



FSMA_2024_06 of 22/03/2024

Questionnaires for regulated functions at IORPs

Scope:

Institutions for Occupational Retirement Provision

Summary/Objectives:

This handbook contains the questionnaires to be filled in to enable the FSMA to (a) assess the professional integrity and appropriate expertise (i.e. fitness and propriety) of applicants for the function of member of an operational body or key function holder at IORPs and (b) approve the appointment of statutory auditors and liquidators for IORPs.

This handbook explains what questionnaires IORPs must use to provide the information required by the FSMA on:

- the appointment or renewal of the appointment members of the board of directors and of other operational bodies;
- the appointment or renewal of holders of the four key functions, i.e. the risk management function, the internal audit function, the actuarial function and the compliance function;
- the periodic fit & proper assessment of a person/entity in a function if the appointment is for an indefinite term, or for a fixed term with tacit renewal (members of the operational bodies, with the exception of the board of directors, and key function holders);
- a change to the information regarding the appropriate expertise or professional integrity of a person/entity in a function (members of the operational bodies and key function holders);
- the termination of the mandate for a function (members of the operational bodies and key function holders);
- the appointment (and renewal) of the statutory auditor or substitute statutory auditor;
- the appointment of a liquidator.

Handbook FSMA_2019_16 of 17 July 2019 *“Questionnaires to use when appointing members of operational bodies and key function holders and when designating a statutory auditor and liquidator”* and its annexes are abrogated and replaced by this handbook.

I. Members of the board of directors and of other operational bodies, as well as key function holders¹

I.1. The IORP must ensure that the members of its board of directors and its other operational bodies, and the key function holders (those responsible for the risk management function, internal audit function, actuarial function or compliance function), permanently comply with the requirements of professional integrity and appropriate expertise required to perform their function.

Where these functions are exercised by a legal entity, the requirements of professional integrity and appropriate expertise must be met by both that legal entity and the permanent representative who will exercise the function.

Equally, where there is a three-part cascade in a key function² (i.e. the legal entity applicant for a key function is permanently represented by another legal entity, which is in turn permanently represented by a natural person), every level of the cascade must meet the requirements of professional integrity and appropriate expertise.

The appropriate expertise of the members of the operational bodies is assessed both individually and collectively, taking into account the functions exercised and the extent to which advisors with that expertise are called on.

The assessment of the expertise of key function holders takes into account the extent to which they call on others for advice or to conduct specific control activities.

I.2. The IORP must submit to the FSMA in advance the appointment and the renewal of the appointment of the members of its board of directors and other operational bodies and the key function holders.

To allow the FSMA to assess whether the person/entity concerned has the requisite professional integrity and appropriate expertise, **the IORP shall provide, in advance:**

- **for an appointment**, all documents and information required pursuant to (as appropriate):
 - the [Questionnaire concerning the initial appointment of a member of an operational body of an Institution for Occupational Retirement Provision \(IORP\)](#) (Annex 1 to this handbook), or
 - the [Questionnaire concerning the initial appointment of a key function holder of an Institution for Occupational Retirement Provision \(IORP\)](#) (Annex 2 to this handbook);
 - the [Explanatory document concerning the professional integrity of an applicant for a mandate in an operational body or an applicant for a key function of an Institution for Occupational Retirement Provision \(IORP\)](#) (Annex 3 to this handbook), for all statements where “not, or not

¹ Article 77 of the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision (hereafter ‘LIRP’), as amended by the Law of 11 January 2019 transposing Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) and amending the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision (hereafter the ‘Law of 11 January 2019’).

² A three-part cascade is not allowed for membership of the board of directors or another operational body.

entirely true” was ticked in section 4 of the initial questionnaire “You have professional integrity”;

- the [Explanatory document concerning conflicts of interest for an applicant for a mandate in an operational body or an applicant for a key function of an Institution for Occupational Retirement Provision \(IORP\)](#) (Annex 4 to this handbook), for all statements where “not, or not entirely true” was ticked in section 5 of the initial questionnaire “You are aware of the conflicts of interest that may arise”.

The same questionnaires and documents must also be used, as a transitional measure, **for the renewal of an appointment** if the person/entity concerned has not yet completed a questionnaire for an initial appointment **in its version applicable since 17 July 2019** with respect to a function within the IORP concerned³.

- **for the renewal of an appointment**, all documents and information required, as the case may be, pursuant to:
 - the [Questionnaire concerning the renewal of the appointment of a member of an operational body of an Institution for Occupational Retirement Provision \(IORP\)](#) (annex 5 to this handbook), or
 - the [Questionnaire concerning the renewal of the appointment of a key function holder of an Institution for Occupational Retirement Provision \(IORP\)](#) (annex 6 to this handbook).

1.3. The initial appointment takes effect only after the FSMA’s approval of the proposed appointment.

The FSMA must give its approval before the appointment by the competent body of the IORP comes into effect. This applies both to the appointment of a member of an operational body and the appointment of a key function holder of the IORP.

The competent body of the IORP may, if it wishes, proceed with an appointment on the condition precedent of approval by the FSMA. Pursuant to Article 77, § 2, third paragraph of the LIRP, among other provisions, the condition precedent means that the person/entity concerned may exercise the function only as from the date of the FSMA’s approval. In other words, fulfilling the condition precedent does not have retroactive effect.

1.4. If the person/entity concerned is appointed for an indefinite term or a fixed term with tacit renewal, the FSMA will reassess the appropriate expertise and professional integrity of the person/entity concerned every 6 years.

³ If the person/entity concerned has already completed a questionnaire for an initial appointment as per the template applicable since 17 July 2019 with respect to another function *within the IORP concerned*, the questionnaire for an initial appointment does not need to be completed again and the questionnaire for a renewal of an appointment may be used.

This **periodic assessment** does not apply to members of the board of directors. After all, the mandate of members of the board of directors may not be longer than 6 years⁴.

The FSMA will contact the IORP every time a periodic assessment must be conducted for one of the members of its operational bodies or its key function holders. At that time, it will also provide the IORP with the questionnaires that must be completed.

I.5. Lastly, **the IORP must inform** the FSMA of the following two situations:

- any fact or aspect that entails a **change to the information provided at the time of appointment or afterwards**. This applies in particular if the change could have **a significant negative impact on the appropriate expertise or professional integrity** of the appointed person/entity⁵.

In such a case, the document [Notification of a change to the information provided for the appointment of a member of an operational body or a key function holder of an Institution for Occupational Retirement Provision \(IORP\)](#) must be used (Annex 7 to this handbook).

As a transitional measure, the change must be notified by way of the questionnaire for an initial appointment **if the person/entity concerned has not yet completed a questionnaire for the initial appointment, in its version applicable since 17 July 2019**, with respect to a function within the IORP concerned⁶.

Please complete the *full* questionnaire for an initial appointment in such a case.

- for the **termination of a mandate**⁷.

In such a case, the document [Notification of termination of the mandate of a member of an operational body or a key function holder of an Institution for Occupational Retirement Provision \(IORP\)](#) must be used (Annex 8 to this handbook).

The notification requirements in the case of a change or a termination also apply to those who had been appointed prior to the entry into force on 13 January 2019 of the Law of 11 January 2019⁸.

⁴ Article 29, first paragraph of the LIRP.

⁵ Article 77, § 3, first paragraph of the LIRP.

⁶ If the person/entity concerned has already completed a questionnaire for an initial appointment, in its version applicable since 17 July 2019, with respect to another function *within the IORP concerned*, the questionnaire for an initial appointment does not need to be completed again and the notification of a change may be used.

⁷ Article 77, § 3, second paragraph of the LIRP.

⁸ This Law amended the procedures for the FSMA's assessment of the professional integrity and appropriate expertise of members of the operational bodies and key function holders of an IORP. See on this subject Communication FSMA_2019_03 of 8 January 2019 on the transposition of the IORP II Directive.

I.6. The **table in Appendix A** to this handbook contains specific examples to further clarify which questionnaire applies to each situation.

For example, for the *replacement of the permanent representative* of a legal entity that holds a function⁹, complete the questionnaire for appointment (of the new natural person) as well as the questionnaire for termination (of the natural person who is being replaced).

Equally, if a person/entity is *put forward to replace a function holder¹⁰ for the remaining term of the mandate of the predecessor or as a temporary replacement during a leave of absence*, please use the questionnaire for appointment.

This applies even if the new person/entity is nominated via a co-optation by the board of directors of the IORP, which is later ratified by the general meeting. In the event of co-optation, the questionnaire must be completed in the co-opting stage: there is no new approval procedure required at the time of later ratification by the general meeting.

I.7. The aforementioned questionnaires **must be submitted to the FSMA through eCorporate**.

They must be uploaded, as appropriate, to one of the following sections:

- “VI.01. Appointment of a member of an operational body”;
- “VI.02. Appointment of a key function holder - risk management function”;
- “VI.03. Appointment of a key function holder - actuarial function”;
- “VI.04. Appointment of a key function holder - compliance function”;
- “VI.05. Appointment of a key function holder - internal audit function”;
- “VI.06. Notification of a change”;
- “VI.07. Notification of termination”.

⁹ Or of the legal entity that is the permanent representative of the legal entity that holds a function (permitted for key functions only).

¹⁰ Or of the permanent representative.

1.8. Deadlines

Although the Law provides that the appointment and renewal of an appointment must be submitted in advance, the Law neither provides a deadline by which the IORP must make the necessary notifications nor a deadline by which the FSMA must make its decision.

The latter deadline can, after all, vary depending on the complexity of the dossier in question. However, it goes without saying that the FSMA will make its decision within a reasonable period of time after receiving the full dossier, in accordance with the principles of sound governance.

The IORP is therefore asked to provide all the documents and information required in a timely manner.

If an IORP must *unexpectedly* replace a director swiftly, the FSMA will give the application priority to keep the processing time as short as possible. In such a case, please send an email to pensions@fsma.be to inform us that this is a case of urgent replacement, with a brief explanation of the circumstances that oblige the IORP to proceed with this unexpected and urgent replacement.

The FSMA must be informed of any fact or aspect that entails a change to the information provided at the time of appointment (or renewal) (especially if it could have a significant negative impact on the professional integrity and appropriate expertise required for the exercise of the function concerned) *as soon* as the IORP or person/entity concerned becomes aware of such change.

The same applies for the notification to the FSMA of the termination of the mandate of members of the operational bodies of the IORP and key function holders.

II. Statutory auditors and their substitutes¹¹

II.1. The IORP entrusts the statutory audit tasks to one or more auditors or audit firms that are members of the Belgian Institute of Registered Auditors (IBR-IRE) and accredited by the FSMA.

Before appointing a statutory auditor and a substitute statutory auditor, the IORP needs to obtain the FSMA's consent

The IORP's board of directors must therefore obtain the FSMA's consent first, before proposing the appointment of the statutory auditor at the general meeting.

II.2. In order to provide the FSMA with all the information it needs to make a decision, use of the [Questionnaire for the appointment of accredited statutory auditors and accredited statutory audit firms](#) is recommended (Annex 9 to this handbook).

The questionnaire must be submitted to the FSMA to request its prior consent for:

1. the appointment or renewal of an accredited statutory auditor;
2. the appointment or renewal of an accredited statutory audit firm and its representative;
3. the replacement of the permanent representative of the appointed audit firm prior to the expiry of its mandate.

II.3. The aforementioned questionnaire ***must be submitted to the FSMA via eCorporate***.

It is to be uploaded in section "VI.08. Appointment of an accredited auditor".

Except in exceptional circumstances, the IORP must submit the aforementioned questionnaire to the FSMA ***at least one month before the date of the general meeting*** at which the appointment of the statutory auditor is to be proposed¹². A replacement of the permanent representative of the appointed audit firm prior to the expiry of its mandate does not, however, need to be submitted to the general meeting of the IORP. However, the IORP must upload the questionnaire to eCorporate at least one month before the planned date of replacement.

II.4. It is also important to inform the FSMA immediately of any change to the data communicated. You can use the aforementioned questionnaire for this as well.

¹¹ Articles 103 to 107 of the LIRP and Articles 15 to 17 of the FSMA Regulation of 14 May 2013 on the accreditation of statutory auditors and audit firms for the exercise of an audit mandate at undertakings for collective investment, management companies of undertakings for collective investment, regulated real estate companies and institutions for occupational retirement provision.

¹² Article 15, fourth paragraph of the FSMA Regulation of 14 May 2013 on the accreditation of statutory auditors and audit firms for the exercise of an audit mandate at undertakings for collective investment, management companies of undertakings for collective investment, regulated real estate companies and institutions for occupational retirement provision.

III. The liquidator¹³

III.1. If an IORP is liquidated, **the FSMA's prior approval is required to appoint the liquidator(s).**

In order to provide the FSMA with all the information it needs to make a decision, use of the [Questionnaire for the appointment of a liquidator](#) is recommended (Annex 10 to this handbook).

III.2. The questionnaire **must be submitted to the FSMA via eCorporate.**

It is to be uploaded in section "VI.09. Appointment of liquidator" prior to making the appointment decision.

III.3. It is also important to inform the FSMA immediately of any change to the data communicated. You can use the aforementioned questionnaire for this as well.

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Jean-Paul Servais
Chairman

¹³ Article 38 of the LIRP.

- Annexes:
- [FSMA 2024 06 01 / Questionnaire for the initial appointment of a member of an operational body of an Institution for Occupational Retirement Provision \(IORP\)](#)
 - [FSMA 2024 06 02 / Questionnaire for the initial appointment of a key function holder of an Institution for Occupational Retirement Provision \(IORP\)](#)
 - [FSMA 2024 06 03 / Explanatory document concerning the professional integrity of an applicant for a mandate in an operational body or an applicant for a key function of an Institution for Occupational Retirement Provision \(IORP\)](#)
 - [FSMA 2024 06 04 / Explanatory document concerning conflicts of interest for an applicant for a mandate in an operational body or an applicant for a key function of an Institution for Occupational Retirement Provision \(IORP\)](#)
 - [FSMA 2024 06 05 / Questionnaire for the renewal of the appointment of a member of an operational body of an Institution for Occupational Retirement Provision \(IORP\)](#)
 - [FSMA 2024 06 06 / Questionnaire for the renewal of the appointment of a key function holder of an Institution for Occupational Retirement Provision \(IORP\)](#)
 - [FSMA 2024 06 07 / Notification of a change to the information provided for the appointment of a member of an operational body or a key function holder of an Institution for Occupational Retirement Provision \(IORP\)](#)
 - [FSMA 2024 06 08 / Notification of termination of the mandate of a member of an operational body or a key function holder of an Institution for Occupational Retirement Provision \(IORP\)](#)
 - [FSMA 2024 06 09 / Questionnaire for the appointment of accredited statutory auditors and accredited statutory audit firms](#)
 - [FSMA 2024 06 10 / Questionnaire for the appointment of a liquidator](#)

APPENDIX A

The table below gives a (non-exhaustive) overview of the situations in which the different questionnaires apply.

WHICH QUESTIONNAIRE?	APPOINTMENT	RENEWAL	PERIODIC ASSESSMENT	CHANGE	TERMINATION
WHEN IS IT APPLICABLE?	<p>Initial appointment to the IORP¹⁴</p> <p>Later additional appointment to the IORP or change in function at the IORP - <i>for example</i>:</p> <ul style="list-style-type: none"> - An existing director becomes a member of the investment committee (operational body) - An existing director no longer sits on the board of directors, but becomes a member of another operational body. - An existing director is tasked with day-to-day management/nominated managing director¹⁵ - The holder of the actuarial function is also appointed as the holder of the risk management function 	<p>Renewal of the same appointment at the IORP</p> <p><i>Not</i>: tacit renewal with no decision by the general meeting/governing body</p>	<p>Appointment for an indefinite term or appointment for a fixed term with tacit renewals: periodic assessment every 6 years</p>	<p>Changing the role or capacity within the same body or taking on an additional role or capacity within the same body - <i>for example</i>:</p> <ul style="list-style-type: none"> - An existing director becomes chair - Chair becomes 'ordinary' director - Non-executive director becomes executive director (or vice versa) - Director representative of members or beneficiaries becomes director representative of sponsoring undertaking (or vice versa) 	<p>Termination of a mandate - <i>for example</i>:</p> <ul style="list-style-type: none"> - Dismissal / resignation - Termination of a mandate, while the person/entity concerned takes on or continues to exercise another function. - Termination of a mandate resulting from the expiry of the term of the mandate/appointment or of the service agreement concerned <p>Change of the permanent representative (<i>natural person</i>) of a legal entity (where this concerns the termination of the mandate of the <i>previous</i> natural person)²²</p>

¹⁴ Equally, for a replacement for the remaining term of the mandate of a predecessor.

¹⁵ An authorization for signature refers to an authority to represent and does not in and of itself constitute day-to-day management. If a director becomes solely an authorized signatory, no action is therefore required.

²² In addition, the questionnaire for the appointment of the new natural person is required.

WHICH QUESTIONNAIRE?	APPOINTMENT	RENEWAL	PERIODIC ASSESSMENT	CHANGE	TERMINATION
	<p>Appointment at another IORP</p> <p>Change of the permanent representative (<i>natural person</i>) of a legal entity (when it concerns a <i>new natural person</i>)¹⁶</p> <p>Appointment of a temporary substitute during the absence of the function holder</p> <p>Co-optation of a member by the governing body¹⁷</p> <p>An existing non-operational body becomes an operational body</p>			<p>The legal entity is undergoing a structural change with continuity of asset relations²⁰</p> <p>A legal entity changes its name but does not undergo any structural change and the permanent representative remains unchanged</p> <p>Another change that could have a significant negative impact on integrity or expertise²¹ - <i>for example:</i></p>	

¹⁶ The notification of termination of the mandate of the previous natural person is also required.

¹⁷ At the time of the later confirmation/ratification by the general meeting of such a co-optation by the governing body, there is no need for a new appointment procedure (no questionnaire; no implementation letter).

²⁰ By this we mean structural changes that entail the ‘universal transfer’ of the company’s assets. This is the case with:

- a merger (Article 12:2-12:3 Code on Companies and Associations);
- a division (Article 12:4-12:5 Code on Companies and Associations);
- a mixed division (Article 12:6 Code on Companies and Associations);
- a transaction equivalent to a merger or division (Article 12:7 and 12:8 respectively Code on Companies and Associations);
- universal contribution/transfer (Article 12:9 Code on Companies and Associations); and
- a contribution/transfer of branch of activity (Article 12:10 Code on Companies and Associations);

with the proviso that these transactions take place in accordance with the conditions and procedures laid down in the Code on Companies and Associations.

²¹ In the event of a later additional appointment at the same IORP, a notification of change does not have to be completed for the initial function at the IORP (with regard to the question about combining the function with other functions). The appointment questionnaire for the additional function suffices in this case.

WHICH QUESTIONNAIRE?	APPOINTMENT	RENEWAL	PERIODIC ASSESSMENT	CHANGE	TERMINATION
	<p>The legal entity is undergoing a structural change with discontinuation of asset relations¹⁸</p> <p>Exceptional circumstances in the case of a legal entity cascade:</p> <ul style="list-style-type: none"> - Appointment as permanent representative of a legal entity, as opposed to previous appointment in own name (or vice versa) - Appointment as permanent representative of another legal entity - Appointment of another permanent representative <i>legal entity</i> of a legal entity - Appointment with the addition of an extra legal 			<ul style="list-style-type: none"> - Change to the content of the function - Change to the distribution of tasks within the operational body - Conviction of the person in question - Summons of the person in question - New conflict of interest 	

¹⁸ By this, we mean structural changes that do **not** entail the ‘universal transfer’ of the company’s assets. This is the case, for example, when transferring individual assets and/or liabilities, transferring a business and a contribution/transfer of all or part of a branch of activity outside the framework provided for in the Code on Companies and Associations.

WHICH QUESTIONNAIRE?	APPOINTMENT	RENEWAL	PERIODIC ASSESSMENT	CHANGE	TERMINATION
	entity in a cascade ¹⁹ (or vice versa)				
WHO FILLS IN THE QUESTIONNAIRE?	Part A: applicant Part B: IORP	Part A: function holder Part B: IORP	Part A: function holder Part B: IORP	Function holder and IORP	IORP

¹⁹ Previously: legal entity represented by a natural person. Now: legal entity represented by a management company that is represented by the same natural person.