



Communication FSMA_2017_10 of 28/06/2017

Fit and proper questionnaires for directors, senior managers and heads of independent control functions

Updated on 14 May 2018

Scope

This Communication is addressed to the following institutions:

- Portfolio management and investment advice companies;
- Management companies of undertakings for collective investment;
- Management companies of alternative investment funds;
- Certain branches of the above-mentioned companies;
- Independent financial planners (natural and legal persons);
- Bureaux de change (natural and legal persons);
- Public investment companies;
- Alternative finance platforms;
- Regulated real estate investment companies (public and institutional).

Summary/Objectives

Questionnaires to be completed as part of the FSMA's assessment of the fitness and propriety of members of statutory governing bodies, senior managers and heads of independent control functions at the above-mentioned institutions.

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1 **Introduction**

The Belgian supervisory laws that apply to the aforementioned institutions¹ provide that members of the statutory governing body, senior managers and heads of independent control functions at the said companies, as applicable, must at all times have the requisite professional integrity and appropriate expertise to perform their functions, in other words, must be fit and proper.

The nature and scope of the supervision conducted in this regard by the supervisory authorities of the Member States of the European Economic Area (EEA) is undergoing significant developments, in particular under the impetus of the European supervisory authorities, EBA and ESMA. The latter published, on 21 March 2018, a set of “Guidelines on the assessment of the suitability of members of the management body and key function holders”.

The FSMA adheres to these joint Guidelines, and this Communication is therefore aimed at incorporating them into its supervisory practice. These joint Guidelines thus constitute an integral part of this Communication, to which they are annexed.

The European Central Bank has, moreover, drawn up a model questionnaire for the institutions under its supervision².

In the light of these developments, the FSMA has also drawn up new questionnaires to allow it to optimize the assessment of the fitness and propriety of candidates for the positions of directors, senior managers and/or heads of independent control functions at the aforementioned institutions:

- fit and proper questionnaire for an initial appointment (annex 1);
- fit and proper questionnaire for a reappointment (annex 2);
- questionnaire on the collective fitness and propriety of the members of the statutory governing body and of the senior managers (annex 3).

These questionnaires emphasize the following 5 essential assessment criteria:

- the candidate's knowledge, qualifications and experience;
- the candidate's professional integrity;
- any conflicts of interest on the part of the candidate;
- availability of the candidate;
- collective suitability of the statutory governing body and of senior management.

¹ Law of 25 October 2016 on access to the activity of investment services and on the legal status and supervision of portfolio management and investment advice companies (Article 12, 13, 23, 35, 47 and 84).
Law of 3 August 2012 on undertakings for collective investment meeting the conditions of Directive 2009/65/EC and on undertakings for investment in receivables (Articles 39, 199, 211 and 227).
Law of 19 April 2014 on alternative investment funds and their managers (Articles 25, 102, 206, 317, 324, 334 and 335).
Law of 25 April 2014 on the legal status and supervision of independent financial planners and on the provision of financial planning advice by regulated firms and amending the Companies Code and the Law of 2 August 2002 on the supervision of the financial sector and on financial services (Articles 12, 17 and 34).
Law of 18 December 2016 regulating the recognition and delineation of crowdfunding and containing various provisions on finance.
Law of 12 May 2014 on regulated real estate investment companies (Article 14).
Royal Decree of 27 December 1994 on bureaux de change and currency trading (Article 4).

² [Fit & proper Questionnaire – ECB Model](#).

2 The positions in question

Pursuant to the Belgian supervisory laws, the following natural persons must have the requisite fitness and propriety:

a) the members of the statutory governing body, senior managers and heads of independent control functions of:

- portfolio management and investment advice companies governed by Belgian law;
- management companies of undertakings for collective investment governed by Belgian law;
- management companies of alternative investment funds governed by Belgian law which manage public alternative investment funds;
- branches in Belgium of investment firms governed by the law of another EEA Member State that do not fall within the scope of Directive 2004/39/EC;
- branches in Belgium of investment firms that are governed by the law of a third country and that wish to provide in Belgium solely those investment services that are reserved in Belgian law to portfolio management and investment advice companies;
- public investment companies governed by Belgian law;
- regulated real estate investment companies governed by Belgian law;

b) the senior managers and the heads of independent control functions of:

- branches of portfolio management and investment advice companies governed by Belgian law that have been opened in other EEA Member States or in third countries;
- branches of management companies of undertakings for collective investment governed by Belgian law that have been opened in other EEA Member States or in third countries;

c) the members of the statutory governing body and senior managers of:

- independent financial planners governed by Belgian law who carry on their activities within a company;
- regulated institutional real estate investment companies governed by Belgian law;
- alternative finance platforms governed by Belgian law;
- alternative finance platforms governed by the law of other EEA Member States which carry on activities in Belgium without having an establishment there;

d) independent financial planners authorized in Belgium who are natural persons and any employees authorized to represent them in providing consultancy in financial planning, as well as bureaux de change governed by Belgian law acting in the capacity of a natural person;

e) the senior managers of:

- management companies of alternative investment funds governed by Belgian law that manage non-public alternative investment funds;
- branches of management companies of alternative investment funds governed by Belgian law that manage non-public EEA alternative investment funds governed by the law of another EEA Member State;
- branches of management companies of alternative investment funds governed by the law of another EEA Member State that manage public alternative investment funds governed by Belgian law;
- branches in Belgium of companies governed by the law of another EEA Member State or of a third country and that provide consultancy in financial planning in that country or those countries;
- bureaux de change governed by Belgian law;
- branches established in Belgium by alternative finance platforms governed by the law of another EEA Member State or of a third country.

3 Who must complete the questionnaires and when?

3.1 Fit and proper questionnaire for an initial appointment

This questionnaire must be completed and submitted to the FSMA by the aforementioned persons as part of the procedure for application for authorization or registration, as well as before each new appointment while the institution to which they are appointed carries on regulated activities.

3.2 Fit and proper questionnaire for a reappointment

This questionnaire must be completed and submitted to the FSMA by the aforementioned persons before their reappointment to an identical position within the institution in question.

Its aim is to determine whether there have been any changes in the information previously submitted, either at the time of the initial appointment or during the term of office. The changes themselves will have to be submitted via the first "fit and proper questionnaire for an initial appointment", of which only the headings where changes have been made must be filled in.

3.3 Questionnaire about the collective fitness and propriety of the members of the statutory governing body and of the senior managers

This questionnaire must be completed by the institution itself and submitted to the FSMA at least three weeks before each new nomination for an initial appointment, reappointment to the same position or in the event of a material change in the distribution of tasks among members of the statutory governing body and the senior managers.

4 Practical arrangements

These questionnaires must be completed electronically, signed and sent to the following addresses, as applicable:

opm@fsma.be for the following institutions:

- portfolio management and investment advice companies;
- management companies of collective investment undertakings;
- management companies of alternative investment funds;
- certain branches of the above companies;
- Independent financial planners;
- bureaux de change.

For alternative finance platforms: the email address is crowdfunding@fsma.be.

For public investment firms: the email address of the investment firm's usual correspondent(s) at the FSMA. If this correspondent is not known, the questionnaires are to be sent to cis.pub@fsma.be.

For regulated real estate investment companies: the email address of the company's usual correspondent(s) at the FSMA. If this correspondent is not known, the questionnaires are to be sent to soc.fin@fsma.be.

5 Transitional measure

The new *Fit and proper questionnaire for an initial appointment* is more complete than the previous one.

As a result, as a transitional measure, all candidates for reappointment to a position after publication of the new questionnaire must complete it.

As regards subsequent reappointments, the questionnaire will only have to be completed if there is any change to the information previously submitted.

6 Repealing measure

This Communication repeals and replaces Communication *CBFA_2009_20 of 8 May 2009 - Questionnaires concerning the professional integrity and appropriate experience of non-executive directors and senior managers*, as well as its annexes.

Annexes:

- [FSMA 2017_10-1 / Fit and proper questionnaire for an initial appointment](#)
- [FSMA 2017_10-2 / Fit and proper questionnaire for a reappointment](#)
- [FSMA 2017_10-3 / Questionnaire on the collective fitness and propriety of the members of the statutory governing body and of the senior managers](#)
- [Guidelines on the assessment of the suitability of members of the management body and key function holders \(EBA/GL/2017/2\)](#).