



Regulatory Newsflash

New requirements on the certification of Compliance Officers

On 25 April the following Royal Decrees (RDs) were published in the Belgian Official Journal:

- RD of 15 April 2018 approving the FSMA Regulation of 28 February 2018 amending the FSMA Regulation on the certification of Compliance Officers ([NL/FR](#))
- RD of 15 April 2018 approving the NBB Regulation of 6 February 2018 on the fitness of the persons responsible for the Compliance function ([NL/FR](#))

The purpose of these Regulations is to align the approach followed by the NBB and the FSMA on the certification of Compliance Officers and more specifically the requirements to determine whether the persons responsible for the Compliance function can be deemed 'fit and proper'.

In this context the NBB and the FSMA developed a mutual approach in which:

- The FSMA amended its Regulation on the certification of Compliance Officers
- The NBB elaborated a new Regulation on the 'fitness' of the persons responsible for the Compliance function

These Regulations will enter into force as of 1 June 2018.

The main changes brought by these Regulations to the current regime can be summarized as follows:

'Fit and proper' assessment

When assessing whether a candidate meets the 'fit and proper' requirements for persons responsible for the Compliance function the FSMA will take into account:

- The candidates previous **experience**: as was already the case under the existing FSMA Regulation, the regulated institutions will have to demonstrate, when proposing a candidate, that the candidate has at least 3 years of appropriate experience. The new FSMA Regulation specifies that previous experience will be considered appropriate if the candidate, in his or her previous function, had a judgement responsibility on the application of the conduct rules.
- The candidates **professional knowledge**: which can be demonstrated by passing a mandatory exam. Contrary to the requirements under the existing FSMA Regulation this exam, now has to be approved by the NBB and FSMA.
- In the new approach the FSMA will also take into account the candidates **skills**, such as independent judgement and possibility to influence the decision making process, and his or her **professional behaviour**.

This approach will also be followed by the NBB for the 'fit and proper assessment'.

Mandatory exam

As indicated above the professional knowledge of a candidate can be demonstrated by passing an exam (separate exam for the banking/investment sector and for the insurance sector), that must be approved by the NBB and FSMA. The exam consists of a theoretical and a practical part.

The **theoretical** part will assess the candidates knowledge of the applicable legal and regulatory conduct and integrity rules.

From now on, the **practical** part will consist of a Module A and a Module B. Module B will be mandatory for all candidates taking the exam for a specific sector. Module A will only be relevant in function of the specific activities of the regulated institution.

Module	Insurance Sector	Banking/Investment sector
B - all	<ul style="list-style-type: none">• Rules of conduct and integrity applicable to the insurance sector	<ul style="list-style-type: none">• Duty of vigilance towards clients• AML/CFT requirements• Organisational requirements

A – specific activities	<ul style="list-style-type: none"> • AML/CFT requirements ⇒ for Compliance Officers in insurance undertakings which offer life insurances 	<ul style="list-style-type: none"> • Investment services requirements ⇒ for Compliance Officers at regulated institutions providing investment services
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A complete list of the required topics for both Modules A and B can be found in article 11 of the amended FSMA Regulation and article 5 of the new NBB Regulation.

Permanent training

The permanent training requirements remain for certified Compliance Officers. After passing the mandatory exam, the certified Compliance Officer should be able to demonstrate that his knowledge is kept up-to-date by following at least 40 hours of training each 3 years.

New is the clarification that permanent training requirements also apply for candidates who passed the exam but who are not immediately appointed as certified Compliance Officer afterwards. They will need to demonstrate a minimum of 20 hours of training each 3 years, which is the equivalent of the mandatory training to be followed by other employees in the Compliance function of a regulated institution.

A detailed description of the permanent training requirement of the Compliance Officers can be found in the FSMA communication 2018_05 of 08/05/2018 ([NL](#)/[FR](#)).

Transitional measures

The NBB and FSMA Regulations provide in transitional measures for Compliance Officers who were already in function at the moment the new Regulations enter into force. They will not have to pass a new exam on condition that they have complying with the permanent training requirements and they are still active in the same activity sector as before.

Contact

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