

Circular

Brussels, 29 October 2024

Reference: NBB_2024_16

Your correspondent:

Nicolas Strypstein
phone +32 494 53 38 90
nicolas.strypstein@nbb.be

Fit & Proper – Prudential expectations arising from the Act of 22 April 2019 introducing a banker’s oath and disciplinary regime

Scope

- Credit institutions governed by Belgian law within the meaning of Article 1 §3, subparagraph (1), point (1) of the Act of 25 April 2014 on the legal status and supervision of credit institutions;¹
- Branches established in Belgium of credit institutions governed by the law of a member country of the European Economic Area (EEA); and
- Branches established in Belgium of credit institutions governed by the law of a third (i.e. non-EEA) country.

Summary/Objectives

The purpose of this circular is to inform credit institutions of the prudential expectations regarding the suitability (“fit and proper”) assessment of senior managers and heads of independent control functions arising from application of the Act of 22 April 2019 introducing a banker’s oath and disciplinary regime for banking service providers.

These new expectations consist of:

- (i) requiring, for new candidates for a function subject to a fit and proper assessment, that a certificate of non-disqualification be obtained from the FSMA and provided to the supervisory authority,² as from 15 January 2025;
- (ii) recommending that senior managers and heads of independent control functions voluntarily inform their credit institution upon learning that the (deputy) auditor of the FSMA is conducting or has conducted an investigation, as referred to in Article 5 §1 of the Act of 22 April 2019, against them and that the institution assess the impact thereof on the individual’s fitness and propriety and inform the supervisory authority of the results of this reassessment; and
- (iii) recommending that credit institutions update their “fit and proper” policy.

¹ For the sake of clarity, it should be noted that credit institutions within the meaning of Article 1 §3, subparagraph (1), point (2) of the Act of 25 April 2014 (commonly referred to as “class 1 investment firms”) are not covered by this circular as they do not fall within the scope of the Act of 22 April 2019 on the banker’s oath and disciplinary regime.

² As defined in Article 3(4) of the Act of 25 April 2014, i.e. the National Bank of Belgium or the European Central Bank in accordance with the allocation of powers provided for by or pursuant to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

Dear Sir or Madam,

The purpose of this circular is to clarify the “fit and proper” prudential expectations arising from application of the Act of 22 April 2019 introducing a banker’s oath and disciplinary regime, as amended by the Act of 20 December 2023 containing various financial provisions.

In general, the banker’s oath and new disciplinary regime constitute an additional source of information that will allow the prudential supervisory authority, namely the National Bank of Belgium (NBB), the European Central Bank (ECB) or the home authority for branches of credit institutions governed by the law of another EEA country, to strengthen its oversight of the fitness and propriety of senior managers and heads of independent control functions.

1. Scope of application, allocation of powers and purpose of the circular

Scope of application

The obligation to take the banker’s oath and the rules of conduct imposed by the Act of 22 April 2019 apply to all categories of “banking service providers” foreseen in this Act. This circular covers the following categories of banking service providers:

- within category 1 banking service providers, namely persons that must possess at all times the required professional integrity and appropriate expertise to perform their function in accordance with the Act of 25 April 2014 or the Act of 22 March 2006 (so-called “fit and proper” persons):
 - o (i) members of the statutory governing body, (ii) members of senior management³ and (iii) heads of independent control functions of credit institutions governed by Belgian law;
 - o (i) senior managers and (ii) the head of the compliance function for Belgian branches of credit institutions governed by the law of a third country;
- when falling within category 2 and/or 4 banking service providers called, respectively, “responsible managers” and “persons directly taking part in the exercise of banking activities or providing banking services on the Belgian territory”, the senior managers of branches established in Belgium of credit institutions governed by the law of another EEA country.

Allocation of powers

The Act of 22 April 2019 introducing a banker’s oath and disciplinary regime provides that, for the persons covered by this circular, the FSMA will not be the competent authority to decide on disciplinary measures. For category 1 banking service providers, the FSMA will transmit a copy of the final investigation report and exhibits to the NBB, which will either forward it to the ECB, if it concerns a person working for an SI,⁴ or will handle the file itself as the competent prudential supervisory authority for LSI. The NBB and the ECB will handle the file in the framework of their fit & proper screening, by proceeding, if necessary, with a fit and proper reassessment. In addition, pursuant to new Article 236 §7 of the Banking Act, introduced by the Act of 20 December 2023, the person concerned may be disqualified from the banking profession for up to five years if the supervisory authority finds that this person no longer meets the statutory requirements in terms of professional integrity or appropriate expertise.

³ See the definition of “senior management” in the NBB Regulation of 9 November 2021 on external functions.

⁴ Significant institutions (SI) are credit institutions that meet at least one of the criteria defined in Council Regulation (EU) 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions. Credit institutions that do not meet one of these criteria are considered less significant institutions (LSI).

Objective

The purpose of this circular is limited to clarifying the impact on prudential fit and proper assessments of application of the Act of 22 April 2019 introducing a banker's oath and disciplinary regime.

For more information on the practicalities of taking the oath, the rules of individual conduct and the FSMA's powers in this area, please refer to the applicable legislation on this subject⁵ and to the questions and answers (FAQ) on the banker's oath and disciplinary regime for banking service providers available on the FSMA's website.⁶

2. Provision of a certificate of non-disqualification

As from 15 January 2025, all candidates for a banking service provider function will be able to request a certificate from the FSMA confirming that they are not subject to a professional ban imposed by the latter pursuant to the Act of 22 April 2019 or the Act of 25 October 2016 on access to the activity of investment service provider and on the legal status and supervision of portfolio management and investment advisory firms, by the supervisory authority pursuant to the Act of 25 April 2014, or by the NBB further to the Act of 22 July 2022 on the legal status and supervision of stockbroking firms.⁷

Credit institutions, for their part, will be obliged to require the presentation of such a certificate before calling on the services of a banking service provider.⁸

Pursuant to Article 60 §1, subparagraph 2, of the Banking Act of 25 April 2014, all credit institutions governed by Belgian law that, as from 15 January 2025, wish to submit a "new appointment" form for a director, senior manager or head of an independent control function subject to fit & proper screening will be required to attach a certificate of non-disqualification.⁹ This certificate must be requested by the fit & proper candidate from the FSMA.

The certificate of non-disqualification must be appended to the ECB or NBB "new appointment" fit & proper form applicable to significant (credit) institutions (SI) and/or less significant institutions (LSI) and submitted via the ECB's IMAS portal, for SI, or the NBB's OneGate platform, for LSI.

The obligation to provide the supervisory authority with a certificate of non-disqualification does not apply to senior managers at N-1 level within credit institutions governed by Belgian law, insofar as the individuals in question are not subject to fit and proper screening by the supervisory authority. However, these persons will be obliged to submit such a certificate to their credit institution so as to allow the latter to fulfil its obligations pursuant to Article 7 §3 of the Act of 22 April 2019.

With regard to Belgian branches of credit institutions, Article 7 §3 of the Act of 22 April 2019 provides that a certificate of non-disqualification must be submitted by candidates for the banking service provider functions concerned. For branches governed by the law of a third country, this certificate must be attached, as from 15 January 2025, to the "new appointment" form submitted to the NBB. For branches of credit institutions governed by the law of another EEA country, the persons concerned are asked to

⁵ Act of 22 April 2019 introducing a banker's oath and disciplinary system; Royal Decree of 28 January 2024 on the individual rules of conduct referred to in Article 4 §3 of the Act of 22 April 2019 introducing a banker's oath and disciplinary regime; FSMA regulation on the banker's oath, approved by royal decree on 16 June 2024 (*Moniteur belge/Belgisch Staatsblad* 20 June 2024).

⁶ See [Questions et réponses \(FAQ\) relatives au serment bancaire et au régime disciplinaire des prestataires de services bancaires](#).

⁷ Article 7 §2 of the Act of 22 April 2019. Based on Articles 64 §7 of the Act of 25 October 2016, 236 §7 of the Act of 25 April 2014 and 204 §8/1 of the Act of 20 July 2022, inserted by the Act of 20 December 2023 containing various financial provisions, a professional disqualification of up to five years may be imposed in cases where it is found that a person subject to the fit and proper requirements imposed by the respective laws no longer meets the statutory requirements in terms of professional integrity or appropriate expertise.

⁸ Article 7 §3 of the Act of 22 April 2019.

⁹ Dated within the past three months.

contact the authority in their country responsible for the fit and proper screening of the managers of these branches (the “home authority”) to determine the practical arrangements for providing this certificate.

3. Voluntary disclosure to the credit institution of information on an investigation by the FSMA’s (deputy) auditor

Article 5 §1 of the Act of 22 April 2019 provides that the FSMA’s auditor (or, in the auditor’s absence, the deputy auditor) shall investigate serious indications of breach of the obligation to take the banker’s oath or the rules of individual conduct on the part of banking service providers.

Thus, when the senior managers and heads of the independent control functions of credit institutions become aware of the fact that the (deputy) auditor of the FSMA is investigating or has investigated them,¹⁰ it is recommended that they immediately inform their credit institution of this fact, notably so that the latter can proceed to reassess the fitness and propriety of the person concerned.¹¹

Furthermore, in all cases (regardless of whether the reassessment calls into question the fitness and propriety of the person concerned), the supervisory authority expects credit institutions governed by Belgian law or Belgian branches of credit institutions governed by the law of a third country to inform the supervisory authority of the existence of such an investigation by submitting a “new elements” fit & proper form, including the result of the internal reassessment. For more information, please refer to Section 5.2. of the NBB’s Fit & Proper Manual, which states that this form must be submitted to the supervisory authority as soon as new information comes to light that could have an impact on one or more of the five “fit and proper” assessment criteria.

In the case of senior managers of Belgian branches of credit institutions governed by the law of another EEA country, it is up to the home authority to decide on the steps to be taken.

4. Modification of the “fit and proper” policy

As stated in the NBB’s Fit & Proper Manual, credit institutions must ensure that their “fit and proper” policy is in line with the applicable rules.¹² Accordingly, the supervisory authority expects credit institutions falling within the scope of this circular to update their “fit and proper” policy by 31 March 2025 in order to incorporate the relevant provisions of the Act of 22 April 2019.

A copy of this circular is being sent to the accredited statutory auditor(s) of your institution.

Yours faithfully,



Pierre Wunsch
Governor

¹⁰ The persons concerned are generally informed by the FSMA upon the opening of an investigation or submission of the provisional investigation report (Article 5 §4 of the Act of 22 April 2019). However, this will not be the case if, for example, no request for information is made to the person concerned and the investigation results in closure of the file with no further action.

¹¹ Please note that in the event of a new appointment, the candidate must also be transparent on the fit & proper form “New Appointment” about any current proceedings (including disciplinary proceedings) to which he or she may be subject.

¹² See paragraphs 2:102 and 3:99 of the NBB’s Fit & Proper Manual.