

Sustainability: CSRD, EU GB Regulation and AFM Supervision

In short This Market Watch focuses on the Corporate Sustainability Reporting Directive (CSRD)¹ and our oversight of this important piece of EU legislation. We highlight the most relevant developments to raise awareness and support effective implementation in the market. Additionally, we provide information on the CSRD in the context of prospectus supervision and the AFM's oversight in relation to the EU Green Bond Regulation (EU GB Regulation).² The final part of this Market Watch contains a brief 'Facts & Figures' section on recent developments regarding the number of notifications with respect to the use of the €5 million exemption to the obligation to publish a prospectus.

1. Introduction

1.1 CSRD

As of the 2024 financial year, the CSRD and the European Sustainability Reporting Standards (ESRS) apply to large, publicly listed companies with more than 500 employees.³ The CSRD will gradually increase the number of publicly listed companies under our supervision. In short:

In addition to the publicly listed companies subject to AFM's CSRD reporting supervision, the CSRD will also become mandatory for large companies and public interest entities with fewer than 500 employees.⁴ This group constitutes the majority of the CSRD population in the Netherlands, approximately 3,300 companies. These companies are not directly subject to AFM's sustainability reporting supervision because they are not publicly listed.

However, the AFM does oversee the assurance work performed by auditors on the sustainability reporting of these companies and the sustainability information they provide as issuers in regulated prospectuses.

Table 1. CSRD population under AFM reporting supervision

| When | Who |
|----------------------|--|
| From January 1, 2024 | +/-100 large publicly listed companies with >500 employees |
| From January 1, 2025 | +/-25 large publicly listed companies >250 employees |
| From January 1, 2026 | +/-30 small and medium-sized companies (simplified rules) |
| Total | +/-155 |

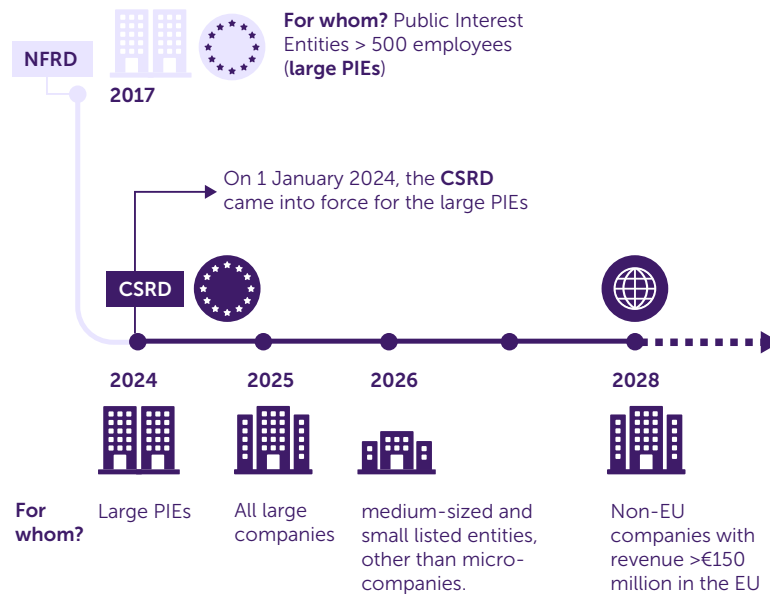
1 CSRD (EU) 2022/2464.

2 EU GB Regulation (EU) 2023/2631.

3 These European directives are implemented in the Netherlands through the Sustainable Reporting Directive Implementation Act, which is currently before the House of Representatives and will replace the Non-Financial Information Disclosure Decree (BNFI). At the time of publication of this Market Watch, it is not yet known when the House of Representatives will consider this implementation act.

4 A company is considered a large undertaking (under the CSRD) if it meets at least two of the following three criteria: 1. 250 or more employees, 2. Annual revenue of more than €50 million, 3. A balance sheet total of more than €25 million

Figure 1. CSRD Implementation Timeline



1.2 EU GB Regulation

The EU GB Regulation sets standards for the transparent issuance of green bonds to promote investments in sustainable projects.⁵ The increasing demand for sustainability transparency from investors and the impact of these reports on investment decisions make it essential for companies to not only comply with regulations but also build trust with their stakeholders by providing honest and consistent information.

1.3 AFM's role in supervision

As a supervisory authority, the AFM understands that it is a 'journey' and we do not expect everything to go perfectly in the beginning. That is simply not feasible; we are dealing with complex matters, and there are also transitional reliefs for CSRD and ESRS provisions. However, if there are clear violations, the AFM will act. For example, if a company is "greenwashing", or if it is clearly intentionally failing to comply with the CSRD requirements. Companies must, for instance, at a minimum provide a sustainability report covering the key material topics.

5 In contrast to the scope of the CSRD, the EU GB Regulation applies to any issuer wishing to issue an EU Green Bond.

2. Corporate sustainability reporting supervision

2.1 AFM Publications: Transparency and Double Materiality

The AFM is committed to fair and transparent financial markets. This year, the AFM published two studies in light of the upcoming CSRD reporting requirements. Both reports⁶ emphasise essential elements of the new sustainability reporting requirements:

“Transparent Net-Zero Targets Require Courage”:

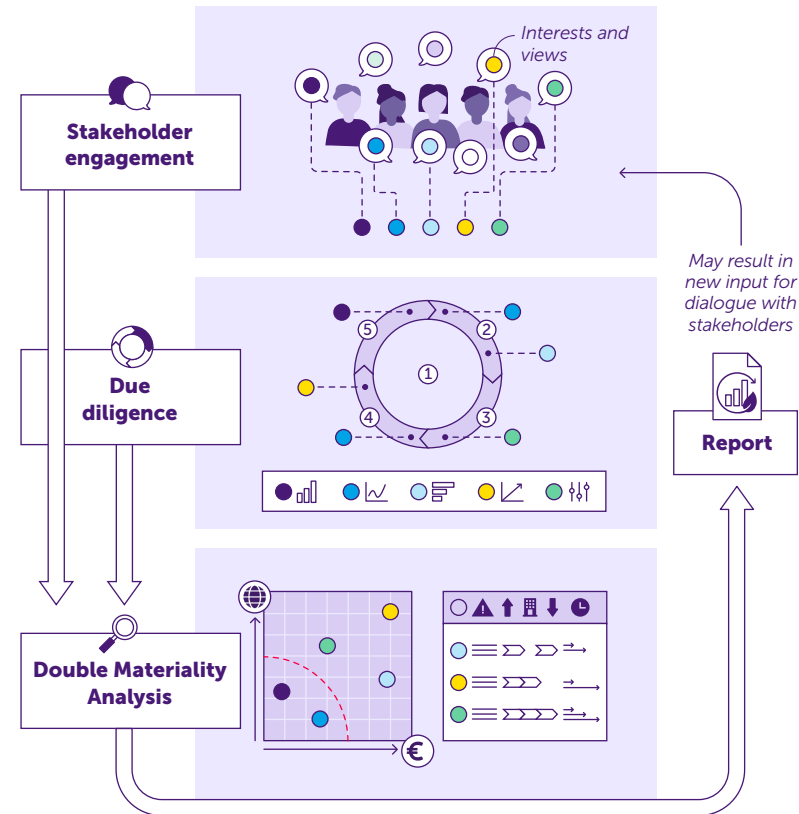
This report primarily focuses on transparency regarding the uncertainties and challenges surrounding climate goals. It references the requirements in ESRS E1, which mandate that companies provide clarity on their climate-related objectives, such as emissions reductions, net-zero targets and the use of methods like carbon capture, offset projects and carbon credits. The AFM emphasises that companies should be transparent about the limitations and uncertainties they face. This requires “courage,” especially concerning data quality and the practical challenges of achieving their targets.

“Ten Waypoints for CSRD: Double Materiality”:

The second report focuses on the double materiality assessment (DMA). This is a core aspect of the CSRD, requiring companies to identify which sustainability issues are material from both an impact and financial perspective. The DMA forms the foundation for further sustainability reporting as required by ESRS 2. The report provides 10 navigation points grouped into three themes to help companies conduct their double materiality assessment effectively:

- **Stakeholder engagement:** Transparency about the representativeness and input of stakeholders is crucial.
- **Due diligence:** Companies should thoroughly assess their sustainability impacts and use international guidelines, such as the OECD, to structure their approach.

- **Transparency in analysis:** The entire value chain must be considered, with insights into how business activities relate to material topics and how these topics are evaluated in terms of impact, risks and opportunities in the short and long term.



6 [Transparent net-zero targets require courage](#) and [Ten waypoints for CSRD – Double Materiality](#)

2.2 Relevant Initiatives and Guidance

In addition to the core messages in the two reports mentioned above, the following relevant initiatives can assist companies in preparing for CSRD reporting. On August 7, the European Commission (EC) published a series of [Frequently Asked Questions \(FAQs\)](#) to support companies in implementing the CSRD and ESRS.

These FAQs address topics such as the scope of the new rules, when companies fall under their application and any exceptions to them. For example, it clarifies when companies are allowed to use estimates instead of collecting information about the value chain of suppliers or partners.

In addition to the EC's FAQs, the European Financial Reporting Advisory Group (EFRAG), which drafted the ESRS, has published [Implementation Guidance](#) to help companies meet ESRS requirements. These guidelines focus on conducting the double materiality assessment, stakeholder engagement and reporting on sustainability performance in a consistent and transparent way. Furthermore, EFRAG is expected to provide additional guidance next year to help companies develop transition plans.

The European Securities and Markets Authority (ESMA) has also issued their [Public Statement on the first application of the ESRS](#), covering topics such as internal control of sustainability information, double materiality assessment, use of transitional measures, connectivity between the sustainability report and the annual report and the structure and format of the sustainability report.

Additionally, in [Common Enforcement Priorities](#) for 2024 reporting, ESMA has emphasised the importance of materiality considerations, scope & structure and disclosures related to Article 8 of the Taxonomy Regulation⁷ in sustainability reports.

⁷ Taxonomy Regulation (EU) 2020/852.

3. Prospectus supervision and the CSRD

3.1 Cohesion between CSRD information and sustainability information in prospectuses

This section highlights various aspects of the impact of the CSRD on prospectus oversight, since there is a coherence between the sustainability reporting required under the CSRD and the sustainability information contained in the prospectus. For example, the prospectus often contains further sustainability information regarding the company's business, strategy and material risk factors. That information could relate to the information included in the CSRD sustainability report, or vice versa. So far, the management report -as part of the annual report- is sometimes also part of the prospectus. The management report will include the CSRD sustainability report. With the applicability of the CSRD, a large group of issuers (who are obliged to publish a prospectus) must report on a wide range of sustainability topics.

In light of the aforementioned cohesion, it is interesting to share various developments and focus points relevant to prospectus sustainability disclosures that are CSRD-related.

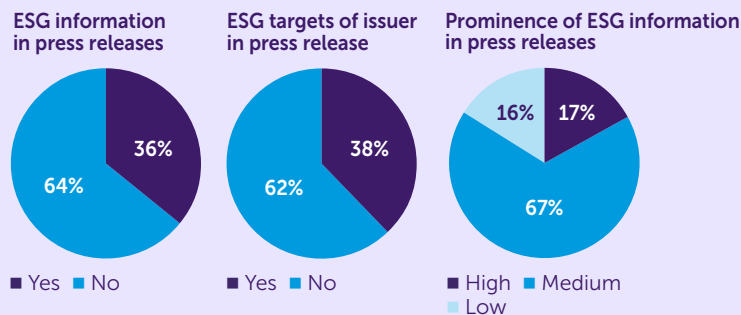
3.2 More sustainability-related information in prospectuses

Not only in the Netherlands, but also on a European and global level, there are many developments in the field of sustainability, such as the Paris Climate Agreement, the European Green Deal and the EU Action Plan on Financing Sustainable Growth. The CSRD also stems from this. These developments create more (EU) regulations applicable to a large number of companies, including issuers, as well as more sustainability information.

The prospectus also contains more and more sustainability information. On the one hand, the inclusion of such information in the prospectus stems from the information requirements contained in the prospectus rules, because such information is material to investors and their investment decisions. On the other hand, issuers themselves include further sustainability information in the prospectus which they consider relevant for investors, based on their responsibility.

The materiality threshold for including sustainability-related information in the prospectus seems to be getting lower. More sustainability-related information is being prepared and there are (and will be) increased requirements from laws and regulations. Investors are also increasingly considering sustainability information in their investment decisions. The AFM's recent [Consumer Monitor](#), for example, also shows that many investors pay attention to the sustainability of investments.

Figure 2. Press release analysis on ESG information



Not only does the CSRD enhance the sustainability content in prospectuses, but it also affects other documents, including press releases. The AFM analysed the inside information press releases that were filed to the AFM. In scope are all the scheduled press releases (at the end of the quarter, half year and year) over 2024 up to and including September 30. Approximately 36% of these filed press releases contained ESG related information. In approximately 17% of these cases the ESG information was published in a prominent way (for example on the first page of the press release in the “Highlights” section). In most cases (67%), ESG information was published in the second part of a press release (for example the section “Comments from the CEO”). In 16% of the cases, ESG information was published in the last part of the press release. Furthermore, among the issuers that included ESG related information in their filed press releases, 38% formulated ESG targets (ranging from short to long-term targets).

Also, through new laws and regulations and/or changes in the existing legal framework, it is expected that further linkage to the CSRD will be made. Reference is made, for example, to the amendments to the Prospectus Regulation⁸ and (the relevant Annexes to) Delegated Regulation 2019/980 through the Listing Act with more specific ESG

⁸ Regulation (EU) 2017/1129.

⁹ This aims to further harmonise how national competent authorities assess sustainability information in prospectuses.

information requirements.⁹ In this respect, we also refer to the relevant [ESMA consultation](#) which is currently ongoing until 31 December 2024.

Due to the availability of more sustainability information as a result of increased reporting requirements and the growing importance of sustainability considerations in investment decisions, it can be expected that issuers will more often include (more) substantial sustainability-related information in their prospectuses.

3.3 Focus points

The AFM attaches importance to the transition to a sustainable society and encourages market participants to fulfil their important role in this transition. The perspectives, intentions and impact of issuers with respect to sustainability issues and the availability and quality of information in this regard for investors and other stakeholders to support their financial decisions, including in prospectuses, is one of the AFM’s key focus points in this regard. By including material sustainability information in their prospectuses and presenting that information in a fair manner, issuers enable investors to make better-informed investment decisions and more informed transition influencing choices.

In view of the materiality of sustainability information and the cohesion with CSRD sustainability reporting, the AFM draws attention to a number of points relating to the relevant sustainability information in prospectuses.

3.3.1 Reliability, comprehensibility and consistency of information

The reliability, comprehensibility and consistency of the CSRD-related information included in the prospectus are of great importance.

With respect to the reliability of the sustainability-related information, the issuer has the responsibility to adequately prepare and include the material information in the prospectus and to comply with the

requirements under applicable laws and regulations. The prospectus should include the material information in full and that information should be comprehensible and consistent. In addition, it is the issuer's responsibility to have the sustainability report provided with the auditor's assurance.

In the context of comprehensibility, it is important that the investor can easily understand the information in the prospectus. The sustainability information should be clearly formulated, with adequate explanations. It is also important that the information, such as sustainability claims, is substantiated in concrete terms.

Furthermore, it is important that the sustainability information in the prospectus is consistent with the sustainability reporting in the annual report.

3.3.2 Double materiality

In preparing the prospectus, the issuer is responsible for including all necessary information that is material for investors to make an informed investment decision with respect to the issuer and the securities.¹⁰ This includes material sustainability/CSRD information.¹¹ The issuer should also ensure that such information in the prospectus does not conflict with the sustainability information in the annual report. The double materiality analysis in the annual report -as described above in section 2- can provide an important basis in this regard, for example, to determine the extent to which specific and material risks are included in the prospectus.

¹⁰ See Article 6 of the Prospectus Regulation.

¹¹ In ESMA's statement [Sustainability disclosure in prospectuses](#), ESMA provides guidance on expected sustainability-related disclosures in debt and equity prospectuses. For example, ESMA refers in the statement to recital 54 of the Prospectus Regulation: "(...) Environmental, social and governance conditions, among others, may also pose specific and material risks to the issuer and its securities and should, in that case, be disclosed (...)" and states that this includes any sustainability information that the issuer is already required to report under the NFRD or CSRD in the annual report if that information is material to an investor under Article 6 of the Prospectus Regulation.

4. Supervision in relation to the EU GB Regulation

4.1 Introduction of the EU GB Regulation

From December 21, 2024, the EU GB Regulation will be fully applicable and issuers will be able to issue EU Green Bonds. The sustainability transition and the EC's Sustainable Finance Strategy -which includes the EU GB Regulation- introduce new tasks and challenges for the market, but also offer opportunities and flexibility. For example, by encouraging investment, the EU GB Standard can contribute to the achievement of the EU's climate and environmental goals and better exploit the potential of the capital market. Another example is that standardisation makes it easier to identify and compare EU Green Bonds and check credibility. Furthermore, the label can be beneficial for an issuer's reputation as well as market confidence. The EU GB Regulation has been preceded by wide-ranging consultation. The desirability of developing an EU GB Standard has been widely recognised. It is largely based on already established market practices. Additional elements concern the role of the external reviewer in, among other things, the allocation report and the role of supervision. Step by step, the framework is being further improved, as is the further development of the EU Taxonomy. The flexibility pocket¹² provides some degree of flexibility under the EU GB Regulation. In addition, the issuer's use of the EU GB Standard is voluntary and it remains possible to use other market standards.

4.2 New requirements and new supervision

Alongside various additional disclosure requirements via the EU GB Regulation regarding the prospectus, the issuance of EU Green Bonds is accompanied by (publication) requirements regarding various pre- and

¹² See Article 5 of the EU GB Regulation.

¹³ See Article 44 of the EU GB Regulation. With respect to EU Green Bonds, the AFM supervises the compliance of issuers with their obligations under Title II, Chapter 2 and Articles 18 and 19, and DNB (as competent authority designated in accordance with Article 29(5) of Regulation (EU) 2017/2402) supervises, in relation to securitisation bonds designated as EU Green Bonds, the compliance of originators with their obligations under Title II, Chapter 2 and Articles 18 and 19 of the EU GB Regulation.

¹⁴ See Article 15 of the EU GB Regulation.

¹⁵ Review by the external reviewer is not required for all post-issuance information.

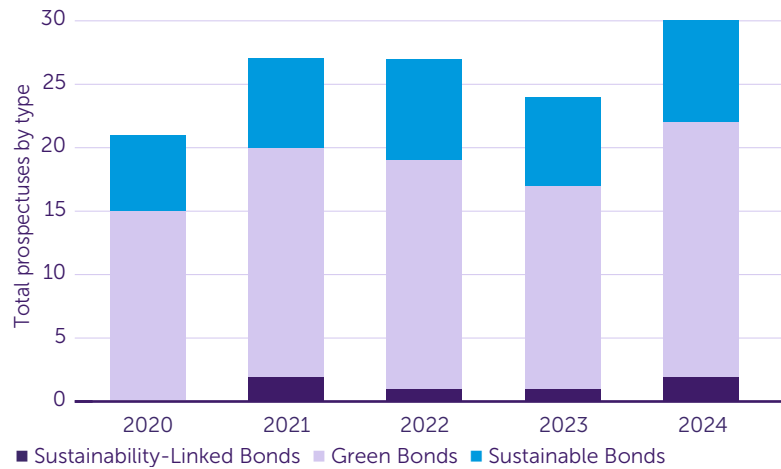
¹⁶ See Article 69 of the EU GB Regulation.

post-issuance information documents. With respect to the issuance of EU Green Bonds for which the AFM approves the prospectus, the AFM supervises the compliance of issuers with the relevant obligations under the EU GB Regulation.¹³ For instance, pre- and post-issuance information should be published on time and the publications should be notified to the AFM without undue delay after each publication.¹⁴ Mandatory disclosure requirements exist prior to and during the term of the EU Green Bonds. In principle,¹⁵ the substantive review of pre- and post-issuance information takes place by external reviewers registered with ESMA and subject to ESMA supervision. There is a transitional regime for this until June 21, 2026.¹⁶ The review by the external reviewers consists of, among other things, verifying that the EU Taxonomy is complied with as regards the use of proceeds and that the relevant publications contain the information as prescribed by the EU GB Regulation. Furthermore, Recital 53 of the EU GB Regulation indicates that the AFM should not be required to verify the truthfulness or accuracy of the pre- and post-issuance information nor whether issuers have complied with the obligations regarding the allocation of proceeds.

4.3 Activity under the EU GB Regulation

It remains to be seen how active issuers are going to be under the EU GB Regulation regarding the issuance of EU Green Bonds. Since the EU Green Bond Standard is largely based on established market practices, a comparison can be made with the number of prospectuses the AFM has approved for the issuance of sustainable bonds in recent years. It may be the case that (part of) that population is also considering issuing, or wants to have the possibility to issue, sustainable bonds under the EU Green Bond Regulation. It is important for the market, as it is for the regulators themselves, to be prepared for this.

Figure 3. Total prospectuses approved by AFM and types of sustainable bonds



In 2024, up to the date of publication of this Market Watch, the AFM approved a total of 30 prospectuses for the issuance of green bonds, sustainable bonds and sustainability-linked bonds, an increase compared to the total in 2023 (24). In this respect, reference is also made to the previous Facts & Figures section as included in [AFM Market Watch #10](#), January 2024, pages 8-9.

FACTS & FIGURES

Parties offering securities such as shares or bonds are required to make an approved prospectus available. Under Article 3 of the Prospectus Regulation, an offer in the European Union involving a total consideration of less than €8 million calculated over a period of 12 months is exempt from the obligation to publish a prospectus. Because the various financial markets within the European Union vary in size, the Member States are empowered to determine the threshold for application of this exemption in their national legislation. In the Netherlands, this threshold is set at €5 million.

To make a notification for an exemption, parties must turn in a form and an information document containing specific details on the offering. The chart shows that the number of notifications started growing from 2020 until 2022. Low interest rates combined with a steadily growing economy made it more attractive to invest. In 2023, high interest rates and limited economic growth seem to have led to an overall decrease in parties using the exemption under the Prospectus Regulation.

Figure 4. Change in number of notifications compared to the previous year

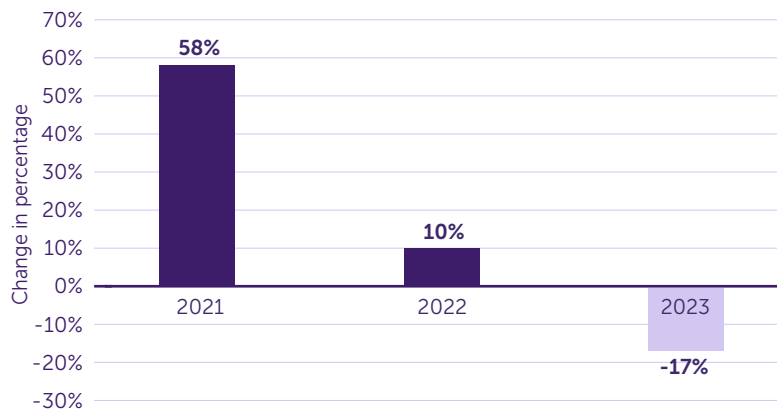
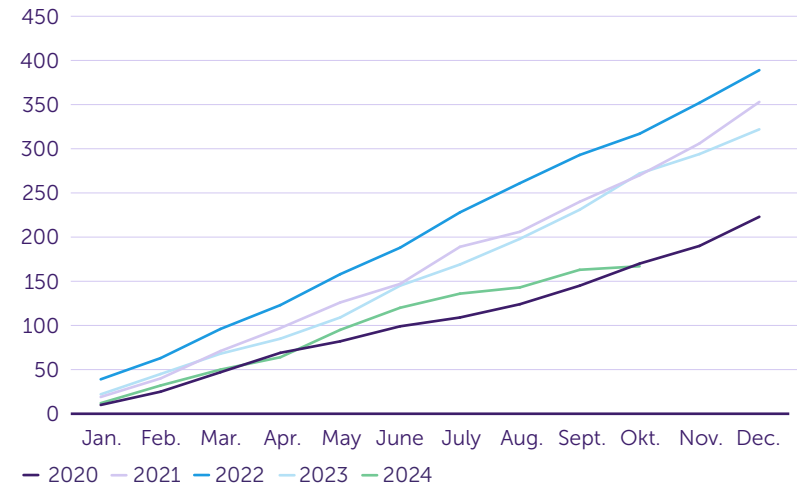


Figure 5. Annual notifications of prospectus regulation exemption usage



| Year | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sept. | Okt. | Nov. | Dec. |
|------|------|------|------|------|-----|------|------|------|-------|------|--------|--------|
| 2020 | 10 | 25 | 47 | 69 | 82 | 99 | 109 | 124 | 145 | 170 | 190 | 223 |
| 2021 | 19 | 40 | 71 | 97 | 126 | 147 | 189 | 206 | 240 | 270 | 306 | 353 |
| 2022 | 39 | 63 | 96 | 123 | 158 | 188 | 228 | 261 | 293 | 317 | 352 | 389 |
| 2023 | 22 | 45 | 68 | 85 | 109 | 145 | 169 | 198 | 231 | 272 | 294 | 322 |
| 2024 | 12 | 32 | 50 | 64 | 95 | 120 | 136 | 143 | 163 | 167 | t.b.d. | t.b.d. |