

Privacy and assessments of persons

When performing assessments of persons, the AFM collects personal data. Which data is processed for which purposes is determined by law. With regard to institutions subject to supervision, this follows from the Market Conduct Supervision (Financial Institutions) Decree (*Besluit Gedragstoezicht financiële ondernemingen Wft*), the Market Access (Financial Institutions) Decree (*Besluit Markttoegang financiële ondernemingen Wft*), the Regulated Markets Decree (*Besluit gereguleerde markten Wft*), the Audit Firms (Supervision) Decree (*Besluit toezicht accountantsorganisaties*) and the CSDR¹. In processing this personal data, the AFM is obliged to abide by the General Data Protection Regulation (GDPR), which is in force throughout the EU. Below, we will explain why the AFM processes personal data for these tests and how the AFM does so.

Purposes of processing

The AFM collects personal data in order to decide whether the trustworthiness of the person is beyond doubt and whether the person is fit to hold the envisaged position. If any relevant changes occur after the assessment (such as a criminal conviction, for example), the AFM may reassess a person's trustworthiness and/or fitness.

Providers and recipients of the personal data

The data required for the assessment is initially requested from the person to be assessed. Based on this data, the AFM subsequently collects additional data from public sources (such as LinkedIn), from national and international fellow-supervisors such as De Nederlandsche Bank N.V. (DNB) and the European Central Bank (ECB), the police, the Tax and Customs Administration, [the Financial Expertise Centre](#) (FEC), the Chamber of Commerce, the Central Insolvency Register (and any bankruptcy trustees or administrators involved) and the references provided. The AFM also consults its internal sources in order to gather information about the person to be assessed. Based on the law ([Section 14 of the Market Conduct Supervision \(Financial Institutions\) Decree](#)), we may collect and process this data for the purpose of an assessment of persons.

The AFM has a duty to cooperate with DNB and the ECB in the context of assessments of persons in relation to financial undertakings within the meaning of the Financial Supervision Act (*Wet op het financieel toezicht* (Wft)). This duty is laid down in [Section 1:47c Wft](#). The [partnership agreement](#) with DNB and the [Memorandum of Understanding](#) (MoU) with the ECB contain arrangements on exchanging assessment information. Likewise, the AFM exchanges information with other supervisory authorities within and outside the EU in the context of assessments of persons. It does so on the basis of the possibility for cooperation laid down in [Section 1:51 Wft](#) (within the EU) and [Section 1:65 Wft](#) (outside the EU). Information is also exchanged in the context of various international partnerships, such as the [International Organization of Securities Commissions](#) (IOSCO) and [International Forum of Independent Audit Regulators](#) (IFIAR), and via the [European Banking Authority](#) (EBA), the [European Insurance and Occupational Pensions Authority](#) (EIOPA) and the [European Securities and Markets Authority](#) (ESMA).

Storage and security

The personal data collected for assessment purposes is appropriately secured. The AFM employs two security officers who supervise the appropriate protection of personal data.

¹ article 27, first and fourth subsection, Regulation (EU) Nr. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012

The information that the AFM processes for the performance of the assessment of persons is stored no longer than is necessary for the processing purposes. The AFM retains information obtained in the context of assessments of persons for a period of 20 years after receipt. Some information is retained for less than 20 years, for example information about criminal antecedents and copies of identity documents; this information is retained for a year.

Ground for processing data: a statutory task

The AFM has the statutory task to supervise the integrity of the financial markets, in which context it carries out assessments of persons. Companies are obliged to have their policy determined, co-determined or supervised by persons who are deemed fit to do so and/or who meet the requirements of trustworthiness. These requirements have been laid down in various statutory provisions:

- With regard to collective investment scheme managers, investment companies, UCITS managers, undertakings for collective investment in transferable securities, investment firms, depositories, data reporting service providers, financial service providers or pension custodians: [Section 4:9\(1\)](#), and [Section 4:10\(1\) Wft](#);
- With regard to market operators: [Section 5:29\(1\) Wft](#);
- With regard to central securities depositories: Article 27(1) and (4) of [Regulation \(EU\) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation \(EU\) No 236/2012](#) (CSDR);
- With regard to audit firms: [Sections 15 and 16\(3\), \(4\) and \(5\) of the Audit Firms \(Supervision\) Act \(Wet toezicht accountantsorganisaties \(Wta\)\)](#) and [Section 5 of the Audit Firms \(Supervision\) Decree \(Bta\)](#);
- With regard to brokers in redeemable funds: [Section 2a of the Market Conduct Supervision \(Financial Institutions\) Decree \(BGfo\)](#);
- With regard to crowdfunding platforms: Article 12(2)(l) of the [European Crowdfunding Service Provider Regulation for Business](#).

Therefore, the ground for the processing of personal data for the purpose of assessments of persons is the AFM's exercise of the official authority vested in it to perform this statutory task.

The AFM processes criminal data for the purpose of a trustworthiness assessment. The AFM may do so pursuant to [Section 33\(2\)\(a\) of the General Data Protection Regulation \(Implementation\) Act \(Uitvoeringswet Algemene verordening gegevensbescherming\)](#).

Public register

The AFM has the statutory duty to publish the names of the day-to-day policymakers of insurance brokers and the names of the external auditors, contact persons, policymakers, co-policymakers, shareholders, partners and associates of audit firms in the [public register](#) on its website.

Categories of personal data

The categories of personal data relevant for the assessment concern personal data and information required to establish the candidate's identity, contact details of the candidate and references provided, data relating to work experience and education, as well as criminal, fiscal, financial, supervisory and other antecedents.

Rights of data subject

For information regarding the option to exercise the rights of access, rectification, erasure (i.e., the right to be forgotten) and limitation, and the submission of a complaint, please refer to the AFM's [privacy statement](#).

Controller

The AFM is the controller in respect of the processing and decides for which purpose personal data is processed, which personal data is processed and how.

Questions

If you have any questions about this statement, please contact our Data Protection Officer. You can submit your question by email to: privacy@afm.nl. Alternatively, you can submit your question by letter to: Dutch Authority for the Financial Markets, Data Protection Officer, PO Box 11723, 1001 GS Amsterdam. For information on how to submit a GDPR request, please refer to the AFM's [privacy statement](#).



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Dataclassificatie

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