should be proportionate and reasonable.

- **Risks**

Under circumstances the regulator may share the information with other (national or international) regulators, or use it in (public) proceedings, investigation reports, and/or in publications of decisions to impose sanctions.

- **Sanctions for non-compliance**

There are sanctions for non-compliance with the information request. Possible sanctions are inter alia instructions, cease-and-desist orders, administrative fines, criminal prosecution.

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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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