

Annex Practical guide

**FSMA\_2019\_16-3 of 17/07/2019**

Explanatory document concerning the professional integrity of an applicant for a mandate in an operational body or an applicant to a key function of an Institution for Occupational Retirement Provision (IORP)

Scope:

Institutions for Occupational Retirement Provision

Part 4. ‘You have professional integrity’ in the questionnaires for the initial appointment of a member of an operational body or a key function holder contains a number of statements. For each statement you have not been able to confirm is true, you need to provide explanations. Use the present questionnaire for this purpose.

The questions in part 4 of these questionnaires may be classified based on the following themes:

1. Financial supervision
2. Amicable settlement
3. Criminal law
4. Tax law
5. Administrative and disciplinary law
6. Occupational activity
7. Personal debts
8. Funds management
9. Bankruptcy and judicial reorganization

The explanations requested are subdivided into these categories

# Financial supervision

## Explanation to statement 4.1.1 - Another application underway in the financial sector

are you, in parallel to your application to the IORP, applying for another function leading to your professional integrity and your expertise being evaluated by a supervisory authority in the financial sector? If so, please fill in the following table. Copy the table if necessary for each function.

|  |  |
| --- | --- |
| **I am currently also applying for the function of** | non-executive director  executive director  senior manager  member of the supervisory board  member of the management committee  compliance officer  risk management  internal audit  actuary  another regulated function:  …………………………………………………… |
| **At** *(details of the undertaking)* |  |
| **Financial supervisory authority concerned** |  |
| **Country** |  |
| **Comments** |  |

## Explanation for statements 4.1.2, 4.1.3, and 4.1.4 - Evaluations conducted previously by supervisory authorities in the financial sector

Have you ever applied for another function leading to your professional integrity and your expertise being evaluated by a supervisory authority in the financial sector? If so, please fill in the following table. Copy the table if necessary for each function.

|  |  |
| --- | --- |
| **My professional integrity and my expertise were evaluated in the past when I applied for the function of** | non-executive director  executive director  senior manager  member of the supervisory board  member of the management committee  compliance officer  risk management  internal audit  actuary  another regulated function:  …………………………………………………. |
| **At** *(details of the undertaking)* |  |
| **Financial supervisory authority concerned** |  |
| **Country** |  |
| **Result** | the supervisory authority approved my application  the supervisory authority provided a conditional approval to my application  the supervisory authority rejected my application  I withdrew my application  the undertaking subject to supervision withdrew my application  the supervisory authority considered that I no longer possessed professional integrity and/or appropriate expertise  I departed from my function early |
| **Date of the decision or the withdrawal of my application** |  |
| **Comments** |  |

## Explanation for statement 4.2.3 - Being refused, suspended or struck-off from authorization, registration or listing by a supervisory authority in the financial sector.

Have you ever been refused, suspended or struck-off from authorization, registration or listing by a supervisory authority in the financial sector? If so, please fill in the following table.

|  |  |
| --- | --- |
| **Nature of the authorization, registration or listing concerned** |  |
| **Supervisory authority concerned** |  |
| **Reason for being refused, suspended or struck-off** |  |
| **Date on which you were refused, suspended or struck-off** |  |
| **Comments** |  |

# Amicable settlement

## Explanation for statement 4.2.1 - Amicable settlement

Have you ever been party to an amicable settlement destined to put an end to a dispute relating to a potential breach of financial or tax legislation or relating to another criminal offence? If so, please fill in the following table.

|  |  |
| --- | --- |
| **Parties concerned** |  |
| **The amicable settlement concerned the following facts** |  |
| **Date of the facts** *(period)* |  |
| **Nature of the amicable settlement** | settlement  arbitration  mediation  other:………………………………………….. |
| **Was the amicable settlement fully executed?** | Yes  No |
| **Comments** |  |

## Explanation for statement 4.2.2 - Negotiations underway concerning an amicable settlement

Are you involved in negotiations concerning an amicable settlement destined to put an end to a dispute relating to a potential breach of financial or tax legislation or relating to another criminal offence? If so, please fill in the following table.

|  |  |
| --- | --- |
| **Parties concerned** |  |
| **The negotiations relate to the following facts** |  |
| **Date of the facts** *(period)* |  |
| **Comments** |  |

# Criminal law

## Explanation for statement - 4.2.4. Closed criminal proceedings

Have you been involved in criminal proceedings that are now closed? If so, please fill in the following table.

**Please attach a copy of the ruling to the present explanatory document.**

|  |  |
| --- | --- |
| **I was prosecuted for the following facts** |  |
| **Date of the facts** *(period)* |  |
| **Type of crime** | financial crime**[[1]](#footnote-1)** *(for example for having exercised a regulated activity without the necessary authorization)*  corporate crime  tax crime |
| **Outcome of the proceedings** | discontinuance  settlement  early termination of prosecution  acquittal  simple declaration of guilt  suspended sentence  conviction |
| **Date of final ruling** |  |
| **Comments** |  |

## Explanation for statement 4.2.5 - Criminal proceedings underway

Do you have knowledge of an investigation or criminal proceedings underway against you? If so, please fill in the following table.

|  |  |
| --- | --- |
| **There is currently an investigation or criminal proceedings underway involving me for the following facts** |  |
| **Date of the facts (period)** |  |
| **Stage of the investigation or proceedings** |  |
| **Comments** |  |

# Tax law

## Explanation for statement 4.2.6 - Tax fine

Have the tax authorities ever issued you a fine for a breach committed with a view to evading taxes or allowing taxes to be evaded? If so, please fill in the following table.

**Please attach a copy of the ruling to the present explanatory document.**

|  |  |
| --- | --- |
| **I have received a tax fine for the following facts** |  |
| **Date of the facts (period)** |  |
| **Amount of the fine** |  |
| **Date of the final decision** |  |
| **Comments** |  |

# Administrative and disciplinary law

## Explanation for statement 4.2.7 - Administrative or disciplinary matters ruled on

Have you been fined or subject to administrative or disciplinary measures ruled on by an authority, a supervisory authority in the financial sector or a professional body? If so, please fill in the following table.

**Please attach a copy of the ruling to the present explanatory document.**

|  |  |
| --- | --- |
| **The measures concerned the following facts** |  |
| **Date of the facts (period)** |  |
| **Authority, supervisory authority or professional body concerned** |  |
| **Outcome of the proceedings** | warning  reprimand  fine  suspension  exclusion  other: |
| **Date of the final decision** |  |
| **Comments** |  |

## Explanation for statement 4.2.8 - Administrative or disciplinary matters underway

Do you have knowledge of any proceedings against you at the moment that may lead to administrative or disciplinary measures by an authority, a supervisory authority in the financial sector or a professional body? If so, please fill in the following table.

|  |  |
| --- | --- |
| **The measures concern the following facts** |  |
| **Date of the facts (period)** |  |
| **Authority, supervisory authority or professional body concerned** |  |
| **Stage of the proceedings** |  |
| **Comments** |  |

# Occupational activity

## Explanation for statement 4.1.5. - Serious misconduct in the context of an occupational activity as an employee

Have you been dismissed for serious misconduct in the context of an occupational activity as an employee? If so, please fill in the following table.

|  |  |
| --- | --- |
| **Employer concerned** (data) |  |
| **My role with this employer** |  |
| **Date of dismissal** |  |
| **Motive for dismissal** |  |
| **Comments** |  |

## Explanation for statement 4.1.6. - Serious misconduct in the context of an occupational activity when self employed

## Have you, when exercising an occupational activity when self-employed, committed serious misconduct that culminated in the termination of a contract? If so, please fill in the following table.

|  |  |
| --- | --- |
| **Contractual party concerned** (data) |  |
| **Purpose of the contract concerned** |  |
| **Date of termination** |  |
| **Grounds for termination** |  |
| **Comments** |  |

# Personal debts

## Explanation for statement 4.1.7 - Amicable settlement or legal proceedings

Please fill in the table below if you have been party to an amicable settlement or legal proceedings concerning discharge of your personal debts.

|  |  |
| --- | --- |
| **Parties concerned** |  |
| **Date of the facts** |  |
| **Nature of the amicable settlement or outcome of the proceedings** |  |
| **Comments** |  |

## Explanation for statement 4.1.8. - Credit register

Please fill in the following table if you are registered on a credit register such as the Central Individual Credit Register.

|  |  |
| --- | --- |
| **I am registered on the following credit register** |  |
| **Nature of debts and counterparty** |  |
| **Date of registration** |  |
| **Comments** |  |

# Funds management

## Explanation for statement 4.1.9. - Undeclared foreign bank accounts

Please fill in the following table if you are the beneficiary of foreign bank accounts that have not been declared to the Belgian tax authorities when they should have been.

|  |  |
| --- | --- |
| **Bank concerned** |  |
| **Since when** |  |
| **Comments** |  |

## Explanation for statement 4.1.10 - Interests in a trust or foundation

Please fill in the following table if you have interests in—or you are the beneficiary of—a trust, a foundation, a stichting administratiekantoor (STAK)*[[2]](#footnote-2)* or a similar legal structure.

|  |  |
| --- | --- |
| **Type of structure** | trust  foundation  *stichting administratiekantoor*  other:…………………………………………… |
| **Under what law....** |  |
| **Since when** |  |
| **Comments** |  |

# Bankruptcy and judicial reorganization

## Explanation for statement 4.2.9. - Closed bankruptcies and judicial reorganizations

Please fill in the following table if a company of which you exercise control or in which you are a member of the management body has been declared bankrupt or has been the subject of judicial reorganization.

**Please attach a copy of the ruling to the present explanatory document.**

|  |  |
| --- | --- |
| **Undertaking concerned** (data) |  |
| **My links to this undertaking** |  |
| **Date of the bankruptcy or judicial reorganization** |  |
| **The bankruptcy was** | under protection  not under protection |
| **Comments** |  |

## Explanation for statement 4.2.10. - Bankruptcy proceedings and judicial reorganizations underway

Please fill in the following table if you have knowledge of any bankruptcy or judicial reorganization proceedings underway against a company in which you exercise/have exercised control or of which you are/have been a member of the governing body.

|  |  |
| --- | --- |
| **Undertaking concerned** (data) |  |
| **My links to this undertaking** |  |
| **Date of the opening of bankruptcy or judicial reorganization proceedings** |  |
| **Comments** |  |

1. As defined in Article 20 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, or equivalent crimes. [↑](#footnote-ref-1)
2. Under Dutch law. [↑](#footnote-ref-2)