ANNUAL REPORT 2017

FSMA

FINANCIAL SERVICES AND MARKETS AUTHORITY

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ANNUAL REPORT 2017

CONTENTS

FOREWORD

Dear readers,

In this annual report, the Financial Services and Markets Authority (FSMA) reports on how it fulfilled its mandate in 2017. The interests of the financial consumer are central to its tasks. Through its action, the FSMA ensures that consumers can trust the financial services they are offered, and works towards maintaining a solid financial system that inspires confidence and makes for a sound financing of the real economy. To fulfil these tasks, the FSMA strikes a balance between applying preventive measures wherever possible, and applying enforcement measures wherever necessary.

This consumer-focused approach is also a major priority at a European level. This is why the European legislators have enacted new legislation, which will also apply and have an impact in Belgium. The FSMA contributes to a proper, efficient and proportionate transposition and application of the new legislation and informs the sector thereon. As you will be able to read in this report, this was an important area of work for the FSMA over the course of 2017, as several European texts entered into force.

This included the transposition of the European MiFID II, which entered into force at the beginning of 2018 and concerns—among other aspects—investor protection. The PRIIPs Regulation, which concerns the information that consumers receive on financial products, also entered into force at the beginning of 2018.

In addition to this European legislation, the FSMA made a contribution to the national legislative changes necessary to implement the High Level Expert Group's recommendations on the future of the Belgian financial sector, including on the subject of fit & proper requirements and the compliance function. New rules for crowdfunding platforms were also introduced at the beginning of 2017. Platforms that collect money to invest in businesses must obtain an authorization from the FSMA and observe certain rules of conduct. At the end of 2017, there were already six such platforms with an authorization.

In 2017, the FSMA also made a substantial contribution to the roll-out of the new supervision of company auditors. The Belgian legislature entrusted this supervision to a newly established and independent Belgian Audit Oversight College. The FSMA acquired an important role in this respect, including providing knowhow and staff to this College,

which can also call on the FSMA's inspection team. In 2017, the FSMA and the College signed a memorandum of understanding to regulate their cooperation. The Sanctions Committee of the FSMA has now been granted the power to handle dossiers on the subject of auditors as well.

A supervisory authority always keeps its finger on the pulse by continually monitoring trends and risks. In 2017, the FSMA introduced a new channel through which to obtain information that can be useful for its supervision: the Whistleblowers' point of contact. This channel allows people working in the financial sector to report—either anonymously or not—possible breaches of the legislation supervised by the FSMA.

The FSMA also invested in a new monitoring tool for its supervision of trading. This tool is a specialized detection software that detects new forms of market manipulation within a context of high-frequency trading. In 2017, this software enabled the FSMA to uncover one such new form of market manipulation.

Infringements of the financial legislation supervised by the FSMA may be punished with administrative sanctions. The past few years have already shown that fast and dissuasive action can be taken against offenders. In 2017, the FSMA imposed a series of administrative sanctions for infringements of different laws. These consisted of 13 agreed settlements for a total amount of over 2 million euros.

Just as important as imposing sanctions is taking proactive and corrective action in the market to prevent any potential detriment to consumers. An example of this is checking the marketing material for financial products before it is actually used. In 2017, the FSMA checked more than 3,000 advertisements for financial products and, where necessary, asked for amendments to be made. Experience has shown that considerably fewer complaints are made about financial products when their advertisements are checked in advance. In 90 per cent of cases, these advertisements were approved within 72 hours.

The moratorium on the distribution of particularly complex structured products pursues the same aim. In 2017, the FSMA conducted a thorough analysis of 50 structured products with new characteristics; 20 of these did not make it to the market because they were too complex.

The FSMA also intervened with corrective action after specific sectoral audits. In 2017, it conducted an audit of the sale of payment protection insurance to cover consumer loans. The initial conclusion from this audit was that such products are too expensive for the cover offered, and that not all documents used were drawn up in accordance with the law.

The FSMA issued a warning to consumers about such insurance products. Following the audit, two insurance companies stopped offering such insurance products; the other insurers made the necessary adjustments to comply with the FSMA's remarks.

The FSMA also conducted investigations into the payout of pension benefits in the case of death or retirement. Pension institutions were found not to always actively monitor when a payout is due. As a result, a number of beneficiaries did not receive the payout

they were entitled to. After the FSMA's intervention, the situation was remedied and the pension institutions amended their procedures.

A trend that stood out in 2017 was the rise in the number of notifications from consumers, who now find their way to the FSMA more easily. Partly thanks to this, in 2017 the FSMA was able to more quickly and regularly issue warnings about potentially illegal offers of financial products. The FSMA also contributed to the preparation and application of the new legislation on the prevention of money laundering and terrorist financing, and informed the sector on the subject.

Alongside its role as a supervisory authority, the FSMA is additionally tasked with contributing to financial education. The financial education programme Wikifin.be, which was launched in 2013, is meeting with growing success. In 2017, the number of visits to www.wikifin.be increased by more than 12 per cent over the previous year. Since its launch in 2013, the website has already been visited almost 7 million times. Collaboration with schools and other partners is also on the rise. For example, we can see increasing interest in the games which were played in class by more than 70,000 pupils during the most recent edition of Money Week. Preparations for the opening of a centre for financial education in Brussels are also in full swing. The centre will add a new dimension to the FSMA's offer of financial education.

As the Belgian supervisory authority, the FSMA clearly does not work in a vacuum. The trends observed in the financial sector are almost always global trends, making international cooperation increasingly important. Examples of this are shadow banking—on which the FSMA and the NBB prepared a report—and the advent of new technologies, cryptocurrencies and associated products.

The FSMA consciously plays a very active role at an international level. The FSMA is Vice Chair of IOSCO, the International Organization of Securities Commissions, as well as chairing its audit committee, and it is also Chair of IOSCO's European Regional Committee. At a European level, it heads up the work on financial innovation within the European supervisory authority ESMA. In 2017, the FSMA was also appointed Chair of the IFRS Foundation Monitoring Board.

A specific example of the success that international cooperation can achieve is the fight against binary options, which have caused consumers in many countries to lose a great deal of money. Already since August 2016, an FSMA Regulation has banned the distribution of binary options to retail customers in Belgium. Thanks to its role at an international level, the FSMA has also been able to advocate a broader cross-border approach for these products. As a result, ESMA has already announced a Europe-wide ban. Israel, where many offers of binary options were based, also adjusted its legislation after the FSMA's intervention.

As a modern supervisory authority, the FSMA strives for efficiency, user-friendliness and sustainability. This was particularly exemplified in 2017 with the extension of the online registration management tool to all intermediaries under its supervision. From now on, all of these intermediaries can keep their file updated online, which takes away a lot of the

administrative burden for them and for the FSMA, and helps manage files more efficiently. With no fewer than 26,000 intermediaries, these are by far the largest population under the FSMA's supervision.

This report includes a section on the FSMA's efforts in the area of sustainability. Here, you can find out about the measures that the FSMA has taken to reduce consumption of, for example, energy and paper. The results are remarkable, especially taking into account the growth in staff numbers over the last few years.

The considerable increase in the FSMA's tasks has meant that the FSMA has had to increase its workforce. In 2017, just like in the past few years, attracting new staff has been an important area of focus. The FSMA already has highly qualified and motivated staff, but is always on the lookout for new people with the right expertise who are willing to contribute to a public-interest role.

This annual report gives you a detailed overview of all of the FSMA's activities in 2017, some of which space does not permit inclusion in this foreword. It shows how the FSMA contributes on a day-to-day basis to putting the interests of consumers first in the financial sector, to ensure that the sector can earn consumer trust.

Happy reading,

Jean-Paul SERVAIS
Chairman

THE FSMA IN 2017

Supervision

102
credit institutions and **insurance companies** governed by Belgian law

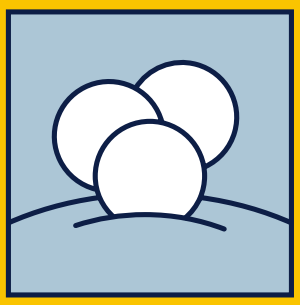
26,094
registered **intermediaries**

3.6 million
employees and self-employed persons with a Belgian pension plan

192
listed companies

202
pension funds

Financial landscape



Deposits with **credit institutions** governed by Belgian law*:
€ 622.4
billion

Assets under management by **funds** governed by Belgian law:
€ 155
billion

Credit institution balance sheet total:
€ 993.8
billion

Pension fund balance sheet total:
€ 29.78
billion

Market value of **Euronext Brussels**:
€ 403
billion

Premium income on the Belgian insurance market:
€ 26.6
billion

* September 2017

A few key dates

1 February: New rules come into effect for crowdfunding platforms. Platforms that enable investments in a business must apply for an authorization from the FSMA and observe certain rules of conduct.

3 February: The Chairman of the FSMA, Jean-Paul Servais, is elected as the new Chairman of the IFRS Foundation Monitoring Board.

27 March - 2 April: The FSMA organizes the second edition of Money Week. Wikifin.be and its many partners set up a variety of activities; more than 50,000 pupils play the budget game in class.

8 May: The FSMA warns about investments in alternative investment products such as rare earths, precious metals and diamonds.

23 May: The FSMA conducts a study into payment protection insurance sold with consumer loans. The initial findings indicate that such products are expensive for the cover offered.

15 June: The FSMA publishes its 2016 annual report.

29 June: The FSMA launches its new and improved website.

8 August: AVA Trade EU Ltd pays EUR 175,000 and iCFD Ltd EUR 200,000 in agreed settlements with the FSMA for the unlawful offer of investment instruments on Belgian territory.

10 August: The FSMA chairs the first meeting of the Eonia College. This college brings together the supervisors of all banks contributing to the Eonia benchmark as well as the supervisors of countries for which Eonia is of systemic importance.

21 August: The FSMA publishes a report with findings from the first inspections on compliance with the duty of care by insurance brokers when they give advice on savings or investment insurance.

28 September: The FSMA launches the Whistleblowers' point of contact. This point of contact can be used by people who work in the financial sector who identify infringements of financial legislation.

1 October: The Chairman of the FSMA, Jean-Paul Servais, is re-elected as Chairman of the committee within ESMA that works on the topic of financial innovation.

2 October: The FSMA and the NBB publish a joint report on asset management and shadow banking in Belgium.

2-8 October: The FSMA takes part in the first edition of World Investor Week, an IOSCO initiative.

24 October: The FSMA publishes the results of an inquiry into communication concerning the costs and returns of pension plans. This inquiry finds that insurers and pension funds must communicate more transparently.

13 November: The FSMA publishes a warning about the risks associated with Initial Coin Offerings (ICOs).

24 November: The FSMA starts a consultation on the preliminary drafts of texts to implement the new prospectus regulation. This ties in with the efforts by the FSMA to involve the sector in its work and to provide clear information.

13 December: EIOPA publishes the results of a pan-European stress test for pension funds. The Belgian pension fund sector holds up well even under extremely stressful economic conditions.

Mission and vision

The FSMA works towards a sustainable financial system. This means a financial system in which consumers can rely on the proper provision of financial services and on transparent and open markets, in which consumers can buy financial products in line with their wishes and needs, and in which the financial industry serves society and contributes to a sound financing of the real economy.

The FSMA makes the interests of consumers its priority. This is why it is constantly monitoring trends and risks and is fully committed to its supervisory tasks. It also engages in efforts to increase financial literacy. In this way it wishes to develop in consumers a discerning confidence in the financial sector.

The FSMA as an organization has identified five priorities for the fulfilment of its mission:

- reinforcing engagement towards the financial consumer;
- allocating as many resources as possible to supervisory tasks;
- identifying risks more quickly, focusing on priorities and monitoring performance and results;
- developing a modern organization;
- optimizing the management and use of available information.

Every year, the FSMA establishes an action plan setting out the way it will put these organizational priorities into play. The action plan is approved by the Supervisory Board and determines the focus for the upcoming year. The FSMA reports on its activities in its annual report.

The FSMA in 2017:

The FSMA subjected **50 structured products with novel features** to a thorough examination. The FSMA deemed 20 products to be particularly complex. These products were, as a result, not sold on the retail market. 4,522 structured products have been marketed in Belgium since the **introduction** of the moratorium in 2011.

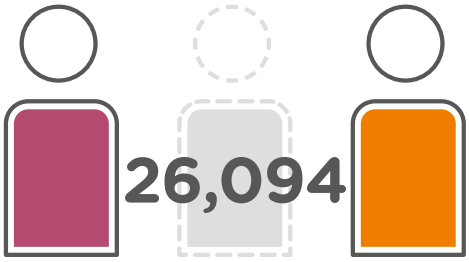
The FSMA launched **80 preliminary or full analyses** of possible market abuse. It suspended trading in a share 39 times.

The FSMA published **116 warnings**, which related to 99 companies. These publications warn the public of the dangers of unlawful offers or potentially unlawful offers.

The FSMA received **513 transparency notifications**. These are notifications regarding the upward or downward crossing of a statutory or regulatory threshold of shareholdings in a listed company.

in brief

The FSMA received **1,603 notifications** of managers' transactions.

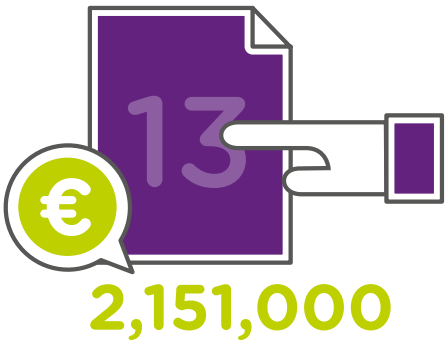


At the end of the year, the FSMA had **26,094 intermediaries** under its supervision. Over the course of the year, the FSMA struck off **285 intermediaries** from the register. It suspended **10 intermediaries** and rejected the registration of **43 candidate intermediaries**.

The FSMA received **1,710 messages** from consumers on a wide range of financial subjects. Almost half of the messages were about fraud and irregular offers of financial products and services. One in eight messages was on the subject of investing. One in ten was on the subject of pensions.

In 2017, the website www.wikifin.be was visited close to **2.1 million times**, an increase of 12.6% over the previous year. Since its launch in 2013, the website has already been visited almost 7 million times.

The FSMA handled **3,278 advertisements** for funds, regulated savings accounts and insurance products.



The FSMA imposed **thirteen administrative sanctions** in the form of an agreed settlement. These settlements entail the payment of a fine and a publication, with names, on the FSMA's website. These agreed settlements brought in a total of **2,151,000 euros** for the Treasury.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HONEST AND FAIR TREATMENT OF CONSUMERS

Financial products that are easy to understand and trustworthy

Many consumers have limited knowledge of financial matters. They find financial products difficult to understand or don't take enough time to study financial matters. As a result, they are often not aware of financial risks. This can lead to problems. The FSMA oversees this area and takes initiatives to prevent problems and to boost consumer confidence in financial products. The FSMA's supervision is intended to help ensure that the products offered are easy to understand, safe, useful and cost-transparent.

Supervision of advertising

The FSMA supervises the distribution of financial products to consumers. Advertisements for products such as undertakings for collective investment (UCIs) (also referred to as 'funds') regulated savings accounts, insurance products, and structured debt instruments and derivatives come under this supervision.

Supervision of adverting material is crucial. Consumers mostly find out about financial products through advertisements. They often make purchasing decisions based on these materials. To enable consumers to make an informed assessment of financial products, the advertisements must be accurate and readable.

The Royal Decree on Advertisements[1] lays down the substantive rules for advertising financial products. The advertising material must meet a number of criteria. The information must be accurate. Advantages and disadvantages of a product should be presented in a balanced manner. Advertisements should be written in language that is easy to understand. Misleading information is prohibited.

The FSMA checks the advertisements of public open-ended funds before their publication. Those who offer these funds are obliged to submit their advertising material so that the FSMA can approve it beforehand. The same rules apply for offerors of regulated savings accounts and issuers who offer the public certain investment instruments, such as structured debt instruments. For insurance products, there is no prior approval of advertising messages by the FSMA. However, the FSMA may conduct ex-post checks.

1 Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients.

The Royal Decree on Advertisements entered into force in 2015. The FSMA provided clarifications on this legislation in meetings with financial institutions and in workshops with the sector. FAQs were also published to clarify certain questions of application of the Royal Decree on Advertisements. The FSMA hopes that such initiatives will help many offerors obtain an in-depth understanding on the subject. In some dossiers, their limited knowledge of the legal framework of the supervision of advertisements, and more particularly that of marketing departments, is an issue.

Over the last year, the FSMA handled 1,272 advertisement dossiers for funds, regulated savings accounts, insurance products, and structured debt instruments and derivatives. The majority of the advertisement dossiers related to funds. The FSMA screened 781 dossiers in that category. The advertisement dossiers for funds, regulated savings accounts and insurance products concerned 3,278 advertisements. An advertisement is any form of provision of information of a promotional nature for a financial service or a financial product. The FSMA sent 1,872 emails with remarks on funds advertisements. These remarks often refer to the obligatory minimum content of advertisements and the presentation of historic returns.

Table 1: Supervision of advertising in 2017

	Number of dossiers	Website dossiers	Number of advertising messages	Number of emails from the FSMA
Funds	781	200	2,809	1,872
Regulated savings accounts	105	68	215	248
Insurance products	116	80	254	165
Structured debt instruments and derivatives	270	N/A	N/A	N/A
Total	**1,272**	**348**	**3,278**	**2,285**

The number of fund advertisements submitted for approval fell in 2017. The number of emails from the FSMA commenting on funds also declined. This decline is partly due to the use of a template for the approval of certain types of funds. This means that only one template per type of fund needs to be approved once. The FSMA encourages this practice. It enables advertisement dossiers to run more smoothly. The use of templates is described in the list of frequently asked questions, which cover various subjects relating to the supervision of advertising.

In 2017, as part of the handling of advertisement dossiers for structured debt instruments, particular attention was devoted to the application of the Belgian rules for unfair contract terms[2]. A lot of queries were also received about the provision of information relating to customized indexes, which are increasingly being used as the underlying asset of structured debt instruments and derivatives (see below).

2 See the FSMA's position in the 2016 annual report, p. 26.

Checks on insurance policies have revealed that certain shortcomings are often repeated. The marketing material contains insufficient information. It contains a host of subjective statements intended to induce a positive feeling among consumers. The potential benefits of the financial product are emphasized without also giving a fair, prominent and balanced indication of the associated risks, limitations or conditions. This constitutes a clear infringement of the Royal Decree on Advertisements. The risks, limitations or conditions must be mentioned legibly in a font size that is at least as large as that used to present the benefits. The insurers and intermediaries concerned adjusted their advertisements to comply with the regulations.

One of the most important domains in the supervision of advertisements is the supervision of websites, product sheets and apps. In the autumn of 2017, the FSMA found that a number of offerors of funds had not fully amended their websites, product sheets or apps. As part of a similar check, the FSMA identified a range of shortcomings on the website and product sheets of an insurer. The offerors of funds and the insurer concerned subsequently remedied these shortcomings.

Customer reviews on the website of an online bank

As part of its supervision of advertisement dossiers, the FSMA handled a new proposal from an online bank in 2017. The bank wanted to offer its customers the option to review its overall service and its savings products using a one-to-five-star rating system. The average scores from these reviews would be displayed on the general and product pages of its website. When clicking the scores, the user would be able to read the reviews from other customers.

The FSMA tested this proposal against the provisions of the Royal Decree on Advertisements. The information included in advertisements may not be false or misleading. The FSMA made a number of comments in this respect.

A review from a customer is subjective and based on criteria that are not always relevant to other customers. A customer may have insufficient knowledge of internet banking and savings accounts or a lack of experience with financial subjects. As a result, that customer's reviews may contain inaccuracies or inconsistencies.

There were also comments on the representativeness of the reviews given, the way in which the internet bank calculates the average scores and the display of a star-based rating.

Moratorium

Structured products are complex investment products which are indirectly linked to one or more assets through derivative products such as options. Structured products differ from conventional investment products in the sense that they do not always follow the price movements of underlying assets. Structured products react sometimes strongly or sometimes weakly to a price movement. This makes structured products difficult for retail investors to understand, meaning that they have trouble estimating the risks.

To protect investors, the FSMA declared a moratorium in 2011 on the distribution of particularly complex structured products. The moratorium lays down the criteria by which to prohibit the distribution of structured products that have too complex a structure. The moratorium also aims to give investors better insight into the costs, credit risk and market value of structured products.

In Belgium, nearly all providers of structured products have signed on to the moratorium. In doing so they have committed not to distribute to retail investors products that are considered particularly complex under the criteria of the moratorium. The FSMA continuously scours the market to see whether offerors are adhering to the moratorium.

If any doubts exist as to whether a structured product should be considered particularly complex or not, the product is analysed in detail.

In 2017, such a detailed analysis was conducted on 50 products which contained new characteristics, and the calculation formula for which was mostly based on a customized index[3]. 20 of these products were finally deemed to be particularly complex. These products were, as a result, not brought to the retail market. As part of this analysis, the accessibility of 22 new customized indexes was examined.

Since the launch of the moratorium in 2011, 4,522 structured products have been distributed in Belgium (see Table 2). Almost half of these (2,205 structured products) fall under the moratorium. The other 2,317 structured products fall under the opt-out regime[4].

The FSMA has kept a record of structured products distributed in Belgium since the launch of the moratorium. Those records show that both the number of non-complex products distributed yearly and the total yearly amount paid out fell between 2016 and 2017.

3 A 'customized index' generally means an index that does not meet the following cumulative conditions: 1° it has existed for at least one year, 2° its price can be consulted through an accessible source and the method of calculation and breakdown of the price are appropriately disclosed, 3° it is used by several other professional and unrelated market participants, 4° it has a clear investment objective to be sufficiently representative for the market to which it relates, 5° it is sufficiently diversified, 6° it has a maximum three-monthly rebalancing frequency.

4 The opt-out regime offers issuers the option not to apply the moratorium to clients who hold deposits and financial instruments with the issuer with a value at the time of distribution of more than EUR 500,000 in movable assets. The opt-out applies only to the portion of the assets that exceeds the threshold of EUR 500,000.

Since 2016, the annual number of products distributed with a right to repayment of the capital on maturity is increasing. The same trend can be seen for the issue amount, although to a lesser extent. Even against a backdrop of very low interest rates, the right to repayment of capital at maturity is an important factor in the Belgian investor's decision-making process.

In 2014 and 2015, increasing numbers of structured products appear to have been issued in US dollars following the interest-rate differential in favour of the dollar. Although that interest-rate differential still exists, the figures show that between 2016 and 2017, the percentage of products issued in US dollars has fallen in terms of issue amount.

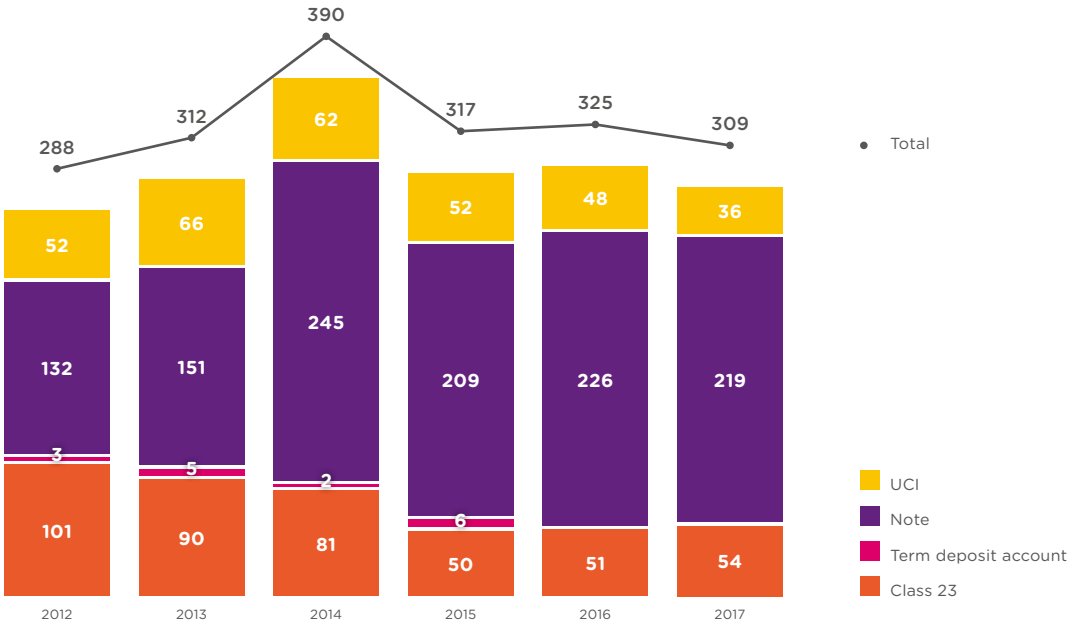
The complexity of structured products distributed to retail clients has also lessened. In 2017, less was invested, in terms of issue amount, in products with three mechanisms than in 2016.

The moratorium determines that the underlyings of a structured product must be accessible. This means that a retail investor should be able to find the data on the value of that asset through the usual channels, such as the internet and written press. This excludes certain assets. The most common underlyings are baskets of shares, interest rates and indexes. Currencies and UCIs or a combination of different assets can also be seen.

Since 2013, offerors have distributed more structured products with customized indexes. This trend carried on into 2017. The FSMA is closely following that trend, especially as regards the selection of the components of those indexes.

The FSMA is convinced of the value of the moratorium. Since the launch of the moratorium, structured products have become less complex. An example of this reduction in complexity is that in 2017 there were fewer investments in structured products with three investment mechanisms than in 2016.

Graph 1: Evolution of the number of structured products distributed (per year)

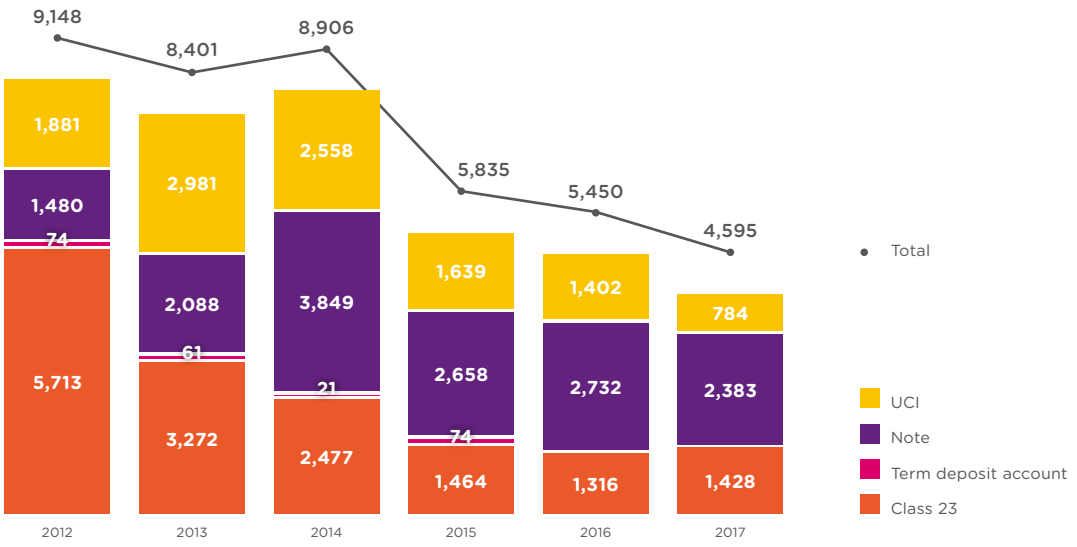


Another example is that in 2017, the FSMA concluded, following an investigation, that 40 per cent of structured products with new characteristics did not comply with the moratorium and consequently could not be brought to the market. This means that the moratorium has succeeded in its intention, which is to better protect consumers against the sale of financial products that are risky and difficult to understand.

Table 2: Structured products distributed since the launch of the moratorium (1 August 2011-31 December 2017)

	Number of products since the launch of the moratorium	Issue volume (in EUR million)[5]
Class 23	**441**	**16,299.63**
Under the moratorium	440	16,299.63
Opt-out	1	N/A
Debt instrument (Note)	**1,287**	**15,801.08**
Under the moratorium	1,237	15,801.08
Opt-out	50	N/A
Term deposit	**18**	**245.48**
Under the moratorium	18	245.48
UCI	**356**	**11,637.13**
Under the moratorium	344	11,637.13
Opt-out	12	N/A
Private Note[6]	**2,420**	**N/A**
Under the moratorium	166	N/A
Opt-out	2,254	N/A
Total	**4,522**	**43,983.31**

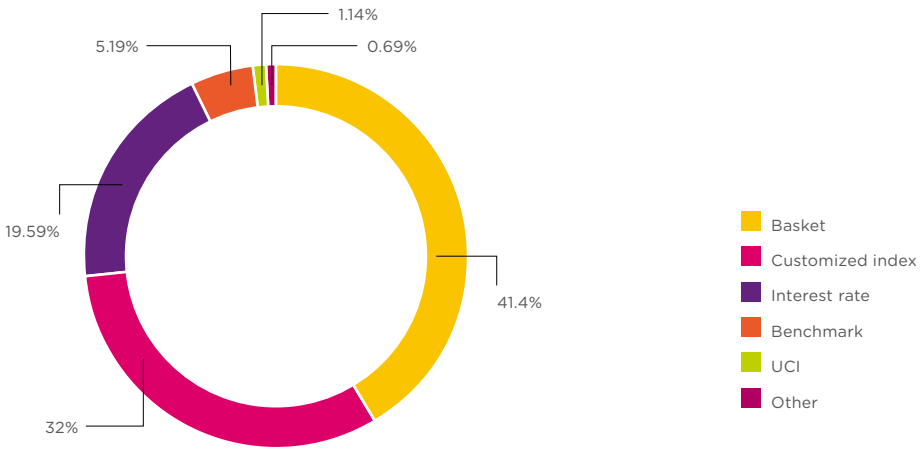
Graph 2: Evolution of the issue volume of structured products distributed (in EUR million per year)



5 These figures also take into account products that have matured, terminated early or that have been resold.

6 A private note is a debt instrument issued as part of a non-public offer.

Graph 3: Underlyings of structured products in 2017



Subordination in structured debt instruments

There have been recent initiatives on an international, European and Belgian level to set out a framework for the issue of 'Tier 3' debt instruments. During the recent financial crisis, governments intervened with public funds to save financial institutions. In the event of new problems, the European Union wishes as much as possible to limit the intervention of governments in rescuing banks and other financial institutions. This is why it has introduced this new category of debt instruments.

Holders of 'Tier 3' debt instruments:

- will, in the case of settlement of a credit institution, bear the losses before the ordinary creditors, but after the shareholders and the holders of certain other subordinated debt instruments;
- run an increased credit risk and an increased risk of bail-in, which is the write-down of debt instruments or their conversion to capital.

Such debt instruments are subordinated by virtue of the indication thereof in the contractual terms and conditions.

The FSMA is of the opinion that such a form of subordination, just like the subordination that arises from the group structure or the law, must be deemed subordination within the meaning of the moratorium[7]. This entails that structured products which are subordinated in this way may not be distributed under the moratorium to retail clients in Belgium, except via opt-out.

7 See the technical questions on the provisions of the moratorium: FAQ 5 and FAQ 34 can be consulted on the FSMA's website https://www.fsma.be/en/faq/technical-questions-relating-provisions-moratorium.

FOCUS 2018

On 1 January 2018, the PRIIPs Regulation[8] entered into force. Since that date, a great number of investment products and insurance products with an investment component, which are referred to as 'PRIIPs' (Packaged Retail and Insurance-Based Investment Products), are obliged to draw up a Key Information Document (KID). Offerors of these products must provide a KID to all retail clients.

The KID is a short document that contains the essential information about a PRIIP in language that is easy to understand. Aside from information on the nature and characteristics of the PRIIP, the KID contains various performance scenarios and information on the risks and costs thereof. The content and form of a KID is drawn up in a uniform manner. This gives retail clients the opportunity to compare the KIDs of different PRIIPs more easily.

If a PRIIP is traded in Belgium, the KID must be provided in advance to the FSMA, with a few exceptions. This obligation rests with the developer of the PRIIP or the person who sells the PRIIP. After publication, the KID comes under the supervision of the FSMA.

The introduction of the KID has led to the amendment of a number of legal rules regarding the marketing material for investment products. The obligatory information document for those products no longer exists. References to the introduction of a national risk label for investment products have been deleted. The regulation that the FSMA had drawn up in 2014 relating thereto was abrogated. To ensure consistency between the marketing material and the KID, other legal rules were also amended.

The PRIIPs Regulation contains a transitional provision for UCITS and other UCIs for which a key investor information document already exists[9].

The supervision of KIDs is a key supervisory theme for 2018. When exercising its supervision, the FSMA will take guidance from the European Position Papers on this subject.

8 Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products.

9 The transitional provision applies to UCITS, which already since several years have what is called a UCITS KIID. This also applies for non-UCITS funds offered to retail clients and for which a Member State applies rules on the format and content of the UCITS KIID. Given that these entities have a UCITS KIID as established in accordance with Regulation 583/2010 of 1 July 2010, they are exempt from the obligations under the PRIIPs Regulation until 31 December 2019.

Supervision of funds

UCIs and sub-funds

The FSMA is responsible for the supervision of public UCIs. UCIs are institutions that collect capital among investors and manage that money collectively following an established investment policy. Public UCIs are different to institutional or private UCIs in that they entail a public offer. For this, they mainly target retail investors.

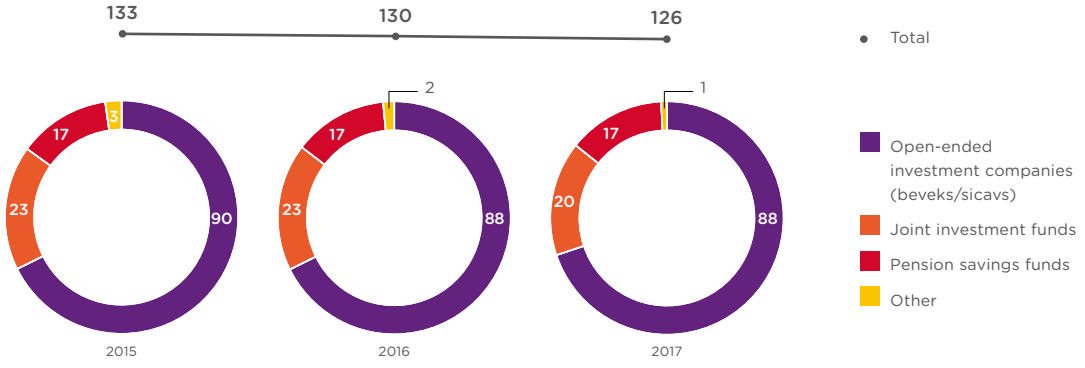
The FSMA supervises the quality of certain information that UCIs provide to investors when they make a public offer. This information encompasses statutory documents such as the prospectus and key investor information, but also the advertising material. The FSMA's approval of the majority of this information is a pre-requisite to the distribution of these UCIs.

The FSMA also supervises the organization and operation of Belgian public UCIs. Public UCIs in Belgium are primarily in the form of collective investment funds and open-ended investment companies, which are also called beveks or sicavs. These UCIs are almost all open-ended. That means that their capital increases or decreases as investors enter or exit (see Graph 4).

One specific type of public collective investment fund in Belgium is the pension savings fund. An investment in a pension savings fund represents the part of the pension that is personally accrued, which is termed the 'third pillar'. In order to promote individual pension saving, there are certain fiscal advantages to investing in this type of fund.

Most public UCIs are composed of different sub-funds. These are different funds within a UCI that have their own investment policy. The units in sub-funds are essentially "products" offered to investors[10] (see Graph 5).

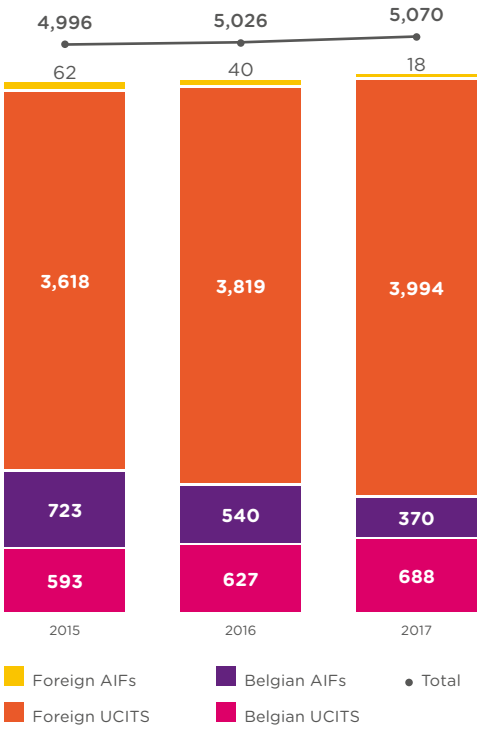
Graph 4: Evolution of the number of Belgian public undertakings for collective investment[11]



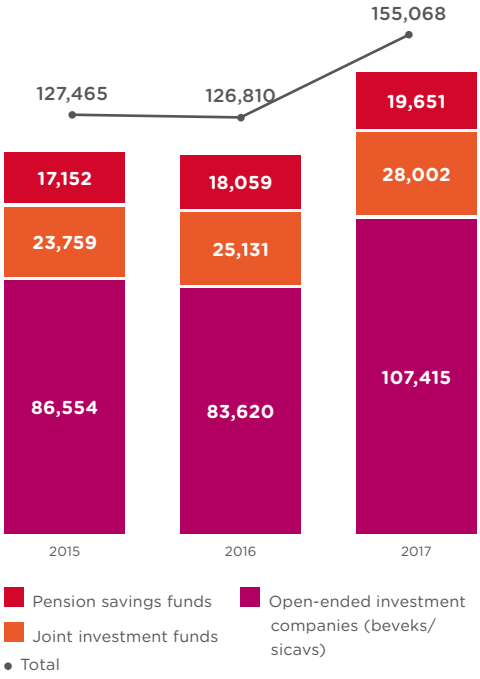
10 It is also possible to create, under certain conditions, classes of units within a UCI or sub-fund, which are for example expressed in different currencies or have different costs. The different classes of units may be offered to different target groups.

11 The statistics on UCIs (Graphs 4 to 7) may in the future be adjusted if the registration of a UCI or sub-fund of a UCI is withdrawn on a particular date, as of the date of this withdrawal if it happened on an earlier date or if a UCI provides the FSMA with a correction to certain statistics at a later date.

Graph 5: Evolution of the number of sub-funds of public open-ended undertakings for collective investment



Graph 6: Evolution of the total net assets of Belgian public open-ended undertakings for collective investment (in EUR million)



Belgian and foreign UCIs

At the end of 2017, there were 5,070 sub-funds of public open-ended UCIs registered with the FSMA. Of these, 4,012 were sub-funds of foreign UCIs and 1,058 were sub-funds of Belgian public UCIs[12] (see Graph 5).

Almost all foreign sub-funds offered to the public in Belgium are sub-funds of UCIs that comply with the provisions of the UCITS Directive. They are also referred to as undertakings for collective investment in transferable securities (UCITS). These UCITS have a European passport allowing them to be traded freely.

There are also alternative investment funds (AIFs), for which no harmonized European supervisory regime or passport scheme exists. Foreign AIFs offered to the public in Belgium are supervised by the competent authority of their home country and by the FSMA.

In 2017, the number of registered sub-funds of UCITS grew further. The number of registered sub-funds of AIFs fell again. This change could be seen both among the Belgian and foreign UCIs.

12 Some of these Belgian or foreign UCIs are not divided into sub-funds. For these UCIs, the UCI itself is considered a sub-fund for statistical purposes.

Belgian UCIs

The total value of the net assets[13] of the Belgian funds sector (Belgian public open-ended UCIs), grew in 2017 to 155.5 billion euros. This is because globally more investors signed up to such UCIs than exited[14]. This rise can also be attributed to the positive returns of the financial instruments in portfolio over this period. Although at the end of 2016 there was a very slight dip in the total net assets compared to the previous year, 2017 showed significant growth (see Graph 6).

The type of assets in which the UCIs may invest and how a return is sought are determined by the investment policy. The Belgian funds sector is divided into seven different categories based on investment policy: share funds, bond funds, mixed funds, structured funds, money market funds, pension savings funds and other funds[15] [16] (see Graph 7).

Mixed funds have shown continuous growth over the last few years and are by far the largest category, making up 39.3 per cent of the total net assets for the sector. This growth is partly down to a positive result over the calendar year, but mostly down to a great surplus of subscriptions. Mixed funds invest primarily in both shares and bonds[17].

The second largest category is that of share funds. This category represents 28 per cent of the total net assets for the sector. The assets of share funds saw a sharp rise in 2017, both thanks to their positive results and to a surplus of subscriptions.

Pension savings funds constitute the third largest category, representing 13 per cent of the total net assets for the sector. Their net assets have seen constant growth in recent years. This is mainly down to the positive returns from the investment portfolio, and to a lesser extent also to a surplus of subscriptions.

The net assets of bond funds and money market funds rose in 2017 thanks to increased subscriptions. At the end of 2017, bond funds and money market funds represented 12% and 2% respectively of the total net assets for the sector.

Money market funds try to offer a return close to that of the money market and, as a result, they predominantly invest in money market instruments. Money market funds attract investors who attach importance to being able to exit any day.

13 The total net assets is the value of the UCI's assets after deducting any debts.

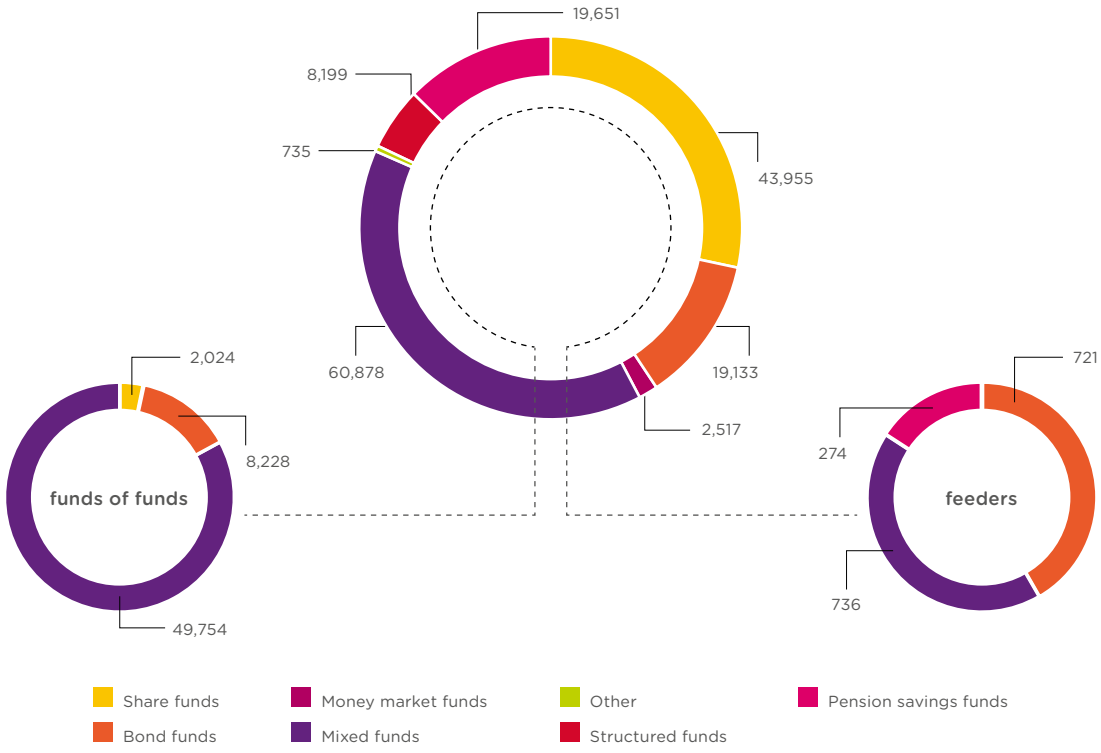
14 Even cross-border mergers have contributed over the course of the calendar year to an increased number of subscriptions and a growth in total net assets.

15 N.B. the division into these categories occurs at the level of the sub-funds. Here, the term 'funds' also relates to a sub-fund of an undertaking for collective investment, in so far as it is divided into several sub-funds.

16 Since the 2017 annual report, a new classification of sub-funds of public open-ended UCIs has been used for statistical purposes. As a result, funds of funds are no longer included as a separate category. Funds of funds and feeders are now categorized based on the type of asset in which they indirectly invest. For this purpose, the investment policy of certain UCIs and their sub-funds were once again examined and these were divided into one of the aforementioned seven categories, and some of them were further classified as a fund of funds or a feeder. In the description of the evolution of the net assets of a certain category in this annual report, account is always taken of the re-classification.

17 Pension savings funds are in reality mixed funds, but because of their specific investment policy and admitted assets, they are placed in a separate category.

Graph 7: Total net assets of Belgian public open-ended undertakings for collective investment, divided by investment policy (in EUR million)



Structured funds offer investors repayments on pre-established dates, based on a formula relating to the evolution of certain underlying financial assets, indexes or reference portfolios. Funds that offer capital protection come under this category. Both the number of structured funds and their net assets have continuously fallen over the last five years. This is because over this period, more structured funds matured than new funds were launched. At the end of 2017, structured funds still represented 5 per cent of the total net assets for the sector.

UCIs or their sub-funds may opt to invest directly in certain assets. They can also do so indirectly by investing in other UCIs. UCIs or sub-funds of UCIs that opt to invest primarily in other different UCIs, are also called funds of funds. At the end of 2017, Belgian funds of funds represented 38.7 per cent of the total net assets for the sector and mainly belonged to the category of mixed funds (see Graph 7).

In addition, UCIs or their sub-funds may also set up what is called a master-feeder structure. Feeders are UCIs or sub-funds that invest at least 85 per cent of their assets in a master. A master is another UCI or sub-fund thereof. At the end of 2017, Belgian feeders, primarily mixed funds and pension savings funds, represented close to 1.7 billion euros of net assets (see Graph 7).

Audit of securities lending

Following checks to the annual reports of a range of public UCIs, in 2017 the FSMA conducted a thematic audit of securities lending.

Securities lending is a transaction through which such funds transfer ownership of a certain number of securities to a counterparty, on the condition that the counterparty provide the same number of securities in return. The owners receive a fee for this.

The audit of securities lending ties in with the work that the FSMA has conducted on risks related to funds. Given that securities lending is a rather complex matter from an operational standpoint, and also needs attention in view of the manager's obligation to act only in the interest of holders of share certificates, this audit fits in with the FSMA's risk-based approach. The use of securities lending also forms part of the new reporting requirements that recently came into effect for public open-ended UCIs. The FSB equally identified this theme as a vulnerability as regards the collective management of funds[18].

Following the FSMA's remarks, one asset management company decided to put a stop to its securities lending activities.

Two asset management companies did not fully comply with the rules on information disclosure and on the application of securities lending. The FSMA asked them to remedy these issues within a short space of time.

The FSMA found that the other funds examined comply with the provisions on securities lending with the exception of a number of reporting obligations in the annual reports. Some provisions from a European Regulation on transparency of securities financing transactions[19] had not yet been applied. The FSMA asked the funds in question from now on to include all the required information in their annual reports. The FSMA also wrote to a number of funds asking for further clarification as to payment for the securities lending services provided in light of European authority ESMA's Guidelines that apply in this respect.

Reporting of statistics

Since October 2017, new standards apply on the reporting of statistics for certain public UCIs. That reporting process is becoming largely automated. The information requested also serves as an input for a risk model under development to achieve a more efficient UCI supervision process and a risk dashboard that identifies the evolution of risks in the funds sector.

The new reporting requirements enable the FSMA to collect more information on the potential risks of UCIs. In this way, the new reporting requirements respond to one of the general recommendations in the joint report from the FSMA and the NBB on shadow banking and portfolio management in Belgium[20]. The supervisory authorities consider it very important to gather data not hitherto available on shadow banking and portfolio management[21].

18 *Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities*, published on 12 January 2017.

19 Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

20 Report on Asset management and Shadow banking, September 2017 (www.nbb.be).

21 See this report, p. 144.

Fund liquidity risk

Under the current Belgian legislation, Belgian public UCIs have a limited range of instruments they can use if the liquidity of their investments (which means the ability to turn investments into cash) comes under threat. Liquidity is crucial to be able to fulfil requests to exit by share certificate holders. In the current legislative framework, entries and exits to the UCI are usually suspended in the case of liquidity problems, and more generally, an amount may be payable to the UCI in case of entry or exit. The use of these instruments is not proportional, or even effective, in all cases of liquidity problems.

The liquidity risks of these funds form a specific point for attention for international supervisory bodies such as the FSB and the International Monetary Fund. These institutions warn that fund liquidity risks are likely to lead to systemic risk. They therefore recommended a broadening of the liquidity instruments available. In this way, the manager can choose the most suitable instrument based on the circumstances, and the UCI's liquidity risk can be better managed.

In light of these recommendations and the appeal from the fund sector to introduce certain changes, the FSMA drew up a preliminary draft for a Royal Decree with the purpose of providing additional liquidity instruments.

In the first place, the preliminary draft proposes the introduction of the swing pricing mechanism for funds. Swing pricing is a method that aims to eliminate the negative impact of entries and exits of fund unit-holders on the net asset value of the fund.

If the entries or exits exceed a certain threshold, the net asset value is adjusted upwards or downwards by a set percentage, which is called the swing factor. As a result, in case of major net exits, the net asset value will be adjusted downwards, meaning that the exiting unit-holders receive a somewhat lower net asset value. Vice versa too, in the case of major net entries, the net asset value is adjusted upwards, meaning that the entering unit-holders pay a slightly higher net asset value.

The preliminary draft of this Royal Decree also allows a mechanism called the anti-dilution levy. This mechanism, just like swing pricing, is a technique that aims to eliminate the negative impact of fund unit-holders' entries and exits on the net asset value of the fund. If the net entries or exits exceed a particular threshold, the fund may decide to apply a supplementary fee to the entering and exiting investors, to the benefit of the fund.

The preliminary draft moreover introduces the possibility of applying redemption gates, through which the fund may choose to execute the orders of exiting unit-holders only in part if a previously established threshold is exceeded, without suspending the calculation of the net asset value. This measure comes over and above the possibility that already exists to proceed, under certain circumstances, with a complete suspension of entries and exits.

Information to depositors on the deposit guarantee scheme

Credit institutions inform depositors on the Belgian deposit guarantee scheme prior to entering into the deposit contract, over the course of that contract, and in the case of changes that affect the deposit guarantee scheme's cover.

Prior to entering into a deposit contract, depositors are provided free-of-charge with an information document on the deposit protection provided by the credit institution or by its intermediaries in banking and investment services. The information document on deposit protection is also sent once a year to the depositors and to all potential depositors who ask for it.

The information document on deposit protection contains information on:

- the deposit guarantee scheme concerned: in Belgium it is the Guarantee Fund for Financial Services;
- the protection limit: in Belgium this is EUR 100,000 per depositor and per credit institution;
- the repayment procedure: point of contact, repayment term and website of the deposit guarantee scheme.

The statements provided to depositors by the credit institution under a contract for eligible deposits expressly state that these are eligible deposits and refer to the information document on deposit protection.

In case of mergers, transformation of subsidiaries into branches or similar operations, or at the time at which the cover for the deposit guarantee scheme ends, the credit institutions inform their depositors thereof at least one month in advance.

The key information document for savers that is provided when distributing regulated savings accounts includes a short description of the deposit guarantee scheme and gives the website of the Guarantee Fund for Financial Services.

The FSMA supervises compliance with these legal provisions. Pursuant to those provisions however, the information document on deposit protection does not need to be approved by the FSMA in advance. The institutions must themselves ensure that the information document is correctly written.

Supervision of insurance products

The FSMA sees to it that insurance products subject to Belgian law are in compliance with the law. This pertains to the product conditions and the pre-contractual and contractual provision of information on the product. In addition, the FSMA strives to contribute to the protection of consumers of insurance products, by further clarifying certain themes or by warning against certain risks.

The supervision of insurance products is risk-based and comprises of two pillars. Audits on a particular theme are the basis for the first pillar. The second pillar concerns reactive supervision triggered by a particular event or by an issue detected. The FSMA also offers advice on regulatory and other initiatives in the area of product supervision.

Thematic audits

The FSMA's approach is prevention rather than cure. This approach focuses on identifying risks and preventing risks in one or more companies or in the insurance sector as a whole.

Risks are primarily estimated on the basis of impact and likelihood. The choice of audit themes is therefore based on estimating the potential damage that could be caused if a risk occurs, in combination with the likelihood of the risk materializing. For this estimation, the FSMA uses its own findings such as those collected during inspections and when conducting sector analyses, as well the report from the Insurance Ombudsman, information from the FPS Economy, data and information from insurers, information from stakeholders, consumer complaints, and experiences and studies from the European authority EIOPA or other supervisory authorities.

In a thematic audit, apart from exercising its supervision of individual insurers, the FSMA wishes primarily to open dialogue with the insurance sector. Such audits also enable comparisons to be made between different companies in the sector.

Ultimately, with the thematic audits, the FSMA strives to mitigate risks in the insurance sector. This can be in the form of policy changes or new legislation and regulations, publishing good practices or communicating recommendations to professionals and consumers.

Payment protection insurance to cover consumer loans

One of the first audits conducted in 2017 was on payment protection insurance to cover consumer loans.

Consumer loans are generally for small amounts and are relatively short term. The question arose as to what added value payment protection insurance offers to such loans, especially for relatively young people or for insurance that covers limited amounts.

To be able to assess the usefulness of the product, the FSMA looked into what cover such payment protection insurance offers and how much this cover costs the policyholder. The statistics showed that insurers paid out on a claim in only 0.24% of existing contracts. Only 12% of premiums paid were used to pay claims. More than half the total average annual premiums, that is 35 million euros or 53%, was used to pay fees and commissions. The remaining 35% of the premiums collected represented a profit for the insurance company, minus any limited premiums the insurer paid to reinsurers.

The FSMA asked the insurers to provide a description of the internal procedures, roles and strategies they had used to develop the payment protection insurance and bring it to the market. It also asked after the way in which they monitor and evaluate this product over the term of the contract. Several insurers responded to this that they had commenced preparatory work to adjust their procedures to the new European legislation on product development and product monitoring in insurance distribution[22].

The FSMA's research also showed that insurers rarely communicate transparently on the amount of commissions they pay to the intermediaries who sell these products. This is despite these commissions in some cases representing more than half of the premium paid by policyholders. The FSMA also noted that the contractual and marketing documents were not always drawn up in accordance with the relevant legislation. Where necessary, the FSMA asked the companies inspected to amend their documents.

Two of the insurance companies inspected stopped selling their payment protection insurance. Another two informed the FSMA that they were developing new payment protection insurance taking into account the remarks received. The other insurance companies implemented the changes requested in their contractual and marketing documents and since then sell improved products.

Following these aforementioned findings, the FSMA published a press release to warn consumers about the limited value of this financial product.

Life annuity products

The second sectoral audit was on the subject of life annuity contracts. In such a contract, the policyholder pays a one-off or periodic premium. In exchange, the insurer pays the policy-holder an annuity. These types of contract can take the form of a Class 21 or Class 23 product.

The FSMA studied the pre-contractual and contractual documentation as well as the marketing material of Belgian insurers that sell such life annuity contracts.

As a result of the study, the question arose as to whether insurers did indeed always sell this product to the right target group. The FSMA noted that the products were sold for example to older people who would have to reach a very old age before they could recover their outlay. Furthermore, it appeared that the insurers did not always clearly, comprehensively and accurately explain to policyholders the method and criteria used to calculate the annuity.

22 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016.

The insurance companies concerned adapted the pre-contractual, contractual and marketing documents to the rules in force based on the remarks from the FSMA. The FSMA considers it advisable that the companies properly monitor and evaluate this product over the entire duration of its term.

Insurance policies - financial insolvency of travel companies

The third sectoral audit was on insurance policies for the financial insolvency of travel companies. Some of these policies offer no unlimited guarantee to the consumer. Nevertheless, such a guarantee is obligatory.

Every travel organizer and/or travel agency that is party to a travel contract must be able to show that it has sufficient guarantees, in the event of financial insolvency, to fulfil its obligations to its travellers. For this purpose, it must have an insurance policy, with travellers as the beneficiaries[23].

An analysis of the insurance policies showed that these were on the whole compliant with the insurance legislation. Moreover, there was no case of a restriction to the cover in the policies studied. The FSMA formulated a number of comments and questions on insurance documents. The insurance companies concerned were granted until 1 July 2018 to make the necessary adjustments to the documents. 1 July 2018 is the date of entry into force of a new European directive on package travel and linked travel arrangements[24].

Problem-based supervision

Potential problems inherent in an insurance product or in transactions relating to an insurance product arise through varying channels. The FSMA's reaction will depend on the nature and scale of the risk in question. Of course, the FSMA's focus is primarily on the most significant risks.

If the FSMA establishes that the same risk may also arise among other players, its supervisory action could conceivably be extended. Nevertheless, not every action by the FSMA will automatically lead to a comprehensive sectoral audit, unless the theme is selected for a thematic audit (see above).

A wide range of enforcement instruments is available where there are motives for action.

European legislation and regulations in principle do not allow the FSMA to conduct ex ante supervision on insurance products, contrary to the case with other financial products. This means that supervision often can only occur when a consumer has already incurred a loss after subscribing to a non-compliant product or after a breach of trust in the insurance sector. This explains why the FSMA opts for getting the insurer's voluntary cooperation so that it may obtain ex ante information on certain dossiers.

Handling problem-based dossiers covers various aspects of insurance policies.

23 Such insurance policies are qualified as an insurance policy with a clause for the benefit of third parties. Article 77 of the Law of 4 April 2014 on insurance specifies that parties may at any time agree that a third party may have a claim to the benefits offered by the insurance policy, under the terms that they agree.

24 Law of 21 November 2017 on the sale of package holidays, linked travel arrangements and travel services, implementing Directive of 25 November 2015 of the European Parliament and of the Council on package travel and linked travel arrangements

Buyback campaigns for Class 21 products

The FSMA intervened in dossiers on the redemption of insurance policies. More particularly, these related to offers to purchase Class 21 insurance policies that still benefited from a relatively high guaranteed interest rate. In such transactions, where the policyholder receives a bonus for the policy's redemption, the FSMA sees to it that the insured has the requisite information to be able to make an informed decision on the offer.

Recovery measure for a Belgian insurer

The FSMA provided an opinion to the NBB on a recovery measure for a Belgian insurer that provides health insurance.

The law lays down that non-occupational health insurance may not in principle be terminated by the insurer and is therefore lifelong. Additionally, the insurer may no longer amend the technical bases for the premium and the cover after the policy has been entered into, unless this occurs in the interest of the insureds and at the request of the principal insured person. The premium, exemption or benefits may only be amended on the annual premium due date and only on the basis of the medical index or the consumer price index.

This legal provision may be derogated from if it appears that the health insurance tariffs are – or are at risk of becoming – loss-making. In that case, the NBB has the power to require an insurance company to adjust its tariffs.

In the dossier on the Belgian insurer, the NBB imposed such a recovery measure. The consequence of this was that the premiums for the existing health insurance policies rose steeply. In its opinion in preparation of this measure, the FSMA emphasized that the insurer had to inform policyholders effectively and clearly on the measures and the specific impact thereof on their contract. The focal point of this was to achieve transparency and as much predictability as possible in terms of the future premiums. The FSMA supervised the information provided on these points.

Potential discrimination in the acceptance conditions for certain products

Is a distinction based on age and health condition a permissible discrimination when offering insurance products? This question arose last year following the launch of a new insurance product.

The FSMA obtained an opinion on this matter from Unia, a public institution competent for supervision of the Law on combating certain forms of discrimination[25].

Age and health condition are criteria protected by this Law. Permissible discrimination is only allowed when it is objectively justified by a legitimate aim, and the means for achieving that aim are appropriate and necessary.

In its opinion, Unia stated that it could not sufficiently assess, based on statistical data and scientific literature, whether the grounds for refusal based on age and health condition constituted permissible discrimination. Given that Unia can only make such an assessment after some time has elapsed, it asked the insurer to prepare a periodic evaluation and to share data to enable this matter to be monitored. Moreover, Unia stated that it could only make a general assessment for its opinion, but that there would be a dynamic review based on specific cases.

25 Law of 10 May 2007.

Extension of cover on initiative of an intermediary in consumer loans

The FSMA found that there were many complaints from consumers to the Insurance Ombudsman.

One of those complaints concerned an intermediary in consumer loans who offered his clients insurance cover via collective insurance policies when entering into a credit facility. The intermediary unilaterally decided to extend this insurance cover. This decision culminated in an increase to these clients' premiums, who were furthermore not always aware of the changes.

To guarantee investor protection, the FSMA asked the intermediary concerned to send all of his clients a letter stating that they had to give their consent and that the premium would increase as a result of the extension of cover, and giving them the option of either maintaining the original contractual terms or terminating the contract. The intermediary heeded this request.

Observations by the FSMA on the new Assuralia Code on info sheets

Assuralia provided the FSMA with its new Code of Conduct for financial info sheets for individual life insurance policies. That Code in particular includes 'templates of financial info sheets' for four types of product[26] which are not subject to the PRIIPs Regulation and for which the developer does not need to draw up a KID. To enable a certain comparability between the products envisaged by the PRIIPs Regulation and those excluded, Assuralia decided to draw up, for the latter products, a template of a financial info sheet.

The FSMA formulated a number of remarks, which mainly related to the information on profit share and the presentation of the risks. In this respect it reiterated its position that info sheets may not be deemed regulated information.

26 (1) pension saving or long-term saving in Class 21;
(2) pension saving or long-term saving in Class 23;
(3) pension saving or long-term saving via a combination of Class 21 and Class 23;
(4) death insurance (other than savings and investment products) with and without the tax advantages for pension saving and long-term saving.

Compliance with conduct of business rules

The FSMA ensures that regulated undertakings abide by the rules of conduct in force and act honestly, fairly, and professionally in the best interests of their clients. The rules of conduct require regulated undertakings to have a suitable organizational structure and to use the required procedures to ensure the correct and diligent treatment of consumers of financial services. The FSMA conducts on-site inspections at regulated undertakings to verify whether they comply with the conduct of business rules that apply to them. These on-site inspections occur on the basis of a supervisory methodology and can relate to a certain theme or a set of themes. Inspections can also be conducted as part of a specific task. The themes and regulated undertakings to be inspected are selected on the basis of a risk assessment specially developed for this purpose.

It is important to clarify that the FSMA is tasked with supervising rules of conduct in the following regulated undertakings in so far as they offer investment services:

- credit institutions governed by Belgian law;
- branches established in Belgium of credit institutions governed by the law of States that are not members of the EEA;
- investment firms governed by Belgian law
- branches established in Belgium of investment firms governed by the law of States that are not members of the EEA;
- management companies of undertakings for collective investment governed by Belgian law;
- branches established in Belgium of management companies of undertakings for collective investment governed by the law of States that are not members of the EEA

The FSMA has a limited task of supervising rules of conduct in branches established in Belgium governed by EEA Member States.

Duty of care

With the inspections on the theme of the duty of care, the FSMA wishes to examine whether regulated undertakings act honestly, fairly and professionally and serve the best interests of their clients when providing investment advice services or when executing orders.

In 2017 the FSMA continued its inspections on the theme of the duty of care. The duty of care entails that firms which offer complex financial instruments must first collect information from their clients about their knowledge and experience in the proposed transactions. If the company recommends a transaction to a client in the context of investment advice or manages the client's portfolio on a discretionary basis, it must furthermore evaluate whether the transaction is suitable for that client.

In 2017, the FSMA conducted two types of inspections. The first were inspections conducted in small-scale entities that primarily offer portfolio management and investment advice. The second were a round of inspections started in companies which had previously been inspected for compliance with the duty of care to verify the effectiveness of the action plan they had submitted. As part of the inspections, the FSMA may, where appropriate, take the measures provided for, in the Law of 2 August 2002 on the supervision of the financial sector and on financial services, for infringements of the rules of conduct.

Best execution

In 2015 and 2016, the FSMA conducted a series of specific inspections on the obligation to achieve best execution of orders. The aim of these was to obtain a sectoral overview of the application of the rules of conduct concerned within the sector. The emphasis lay, more specifically, on the execution of orders in Bel20 shares for retail clients. These inspections had a dual aim: firstly to provide an individual and confidential report on the shortcomings identified at each regulated undertaking where an inspection was conducted, and secondly to draw up a report for the sector with a summary of the shortcomings identified in terms of compliance with the best-execution obligation. In view of the current level of convergence of the supervisory approach in the various EU Member States, and of the fact that certain aspects of the applicable legal framework are subject to interpretation, the FSMA opted for an approach by which only infringements of unequivocal provisions are deemed to be shortcomings. It should also be underlined that the shortcomings identified in the policy and procedures could entail a legal risk but do not necessary entail a disadvantage to clients.

In 2017, the FSMA published a sectoral report on the findings from its inspections. Although the obligation of best execution is a best-efforts obligation and although the FSMA has identified good practices, it is still of the opinion that there are major points for improvement in the manner in which the regulated undertakings supervised have determined and applied their best-execution policy and procedures, primarily as regards the following:

- The **execution strategy** of some regulated undertakings was not always consistent with the procedures developed or with the way in which orders were executed in practice. The FSMA noted that certain regulated undertakings that declared that they execute all of their orders themselves, or opt for certain markets in the case of outsourcing, in reality provided an investment service that entailed receiving orders from clients and transferring these orders to a third entity for execution.
- The **choice of a 'standard place of execution'** which certain regulated undertakings made in their order execution policy (e.g. the most liquid market or the home market of the instruments in question), was not necessarily based on objective data by which the undertakings could demonstrate that when executing orders on that market, their obligation of best execution as regards the total consideration (price and fees) for retail clients was consistently complied with.
- The **notion of 'specific instruction'** was not always correctly defined or applied. Certain regulated undertakings interpreted that notion in an unacceptable way or compelled clients to give a specific instruction. In certain regulated undertakings, the order execution policy also led to the impression that if the client placed an order with a specific instruction, these companies would no longer have to apply their order execution policy overall, when in practice they did have to apply that policy for the parts of the order to which that specific instruction did not apply.

- The **monitoring and checks** conducted by the regulated undertakings usually did not allow checks as to whether the execution strategy defined was correctly translated into the order execution policy and the internal procedure. Most checks only had to guarantee that the policy and procedures introduced were complied with, without verifying their adequacy. Furthermore, only some undertakings could demonstrate that they had re-evaluated their order execution policy on a regular basis.
- The **information provided to clients** on the best execution obligation was not always sufficient to be able to comply with the legal obligations on the subject. Regulated undertakings must see to it that the information provided to clients on the policy and the placement of an order does not mislead them as to the nature of the service provided, and that the information complies with the legal provisions concerned.
- **Staff training** on compliance with the best-execution obligation must be improved. The content of the training courses must allow the employees concerned of the regulated undertakings to understand all applicable legal and regulatory provisions and the internal policies and procedures established by the regulated undertakings in order to comply therewith.

After the various inspections, the FSMA asked the regulated undertakings concerned to take corrective measures, based on the individual and confidential report provided to them, to comply with the regulations in force.

For the regulated undertakings in which no inspection has yet been conducted, this sectoral report provides a reference document for them to assess the effectiveness of their procedures for compliance with the best-execution obligation and with the expectations of the FSMA in that respect. It goes without saying that the findings with respect to those inspections relate to the scope of those inspections, namely the transactions executed by retail clients in Bel20 shares, but that the points for attention that the FSMA brings up in this report must also be taken on a broader scale (e.g. with respect to other financial instruments or transactions by professional clients).

Moreover, the FSMA drew the attention of the senior management of regulated undertakings to the importance of conducting internal reviews and studies on the impact of the implementation of MiFID II and the measures transposing it into Belgian law.

Conduct of business rules in the insurance sector

Over the past few years, the regulatory framework in force for insurance companies has considerably evolved. The Belgian legislature has adopted several legal texts that broaden the powers of the FSMA and confer on it new supervisory tasks within the context of the extension of MiFID conduct of business rules to the insurance sector. That legislation, called 'AssurMiFID', is in force since 1 May 2015 after a decision by the Constitutional Court to postpone the original date of entry into force. One of the purposes of this change in the regulations and in supervision is to better protect users of financial products and services and to restore trust in the financial sector. It contributes, moreover, to a greater consistency among the rules by taking an additional step in the direction of creating a level playing field between the banking sector and the insurance sector, given that certain bank and insurance products are interchangeable. These provisions also reinforce the level playing field within the insurance sector itself by introducing a general obligation for insurance intermediaries to act honestly, fairly and professionally in the best interests of their clients and more generally by introducing the same rules of conduct for them as for insurance companies. That change also fits in with developments at a European level, especially within the scope of the IDD.

The FSMA was given the task of supervising compliance with the rules of conduct in the insurance sector. After a round of inspections within that sector, the FSMA published two reports summarizing the major findings on the duty of care of insurance companies and insurance brokers.

Within the perimeter of these inspections was the supervision of compliance with the provisions on the duty of care at the time of providing advice to clients as part of the distribution of savings and investment insurance policies (Class 21 and Class 23 life insurance policies).

The FSMA visited 115 insurance intermediaries and insurance companies, representing 85% of the market in terms of Class 23 provisions and 73% of the market in terms of 'life' technical provisions.

In view of its earlier findings during those visits, the FSMA is of the opinion that it has indeed identified good practices, but that there are several flaws in the manner in which the insurance companies and insurance brokers that were visited provide advice on their savings or investment products. The main findings in both insurance companies and insurance brokers are the following:

- **Client information** is not always correctly **collected**, both as regards the knowledge and experience of the clients and their savings or investment goals. The coherence of the client information collected is not always sufficiently assessed.
- The **suitability test** is not always correctly conducted, partly because of faulty application of the standard profiles or the questionnaires used by the sector. Furthermore, the FSMA identified cases in which the responsibility for conducting the suitability test was passed on to the client, which is unacceptable. For its research into client dossiers, the FSMA did not systematically receive information on the way in which the suitability test was conducted, and on the criteria used when conducting these tests.
- The **information provided to clients** regarding the duty of care does not always fulfil the criteria of being accurate, clear and not misleading. Insurance companies must see to it that their disclaimers in documents intended for clients do not violate the rules of conduct they must comply with. As regards insurance brokers, there is room for improvement in terms of the comprehensiveness of the information provided on the insurance broker's status, the services offered and the recommended insurance product, as well as on the remuneration, provisions, and non-monetary benefits they receive.

- The **level of training** of insurance agents or brokers as regards compliance with the duty of care is sometimes inadequate.
- Certain **insurance company incentive programmes** offer brokers who have reached certain targets perks such as tickets to events (e.g. sporting events or concerts) or training courses in tourist destinations abroad. The FSMA points out that **such remuneration and incentive programmes** may not lead to a conflict of interest between the insurance brokers and the clients. The minimum thresholds imposed to be eligible for commissions may lead to such conflicts of interest.

During its visits, the FSMA also established specific points relating to insurance companies.

- The FSMA analysed the **procedures for selection, approval and distribution** of savings or investment insurance products from the stance that those procedures constitute a good practice crucial to guarantee compliance with the duty of care. On this subject, it is of the opinion that the insurance companies should designate a 'gatekeeper' whose role it is to ensure that the interests of clients are taken into account in these procedures. The FSMA is also of the opinion that the criteria used by the gatekeeper to select a product should be clarified.
- The **distribution model** provided by some insurance companies is not always in line with the practices of the distribution network. The FSMA noted that certain insurance companies that declare that they distribute their products only through insurance brokers do in fact contact their clients directly by letter to propose that they subscribe to the savings or investment insurance policies they issue.
- The **monitoring and checks** by the insurance companies are not yet fully effective and operational. The fact that the checks have not yet reached their full level of maturity is attributable to the fact that the regulations are fairly recent. As a result, the FSMA urges that these checks be swiftly introduced and efficiently implemented. Moreover, some insurance companies forget that, even when the checks are conducted by a third company, they remain responsible for those checks and they must be able to prove that all risks are taken into consideration in these checks.

The insurance companies and insurance brokers inspected by the FSMA were asked to take the necessary corrective measures to appropriately take into consideration the FSMA's findings. For insurance companies and insurance brokers not inspected by the FSMA, the sectoral reports published on the FSMA's website constitute reference documents with which they can assess their application of the rules of conduct.

As regards the evolution of the regulatory framework, the transposition of the IDD[27] is in full swing. That transposition must be completed by 1 July 2018. The pre-determined date for the entry into force of the new rules for the sector is 1 October 2018. As regards compliance with the duty of care in the distribution of insurance products with an investment component, insurance companies and insurance brokers will be able to use the aforementioned sectoral reports as a pertinent basis for assessing whether the methods for trading the products are in line with the future legal obligations. The current Belgian legislation already ties in many areas in with the future requirements of the IDD, so the experience gained in the implementation of AssurMiFID will be useful for the implementation of the new regulatory framework arising from the transposition of the IDD.

27 See this report, p. 160.

In 2018, the FSMA will update the supervisory tools to include the obligations arising from the new legal and regulatory provisions. It will organize transversal analyses to assess the application of the specific rules within the sector. After the entry into force of the new provisions, it will also conduct inspections in which it will strictly apply its supervisory methods. As part of this task it will draw up reports which will lead, where applicable, to the taking of administrative measures as referred to in the legislation.

Financing of SMEs

The Law of 21 December 2013 on various provisions for financing for small and medium enterprises, and the code of conduct concerned are evaluated in line with the requirements of the Royal Decree of 10 April 2016[28].

In the assessment of that Law, certain points for improvement were found. In light of this, on 14 December 2017[29] a draft bill was voted on containing several provisions aiming to:

- lighten the administrative burden for loans of less than 25,000 euros under certain conditions;
- structure the use of securities and guarantees (improvements to the provision of information, possibility of reviewing securities and guarantees based on the full or partial repayment of the loan);
- change the funding loss indemnity system (the threshold is increased from 1 to 2 million euros);
- clarify the notion of 'unfair clause' with certain unilateral changes by the lender;
- correct certain technical flaws in the Law.

The FSMA has also been tasked with supervising compliance with the provisions on funding loss indemnity over and above its previous responsibilities under the Law of 21 December 2013.

Mystery shopping

The FSMA has the power to conduct mystery shopping. This technique allows FSMA employees or external contractors authorized by the FSMA for that purpose to visit regulated undertakings without revealing that they are acting under the FSMA's authority.

Over the last three years, the FSMA has done mystery shopping to ascertain whether regulated undertakings comply with their obligations in the pre-contractual stage. For this purpose, the FSMA contracted two specialist external partners for two types of task:

- the first type of mystery shopping relates to undertakings that have not yet had an inspection. In these companies, the FSMA gathers information through mystery shopping to assess whether a formal inspection is recommendable;
- the second type of mystery shopping takes place at undertakings that must draw up an action plan to remedy shortcomings that the FSMA has previously identified as part of an inspection. In such a case, mystery shopping serves to assess whether these action plans are put into practice on the field.

28 Royal Decree on determining more detailed rules for the evaluation as referred to in Article 14 of the Law of 21 December 2013 on various provisions for financing for small and medium enterprises.

29 Bill of 24 November 2017 amending the Law of 21 December 2013 on various provisions for financing for small and medium enterprises.

To date, the FSMA has completed three mystery-shopping campaigns. The main conclusions of these can be summarized as follows:

- regulated undertakings must encourage their staff, when offering investment advice, to know their client, to check the suitability of the transaction and to provide the necessary information to the client. This should occur irrespective of whether or not the transaction is executed in the end;
- the advice does not always correspond with the scenario put forward or with the questionnaires used to gather data from the client;
- the undertakings must more thoroughly communicate the transaction costs and the risks entailed by the products proposed;
- undertakings should check that the legally required information is provided, such as for example the key investor information document (KIID); at the same time, undertakings should closely monitor that they do not give out documents intended for internal use.

In 2017, the FSMA evaluated its approach for the first three mystery-shopping campaigns. It also prepared an action plan for the organization of new campaigns and on the basis of this, and drew up a new call for tenders with a view to selecting new external partners.

FOCUS 2018

In 2018, the FSMA will see to it that it adjusts its supervisory tools to the new European requirements introduced by MiFID II and the IDD. Transversal analyses and audits will be organized to be able to assess the implementation of the procedures that enable compliance with the new obligations.

Special attention will also need to be paid to the regulated undertakings that give advice on financial planning. These are companies that advise on optimization, primarily of the structure, time planning, protection, legal organization or transfer of the assets of a client, pursuant to the needs and objectives provided by that client. When giving advice on financial planning, the undertakings concerned will have to comply with specific rules of conduct, which the FSMA will supervise.

Inspections will also have to be organized to verify application of the rules on SME financing.

Unlawful activity

One of the FSMA's tasks is to protect financial consumers by publishing warnings of unlawful offers of investment services and products. As part of that task, the FSMA monitors and investigates indications of unlawful offers, mainly based on warnings from third parties, consumer complaints or its own observations. This investigative work can result in sanctions or concrete measures that are intended to put a stop to unlawful offers or activities.

Cooperation with judicial authorities and publication of warnings

The FSMA also works closely with other public authorities such as the judicial authorities, for example in the field of international fraud related to binary options, CFDs (contracts for difference) and forex products, boiler rooms and recovery rooms.

Where the FSMA identifies a potentially unlawful offer of financial products and services, it may decide to open an investigation. In the year under review, it opened 241 investigations compared with 273 in 2016.

If the FSMA is unable quickly to put an end to such potentially unlawful offers, usually because they are offered through the internet or from abroad, or because the perpetrators cannot be identified, it notifies the judicial authorities and publishes a warning to alert the public to the dangers of the unlawful offer.

In 2017, the FSMA published 116 warnings, relating to 99 companies. In 2016, the number of warnings published was 54. This rise is primarily attributable to the greater number of queries or alerts received by the FSMA from[30] consumers.

In its investigations, the FSMA established that certain fraudulent companies had links with other companies on which it had previously published a warning, or that in reality, these were one and the same companies. Fraudsters have no hesitation in changing the name of their company or setting up a new company as soon as their unlawful activities have been outed to the public.

30 See this report, p. 50.

In addition to general warnings on recurrent themes such as boiler rooms and binary options, in 2017 the FSMA published a general warning on alternative investment products. These concern a variety of assets such as rare earths, precious metals or even wine, offered to the public as investment products. Often these are fraudulent. For this reason, the FSMA warned consumers not to let themselves be lulled into a false sense of security by such tangible investments, but rather to be especially vigilant.

Following this general warning, the FSMA also published two warnings specifically about offers to invest in diamonds. In 2017 many consumers were approached by companies proposing investments in diamonds, drawing them in with considerable returns. However, consumers who took up these offers never succeeded in recovering the sums invested, only serving to confirm the fraudulent nature of those offers. In December 2017, the FSMA also took the initiative to publish a list of the websites offering investments in diamonds reported by consumers.

In the year under review, the FSMA also published a warning about Initial Coin Offerings (ICOs). This method for financing start-ups through the sale of digital tokens, which usually need to be paid for with a virtual currency, is meeting with growing success. The FSMA has not only specified which laws may apply to such offers, but has also emphasized that consumers face great risks. It also warned of the danger of deceit and fraud that consumers face with this, and of the signs that may help the public recognize potentially dubious offers.

Because of the great number of warnings, the FSMA continued to publish its list of companies that engage in unauthorized activity on Belgian territory. The advantage of this list is that consumers and financial institutions get a clear overview of all companies that engage in unauthorized activity about which a warning has already been published or which are linked to companies about which a warning has already been published. This list is regularly updated[31].

In addition to its own warnings, the FSMA also publishes the warnings of its European colleague supervisory authorities, which are provided to it by ESMA. In 2017, the FSMA published 273 of these warnings. The FSMA also publishes, via a hyperlink on its website, the warnings issued by other foreign supervisory authorities from outside the European Union which are members of IOSCO.

The FSMA also takes specific initiatives to prevent consumers taking up unlawful or fraudulent offers. Over the past year, the FSMA has primarily focused on investments in diamonds. After the FSMA identified several cases of fraud and suspicious offers, it took steps to put a stop to certain online advertisements for diamond investments which contained fictitious returns. In accordance with the general policy of the FSMA, it also reported the dossiers concerned to the judicial authorities.

31 See the FSMA's website.

Handling whistleblower alerts

A whistleblower is someone who works in the financial sector and identifies breaches of the financial legislation supervised by the FSMA and reports these breaches to the FSMA. Whistleblowers can help identify and properly tackle abuses.

The Whistleblowers' point of contact was launched on 28 September 2017[32]. Reports from whistleblowers should enable the FSMA to investigate certain facts. As a result, whistleblowers must provide sufficient accurate and detailed information and see to it that the facts reported are sufficiently documented. Whistleblowers can report through the electronic point of contact on the FSMA's website, by telephone, in writing or by requesting a meeting. The FSMA has designated members of staff specifically to work on handling such alerts of breaches.

It should be noted that the FSMA only handles reports of breaches to the financial legislation. The Whistleblowers' point of contact equally is not meant for customers to make complaints about a financial institution or to report a potential conflict, for example with an employer. The FSMA has another specific communication channel for consumer questions and complaints.

In view of the professional secrecy to which it is bound, the FSMA cannot give any individual feedback on inquiries it conducts following an alert it has received. Suitable measures or sanctions may be taken in the case of actual infringements identified. In some cases, the public may be informed of such measures and sanctions, usually on the FSMA's website.

32 For more information about the Belgian and European regulations on whistleblowers, see this report, p. 157.

Raising awareness

In 2017, the FSMA pursued its active policy to raise awareness, among both the public and financial sector professionals, of the risks of investment and credit card fraud and how to prevent them.

The FSMA works to respond to questions and complaints from the public on fraudulent investments and credit offers. For this purpose, it formulates personalized recommendations to consumers, albeit with the proviso that it is not within its power to recuperate the amounts invested. Questions and complaints from consumers are a valuable source of information for combating unlawful activities.

To raise more awareness among professionals, the FSMA also organized a new meeting with compliance officers, to make them more aware of the problem of investment fraud. They are after all the main catalysts to ensuring better awareness of information on fraud within credit institutions and insurance companies.

The FSMA is also present on the field, primarily through its participation in a broad range of conferences and campaigns, for example on the topic of cybercrime or credit card fraud. Sometimes the FSMA works with other parties on such activities. In 2017 these included the FPS Economy, Test-Aankoop/Test Achats, a Belgian consumer protection organization, and the Belgian credit and debt observatory, always with the common goal of raising awareness among the public and acting to prevent fraud.

With awareness-raising in mind, the FSMA has also published new texts on its website. The 'Consumers' section on the website now has a specific 'Beware of Fraud' section. This section contains detailed information on the various financial fraud mechanisms and reveals how fraudsters operate. This information should better equip consumers against fraud in financial services and investments.

The FSMA is also now a partner of the FPS Economy contact point for fraud, which acts as a one-stop shop for consumers who wish to report a case of fraud. The FSMA's participation in this initiative will eventually ensure that more consumers find their way to the FSMA.

FOCUS 2018

In 2018, the FSMA's services will pay particular attention to certain unlawful activities.

They will conduct targeted supervisory actions against offers of virtual currencies and ICOs. The FSMA closely monitors market trends and emphasizes that virtual currencies are neither subject to financial supervision, nor to oversight, which increases the risks to investors. Equally, ICOs are also currently on the FSMA's radar. More specifically, it will investigate whether the ICOs launched are subject to specific financial regulations, and whether they are simply scams. Platforms that offer cryptocurrencies will be thoroughly investigated, all the more so because there are often indications of fraud in that sector.

A second section relates to alternative investments, an area that requires vigilance, and in which fraud appears to be rife. The FSMA will therefore also scrutinize those offers in the context of the legislation it supervises and inform the public of its main points of attention.

Finally, it will focus several actions on lenders that have not obtained authorization and therefore work illegally. As part of this, the FSMA plans to raise awareness among the public and where necessary take the necessary measures to put a stop to such activities.

Consumer notifications

The FSMA has a mailbox to which consumers can direct their questions, complaints, information and suggestions.

The FSMA received 1,710 notifications from consumers on various financial subjects. That is 13 per cent more than in 2016. In that year, the FSMA registered 1,510 questions and complaints.

Almost half of the messages were about fraud and irregular offers of financial products and services. One in eight messages was on the subject of investing. One in ten was on the subject of pensions.

The notifications on fraud and unlawful offers were primarily on the subject of binary options, boiler rooms, pyramid schemes and phishing. The new themes in 2017 were credit card fraud, virtual currencies and fraud involving investments in diamonds. In total the FSMA received 792 notifications in this category.

The FSMA received 212 notifications on investments. Those related to questions and complaints on securities, investment funds, investment insurance and asset management.

Consumers asked 178 questions on the theme of pensions. They called on the FSMA's expertise as supervisory authority of supplementary pensions.

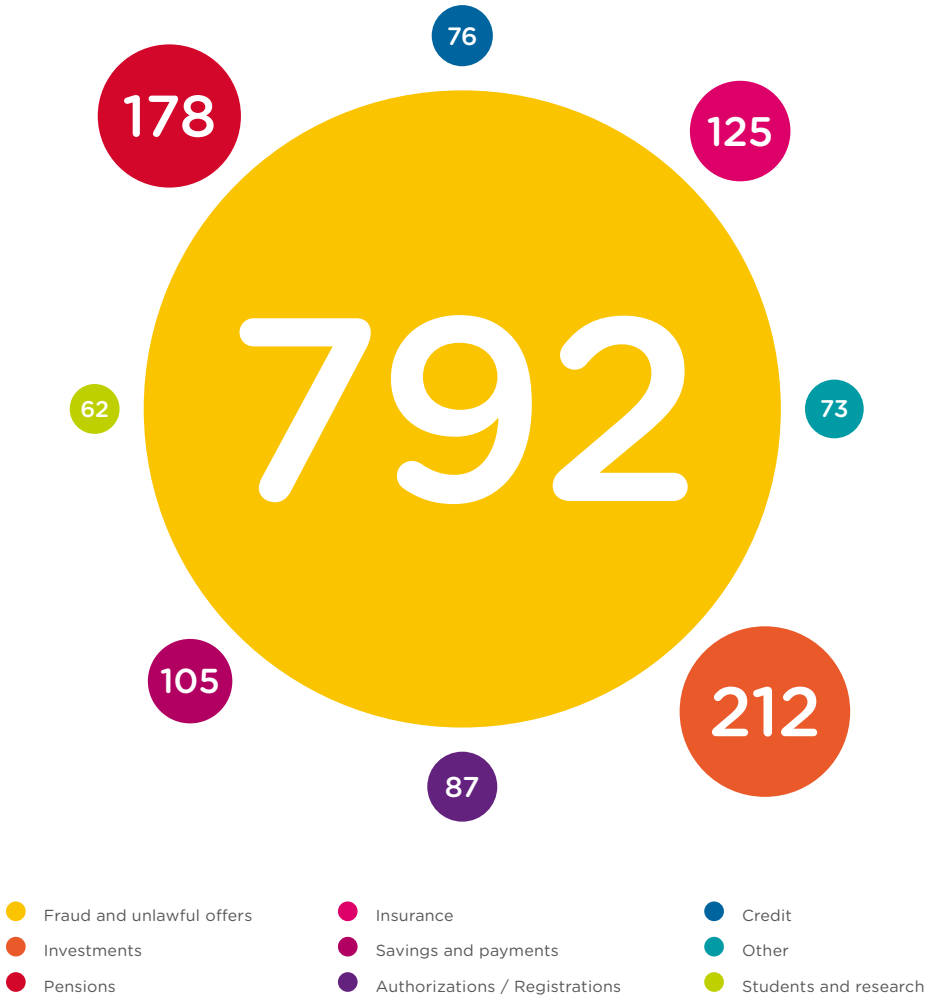
The FSMA received approximately 60 questions from students and from educational and research institutions. The tightening of the MiFID rules to protect consumers was a recurrent theme.

Consumer notifications are a major source of information for the FSMA. They offer an insight into problems with financial products and services. In this sense, they are important signals for the FSMA's supervision of the financial sector.

The FSMA is not allowed to mediate if a consumer has a complaint on a financial product or financial institution. Mediation is the task of the Ombudsman for financial disputes and the Insurance Ombudsman.

Some notifications are on subjects that fall outside the FSMA's competence. In such a case, the FSMA refers consumers to the competent institution, such as the National Bank of Belgium, the FPS Finance and the FPS Economy. The FSMA is a partner of the FPS Economy Contact Point for Fraud.

Graph 8: Number of consumer notifications by category



TRANSPARENCY OF FINANCIAL MARKETS

Investors in a company should be able to access all the information on that company to enable them to make informed investment decisions. The FSMA ensures that the information from listed companies is complete, true, and fair and is made available to the public on time and in the correct way. The FSMA supervises the correct and transparent operation of the markets on which these companies are listed. The FSMA also checks the information from unlisted companies at the time of a public issue of securities with the purpose of collecting money from the public.

Transactions of listed companies

Listed companies that make a public offer of shares or debt instruments must provide all necessary information to the market. This information is usually to be found in a prospectus that the FSMA approves, or in other documents the FSMA deems equivalent thereto. In 2017, the FSMA approved the information provided on several transactions of listed companies.

The information in a prospectus must adhere to legal requirements and be thorough, easy to understand and consistent. The FSMA places particular importance on identifying and clearly stating the risks to investors in the prospectus. A prospectus therefore also contains a separate section on the risks and, where necessary, specific risk factors are again emphasized on the cover page of the document. This is to make potential investors aware of the risks the company runs and take this into account in their decision as to whether or not to invest.

Issuances and initial public offerings

In 2017 two Belgian companies were listed on Euronext for the first time. These are Balta, a producer of textile floor coverings, and chipmaker X-FAB Silicon Foundries. Balta raised 137.6 million euros with its IPO. X-FAB Silicon Foundries raised 242.6 million euros.

Over the course of 2017, five companies already listed on Euronext Brussels obtained additional capital through the stock exchange. To this end, they had a prospectus approved by the FSMA. These are Xior, Sipef, Care Property Invest, Montea and Aedifica.

Existing VGP shares were offered to the public. Ablynx had new shares listed on Euronext Brussels, issued as part of its IPO on the American NASDAQ in the form of American Depository Shares (ADS).

The FSMA approved a prospectus for seven listed companies for the issuance or listing of bonds.

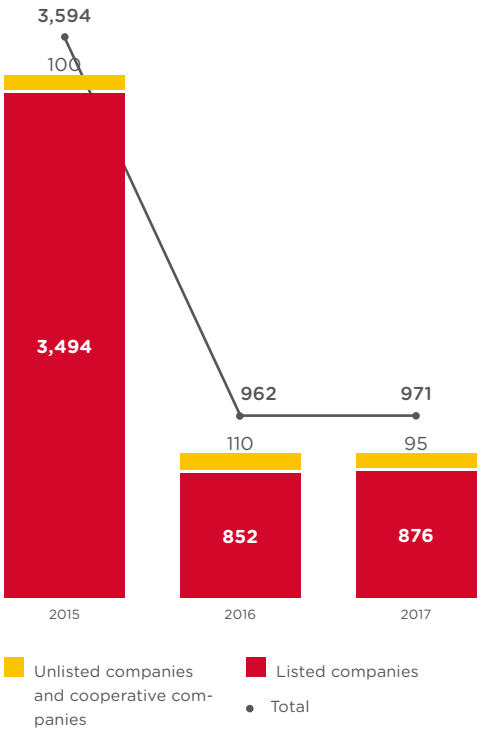
Companies may opt to have a registration document approved. This kind of document can be approved by the FSMA outside the specifications for approval of a prospectus, in anticipation of its use in future public offers or for admissions to listing. In such a case, only a securities note still needs to be drawn up for an issue. In 2017, the FSMA approved 15 registration documents.

Graph 9 shows the evolution of the issue volume of shares. The high volume in 2015 is primarily attributable to the share issues of Solvay and Solvac for 1.5 billion and 450 million euros respectively.

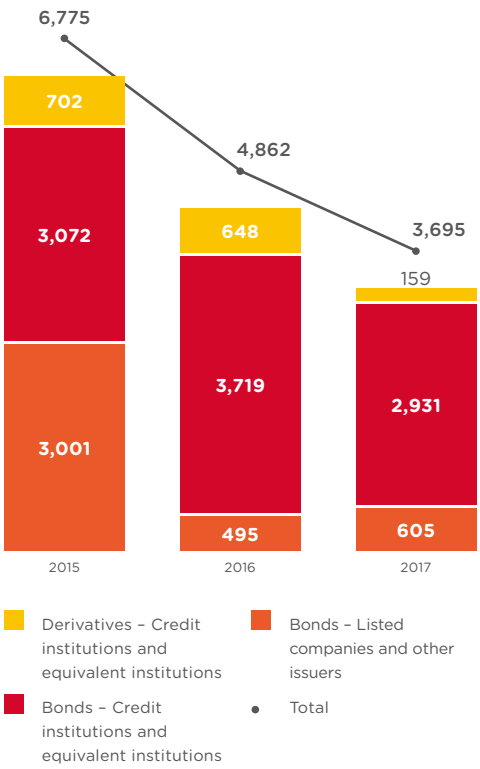
Graph 10 shows the evolution of the issue volume of debt instruments.

Several parties are closely involved in the process of providing information: the companies (or information providers), the investors (or information receivers), and the parties who provide their expertise to the companies, especially in financial transactions. The FSMA wishes to impress upon all of these parties that companies must inform the market clearly and transparently in every situation. Investors are urged to read the information provided by companies which is drawn up for the purpose of providing them with adequate information and thereby to protect them. The FSMA also asks all parties who act as an expert in financial transactions, such as lawyers and corporate bankers, to help facilitate the process of information provision.

Graph 9: Share issue volume (in EUR million)



Graph 10: Issue volume of bonds and derivatives (in EUR million)



Takeover dossiers

In 2017, the FSMA handled several takeover dossiers. The characteristics of these dossiers vary considerably. The takeover bids on Zetes and Dalenys were mandatory bids. They occurred because the offeror had acquired more than 30 per cent of voting securities of the offeree company. Both of these offers were successful and led to the delisting of the shares.

Another dossier was the voluntary takeover bid by Bain Capital on Resilux. That bid did not ultimately go through because one of the conditions that the offeror had attached to the bid was not met, after which the offeror, as provided for in the legislation and regulations, retracted the bid. Ghelamco Invest also made a buyback offer on its own bonds with a maturity date of February 2018.

The takeover bid on Sapec was a voluntary bid by the controlling shareholder. Certain obligations apply in such a takeover bid to protect the minority shareholders. The independent directors of the offeree company must then appoint an independent expert who provides a valuation calculated in detail of the securities involved in the bid.

Finally, there was also an independent squeeze-out bid on Option Trading Company, a company listed on the Free Market (Euronext Access). Only a shareholder who already holds more than 95 per cent of the shares of the offeree company may make a squeeze-out bid. Such a squeeze-out bid may occur as an extension to a takeover bid or independently. Given that a squeeze-out bid leads to the expropriation of the minority shareholders, specific shareholder protection rules also apply. In an independent squeeze-out bid, a report from an independent expert is first published. This report contains information such as the expert's advice as to whether the price offered safeguards the interests of the holders of securities. Then, the shareholders have a specific amount of time to communicate to the FSMA any objections they may have to the bid. Afterwards, the FSMA provides its remarks on the draft prospectus to the offeror. It takes into account any objections from the shareholders. In the present case, the FSMA did not receive any objections from minority shareholders.

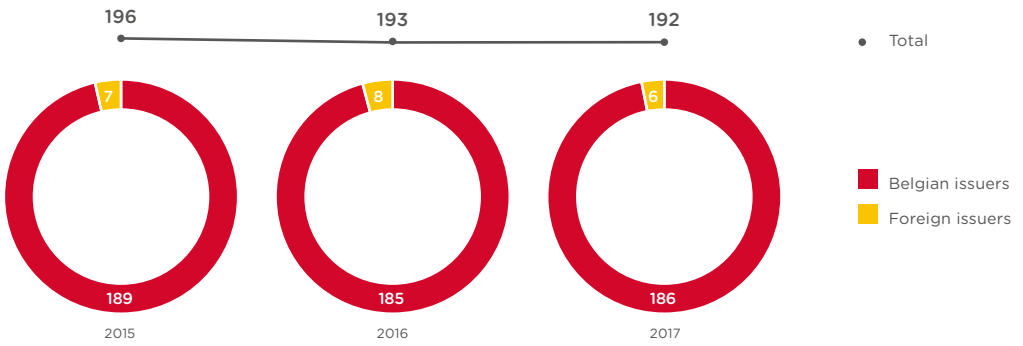
Supervision of regulated information from listed companies

The FSMA does not supervise only the transactions of listed companies but also the regulated information they provide to the public. This includes both information that the companies must periodically publish and inside information.

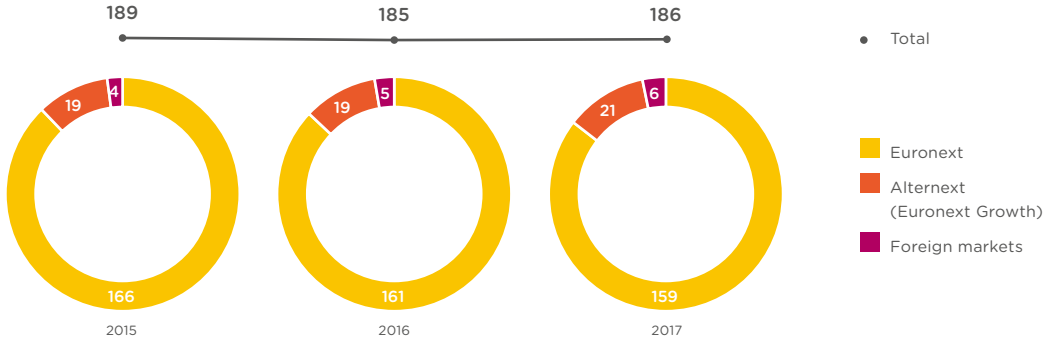
Number of issuers

The number of listed companies whose regulatory information the FSMA supervises has remained relatively stable (see Graph 11 and 12). Two thirds of these issuers list shares; one third lists other securities (bonds, real estate certificates, etc.). The full list of issuers is available on the FSMA's website.

Graph 11: Issuers under supervision



Graph 12: Belgian issuers



Supervisory approach

The main purposes of the supervision of regulated information from listed companies are to ensure that high quality information is published on time, investors are protected and holders of financial instruments receive equal treatment. Information is considered high quality if it gives a true and fair view, is accurate, honest and easy to understand. It must of course be published by the statutory deadline, but above all when it is useful to investors. The quality and completeness of the information provided by issuers are essential for their protection. Finally, investors must be treated fairly, which means that holders of financial instruments must be treated in the same way in the same circumstances. Apart from the responsibility of the board of directors, the audit committee, independent directors and the statutory auditor, the FSMA's supervision is one of the legislature's protection mechanisms.

The supervision of regulated information from listed companies in principle takes place ex post. To determine its supervisory plan, each year the FSMA selects a number of companies whose regulated information will be inspected. The FSMA determines, for the selected companies, which information will be subjected to particular scrutiny (hereinafter referred to as an unlimited review). When selecting these, it takes account, among other things, of the risks identified for each company and the special points for attention that have been established in the Guidelines of the European Securities and Markets Authority (ESMA).

In the review of the organization of its supervision in 2017, the FSMA identified a positive development in the quality of the information provided by listed companies. In response to this, it considered that it could be more efficient to devote less time to unlimited reviews of listed companies, and to make more time for thematic horizontal audits. Investigating specific important themes among all issuers concerned or among a representative sample group could lead to a general improvement in the quality of transactions and information on these aspects. This approach should also make it possible to guarantee a level playing field in supervision and at the same time an improvement to the general quality of the reporting on these points.

The supervision of regulated real estate companies was also fully integrated into the department that supervises regulated information from listed companies. That will guarantee a consistent and integrated approach for all listed companies.

The aforementioned supervisory approach is focused on permanent monitoring and improvement of the quality of financial information, and in 2017 this led to concrete action in a number of dossiers, both as regards the supervision of financial information and specific transactions or decisions. Action was taken on three levels.

Firstly, the FSMA more often formulated recommendations to the issuers under supervision to improve the quality of their regulated information. Those recommendations concerned the annual accounts and notes thereto as well as other regulated information such as the issuers' management report, special reports, convocations to the annual general meeting, transparency declarations or website.

The FSMA also expressly asked for certain data to be improved or supplemented with the later publication of regulated information. These requests mainly related to notes and input on the valuation methods applied when determining the fair value of real estate assets, to the supplementary information that has to be given on business combinations or on structures used in real estate projects, to the analysis of the duration of guarantees or to the compliance of notes with the applicable standards.

Finally, the FSMA also asked for corrections to already published information. In a couple of cases, the corrections related to the amount of the capital gain on the sale of assets and in another case to the diluted earnings per share. As part of a partial demerger, the FSMA asked for a correction to the report of an independent expert that contained methodological errors, as well as for an adjustment to a report from the independent directors. Those changes were primarily designed to ensure that shareholders would have enough information to make an informed decision during the general meeting. The FSMA also identified a case of a start-up that adjusted its annual accounts by omitting the major deferred taxes it had recorded on the assets side to compensate for its losses carried forward. Taking into account the fact that this company had not yet made any profit and that it was at a very early stage, there were not enough convincing indications that there were sufficient taxable profits with which to offset tax losses carried forward.

In 2017, another point that attracted attention from the FSMA was supervising the correct application of the rules on alternative performance measures. An alternative performance measure is a financial measure of historical or future financial performance, financial position, or cash flows, not defined in the applicable financial reporting framework. It is therefore also important that companies provide the necessary information on this to investors so that these measures are properly understood. The FSMA previously consulted several companies and an industry federation on the way in which to implement these rules. In some cases, the FSMA previously consulted with its European colleague supervisory authorities and ESMA to achieve consistent application of these European guidelines.

15,950

The STORI (Storage of Regulated Information) online database includes all regulated information that companies listed on Euronext Brussels have published since 2011. At the end of 2017, this database already included 15,950 documents.

STORI can be consulted through stori.fsma.be.

IN PRACTICE

A listed company offered its shareholders a contribution in kind from a reference shareholder of the company. In such a case, the board of directors must draw up a special report that includes information on the exchange ratio. The exchange ratio is based on the valuation of the listed company and of the contribution and is decisive for the future power structures between the shareholders.

The FSMA found that the value of the listed company used to determine the exchange ratio was considerably lower than its unconsolidated equity as stated in the annual accounts drawn up by the board of directors. Given that the listed company is a holding company with as its primary asset a participating interest in an operational subsidiary, this unconsolidated equity is largely determined by the book value of this operational subsidiary. Given that the Belgian accounting law states that holdings are subject to impairment in the case of long-term loss in value, the lack of impairment could lead to the conclusion that the company thought that the participating interest in its subsidiary had not undergone any long-term loss in value and the unconsolidated equity could therefore be deemed a bottom limit for the company's valuation.

The FSMA asked the board of directors of the listed company to adopt a standpoint on this apparent inconsistency between the standalone annual accounts and the valuation for the contribution in kind.

To be able to investigate the FSMA's request, the board of directors decided to postpone both the extraordinary general meeting that had to decide on the contribution and the ordinary general meeting that had to approve the annual accounts.

The board of directors eventually decided to use the unconsolidated equity of the listed company as it was stated in the annual accounts as the basis for determining the exchange ratio. For the minority shareholders, this led to the specific consequence that their participation in the listed companies was diluted to a lesser degree than would have been the case with the initially proposed exchange ratio. Then a new ordinary and extraordinary general meeting was convoked. During that meeting, the shareholders approved the capital increase by contribution in kind.

Disclosure of shareholding structure

Whoever exceeds certain thresholds downwards or upwards in the shareholdership of a listed company must disclose this to the public through what is called a transparency notification. The thresholds can be either legally established thresholds or thresholds that the companies themselves have established in their articles of association.

On 1 October 2016, the transparency legislation changed. This resulted in a broadening of the notion of 'financial instruments that are treated as voting securities'. Previously, such instruments only had to be reported if, on their maturity date, they gave the holder an unconditional right to acquire voting securities already issued. The new legislation broadened the notion to financial instruments with an economic effect comparable to that of the existing financial instruments that are treated as voting securities, irrespective of whether or not they give the right to physical settlement.

The broadening of the notion of financial instruments that are treated as voting securities led to a spectacular rise in the number of notifications. In 2017, the FSMA received 513 such notifications, compared with 335 in 2016. That represents an increase of 53%.

On the basis of these transparency notifications, the FSMA keeps an overview of the shareholdership of listed companies. This information can be consulted on the FSMA's website. This website also contains an overview of the statutory thresholds used by these companies in such cases.

Transactions of unlisted companies

When unlisted companies execute financial transactions, they must in certain cases have a prospectus approved by the FSMA. These documents contain all the information legally required and useful to investors and make reference to the risks associated with the investment.

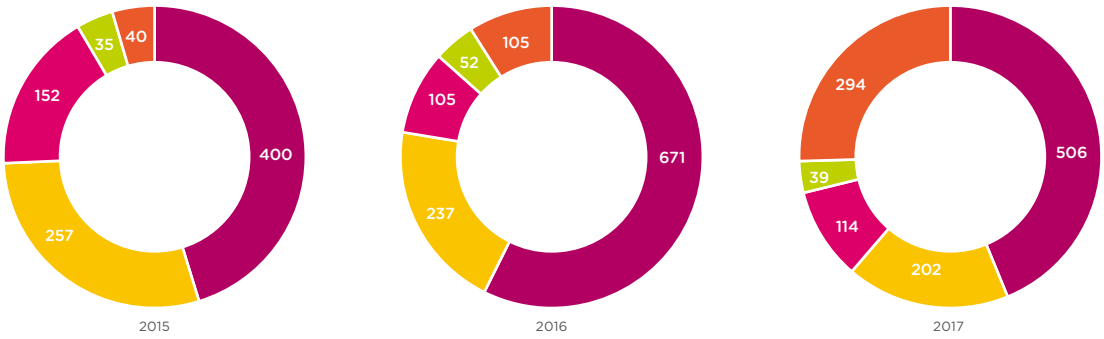
In 2017, the FSMA approved 36 prospectuses of unlisted companies. 13 of these were prospectuses for the issue of shares by cooperatives. The FSMA also approved 16 prospectuses of tax shelters for investments in audio-visual productions. There were also three prospectuses for the issue of bonds or notes and four prospectuses for employee share ownership plans.

Supervision of financial markets

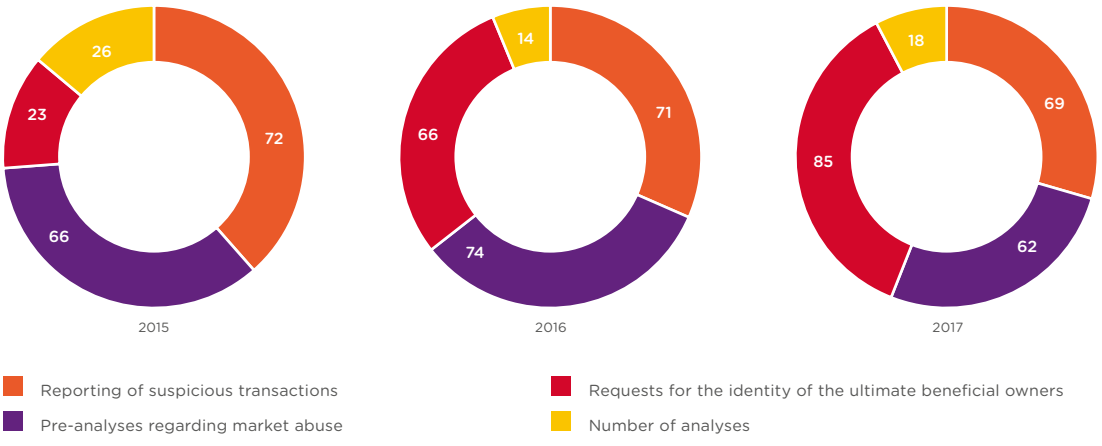
Real-time monitoring

The FSMA monitors evolutions on the financial markets in real time. That occurs in a market surveillance unit equipped with all the necessary monitoring and information tools to exercise market supervision. This includes real-time access to the Euronext markets on which Belgian shares are traded, specialist software to trace potential market abuse, a link to the major electronic distributors of financial information, the financial press, the studies of financial analysts concerning listed companies and the information published by those companies.

Graph 13: Real-time supervision



Graph 14: Detecting market abuse



The market surveillance unit exercises several functions. It ascertains whether listed companies meet their obligations as regards disclosing inside information. This monitoring entails checks on both the completeness and the correct dissemination of that information. The market surveillance unit is also tasked with tracing potential situations or indications of market abuse.

The FSMA opts for real-time supervision of the markets because this presents a number of advantages vis-à-vis other countries which only supervise their financial markets ex post. Real-time supervision after all enables immediate action to be taken where, for example, incorrect information circulates in connection with a listed company, where important information is not published or where a listed company must publish inside information during trading hours. The FSMA may in such cases decide to put a stop to trading in the share in question. That gives the company the opportunity to publish the correct information and gives the market time to assimilate that information. Such intervention also prevents investors incurring loss as a result of price fluctuations in reaction to the inaccurate information. In 2017, the FSMA suspended trading in a share 39 times.

In addition to suspension of trading, the market surveillance unit can also take other action such as placing a share under increased scrutiny, requesting information from listed companies and requesting information from market players. The market surveillance unit also receives alerts of potentially suspect transactions and other information. Finally, it is responsible for the preliminary analysis of indications of potential market abuse. In 2017, the FSMA conducted 62 preliminary analyses and 18 full analyses in connection with potential market abuse. Graphs 13 and 14 give an overview of the number of actions taken by the FSMA's market surveillance unit.

IN PRACTICE

The FSMA's market surveillance unit has specialist detection software to detect potential cases of market manipulation. In 2017, this software allowed a potential case of layering to be identified. "Layering" is prohibited under the European Market Abuse Regulation.

Layering is when a market participant places a great number of orders or an order for a great number of shares on one side (the buy or sell side) of the order book to show a high buy or sell demand, only to then execute the transactions on the opposite side of the order book (sell or buy side). The buy or sell demand shown is spoof: these decoy orders are not intended to be executed.

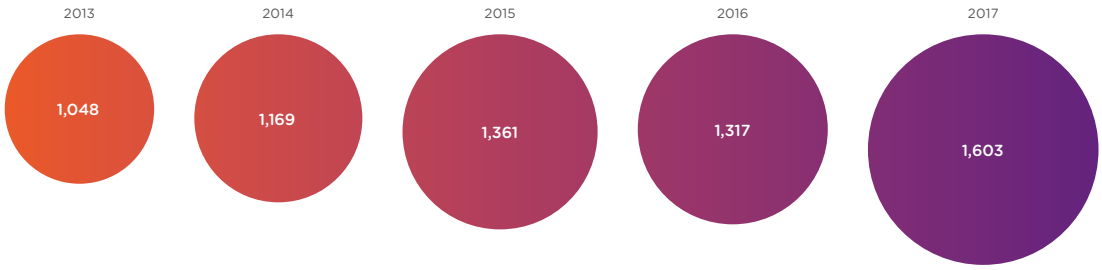
By simulating high interest in buying or selling, the market participant wishes to entice other buyers/sellers into the market at higher/lower price limits to then sell or buy to them more cheaply/expensively. Afterwards, the decoy orders are cancelled, usually by not being executed. By repeating this strategy many times, interchanging layering on the buy side (to be able to sell more expensively) and on the sell side (to be able to buy more cheaply), this strategy can become lucrative.

The financial markets have been characterized in recent years by the emergence of new types of market players, such as high-frequency traders. These changes have also led to new forms of potential market abuse. To be able to detect these new forms of potential market abuse, the FSMA, in conjunction with the French supervisory authority, the AMF, has been using specialist detection software. This software allows detailed analyses of the behaviour of market participants by reconstructing the input, amendment, cancellation and execution of all orders. In 2017, this detection software exposed a case of layering (see box).

Managers' disclosure obligations

The FSMA publishes on its website the transactions of managers of a listed company in the securities of that company. This information can be useful to investors. In 2017, the FSMA received 1,603 communications of managers' transactions. Graph 15 shows the evolution of the number of communications over the last five years.

Graph 15: Transactions by managers

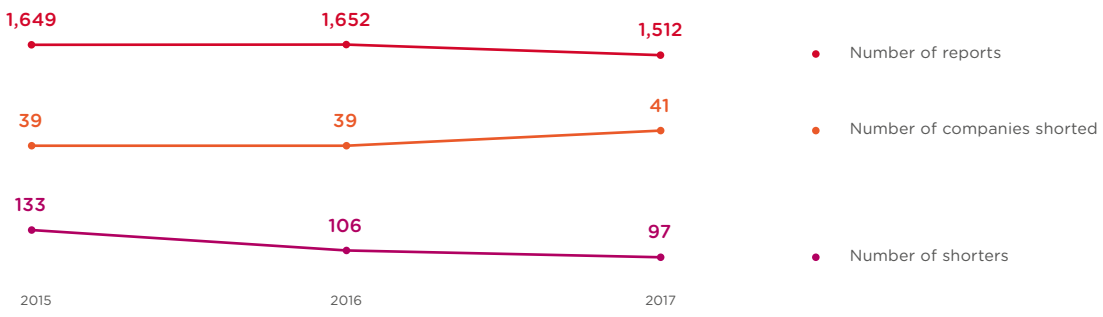


Short selling

The FSMA also publishes on its website major short positions in shares of Belgian listed companies. Anyone who takes a short position is assuming that the share price in question will fall. These positions are therefore also interesting information for investors. A European Regulation lays down the obligation of disclosure of net short positions. All net short positions of at least 0.50% of the share capital can be consulted on the FSMA's website. Short positions between 0.20 and 0.50% of the share capital are communicated to the FSMA but are not published.

Graph 16 gives an overview of the number of communications, the number of players that have a short position and the number of companies on which short positions have been taken. It shows that the number of shorters and the number of disclosures fell in 2017. The number of shorted companies remained more or less stable.

Graph 16: Short selling



Policy on profit warnings

Following the amendment of the European Transparency Directive, the obligation to publish quarterly financial reporting was eliminated in 2014. The deadline for publication of half-yearly financial statements went from two to three months.

Over the past few years, the FSMA has ensured that this easing did not lead to a significant loss of information. The FSMA has systematically told issuers that they must warn the market about price-sensitive results, if necessary before the planned publication date. The FSMA is of the opinion that issuers must publish profit or earnings warnings if inside information comes to light during the process of preparing the financial reporting[33]. Inside information can occur because the results considerably differ from the company's own forecasts, or in the absence of forecasts, from analyst consensus. If none of the two aforementioned aspects are present, inside information can still occur because the results considerably differ from the issuer's historical results or the reasonable expectations of the market, bearing in mind the information available. Issuers may not postpone the publication of such inside information to the date provided for in the financial calendar for the publication of results.

When the publication of yearly or half-yearly results took place relatively late and elicited a sharp price reaction, the FSMA examined whether the issuer was able to, or should have, issued a profit warning. Over the past few years, the FSMA has made several issuers aware of this.

Informing the sector

To contribute to effective supervision of the financial markets, market players must be well-informed on the rules that apply and on the expectations of the supervisory authority. This is why the FSMA pays a lot of attention to communicating to the sector clearly and proactively on its expectations, priorities and points for attention, as well as on changes in legislation and regulations. This communication occurs in a range of different ways, including through presentations and publication of circulars, frequently asked questions, Position Papers, etc. New developments are also communicated to the sector through updates to circulars, consultations, the publication of ESMA priorities, etc.

The FSMA also regularly receives questions from the sector. Those questions come from a range of parties: listed companies, their shareholders or their advisors. By addressing questions to the FSMA, these parties wish to receive an insight into the possible impact of envisaged transactions following the application of legislation and regulations supervised by the FSMA. These questions pertain to different supervisory areas: public issues, takeover bids, regulated real estate companies, etc.

Generally, the questions tend to come from shareholders of listed companies and relate to the impact of planned changes in the shareholding structure on the application of the takeover legislation. In such situations, the question often arises as to whether an envisaged transaction would lead to a mandatory bid, and the FSMA is asked for its opinion. In 2017, the FSMA received and responded to a number of these questions.

33 See Circular FSMA_2012_01 - on the obligations of issuers listed on a regulated market (in Dutch and French only).

There are also regularly questions of interpretation of the legislation on regulated real estate companies. In 2017, there was a question on what activities regulated real estate investment companies are permitted to undertake.

In so far as these questions occur on a nominative basis and contain an analysis by the asker, the FSMA always takes these into consideration. These, after all, give the parties concerned legal certainty.

FOCUS 2018

In 2018 the FSMA will conduct a revised follow-up of the new obligations pursuant to the new Prospectus Regulation, the amended reporting on financial transactions or the new IFRS, work on the new organization of its supervision of regulated information, and consequently conduct thematic horizontal audits.

Supervision of company auditors

Company auditors play a major role in society. After all, they have to give certainty to suppliers, lenders, investors and company employees that the annual accounts and financial situation of a company are reflected accurately. For this reason, the Belgian legislature has opted to subject company auditors to strict supervision. The FSMA is closely involved in that supervision, which is exercised by the Belgian Audit Oversight College.

In the wake of the financial crisis, the European Union enacted legislation to improve the quality of the audit work of company auditors and to subject them to stricter supervision. The European measures were transposed into Belgian law at the end of 2016[34]. This Law created a new supervisory authority, the Belgian Audit Oversight College.

The College's most important tasks are reviewing the quality control regulations introduced by company auditors, organizing the supervision of company auditors and looking into complaints the College receives.

The College is composed of a committee and a secretary-general. The committee has six members. The NBB and the FSMA each have two representatives in the committee. The two other places are filled by a former company auditor and an expert who was not a company auditor.

The FSMA contributes substantially to the public supervision of company auditors. The FSMA provides offices for the College, which also has its headquarters in the FSMA building. The FSMA also provides logistics support, for example IT. Apart from the two FSMA representatives in the committee, the FSMA also provides the secretary-general, who is responsible for the operational management of the College. The secretary-general is appointed by the Management Committee of the FSMA and is a member of the FSMA's management.

34 Law of 7 December 2016 on the organization of the profession and the public supervision of auditors (Belgian Official Gazette, 13 December 2016, second edition).

The secretary-general heads up a unit of FSMA staff who prepare and execute the decisions of the College. For the quality control of company auditors, the College can call on FSMA inspectors. Finally, the Sanctions Committee of the FSMA is also responsible for handling the disciplinary proceedings of company auditors. The cooperation between the FSMA and the Belgian Audit Oversight College is regulated by way of a memorandum of understanding entered into in 2017.

Several conditions may apply to Belgian company auditors for their authorization and the exercise of their role, based on their tasks. An overview:

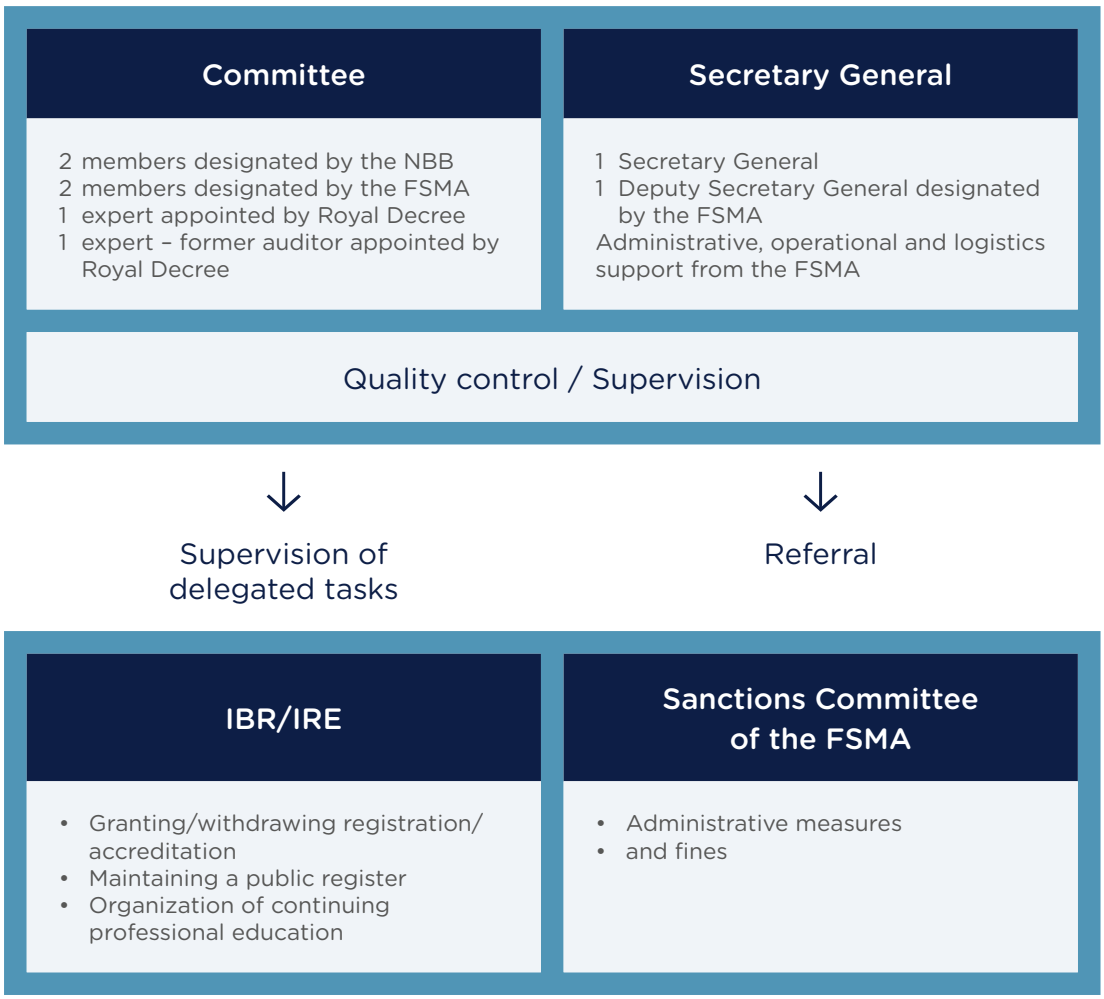
- Company auditor: the title of company auditor is granted by the Institute of Registered Auditors (IBR/IRE). To be registered as a company auditor, the conditions for obtaining this title under the law must be met. These conditions primarily concern professional integrity, professional knowledge and training obligations. The College supervises the correct application of these conditions.
- Statutory auditor: a statutory auditor is a company auditor appointed by the general meeting of a company and tasked with the statutory audit of the annual accounts.
- Accredited statutory auditor: an accredited statutory auditor is a company auditor appointed by the general meeting of a company under prudential supervision. An accredited statutory auditor must be chosen from a list of company auditors who are accredited by the FSMA or the NBB. The FSMA is responsible for the accreditation of company auditors who take up a role of statutory auditor in a UCI management company or in an institution for occupational retirement provision (IORP).

In the supervision of these three categories, the College supervises the application of the audit standards and the legislation governing company auditors when exercising their auditing tasks. Accredited statutory auditors are supervised by both the FSMA and the NBB. Both supervisory authorities may decide to withdraw the accreditation if the accredited statutory auditor no longer meets the accreditation conditions. The College also supervises the application of the standards on the company auditor's duty of cooperation with prudential supervision.

The structure of the College's supervision of company auditors is shown in the graph below. More information on this supervision can be found in the annual report of the Belgian Audit Oversight College[35].

35 The annual report of the Belgian Audit Oversight College can be consulted on its website: www.ctr-csr.be (in Dutch and French).

Belgian Audit Oversight College



HONESTY AND INTEGRITY OF THE FINANCIAL SECTOR

Maintaining and boosting consumers' trust in the financial sector is one of the FSMA's main goals. One of the ways it pursues this goal is by supervising the honesty and integrity of financial sector players. The FSMA ensures that management companies of investment funds, portfolio management companies and investment advice and regulated real estate companies can always meet their obligations and that the continuity of their business is guaranteed. Crowdfunding platforms, independent financial planners and bureaux de change also come under the FSMA's supervision. Its supervision also encompasses financial benchmarks. In the case of lenders and financial intermediaries, the FSMA controls access to the business and ensures that they continuously meet the conditions for pursuing their activities.

Supervision of market operators

Asset management

The FSMA supervises management companies of investment funds. Management companies that manage public investment funds need an authorization to do so.

There are two types of authorization, depending on the type of investment fund under management: undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs)[36]. Most management companies have both authorizations. The rules are largely similar and their content is comparable to the rules that apply to banks. The requirements for authorization are less stringent if the manager only manages investment funds that are not offered to the public.

The FSMA ascertains whether the company's management is fit and proper and sufficiently available. In particular, it examines the distribution of tasks among the managers and ascertains whether they are in a position to effectively mutually supervise each other.

The company must possess sufficient initial capital and own funds. Major shareholders are screened and must be financially sound enough to be able to provide additional capital should this be necessary.

36 For the supervision by the FSMA itself of investment funds: see this annual report, p. 26 et seq.

The company's organization should be appropriate, taking into account the scale and complexity of its activities. A lot of attention is paid here to the control functions such as risk management, internal audit and compliance, to the outsourcing of services and to their continuity.

The remuneration policy of the management company must comply with the rules that aim to prevent encouraging staff to take risks that are not in line with the risk profile of the investment funds they manage.

Management companies are subject to rules of conduct: they must work fairly, equitably, professionally and independently, in the interest of the investment funds managed and of the investors in these funds. They must, among other things, identify, prevent, manage and control conflicts of interest. Management companies may, in addition to managing investment funds, also provide some investment services to individual clients. If they do, they must comply with the MiFID conduct of business rules[37].

The FSMA regularly receives and looks into financial and other reporting from management companies. It screens all new managers and major shareholders. It also conducts on-site inspections. In 2017 it conducted checks on the organization of management bodies and on the control functions of a number of management companies. It also checked whether the companies possessed the necessary authorizations for all the services they provide in practice.

Where management companies form part of a banking group, the FSMA is in close contact with the banking supervisor, namely the National Bank of Belgium or the European Central Bank (ECB). Points for attention for the management company may after all have consequences for the banking group to which it belongs and vice versa. In certain cases, the FSMA takes part in the group supervision organized by the ECB.

In 2017, the FSMA received four applications for authorization from a management company. It granted two authorizations, both to managers of non-public funds. Two applications for authorization, one as a manager of an AIF and the other as a manager of a UCITS, were still being processed in the period under review.

For management companies that only manage funds which are not publicly sold and the total managed assets of which do not exceed the legal thresholds, or 'small-scale managers', there is only an obligation to report to the FSMA. Small-scale managers have a limited reporting obligation to the European supervisory authority ESMA. The FSMA organizes this reporting using the documents required by ESMA. They must also comply with the rules to combat money laundering and terrorist financing[38]. For the rest, these managers are not subject to supervision. The FSMA publishes a list of small-scale managers on its website.

As soon as small-scale managers' managed assets exceed the legal threshold, or as soon as they manage one or more public investment funds, they must apply for authorization. Account also needs to be taken of the assets managed indirectly by managers, via a company with which they are associated by way of joint management, by joint control or by a substantial direct or indirect participating interest. This anti-abuse provision of the AIF Law seeks to ensure that managers may not elude the obligation to obtain an authorization simply by setting up a separate legal entity.

37 See this report, p. 38.

38 See this report, p. 155.

The FSMA proactively supervises compliance with these requirements. Managers who do not adhere to these conditions face penalties.

While management companies' main activity consists in managing investment funds, portfolio management and investment advice companies are primarily involved in providing investment services to individual clients.

Rules also apply to portfolio management and investment advice companies in terms of the management, capital, own funds, shareholders, appropriate organization and remuneration policy. They are subject to the MiFID conduct of business rules. Smaller and less complex portfolio management and investment advice companies may, pursuant to the proportionality principle, have a simpler organization. That does not mean that they do not need to comply with minimum standards. It means that even in an organization with only two managers, there must be proper checks and balances in the management bodies, and a correct separation of functions.

Just as with management companies, the FSMA receives and looks into the reporting of portfolio management and investment advice companies and screens managers and shareholders. In 2017, it checked the organization of the management bodies and of the control functions of a number of portfolio management and investment advice companies. It checked whether the companies possessed the necessary authorizations for all the services they actually provide.

In 2017, the FSMA published a brochure, checklists and an overview of frequently asked questions on the status of portfolio management and investment advice companies.

In 2017, it received one application for authorization as a portfolio management and investment advice company, which it refused. The FSMA was of the opinion that one of the senior managers did not possess the requisite professional integrity and appropriate expertise. Moreover, the members of the statutory governing body together possessed insufficient knowledge, experience and understanding of the business of the company and the company had equally not set up an appropriate compliance and risk-management function.

Two portfolio management and investment advice companies relinquished their authorization after putting a stop to their activities.

FOCUS 2018

In 2018, the FSMA will devote special attention to the robustness of the companies that work in portfolio management, including as regards the management of operational risks in general and of cyber risks in particular. It will work on standardizing the appropriate organization within micro-structures. It will also develop risk-based supervision for combating money laundering and terrorist financing[39].

39 See this report, p. 155.

Independent financial planners

Those who wish to provide advice on financial planning need an authorization or registration with the FSMA to do so.

Companies that are already regulated do not need to apply for a separate authorization or registration. They do however have to follow the rules of conduct on providing financial planning advice. This refers to credit institutions, investment firms, insurance companies, institutions for occupational retirement provision, bank and insurance intermediaries, and management companies of AIFs and UCIs.

Apart from a limited number of exceptions under the law, other companies may only give financial planning advice if they have received an authorization as an independent financial planner.

In 2017, the FSMA received three applications for authorization as an independent financial planner. One authorization was granted, one company withdrew its application and the other application was still being processed in the period under review.

Independent financial planners must possess the requisite professional integrity and appropriate expertise. These conditions also apply to companies that act as independent financial planners, their managers, and the persons who are allowed to give advice on financial planning on behalf of the company. Their controlling shareholders must be able to guarantee a sound and prudent management. These companies must also be appropriately organized. In their request for authorization, they provide a three-year financial plan and a certificate of professional liability insurance.

Bureaux de change

The FSMA sees to it that bureaux de change adhere to the terms and conditions for the exercise of their activities. In 2017, its supervision led to the revocation of a number of registrations of bureaux de change.

Some bureaux de change were not up-to-date with their registration conditions. Their managers no longer had the requisite experience and professional integrity. These bureaux de change also breached the rules on combating money laundering and terrorist financing.

The FSMA calls on bureaux de change to exercise great vigilance and actively work with it to prevent money laundering practices. They must report any suspect transactions to the Belgian Financial Intelligence Processing Unit (CTIF-CFI), also referred to as the Anti-Money Laundering Unit, which is a partner of the FSMA.

Bureaux de change must have someone responsible for combating money laundering and the financing of terrorism. They must collect and analyse the legally required information on their clients and their transactions. If they are unable to collect the necessary information to meet their legal duty of vigilance, they may not enter into relations with the client in question or they must put a stop to the existing business relationship.

Last year, the FSMA received one application for authorization from a new bureau de change. Because there was a lack of transparency in the shareholdership of this company, the FSMA refused to grant this authorization.

At the end of 2017, there were seven bureaux de change in our country. There are also three payment institutions that exercise the activities of bureaux de change. These are already under the supervision of the National Bank of Belgium.

Crowdfunding

Since 1 February 2017, the FSMA supervises crowdfunding activities. Last year, it authorized six crowdfunding platforms.

Crowdfunding provides the opportunity to call on the general public for funds. Calls for funds often occur through an interactive website or platform.

There are three different types of crowdfunding platforms:
- platforms on which the public makes a gift to a project or a company;
- platforms on which the public pays money with a view to receiving a consideration in kind (such as a copy of the work or a corporate gift) which is usually worth less than the amount paid;
- platforms on which the public invests in a company, either by way of a loan, or by way of capital input with a view to potentially obtaining a profit.

The FSMA is responsible for this third category. Platforms that distribute investment instruments fall under its supervision. Companies that offer this activity require a separate authorization as an alternative finance platform.

In 2017, the FSMA received a total of nine applications for authorization. Six platforms obtained an authorization, one of which was a foreign platform. Two platforms withdrew their application for authorization. One application was still pending completion during the period under review.

Two regulated undertakings, one of which foreign, notified the FSMA that they offer alternative finance services. Regulated undertakings do not need to apply for an additional authorization for this, but do need to adhere to the rules of conduct.

Authorized platforms conduct a range of activities. Four platforms are focused on a great number of products such as property, hospitality, food, financial technology, energy, technology, health and mobility. Three other platforms have an express sustainability goal, with projects on themes such as sustainable energy, sustainable agriculture and the circular economy. One platform specifically focuses on local government and non-governmental organizations that want to allow alternative finance within their community.

The granting of an authorization for an alternative finance platform is subject to differing criteria. The FSMA screens the shareholders and the management of the company. It looks into whether the company has obtained the requisite professional civil liability insurance and whether it is appropriately organized, with particular attention to the IT organization.

The FSMA supervises compliance with the provisions of these rules. The FSMA may conduct inspections and request all useful information. It may impose recovery measures and administrative sanctions to companies that do not comply with the legislation. Non-compliance with certain rules is a criminal offence.

The FSMA expressly warns against the dangers an investment in an alternative finance platform could entail. By investing in such a platform, financial consumers stand a chance of losing their investment. Some companies are not sufficiently viable and could go bankrupt, making this a risky investment.

It is important to be aware that the FSMA does not supervise the commercial viability of crowdfunding platforms. These companies have no obligations as regards financial reporting or capital requirements. The FSMA equally does not supervise the companies whose investment instruments are offered through these platforms.

Table 3: Evolution in the number of firms

	31/12/2014	31/12/2015	31/12/2016	31/12/2017
Portfolio management and investment advice companies governed by Belgian law	19	19	19	**17**
Branches established in Belgium of investment firms governed by the law of another EEA Member State and falling under FSMA supervision	11	14	12	**13**
Investment firms governed by the law of another EEA Member State and that do business in Belgium under the free provision of services	2,882	2,886	2,990	**3,005**
Investment firms governed by the law of a country that is not a member of the EEA, which have notified their intention to provide investment services in Belgium under the free provision of services	84	84	84	**90**
UCITS management companies governed by Belgian law	7	7	7	**7**
Alternative investment fund managers governed by Belgian law	4	7	9	**9**
Branches established in Belgium of UCI management companies that are governed by the law of another EEA Member State.	8	10	13	**14**
UCI management companies governed by the law of another EEA Member State and operating in Belgium under the free provision of services	91	98	108	**116**
Closed-ended real-estate investment companies/ Regulated real estate companies	23	24	24	**25**
Bureaux de change authorized in Belgium	12	11	12	**10**
Independent financial planners	0	5	6	**7**
Small-scale AIFMs	0	42	53	**63**
Alternative finance platforms governed by Belgian law authorized in Belgium				**5**
Alternative finance platforms governed by the law of another EEA Member State authorized in Belgium				**1**
Regulated undertakings governed by Belgian law offering alternative finance services in Belgium				**1**
Regulated undertakings governed by the law of another EEA Member State and that conduct alternative finance services in Belgium.				**1**

Financial benchmarks

The FSMA is responsible for the supervision of the financial benchmarks Euribor and Eonia. It supervises adherence to the European rules on authorizations, conduct of business, transparency and the method of calculation of these reference indexes. In 2017, there were important developments in the management of the Euribor and Eonia.

Euribor

The Euro Interbank Offered Rate (Euribor) is a benchmark for interest rates on the eurozone interbank lending market over periods of one week to twelve months. It is calculated every working day based on the estimates of a panel of 20 banks.

To guarantee the continuity of the calculation of Euribor, the Euribor College has prepared itself to potentially use its powers to oblige banks to continue to form part of the Euribor panel or to join the panel.

In 2017, the European Money Markets Institute (EMMI), which is the manager of Euribor, developed a new method to calculate the benchmark based only on financial transactions.

Tests showed that this method of calculating would create a benchmark that considerably differs from the current Euribor. This is why the EMMI decided to develop another method for Euribor. This different (hybrid) method will use transaction details, where these are available, as well as other market indicators to calculate the benchmark.

The FSMA verified the EMMI's tests and confirmed that they occurred based on a representative sample.

The FSMA regularly reported on this reform process within the Euribor College. In addition to the FSMA and the European supervisory authority ESMA, the College is also composed of the supervisory authorities of the banks that provide data for Euribor and the supervisory authorities that have demonstrated that the Euribor is of great significance to their national economy or financial market.

Eonia

The Euro Overnight Index Average (Eonia) is a benchmark for interest rates on the eurozone interbank lending market over a period of one day. It is calculated every working day based on the transactions executed by a panel of 28 banks.

The European Commission identified Eonia as a critical benchmark in June 2017. According to the Commission, Eonia is of great significance for the money-market-instruments and short-term interest-rate-swaps markets.

The quantity of financial instruments and contracts that use Eonia has risen above the 500-billion euro threshold. As a result, Eonia belongs, just like Euribor, to the category of critical benchmarks, the major financial reference indexes in the eurozone.

The FSMA set up a supervisory college for Eonia. In its first meeting in August 2017, the decision was made to merge the Euribor College with the Eonia College, given the fact that the members of both colleges were largely the same.

The FSMA took part in the debate on the choice of a risk-free interest rate benchmark for the euro-zone. Initially, Eonia seemed fit for this role. However, following issues with the calculation of Eonia, a different approach had to be chosen.

The ECB decided to develop a risk-free interest rate benchmark itself. In September 2017, the ECB, the FSMA, ESMA and the European Commission announced that a working group had been set up on this subject. This working group will select a risk-free interest rate benchmark under the direction of the private sector and work on the questions relating to the transition of existing benchmarks to this new benchmark.

Supervision of intermediaries and lenders

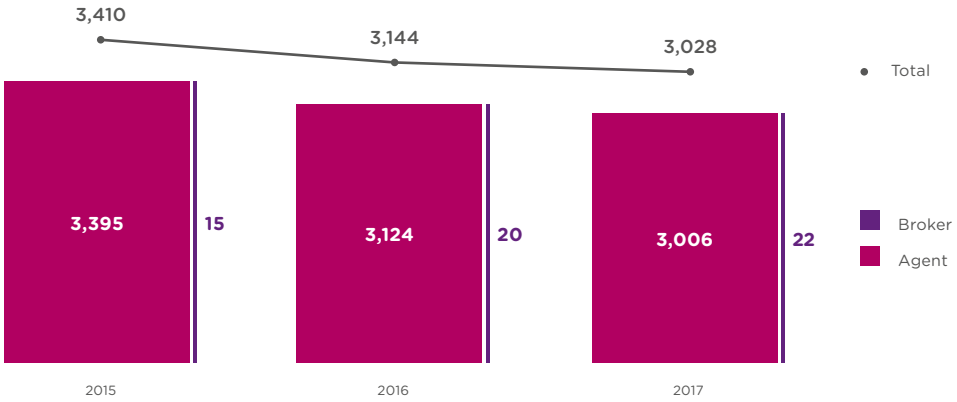
The FSMA supervises access to the business of intermediation in the financial sector. This comprises intermediaries in banking and investment services, insurance and reinsurance, and mortgage loans and consumer credit. The FSMA's task consists essentially of handling applications for registration in the different registers of intermediaries. The FSMA keeps these public registers and supervises compliance with the legal conditions for maintaining registration. The FSMA also supervises access to the business of lender and the way in which lenders comply with the conditions for authorization.

Supervision of intermediaries

On 31 December 2017, 26,094 intermediaries were listed in the FSMA's registers. The FSMA counted 3,028 intermediaries in banking and investment services, 11,434 insurance intermediaries and 12 reinsurance intermediaries.

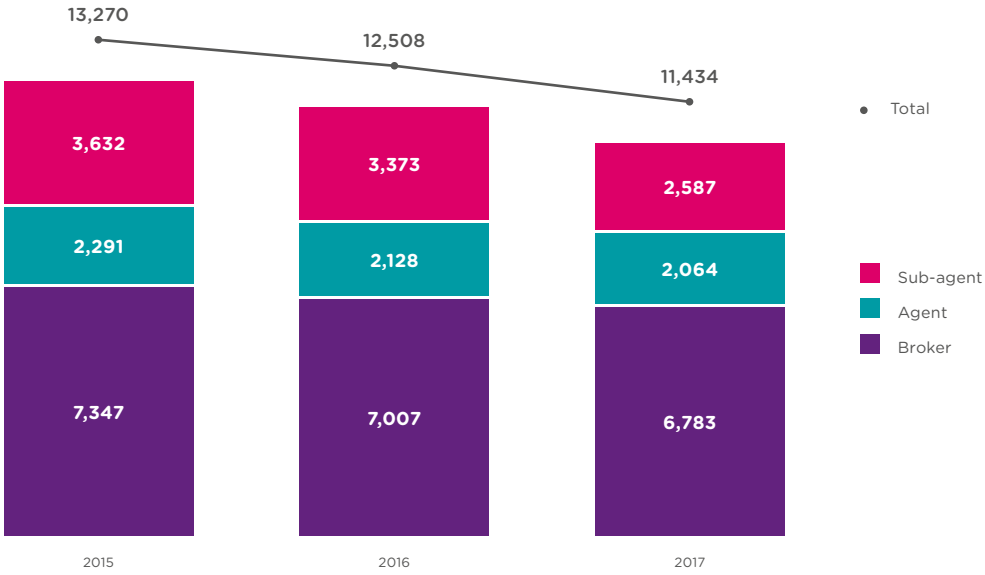
It also counted 11,620 intermediaries in mortgage loans and consumer credit. Since 1 November 2015, the FSMA is the competent authority for the supervision of this category of intermediaries. 2017 is the first year for which a full overview of credit intermediaries is available.

Graph 17: Intermediaries in banking and investment services



Graph 18: Credit institutions

Graph 19: Insurance intermediaries



Graph 20: Reinsurance intermediaries

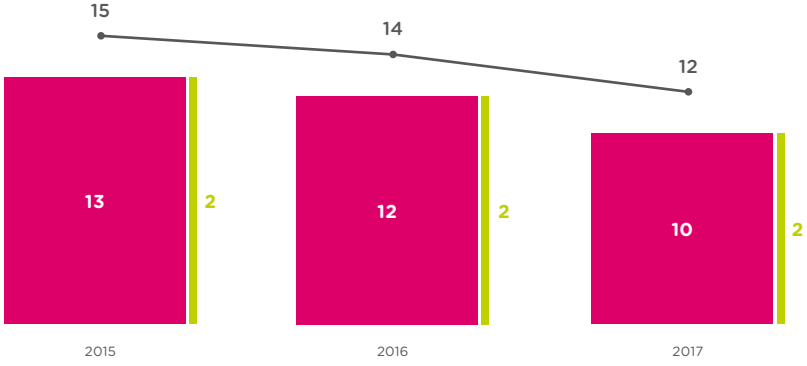


Table 4: Summary of intermediation activities

	Activity				
Category	Mortgage lending	Consumer credit	Insurance	Reinsurance	Banking and investment services
Broker	x	x	x	x	x
Agent			x	x	x
Tied agent	x	x	x		
Sub-agent	x		x	x	
Agent in an ancillary function		x			

There are different activities in which intermediation may occur, which are divided into categories. There are several categories of intermediaries in each activity:

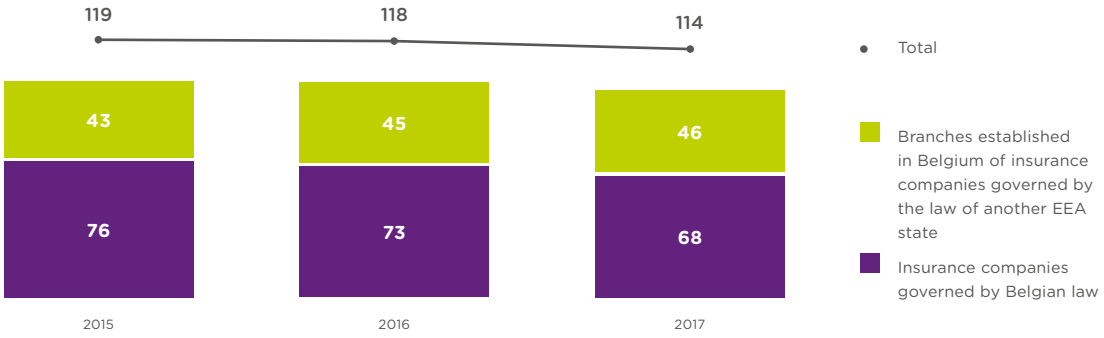
- A **broker** brings lenders, insurance/reinsurance companies or regulated undertakings and consumers in contact with each other. A broker has no obligation whatsoever to place business or some business with a particular lender, insurance/reinsurance company or regulated undertaking.
- An **insurance or reinsurance agent** acts as an intermediary in the name and on behalf of one or more insurance or reinsurance companies. Insurance agents must also communicate to the FSMA whether or not they are tied agents of one or more insurance companies.
- An **agent in banking and investment services** acts in the name and on behalf of a single authorized company.
- A **tied agent in credit or insurance** acts as an intermediary on behalf of and under full and unconditional responsibility of one lender or insurance company or of a group of lenders or insurance companies.
- A **sub-agent** acts under the responsibility of a broker or agent.
- **Agents in an ancillary function**, as their core business, sell goods and services of a non-financial nature and, as an ancillary activity, act as an intermediary in consumer credit on behalf of one or more lenders.

One and the same intermediary may accumulate several registrations for one single activity, for example as an insurance broker and insurance agent or insurance sub-agent.

Intermediaries must comply with a number of conditions for registration. For example, they must prove that they have sufficient professional knowledge, that they have professional liability insurance for intermediation services and that they possess the requisite suitability and professional integrity. If they do not meet the registration conditions, the FSMA rejects their registration. The conditions for registration provide consumers with a guarantee that they can trust the intermediaries who sell financial products.

Intermediaries must continue to meet the conditions for registration for as long as they are registered. The FSMA supervises this. Where the FSMA ascertains that an intermediary no longer complies with the registration requirements, it urges the intermediary to comply. In that case, it gives a deadline by which the intermediary must remedy the non-compliance. If this does not occur, the FSMA suspends the intermediary or strikes it off the register. Intermediaries who wish to cease their activity may voluntarily terminate their registration.

Graph 21: Insurance companies

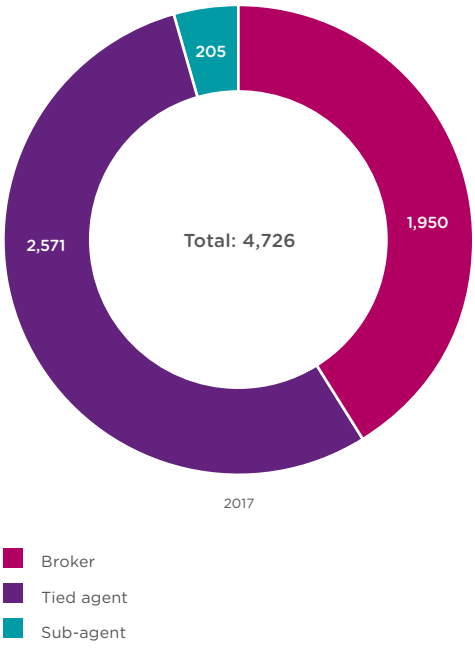


Contrary to the other registration conditions, in which compliance can be established from an objective point-of-view, the FSMA has discretionary power for the assessment of the requirements as regards suitability and professional integrity. The FSMA assesses compliance with these criteria on a case-by-case basis.

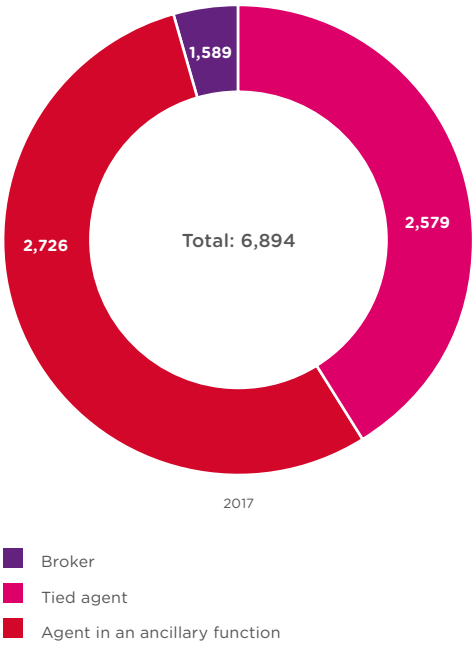
In the case of intermediaries registered in the form of a legal entity, it is the senior managers, members of the statutory governing body and those responsible for distribution who must show suitability and professional integrity.

Facts that could lead to a lack of suitability and professional integrity of an intermediary are, for example: forging or copying client signatures, non-remittance of insurance premiums to the insurance company, embezzlement of client funds, making up false insurance policies, working with front persons for regulated functions, and making false declarations to the FSMA or deliberately concealing relevant information.

Graph 22: Intermediaries in mortgage loans



Graph 23: Consumer credit brokers



Responses to questions from Ombudsmen

Intermediaries are legally obliged to respond to questions on the handling of consumer complaints from the Insurance Ombudsman or the Ombudsman for financial disputes. If the intermediary does not respond, the Ombudsmen inform the FSMA. Based on this information, the FSMA orders the intermediary to answer the questions. The FSMA strikes off from the register any intermediary who still fails to respond.

Not responding to questions from an Ombudsman constitutes an infringement of the registration conditions of an intermediary. Intermediaries must therefore always respond to questions from an Ombudsman, even if they do not agree with its point-of-view.

If intermediaries leave questions from an Ombudsman unanswered more than once, the FSMA may ask them to take measures to prevent a repeat infringement. The FSMA warns them that a lack of cooperation with an Ombudsman may also pose a threat to their suitability to work as an intermediary. That may lead to them being struck off from the register of intermediaries.

All intermediaries are legally obliged to have professional indemnity insurance. Where an intermediary is no longer registered in the register, the Ombudsman may ask the FSMA for details of this professional liability insurance. These details will be the policy number and the company with which they have their insurance. If the intermediary has committed professional misconduct, the consumer affected may claim damages from the intermediary's liability insurer.

If any wrongdoing is committed under a regulated status, for example as an intermediary in banking and investment services, this could have an effect on the registrations for other regulated statuses that the intermediary concerned has with the FSMA such as that of insurance intermediary or credit intermediary.

Intermediaries are obliged to answer any question the FSMA asks concerning their registration dossier. Most of the time, these questions entail updating the dossier. For example, they can concern the provision of proof of obtaining continuing professional education points or proof that the new person responsible for distribution possesses the requisite professional knowledge. Intermediaries regularly fail to respond to these questions.

Intermediaries are also legally obliged to respond to questions from the Insurance Ombudsman or the Ombudsman for financial disputes, as part of the complaints handling process.

Removal from the register

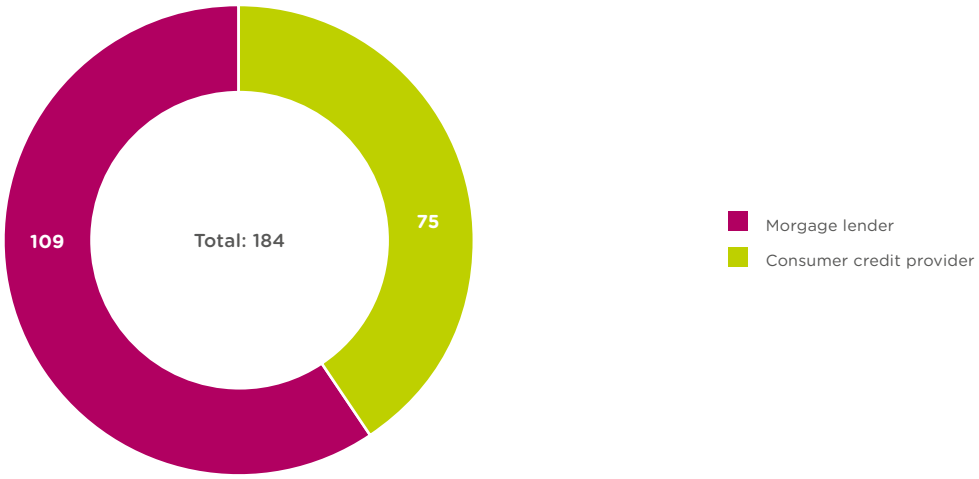
In 2017, the FSMA struck off 285 intermediaries from the register. These consisted of 259 insurance intermediaries, 15 intermediaries in banking and investment services and 11 credit intermediaries.

In the insurance category, the FSMA struck off 208 intermediaries because they failed to pay their contribution to the operating expenses of the FSMA, 28 intermediaries because they did not prove that they had professional liability insurance and 11 intermediaries because they were no longer suitable or they no longer showed professional integrity.

The FSMA also struck off eight intermediaries in the insurance category because they had not responded to questions on their registration dossier, two intermediaries because they had not responded to questions from Ombudsmen and two intermediaries because of bankruptcy.

In the category of banking and investment services, the FSMA struck off 15 intermediaries from the register because credit institutions had terminated their collaboration with them.

Graph 24: Lenders



2017

The 11 credit intermediaries struck off by the FSMA were sub-agents that no longer worked under the responsibility of another intermediary. 9 of these were intermediaries in mortgage lending and 2 were intermediaries in consumer credit.

Suspension of registration

The FSMA may decide to suspend an intermediary's registration. A suspension is an administrative measure that leads to a temporary prohibition of the activities of the intermediary concerned. The FSMA only takes this measure when it believes that the facts that have come to its attention are very serious and a suspension is necessary for the protection of consumers or for the reputation of the sector.

In 2017, the FSMA suspended 10 insurance intermediaries. In the case of a suspension, intermediaries may in principle no longer pursue any intermediation activity. They may no longer enter into new policies or approach prospects, they may no longer renew policies or write amendments thereto, they may no longer take payment of insurance premiums or provide registration certificates for vehicles.

The FSMA may also proceed to a partial suspension if the circumstances justify this. In such a case, an intermediary may for example pursue ongoing activity such as processing claims or amending policies. However, entering into new contracts is prohibited.

Rejection of registration

In 2017, the FSMA rejected 43 applications for registration because the conditions for registration were not fulfilled. These dossiers concerned 2 insurance intermediaries, 17 intermediaries in mortgage lending and 24 intermediaries in consumer credit.

Supervision of lenders

On 31 December 2017, there were 184 lenders with an active authorization from the FSMA. Since 1 November 2015, the FSMA is the competent authority for the supervision of lenders. 2017 is the first year for which a full overview of lenders is available.

Any person who provides credit as part of their professional activity is considered a lender. Lenders who provide consumer credit must obtain an authorization from the FSMA. An authorization can be applied for as a mortgage lender or consumer lender.

There are three different categories of lenders:

- lenders under the prudential supervision of the National Bank of Belgium come under another status, such as credit institutions or insurance companies;
- social lenders: these are public or private institutions from Flanders, Brussels, or Wallonia that provide credit agreements to a limited public, either at an interest rate lower than the market rate or with no interest, or with other conditions that are more advantageous for the consumer than the market terms and conditions;
- other lenders who do not belong to either of these categories are referred to as 'other lenders'. Apart from organizational requirements, these lenders are also subject to transparency requirements as regards their controlling shareholders, and integrity and suitability conditions as regards their senior managers and directors.

The FSMA acts against front persons

During its inspections of certain intermediaries, the FSMA noted that persons who were given responsibility for distribution did not in practice exercise this regulated function and consequently acted as front persons.

The person responsible for distribution is a natural person who is de facto the person responsible for the intermediation work or exercises oversight thereon.

One company that works as an intermediary gave a front person as the person responsible for distribution in its registration dossier. That occurred because the director of this company did not meet the conditions for registration for this regulated function. The facts revealed that this person responsible for distribution had no link whatsoever to the company and did not exercise this task.

The exercise of the function of person responsible for distribution must be real and effective and its content must correspond with reality. The persons who exercise these functions are expected to actually take up their responsibilities and take care of the internal supervision of the company's operation and the intermediation activity. A person responsible for distribution must in practice supervise all operations conducted by persons in contact with the public. The FSMA expects this supervision to be conducted effectively.

The FSMA clearly disapproves and condemns arrangements in which deliberately misleading information is provided in a registration dossier, both by the person who genuinely manages the company and by the front person who has "lent" his/her name.

Supervision of the sector

The FSMA conducts ongoing supervision of compliance with registration conditions. It also exercises this supervision if intermediaries inform it of changes, for example the replacement of a person who exercises a regulated function, such as a senior manager or a person responsible for distribution. It exercises this supervision too when it receives information from third parties, such as Ombudsmen.

The FSMA also inspected two segments within the population of intermediaries during two rounds of off-site inspections it conducted in 2017: bank brokers and a selection of life insurance brokers.

The aim of these inspections was to inspect and update the administrative dossier of these intermediaries, in particular by checking compliance with the legal requirement to regularly update professional knowledge.

Particular attention was focused on compliance with the anti-money laundering legislation by inspecting internal procedures, which are obligatory for all non-exclusive intermediaries who offer life insurance products, and for bank brokers.

Informing and supporting the sector

The FSMA developed an extension to the online application that existed for lenders and credit intermediaries. It presented this new version of the application to the professional associations.

Since June 2017, the individual registration procedure of all lenders, insurance and reinsurance intermediaries, intermediaries in banking and investment services, and lenders happens exclusively online.

Once the application for registration is approved, the registration dossiers are managed exclusively online. This user-friendly and secure application allows the FSMA to substantially improve the quality of its service to intermediaries and regulated undertakings.

Experience with applications for registration from credit intermediaries has demonstrated to the FSMA that the online application enables more efficient processing of the registration applications.

In February 2018, the registration dossiers of all insurance and reinsurance intermediaries and intermediaries in banking and investment services migrated to the online application. As a result of this, the intermediaries will from now on be able to enter all internal changes directly in the application. Their dossier will now be managed exclusively online.

The transitional period for the registration of credit intermediaries and lenders ended on 30 April 2017.

In order to register these numerous intermediaries and lenders, the FSMA has put in a lot of effort to guarantee proper processing of these registration applications. For this purpose, it organized “First Aid” days again with a view to offering credit intermediaries technical support and practical help with their registration.

The FSMA is also in permanent consultation with the sector on the evolution of the legislation and the new registration procedures.

The FAQs are amended as soon as a change in the law enters into force. They offer responses to frequently asked questions on subjects that are important for lenders and intermediaries.

Where a subject needs further clarification, a newsletter is published.

With this newsletter, the FSMA seeks to inform intermediaries of any recent changes in the law that concern them, of practices it has identified and of its expectations from the sector. The selected topics primarily concern the status of intermediaries and their conditions for registration.

FOCUS 2018

Once intermediaries are registered in a register, they must permanently meet the conditions for registration. The FSMA supervises this.

They must for example have professional liability insurance and be suitable and show professional integrity at all times. The professional knowledge they must demonstrate at the time of registration must regularly be updated.

The rules on the professional knowledge required are likely to change in 2018 as a consequence of new developments on a European level, more particularly the IDD (the Insurance Distribution Directive) and MiFID II for the protection of investors.

The FSMA strives as much as possible to harmonize and simplify the rules that apply to different types of intermediaries. To this end, the FSMA regularly consults with professional organizations. In 2018, the FSMA is organizing the consultation within sectoral working groups on the development of knowledge requirements for intermediaries.

PROTECTION OF SUPPLEMENTARY PENSIONS

The FSMA is responsible for the supervision of supplementary pensions that employees, the self-employed and company directors accrue through their professional activities. Accrual of these second-pillar pensions occurs through insurance companies and pension funds. The FSMA supervises compliance by these pension institutions and organizers (in most cases employers who organize a pension scheme for their staff) with the social legislation applicable to second-pillar pensions. In addition to this social supervision, the FSMA also exercises prudential supervision of pension funds. This means that the FSMA oversees the financial health and appropriate organization of these institutions.

Social supervision

Social supervision occurs around four themes: supervising, informing, regulating, and handling complaints.

Supervising

The social legislation supervised by the FSMA should mitigate the risks for members. These risks may relate to non-allocation or non-payment of pension rights or incomplete allocation or payment, wrong information or insufficient say or bilateral decision-making.

In social supervision, the emphasis lies on horizontal supervisory action, in which a specific theme is investigated for the whole sector. When determining its priorities and the theme to be investigated, the FSMA opts for risk-based supervision: the most major risks are dealt with first.

Supervisory action can take on various forms. Firstly, where necessary, the supervisory action results in individual enforcement processes against the pension institutions that appear, following the investigation, to disregard the legislation. In the wake of its supervisory action, the FSMA also often publishes a communication to give pension institutions a guideline for proper compliance with the legislation based on the practices uncovered by the investigation. Finally, a targeted check also sometimes leads to policy recommendations addressed to the public authorities concerned.

In 2017, the FSMA focused its supervisory work around the themes specified as follows.

Obligation to report to the DB2P

After the DB2P, the database for supplementary pensions, was launched to the public at the end of 2016 via the website mypension.be in 2017, the FSMA placed more emphasis on the quality of reporting by pension institutions to this database. This database collates a range of data relating to supplementary pensions of employees, the self-employed and managers, which is why it is a very important source of information. It is crucial, both for the exercise of the social supervision by the FSMA and for the provision of sufficient information to citizens on their supplementary pension rights, that pension institutions report thoroughly, accurately and on time. This is all the more so as regards "dormant" members. Since 2016, they no longer receive an annual pension information sheet, meaning that mypension.be constitutes their only source of information. Any reporting issues must therefore be discovered on time. Recurring horizontal supervisory action is therefore conducted to safeguard the quality of the declarations that sector players submit to the database. Over the past few years, a series of specific actions have been taken on this subject. In 2017, there was stricter action against pension institutions that continued not to meet their obligations. In general, declarations were made on time much more often compared to previous years. Some institutions, which were not in compliance on time with their reporting obligations, were called to order by the FSMA.

Supplementary pensions: death benefits

Over the course of 2016, the FSMA conducted a targeted supervision on the continuance of the death benefits after members had left their employment, which is called 'exit'. With this supervision, the FSMA wished to avoid such a situation leading to a reduction in the supplementary retirement pension without the members' knowledge. It also emerged that some pension institutions wrongly withheld the amounts for this continued death cover from the statutory guaranteed return.

The FSMA is of the opinion that such practices are contrary to the social legislation on supplementary pensions and therefore informed the pension institutions concerned of its views on this issue. The FSMA also published its advice on this point on its website.

The FSMA urged the institutions that applied the aforementioned practices to put a stop to them. The institutions concerned will all review their practices.

Cafeteria plans

The way in which supplementary pension plans may or may not contain a flexible remuneration model (known as 'cafeteria plans'[40]) is regulated in Article 4, second paragraph of the Royal Decree on the Law on Supplementary Pensions. This Article gives an exhaustive description of the benefits for which members may use their budget, namely only for certain cover associated with social risks such as health insurance or disability insurance.

40 It should be noted that the CBFA already spoke out about this in 2010. See Report MC 2009-2010, p. 108-109.

Given that many social secretariats provide advice on general remuneration models, the FSMA decided to conduct targeted supervisory action in 2017 to ascertain the extent to which these social secretariats promote on their websites cafeteria plans that do not meet the legal requirements. The analysis included the websites of 36 social secretariats and that of the main insurance companies, and was exclusively focused on the marketing material for such plans. This supervisory action, which ties in with the FSMA's wish to devote special attention to the distribution of pension products, did not uncover any breaches to legal provisions.

Information upon exit

The FSMA places a lot of importance on the information members must receive upon exit because at that time they have to make important decisions on the further management of their pension scheme. They can only do this properly if the information in question is clear, accurate and easy to understand.

Supervisory action was conducted on this theme in 2015 and the FSMA subsequently published its findings, along with a number of recommendations. When the Law of 18 December 2015 amended the rules regarding information upon exit, a follow-up was conducted in 2016. With this, the FSMA wanted to ascertain the extent to which the information provided by pension institutions upon exit complied with the recommendations that had been published and with the new legislation.

As part of this supervision, the FSMA analysed the exit information documents of 17 pension institutions. The follow-up analysis uncovered that most pension institutions took into account the expectations and recommendations formulated previously, and identified a positive development in the area of exit information documents. However, there continue to be a number of issues. The FSMA took action against pension institutions that did not properly meet their obligation to provide information. In 2017, the FSMA updated its communication on information disclosure upon exit from a supplementary pension scheme[41].

Investigation into "forgotten" pension rights

Where pension rights become due, at the time of retirement or in case of death of a member, the pension institution must inform the members or the beneficiaries thereof. Over the past few years, the FSMA has placed a lot of importance on supervising compliance with this obligation. In the absence of correct and on-time communication to members, pension rights risk being "forgotten" and consequently not paid out.

In 2015 and 2016, the FSMA focused its attention on how death dossiers are handled. The investigation unveiled that many pension institutions did not of their own initiative inform themselves of the death of members and waited until third parties informed them of such. As a result, a lot of death benefits that should have been paid out were left unpaid. The FSMA ordered the institutions concerned to adjust their internal procedures and from now on to follow up deaths in a systematic way. The FSMA's intervention led to the pension institutions being able to use, since 2017, an automatic data stream from DB2P, which informs them of the death of members. As regards the deaths that had gone undetected in the past, the FSMA required pension institutions to regularize the outstanding dossiers as quickly as possible. In the meantime, in a large number of the cases identified, payouts were processed. The FSMA closely monitors this regularization.

41 FSMA_2017_02 of 24 January 2017.

In 2017, the FSMA started an investigation into the payout of benefits at the time of retirement. This investigation uncovered that a number of benefits due had not yet been paid out because the pension institutions had taken no initiative or insufficient initiative to inform members about their rights. A major part of these benefits are kept on what are known as "suspense accounts". Given that these suspense accounts were not provided to DB2P, the beneficiaries were unable to find out about these in this way. The FSMA asked the pension institutions concerned to do everything in their power to pay out the pending amounts as quickly as possible. It expects pension institutions to use the data from the civil register for this purpose, which they can access pursuant to the Law on Supplementary Pensions. The FSMA will closely monitor developments in this area over the course of 2018.

Financing of defined benefit pension plans via group insurance policies

One of the main horizontal audits that started in 2017 and will continue into 2018 is the financing of defined benefit plans via group insurance policies. For IORPs there is a series of rules and specific means that enable the supervisory authority to ascertain whether the pension plans are sufficiently financed. On the other hand there is no comparable legal framework for group insurance policies given that the financing of group insurance policies is largely controlled by the insurance companies themselves. These differences in the legislative framework may have consequences for members.

This is why the FSMA wishes to obtain an overview of the methods of financing and the underlying parameters used by insurers, as well as of the way in which insurers organize the internal supervision of the financing of the pension plan. The main aim of this is to ascertain the extent to which the financing methods used offer sufficient protection for members' pension rights.

Transparency on costs and returns relating to defined contribution plans with no guaranteed return

The FSMA conducted an analysis of the information provided on the costs borne by the member and the returns obtained under defined contribution plans. Because of the nature of this type of plan, the affiliated employees are the ones who to a great extent suffer the consequences of too high a cost, poor returns or risky investments. This is why it is important for them to be fully informed on the subject in a way that is easy to understand.

The FSMA has investigated the extent to which employees can gain an accurate and easy-to-understand picture of all the factors that directly or indirectly influence their supplementary pension, in a way that they can easily understand. To this end, it conducted an analysis of pension schemes, transparency reports and the annual pension information sheet, combined with a spot check of pension plans. The analysis unveiled that there is a need for more transparent communication on costs and returns.

In all cases in which the legal requirements were not fully complied with, the FSMA intervened so that the pension institution would remedy the situation.

Following its analysis, the FSMA, after public consultation, published a communication[42] with its main findings and expectations from the sector relating to the financial transparency that must be taken into account as part of defined contribution pension plans.

The communication explains a series of good practices recommended by the FSMA. These practices, which were identified during the analysis, will serve to promote the comprehensibility and transparency of the documents, but are not mandatory under the current legislation. The FSMA noticed that a number of pension information sheets were very easy to understand, contained specific information on costs for members and returns obtained, even though stating these on the pension information sheet is for the time being not required by law.

The FSMA also translated its expectations and recommendations into several specific templates for the sector to use.

The European legislators are aware of the need for better communication on the management of supplementary pensions, more specifically as regards costs and returns. Recently, several directives have been published that prescribe greater transparency regarding costs and returns (IORP II, IDD etc.). These directives are soon to be transposed into Belgian law. The good practices and templates provided in the FSMA's communication can be a useful tool in this legislative process.

Informing

Alongside its role as a supervisory authority, the FSMA realizes that it also has an important role to play in informing citizens on supplementary pensions. A lot of information on pensions is already on the website of Wikifin.be, the FSMA's programme on financial education. The FSMA also provides additional information on its website in the form of frequently asked questions on supplementary pensions.

42 FSMA_2017_19 of 19 October 2017.

These frequently asked questions are intended for members who need easy-to-understand and accessible explanations on often very technical details. This information should allow them to make properly informed decisions at crucial times, such as upon exit or retirement. The frequently asked questions should also help members to properly understand the pension information that is available since the opening to the public of DB2P via mypension.be and potentially to use it for their individual pension situation.

In 2017, the FSMA added to the information in the FAQs. Firstly it published information on the way in which the supplementary pension may be used for the purchase or renovation of property. There are also new questions and answers on debts in the FAQs. In this new section, information is provided on seizure and the potential consequences thereof for a supplementary pension.

The FSMA is additionally responsible for writing reports every two years on sectoral pension schemes and voluntary supplementary pensions for self-employed persons. This year, it published the sixth edition of these reports. These reports aim to track the evolution of sectoral pension schemes and voluntary supplementary pension for self-employed persons. The main findings regarding sectoral pension schemes were that the number of active members remained stable between 2013 and 2015 and that there is only a slight increase in the average contribution per member. It was also found that certain branches of activity are falling behind and have not yet introduced sectoral pension schemes. The large majority of sectoral pension schemes continue to be defined contribution plans. As regards the voluntary supplementary pension for self-employed persons, the average amount of contributions per active member rose slightly and payouts in the form of annuities are still meeting with limited success.

In 2017, the FSMA published its first two-yearly report on supplementary pensions for self-employed company directors.

Regulating

The third aspect of social supervision is that of regulation. In this area, the FSMA provides technical assistance for the transposition into Belgian legislation of the social aspect of the new European Directive on supplementary pensions (IORP II).

The FSMA also pursues the practice, introduced since 2015, of immediately publishing new Opinions[43] regarding supplementary pensions. This practice contributes to the legal certainty and predictability of the FSMA's actions. In 2017, it published advice on the conservation of death cover after exit[44] and on the scope of the organizer's obligation to convert the capital into income.

Over the course of the year under review, the policy units of the Minister of Pensions and the Minister of the Self-Employed were supported in preparing the Law establishing provisions on supplementary pensions and introducing a supplementary pension for self-employed natural persons, assisting spouses and self-employed assistances.

43 The FSMA's Opinions can be consulted on its website (for a full list see Dutch and French).

44 See this report, p. 94.

The FSMA is responsible for the secretariat of the Supplementary Pensions Committee and the Voluntary Supplementary Pensions Committee. In this capacity, it provided its services to these advisory bodies, which over the course of the year examined a number of questions of interpretation regarding supplementary pension legislation, which were presented to the advisory bodies.

Handling complaints

The FSMA handles complaints on the subject of supplementary pensions. In 2017, the FSMA received 279 questions or complaints dossiers on supplementary pensions. Most of them were closed over the course of the year. The large majority of the dossiers handled related to the Belgian Law on supplementary pensions for employees.

The questions asked covered a wide range of subjects. Almost a quarter of these related to lost pension rights. Since the opening of the DB2P database on the mypension.be website, there is growing interest among the public for reliable data on pension rights accrued as part of an existing professional activity as an employee or a self-employed person, although most of all about the pension rights that were or are still being accrued based on earlier employment. This makes for a clear increase of questions and complaints in this respect.

14 per cent of the questions concerned issues relating to the payout of supplementary pension rights and reaching retirement age. Both subjects are closely related to each other. From 1 January 2016, the general rule is that the supplementary pension is paid out at the time of retirement, which is when the statutory retirement pension effectively commences. Alongside the application of a number of transitional measures, it is in principle no longer possible to apply to receive the supplementary pension prior to the statutory retirement age. Deferring the withdrawal of the supplementary pension after retirement is no longer possible either. When the statutory pension age is reached, the supplementary pension will automatically be paid out. Members often ask the FSMA whether early withdrawal of the supplementary pension was still possible. A number of members also reported losses (including from a tax perspective) from mandatory withdrawal of the supplementary pension before the retirement age in the pension agreement or pension scheme was reached.

FOCUS 2018

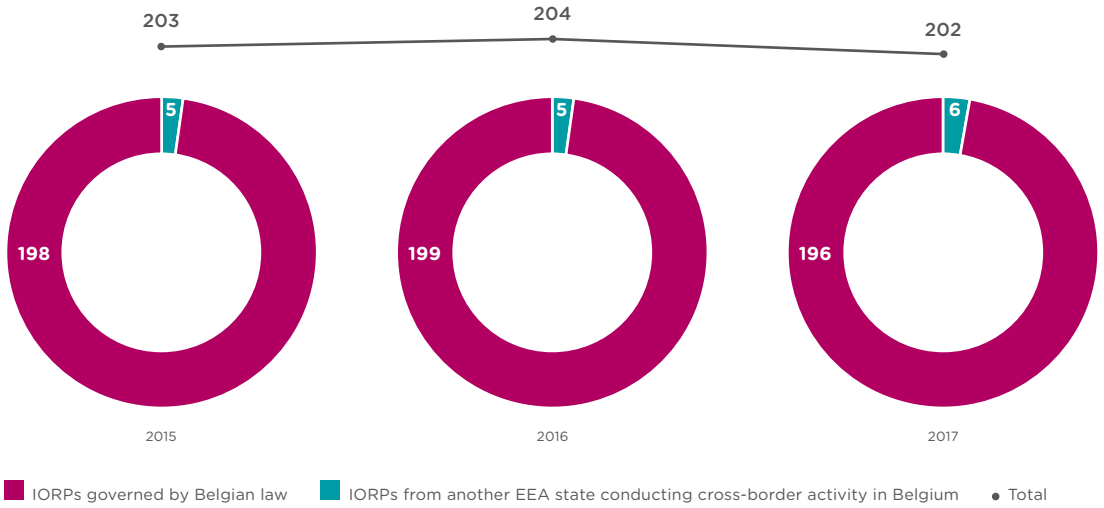
Just like last year, in 2018 the FSMA will pay particular attention to the transposition of the European IORP II Directive. This Directive, which aims to improve the protection of members and beneficiaries and to ensure that they are better informed, more specifically introduces new requirements regarding information. Given that this European text will enter into force at the beginning of 2019, in 2018 the FSMA's services will work on providing technical input for its transposition into Belgian law.

In the area of supervision, the FSMA will continue to supervise accurate reporting to the DB2P by the various pension institutions, and especially too by foreign pension institutions. A second horizontal theme that will be emphasized in 2018 is that of "forgotten" pension rights[45].

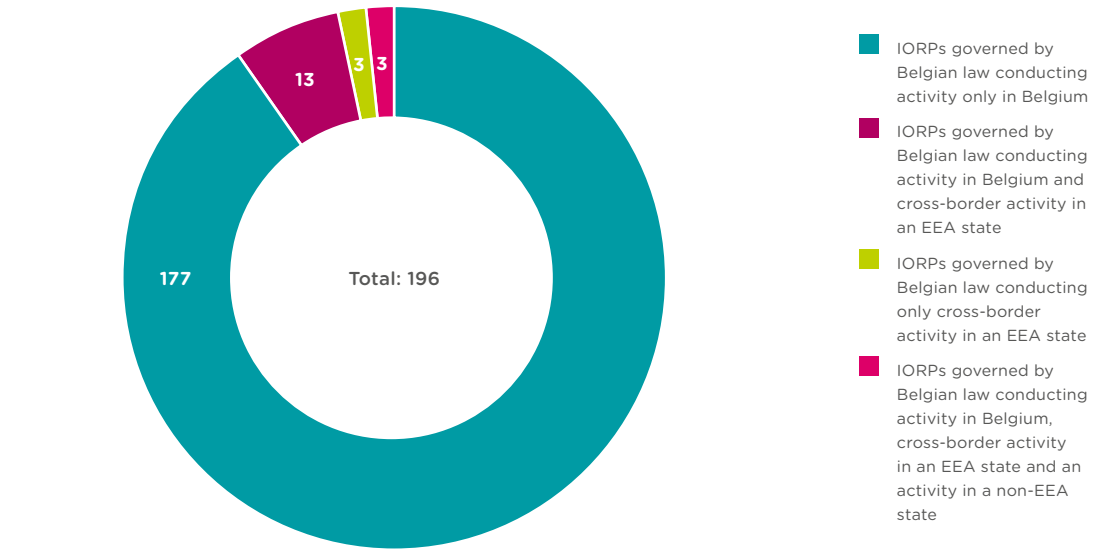
As part of its task of informing citizens on supplementary pensions, the FSMA will continue to add to the FAQs on its website. In the section for employees, the only section that is currently available, it will continue to add new topics focusing on themes such as the bankruptcy of the organizer of the pension plan and the consequences for the supplementary pension in the case of divorce. The FSMA will also focus on writing a new part of the FAQs dedicated to employers. SMEs are an important target group because they do not always have the means to surround themselves with pension specialists and to opt for setting up a pension fund. Given that as a result, they more often work on the basis of insurance policies, they are in a sense consumers who enter into an insurance policy, and it is useful for them to be able to access independent and objective information for the choices they make with a view to introducing a supplementary pension plan.

45 See this report, p. 94.

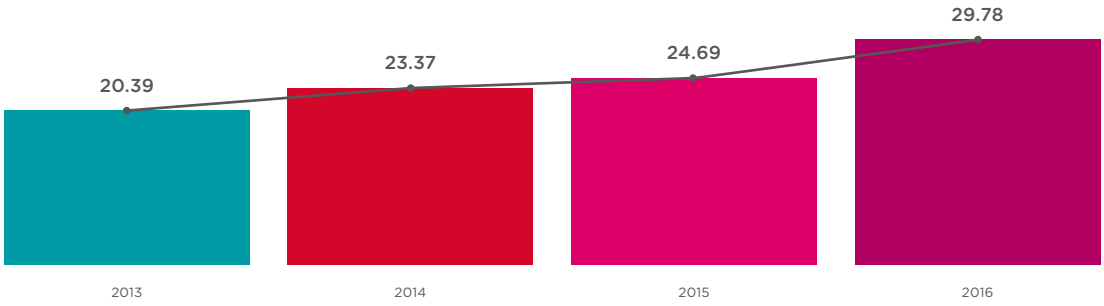
Graph 25: Number of IORPs



Graph 26: Number of IORPs governed by Belgian law (in 2017)



Graph 27: Balance sheet total of IORPs governed by Belgian law (in EUR billion)



Prudential supervision

Supervising

The FSMA exercises prudential supervision on Belgian Institutions for Occupational Retirement Provision (IORPs), generally known as pension funds. This supervision focuses on four key aspects, namely:

- prudent valuation of pension liabilities, which perfectly corresponds with the return on investment and takes into account all relevant risks, as well as appropriate financing of pension liabilities;
- diversified investments tailored to the investor;
- sound organization;
- transparency towards all stakeholders.

Belgium has 196 pension funds governed by Belgian law. In addition, 6 pension funds from other Member States of the European Economic Area manage pension plans subject to Belgian social and labour legislation.

A number of key figures on the pension funds sector are shown in graphs 25, 26 and 27. More statistics on the sector can be found on the FSMA's website.

Technical provisions and expected return

In 2017, the FSMA's prudential supervision was mainly focused on the financing of pension funds in a climate of low-interest rates, and more specifically on the conservative calculation of the IORPs' technical provisions and the realistic nature of the expected return. The Law of 27 October 2006[46] prescribes that the economic and actuarial hypotheses used for assessing commitments must be chosen prudently, taking into account an adequate margin for adverse deviation.

All IORPs that manage defined benefit pension plans were subjected to an analysis of their method for calculating long-term technical provisions, their discount rate and their expected return. More particularly, the FSMA investigated whether the return expected by each IORP appeared in line with the composition of the investment portfolio and the current conditions on the financial markets. As part of this investigation, the coherence between the expected return and the discount rate that was used for the calculation of the technical provisions was also investigated. Finally, the method for calculating the technical provisions was also included in the assessment.

More than 40% of the Belgian IORPs that manage pension plans with one or another form of promised returns were, as part of this supervisory task, asked to review their technical provisions and present an action plan with the necessary measures for a more prudent calculation of the technical provisions.

In that respect, the FSMA put particular emphasis on the fact that the unconditional indexing of incomes must be reflected in the technical provisions.

This investigation will be pursued in 2018.

46 Article 89, fourth paragraph of the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision.

Analysing dossiers in consultation with foreign supervisory authorities

As part of this supervision of notifications of pension funds with a view to the management of pension plans subject to foreign social and labour law, the FSMA must in principle oversee that the pension rights of members under these foreign pension plans are not put at risk or experience any disadvantage simply as a consequence of the fact that the plan will be managed by a Belgian IORP. To this end, it looks into the foreign social and labour legislation that applies to the plan but also puts its findings into perspective and analyses them in consultation with the foreign supervisory authorities responsible for compliance with this legislation. In this way, the FSMA can estimate the prudential consequences of the management of a foreign plan by a Belgian IORP and, where necessary, the FSMA can ask the IORP to take measures to safeguard the rights of members and pensioners.

Risk model and the role of accredited statutory auditors and appointed actuaries

Certain transactions by pension funds are required by law to have the FSMA's prior approval (ex-ante supervision). For example when starting activities, when the fund wishes to manage foreign pension plans or when the fund has to take recovery measures to remedy a funding gap.

Aside from this ex-ante supervision, the FSMA primarily allocates its supervisory resources to areas that entail the greatest risks (risk-based approach) and which therefore need to be properly monitored. The FSMA identifies these risks based on a risk model largely centred on the automated use of reporting data.

In 2017, the FSMA deferred the implementation of a new version of this risk model[47]. In this respect, particular attention is focused on reinforcing the risk model based on the information that the FSMA receives from two major players on the field, the accredited statutory auditor and the appointed actuary. After the FSMA made its expectations known in their regard via circulars in 2015 and 2016, it decided to more systematically integrate the findings of accredited statutory auditors and appointed actuaries in the field in its risk-based approach.

Inspections

In 2016, the FSMA began a series of on-site inspections at a number of pension funds with a focus on subcontracting portfolio management[48]. This work carried on into 2017 and the FSMA was able to complete this cycle of inspections and tackle a new inspection theme. That latter theme relates to the decision-making process and the follow-up of the investment policy, more particularly as regards mitigating conflicts of interest relating thereto. Based on this theme, the FSMA's services are able to assess compliance in practice with the legal provisions that apply and ascertain the extent to which the interests of members are assured. Moreover, the theme chosen comes as a consequence of the analyses of Statements of Investment Principles (SIP) conducted over the last few years[49]. During these analyses, the points brought to the attention of the IORPs were the importance of sound management and more specifically of a suitable decision-making process and appropriate monitoring. The aim of this 2017 inspection cycle is therefore also to ascertain how the decision-making process and the monitoring of investments is managed in the IORPs in question.

47 See the 2016 FSMA annual report, p. 75.

48 See the 2016 FSMA annual report, p. 76.

49 More particularly, see the 2015 FSMA annual report, p. 83.

Stress test

In 2017, EIOPA conducted a stress test of pension funds in 19 countries with a significant pension market. The aim of this was to analyse the resilience of the European pension fund sector in the case of shocks from crises on the financial markets, as well as to investigate the secondary effects of these shocks on the economic system and on the financial markets. The sample of institutions in the Belgian pension funds sector covered half of the assets managed by Belgian IORPs and was representative for the sector. The participating pension funds were subjected to a stress scenario, the assumptions of which were based on a fall in the value of assets in combination with a reduction in the risk-free interest rate.

The Belgian results of the stress test were positive. The stress test indicates that the Belgian pension fund sector can on average hold up well, even under extremely stressful economic conditions. This result can largely be attributed to the substantial buffers that the pension funds concerned keep or to the presence of strong sponsors. This puts Belgium on the list of countries that are able to fully cover their obligations in the stress scenario.

Recovery and reorganization measures

Pension funds with a funding gap must take the necessary measures to remedy that gap. A gap can occur at the level of the fund as a whole or at the level of the pension plan of one or more employers which contribute to the fund. In the first case, recovery measures are taken; in the second, reorganization measures. The number of such measures rose last year as a result of stricter oversight by

FOCUS 2018

In 2018, prudential supervision will primarily focus on the follow-up to the investigation examining how realistic expected returns are, and prudent calculation of the technical provisions.

At the same time, the FSMA will also work on the implementation of the future EIOPA and ECB reporting requirements, which will require a reorganization of IORP reporting.

As regards the method for prudential supervision, the FSMA wishes to focus its attention on the financing of pension funds, and more particularly on the continuity test.

Finally, the European IORP II Directive, which will have to be transposed into Belgian law by 13 January 2019, will, from 2018, require a lot of work to develop a new supervisory framework for the pension funds.

the FSMA following more detailed reporting. Nine pension funds had recovery measures underway at the end of 2016; three funds had reorganization measures underway. Seven IORPs succeeded in ending their recovery or reorganization plans in 2016. Following a new gap at the end of 2016, two IORPs had to take recovery measures and 14 IORPs had to take reorganization measures. Many of the new gaps in pension funds are the result of stricter, and therefore safer, assumptions used by pension funds to calculate their pension liabilities. Those gaps do not have any short-term negative effects for the future pensioners or their beneficiaries.

Informing the sector

The FSMA ensures that the pensions sector remains properly informed as to its supervision and expectations. More specifically, this occurs by training pension funds during seminars organized within the sector and during bilateral meetings with pension funds. At the same time, regular meetings are held with PensioPlus, the professional organization for pension funds.

Regulating

Just as in the social supervision area, the FSMA also provides technical assistance with the transposition into Belgian law of the prudential aspects of the new European Directive for supplementary pensions (IORP II).

SANCTIONS

The FSMA may impose administrative sanctions in the case of infringements of the financial legislation. These sanctions take the form of administrative fines imposed by an independent Sanctions Committee and of agreed settlements.

Procedure for imposing administrative fines

Where the Management Committee identifies strong indications of the existence of a practice liable to give rise to an administrative fine, it tasks the investigations officer with investigating the dossier[50]. This decision is made based on the indications of the FSMA's supervisory services following a complaint or based on the indications of a foreign supervisory authority as part of a request for international cooperation addressed to the FSMA. In the latter case, the Management Committee tasks the investigations officer with ordering the necessary investigative duties in order to be able to handle the request from the foreign supervisory authority.

Decisions to open an investigation

In 2017, the Management Committee opened 27 new investigations based either on the FSMA's own investigations or on complaints. This does not include the dossiers opened in response to requests for international cooperation from foreign supervisory authorities addressed to the FSMA[51].

The term 'investigation' or 'investigative dossier' refers to the decision, in accordance with Article 70, § 1 of the Law of 2 August 2002, to open an investigation into a number of indications of the existence of a practice which could lead to an administrative fine. That decision may concern serious indications that one or more people have infringed one or more legal texts. The estimation of the number of people to which the dossier refers serves only as a guide: the investigation relates to facts so it is possible that once these facts are investigated, the number of people concerned needs to be adjusted.

50 Article 70, § 1 of the Law of 2 August 2002.

51 For more information on those requests, see this report p. 120.

Summary of dossiers handled

The investigative duties of the investigations officer relate to facts that could lead to an administrative fine. Under the lead of the investigations officer, the employees tasked with the dossiers set up the investigative duties that they deem necessary and compare the elements they have gathered with the applicable legal provisions.

Proposed agreed settlements

The provisions on the organization of the procedure for imposing administrative fines provides for the possibility to close a dossier with an agreed settlement[52].

The Management Committee decides on the acceptance of agreed settlements. Those involved must have collaborated with the investigation and have agreed in advance to the proposed agreed settlement.

In 2017, the investigations officer submitted 13 proposed agreed settlements, to which the parties concerned had agreed, for the approval of the Management Committee. The agreed settlements, for a total amount of 2,151,000 euros, concerned both natural and legal persons.

The increase in the number of agreed settlements can be explained by the diversity of the subjects. Alongside the classic themes such as market abuse, a number of dossiers concern "technical" breaches. Examples of these are dossiers on non-approval of commercial documents as imposed by Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients or breaches of the disclosure obligation for transactions by managers as imposed by the Market Abuse Regulation.

This rise can also be explained by the fact that the investigations officer, if the investigation confirms the serious indications of breaches, actively enquires as to whether those involved are prepared to reach an agreed settlement. If the condition of cooperating with the investigation is met, if the person involved agrees to a publication, with names, and if the amount of the settlement acts as a deterrent in light of the breaches identified and the circumstances of the matter, the sanctions procedure may in principle be closed via an agreed settlement.

Some of the agreed settlements that the Management Committee approved in these dossiers are explained in this report[53].

52 Article 71, § 3 of the Law of 2 August 2002.

53 See this report, p. 112-117.

Reporting of findings to the Management Committee

After the investigation is complete, the investigations officer draws up a report setting out the facts ascertained that may constitute an infringement liable to give rise to the imposition of an administrative fine or, where applicable, to constitute a criminal offence[54].

The investigations officer provides the final report to the Management Committee. Based on that report, the Management Committee then decides on the outcome of that dossier[55].

In 2017, the investigations officer sent six investigation reports to the Management Committee.

Overview of the number of dossiers handled by the investigations officer since 2011

In 2011, a new sanctions procedure entered into force[56]. Between 2011 and 31 December 2017, investigations have been opened in 95 dossiers relating to the existence of one or more practices which could give rise to an administrative fine being imposed on one or more people.

During this same period, the total number of proposals for agreed settlement handled and investigation reports closed by the investigations officer was 107. This resulted in the definitive closure of 70 dossiers.

The dossiers for which an investigation has been opened since 15 July 2011 concern serious indications of infringements of one or more of the laws specified in Table 5[57].

Just as in 2016, the new dossiers in 2017 related to a greater number of laws, showing the FSMA's willingness to make use of its sanctioning powers in all of its areas of supervision.

54 Article 70, § 2 of the Law of 2 August 2002.

55 Article 71 of the Law of 2 August 2002.

56 See the 2011 FSMA annual report, p. 42.

57 Several of the dossiers handled by the investigations officer relate to infringements of several of the laws specified in the table. This is why the total number of cases of application of the laws specified in this cumulative overview is higher than the number of dossiers.

Table 5: Overview of the laws to which the dossiers handled by the investigations officer since 15 July 2011 pertain

	From 15 July 2011 to 31 December 2016	From 15 July 2011 to 31 December 2017
Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash (formerly the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorism financing)	1	3
Market Abuse Regulation (MAR) (formerly the Law of 2 August 2002 on the supervision of the financial sector and on financial services)		
1. Prohibition of insider dealing and of unlawful disclosure of inside information (Article 14 of the MAR)	27	33
2. Prohibition of market manipulation (Article 15 of the MAR) and obligation of public disclosure of inside information (Article 17 of the MAR)	14	17
3. Managers' transactions (Article 19 of the MAR)	0	2
4. Reporting of suspicious orders and transactions (Article 16 of the MAR)	1	1
Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market	4	4
Royal Decree of 5 March 2006 on market abuse (abrogated by the Law of 27 June 2017)	8	8
Law of 16 June 2006 on the public offer of investment instruments	14	14
Law of 2 May 2007 on disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions	2	3
Law of 2 August 2002 on the supervision of the financial sector and on financial services (MiFID conduct of business rules) Royal Decree of 3 June 2007 laying down detailed rules for implementing the Markets in Financial Instruments Directive	2	3
Royal Decree of 27 April 2007 on takeover bids	1	1
Law of 3 August 2012 on certain forms of collective management of investment portfolios that fulfil the conditions of Directive 2009/65/EC and undertakings for investment in receivables Law of 19 April 2014 on alternative investment funds and their managers	2	5
Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients. Royal Decree of 18 June 2013 laying down certain information obligations in respect of the distribution of regulated savings accounts	4	8
Law of 4 April 2014 on insurance	2	9
Economic Law Code (credit intermediation)	1	1
The legislation on the supervision of institutions for occupational retirement provision (breaches of the Law of 28 April 2003 on supplementary pensions and on the tax regime applicable to such pensions and to certain additional social security benefits)	0	3

Description of a number of agreed settlements

In 2017, the Management Committee approved agreed settlements in investigations concerning a range of supervisory areas. By way of illustration, there is a description as follows of those agreed settlements. The texts of these and other agreed settlements that came about in 2017 can be found on the FSMA's website.

Agreed settlement with a foreign holding company

On 17 January 2017, the Management Committee accepted an agreed settlement with a holding company listed on Euronext Brussels with its registered office in the United Kingdom.

The company sold its major participating interest and the day after signing the share purchase agreement, stated in a press release that it had the intention of paying out a substantial dividend with the proceeds of that sale. In a subsequent press release, a number of details were provided on the payment of the dividend, including the payment date.

The dividend was ultimately not paid out on the anticipated date. The company, which in the meantime had gone through a change of management, then published a press release announcing that the payment of the dividend had been suspended because the company's financial situation was insufficiently documented and was uncertain. Finally, 9 months later a dividend was paid out, albeit a lower one.

The prohibition of market abuse arose at the time of the matter in Article 25, § 1, 4° of the Law of 2 August 2002. In accordance with this Article, it is prohibited for anyone "to disseminate information or rumours through the media or the Internet or by any other means, which give, or are likely to give, false or misleading signals as to financial instruments, where the person in question knew, or ought to have known, that the information was false or misleading".

The FSMA was of the opinion that the company had disseminated false information by publishing the payment of a dividend which was not paid out on the envisaged date. The FSMA was moreover of the opinion that the information was misleading because the company had given the false impression that it had sufficient means to pay out the dividend announced, although it had failed to comply with the formal requirements for the payment of dividends by a company established in the United Kingdom.

The agreed settlement provided for the payment of a sum of EUR 125,000 to the Treasury and a publication with names on the FSMA's website. The company's limited financial capacity and the measures it took after the change in management to limit the impact of the breaches and to prevent them from being reiterated, were all taken into account.

Agreed settlement with a Belgian credit institution

On 28 March 2017 the FSMA's Management Committee approved an agreed settlement with a Belgian credit institution.

Credit institutions must follow certain rules of conduct as part of their activity, including rules on the duty of care. They must act honestly, fairly and professionally in the best interests of their clients; when they offer products to clients, they must for example take into account the characteristics and risks of these products as well as the knowledge, experience and financial situation of these clients.

In this dossier, the investigation unveiled that the credit institution allocated a very low risk classification to Greek government bonds, whilst Greece was at the time undergoing a serious economic and financial crisis. In the end, Greece was obliged to proceed with a debt restructuring, incurring significant losses for all holders of Greek government bonds.

During the period of the investigation, investors were able to buy Greek government bonds from the credit institution via several investment services, in which these instruments received a positive risk rating according to the institution's risk rating model.

It was only on 24 November 2011 that the institution amended its risk rating. Although the products were deemed from that time on to be highly risky, certain risk-averse investors were still advised to purchase these bonds.

In view of the risks inherent to Greece, the FSMA was of the opinion that the Greek government bonds were not in line with the investment profiles of a group of investors to which the credit institution had sold these government bonds, and that they were therefore not suitable for those clients.

The agreed settlement entailed the credit institution being bound to pay out compensation to certain groups of clients who had bought these Greek government bonds following the investment advice or discretionary portfolio management provided by the credit institution, when this did not tie in with the characteristics of their investment profile or contravened the credit institution's internal code on providing advice. The agreed settlement moreover provided for the payment of a sum of EUR 700,000 to the Treasury and a publication with names on the FSMA's website.

Agreed settlements relating to online offers of CFDs by foreign investment firms[58]

In 2017, the Management Committee accepted three agreed settlements with two investment firms governed by Cypriot law and one investment firm governed by Irish law which had been authorized to offer investment services in Belgium under the freedom to provide services.

These investment firms offered CFDs (Contracts for Difference) with various underlyings via online trading platforms. One of those investment firms also offered binary options. The firms concerned did not have a prospectus approved by the FSMA and their advertisements were not previously approved by the FSMA.

Pursuant to several provisions of the Prospectus Law, the public offer of investment instruments on Belgian territory requires prior approval by the FSMA of a prospectus. CFDs and binary options are investment instruments within the meaning of Article 9 of that same Law because they allow a financial investment to be made. Article 60 of the Prospectus Law requires that advertisements and other documents which relate to such a public offer also be approved in advance by the FSMA.

The FSMA was of the opinion that the websites that served as trading venues contained sufficient factual aspects to entail a public offer on Belgian territory.

In the agreed settlement, the companies undertook proactively to contact the Belgian clients to offer them the opportunity to terminate their contractual relationship at no cost and with the return of their balance. The agreed settlements provided for the payment of EUR 550,000, EUR 200,000 and EUR 175,000 respectively to the Treasury. When determining these amounts, account was taken of such aspects as the scale of the activities of the various companies. The decisions were published, with names, on the FSMA's website.

58 In 2016, the FSMA published a regulation to restrict distribution of certain financial derivatives. Since the entry into force of that Regulation on 18 August 2016, the distribution of CFDs with leverage is prohibited. This same Regulation prohibits the distribution of binary options to retail clients in Belgium.

Agreed settlement with the director of a listed company

On 25 May 2017, the Management Committee approved an agreed settlement with the director of a Belgian listed company.

At the time of the facts, the company conducted a clinical study into a major pharmaceutical product. The directors of the company had signed a document undertaking to handle the data from this study confidentially and not to trade shares in the company prior to the publication of the study results.

On day X the directors obtained access to the test results of the product via a secure portal. That same day, a board meeting was held by telephone in which the test results of the product were discussed. The board of directors approved a press release on the subject.

On the same day X shares in the company were bought from the director's account. That same day, shares in the company were also bought from the account of a company, which had the director and his spouse as the main beneficiaries for settlement.

On day X + 2, the company published the press release with the test results of the study and the share price rose by 23.56 per cent.

The FSMA is of the opinion that the director breached the legislation that determines that it is prohibited for any person possessing information that he or she is aware, or ought to be aware, constitutes inside information, to acquire or dispose of, for his/her own account or for the account of a third party, either directly or indirectly, financial instruments to which that inside information refers.

The agreed settlement provided for the payment of a sum of EUR 62,000 to the Treasury, although the added value of the transactions was limited. The decision was published on the FSMA's website for 6 months with names.

Agreed settlements with regard to the dissemination of advertisements

The Management Committee accepted three agreed settlements in dossiers relating to the dissemination of advertisements for units in undertakings for collective investment and for regulated savings accounts.

Two agreed settlements relating to the dissemination of advertisements for units in undertakings for collective investment

Pursuant to Article 155, § 1, first paragraph of the Law of 3 August 2012[59] announcements, advertisements and other items relating to a public offer in Belgium of units in an open-ended undertaking for collective investment (UCI) governed by foreign law that fulfil the conditions of Directive 2009/65/EC or an announcement or recommendation of such an offer, may be published only after

59 Law of 3 August 2012 on certain forms of collective management of investment portfolios that fulfil the conditions of Directive 2009/65/EC and undertakings for investment in receivables

approval by the FSMA. A similar obligation is included in Article 26, § 1 of Royal Decree of 25 April 2014[60], which applies in the case of professional distribution of financial products to retail clients on Belgian territory.

Article 155, § 2, second paragraph, 2° of the Law of 3 August 2012 also provides that the information included in these announcements, advertisements and other items, may not be inaccurate or misleading, which is confirmed by Article 11, 1° of the Royal Decree of 25 April 2014.

Finally, Article 12, § 1 of the Royal Decree of 25 April 2014 contains the minimum content requirements that such advertisements should meet.

In a first dossier investigated by the FSMA, a Luxembourg management company of undertakings for collective investment (UCI) placed an advertisement in two different Belgian newspapers for the sub-fund of a foreign undertaking for collective investment that fulfilled the conditions of Directive 2009/65/EC. The reason for this was that certain units in the sub-fund concerned of the Luxembourg UCI were allocated a prize as part of a competition to find the "best UCIs distributed in Belgium".

The advertisement in two different Belgian newspapers was not previously submitted to the FSMA for approval and the content thereof did not comply with the minimum legal requirements on content. The FSMA was also of the opinion that the advertisement was misleading because the mention of the prize won by the UCI did not specify that this prize was only won by some (not all) of the units in the sub-fund of the Luxembourg UCI.

The agreed settlement provided for the payment of a sum of EUR 50,000 to the Treasury and a publication with names on the FSMA's website.

In the second dossier investigated by the FSMA, a Belgian portfolio management and investment advice company had asked the FSMA to approve a video advertisement to promote the sub-fund of a foreign UCI that fulfilled the conditions of Directive 2009/65/EC. This video advertisement was to be published on the website of a Belgian newspaper. At the end of the video, there was a hyperlink to give people who were interested access to the various documents on the sub-fund concerned of the foreign UCI.

The FSMA made certain remarks about the video advertisement concerned and more specifically about the hyperlink at the end of it. This hyperlink linked to a website that was not approved by the FSMA and that did not comply with all the minimum requirements on content under Article 12, § 1 of the Royal Decree of 25 April 2014.

The video advertisement appeared on the website of the Belgian newspaper with no response to the FSMA's comments and without have received approval from the FSMA.

An agreed settlement was entered into for the payment of a sum of EUR 80,000 to the Treasury and a publication with names on the FSMA's website.

60 Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients.

Agreed settlements with regard to the dissemination of advertisements for regulated savings accounts

In this dossier, a Dutch credit institution with a branch in Belgium had advertised its regulated savings accounts to potential retail clients via a mobile app.

The dissemination of advertisements as part of the distribution of regulated savings accounts to retail clients on Belgian territory is subject, pursuant to Article 26, § 1 of the Royal Decree of 25 April 2014, to the prior approval of the FSMA.

Moreover, the Royal Decree of 25 April 2014 lays down the minimum content which such advertisements for regulated savings accounts should have, unless it is not technically possible to provide all required information through the chosen advertising medium.

The investigation uncovered that the content of the mobile app did not comply with the minimum legal requirements on the subject and that it was also not submitted to the FSMA for prior approval.

The agreed settlement provided for the payment of a sum of EUR 40,000 to the Treasury and a publication with names on the FSMA's website.

Agreed settlement with a listed company as part of the transparency legislation

On 24 April 2017, the FSMA's Management Committee accepted an agreed settlement with a Belgian listed company as well as with the companies and natural person linked to it (hereinafter referred to as the 'group').

Pursuant to the former Article 6 of the Law of 2 May 2007 on disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions, as applicable at the time of the facts, any natural or legal person who directly or indirectly acquires voting securities in an issuer with shares admitted to trading on a regulated market, must notify the issuer and the FSMA if the voting rights attached to the voting securities held reach 5 per cent or a multiple thereof of the total existing voting rights. In the case of a chain of controlled undertakings, the notification requirement rests on the person who has the final control, and on the various links in the control chain, i.e. on the supervised companies, as soon as the participating interest of the aforementioned reaches one of the thresholds referred to in the Law of 2 May 2007 or the articles of association of the issuer.

A takeover bid must also be made on all voting securities of a company by persons who own, as a result of an acquisition, more than 30 per cent of the voting securities of that company.

The group in question owned a participating interest since the end of October 2008 which amounted, almost uninterruptedly, to 29% and 30% of the capital of a Belgian listed company (hereinafter referred to as the 'issuer'). One of the companies in the group also possessed, since 2009, more than the majority of voting rights of the shareholders present or represented during the general meetings of that issuer, and certainly until the general meetings of 2014. There was also, according to the FSMA, de facto control of the issuer, in view of the presumption in Article 5, § 3, second paragraph of the Companies Code, and there was not a single aspect available based on which that presumption could be rebutted.

Between 18 March and 25 October 2013, the issuer acquired its own shares as part of an employee share ownership plan. Given that the issuer was linked to the group by this de facto control, the percentage of shares in possession of the issuer had to be added to the percentage of shares in possession of the group, for the obligations pursuant to the Law of 2 May 2007 on disclosure of major holdings, the Takeover Law and its implementing decrees. The participating interest in the issuer of the various members of the group exceeded the threshold of 30 per cent on 19 March, 20 March and 25 October 2013.

Shareholders who exceed the aforementioned threshold are in principle obliged to make a takeover bid on all the shares in circulation, unless they ask for an exemption in accordance with the conditions stated in the Takeover Law. The group only asked for an exemption in July 2014.

The agreed settlement provided for the payment of a sum of EUR 100,000 to the Treasury and a publication with names on the FSMA's website.

Legal proceedings

Judgment of the Market Court[61] of 1 March 2017 on insider dealing

In the year under review, the Market Court ruled in a case in which one of the parties had lodged an appeal against the decision by the Sanctions Committee of 20 November 2015. This case related to the purchase of shares of a company listed on Euronext Brussels by three of its directors. The purchases took place after a board of directors of this company decided to proceed with a second phase of a share buyback scheme by the company. The three directors concerned were present at the board meeting. Their share purchases took place before the decision was made public. Two directors acted on behalf of a company and one director on his own behalf.

In its decision of 20 November 2015, the Sanctions Committee identified infringements of the prohibition of insider dealing by the three directors and the two companies. The Sanctions Committee imposed administrative fines only to both companies of EUR 200,000 and EUR 15,000 respectively. All parties lodged an appeal against this decision.

In its judgment of 1 March 2017, the Market Court ruled that the appeal was unfounded and confirmed the decision of the Sanctions Committee in its entirety.

The Court ruled that in the first place, the information in the possession of the parties concerned at the time of the disputed transactions constituted inside information given that it was information that hadn't been disclosed to the public, that was accurate and price-sensitive and that related to the issuer of financial instruments.

61 The words 'Brussels Court of Appeal' in Article 121 of the Law of 2 August 2002 were replaced by the Law of 25 December 2016 by the words 'Market Court'.

Unpublished information

According to the Market Court, the decision of the board of directors of the issuer to start the second phase of the share buyback programme was not public at the time of the disputed transactions, given that it was only published several days later.

The parties concerned disputed that this information was not public because according to them this information was a continuation of information that had been published earlier, and all relevant information was already in the market. Through earlier publications, the issuer had announced its share buyback scheme, and the approval of that programme had been published by the general meeting, as well as the start of the first phase of the buyback programme and the fact that this first phase was successfully completed early.

The Court did not agree with this reasoning. According to the Court, the publication in connection with the second phase of the buyback scheme contained two new aspects, namely the timing of the second phase of the buyback scheme and its scale. The timing was over a period of three months starting on the day after publication. The share buyback scheme was for 300,000 shares. According to the Court, these aspects could not be considered minor aspects that were the continuation of the already published information, given that they added essential information. The Court also stated that the start of the second phase of the buyback scheme took place earlier than expected by market analysts.

Accurate information

According to the Market Court, the information related to a sufficiently certain matter and the information was specific enough to draw a conclusion on the potential influence of this matter on the price of the issuer's financial instruments. This is the case according to the Court because the information on the start of the second phase of the buyback scheme constituted a new and additional signal to the investors, given the considerable maximum amount of shares to buy back and given the short execution timescale. A reasonable investor could expect that the actual purchases would lead to a support of the price and therefore to a price increase. Secondly, according to the Court, the de facto phase-in conducted in this way, and the methods and timing, reinforced and crystallized the signal that arose from the buyback scheme, namely that the directors of the issuer were of the opinion that the share was undervalued. Thirdly, according to the Court, the short execution timescale of the second phase of the buyback scheme was also of a nature as to give a strong positive signal as regards the dividend for the financial year underway.

The parties concerned disputed that the information was sufficiently specific because the impact of the entire buyback scheme would already have fully been incorporated in the price immediately after the announcement of the buyback scheme, meaning that no further impact on the price could be expected. In support of this view, the parties concerned referred to their mathematical calculation of the maximum effect of the announcement of the buyback scheme on the stock-market price. They also argued that the publication of the approval of this scheme by the general meeting, the announcement of the start of the first phase of the buyback scheme, and the publication of the early and successful completion thereof, had no additional impact on the price.

The Court did not agree with this reasoning. According to the Court, the legal criteria to assess whether information is sufficiently specific is not quantitative criteria but qualitative criteria: it should be ascertained whether the information allowed a reasonable investor to draw a conclusion on the potential impact on the share price. According to the Court, mathematical calculations could never be decisive in assessing whether the information with regard to the start of the second phase of the buyback scheme allowed a reasonable investor to draw a conclusion on the possible impact on the share price. The Sanctions Committee was therefore, according to the Court, right not to have taken this into account.

Moreover, according to the Court, even if it could be agreed that certain quantitative aspects were relevant to test the criteria of a reasonable investor, in this case it could not be seriously expected that a reasonable investor would be able to make complicated mathematical calculations. This is all the more so because the mathematical calculations as provided by the parties concerned did not give an accurate view of the potential price impact. The Court also ruled in line with the decision of the Sanctions Committee that it is not decisive that information similar to the information at issue from the past would have had no or hardly any influence on the price of the share.

Price-sensitive information

According to the Market Court, the information was price-sensitive. The Court held that the methods of execution of the second phase of the buyback scheme, i.e. a high maximum amount of shares to buy back over a short time in a not very liquid market, elicited the expectation of strong price support, and increased and crystallized the signal of the share's undervaluation. The Court also pointed out that as a result of the quicker-than-expected start to the second phase of the buyback scheme, the increase in the profit per share and the dividend would occur more quickly than expected.

This led the Court to conclude that the information in question, if it had been published, could have had a considerable influence on the price. A reasonable investor is likely to have based an investment decision, at least partly, on this information. The Court also set out its reasoning as regards the specific nature of the information and the rebuttal of the arguments of the parties concerned in this respect.

In addition, the Court pointed out that this ex ante decision is confirmed by the ex post change in price that actually occurred. On the day of the press release announcing the start of the second phase of the buyback scheme, the share price did, after all, increase by nine per cent. The Court dismissed the other factors to which the parties concerned attribute this price rise because these are not convincing and are negated by the price evolution itself. The Court pointed out that even if it were established that the price rise was solely attributable to these factors, quod non, this does not by any means imply that the information concerned could not have a substantial influence on the share price.

The Market Court ruled that the parties concerned, in view of their functions, and associated professional knowledge and experience, knew or ought to have known that they possessed inside information. This knowledge by the natural persons who acted on behalf of companies is, according to the Court, fully attributable to these legal persons, meaning that the knowledge requirements were also met for these companies. The fact that the disputed transactions were immediately communicated to the FSMA is, according to the Court, of no relevance for the assessment of the knowledge requirement.

The Market Court pointed out that, in accordance with the case law of the European Court of Justice, inside information is presumed to have been used when a person who is in possession of this inside information executes a market transaction with financial instruments to which this information relates, as soon as it is proven that the accused knew or ought to have known that he/she possessed inside information. The Court is of the opinion that the presumption of the use of inside information can only be rebutted if the party concerned proves that the inside information could not possibly have influenced the investment decision. According to the Court, the exhibits provided by the parties concerned in this case do not provide this proof, and the parties concerned consequently executed the disputed transactions with the use of inside information and therefore infringed the trading prohibition.

The Market Court confirmed the sanctions imposed on the companies concerned by the FSMA's Sanctions Committee. In that respect, the Court also points out that imposing an administrative fine is an option, and that a fine does not necessarily need to be imposed when an infringement is identified. The Court is of the opinion that the effective realization or not of a capital gain in case of misuse of inside information is in and of itself not a criterion for determining the scale of a fine, and that bad faith is not an aspect that constitutes the infringement of misuse of inside information.

International cooperation

In 2017, the number of requests received for international cooperation in dossiers on potential market abuse or unlawful offering of financial services fell in comparison with the previous year.

The FSMA received 20 requests for cooperation from foreign competent authorities as compared with 36 in 2016. All of these requests were responded to within an average of 60 days. The duration of that period was determined by the nature and scale of the investigative duties to be conducted. The increase in the average period compared to last year is linked to a number of more complex dossiers that required extensive investigation.

Those investigative duties often involve identifying the beneficiary of a transaction. They may also involve gathering information from an issuer or a telecommunications operator, or the organization of hearings of people suspected to have committed some type of infringement, or of witnesses.

In 2017, the FSMA addressed 30 requests for cooperation to foreign competent authorities, compared to 25 in 2016.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FINANCIAL EDUCATION

The Belgian legislature has tasked the FSMA with contributing to the financial education of the public. To fulfil this task, the FSMA has set up a financial education programme under the name Wikifin.be. The goal of this programme is to develop initiatives to improve the population's financial literacy. This is based around three pillars: education, campaigns directed at the general public, and cooperation and exchange of best practices with different stakeholders.

www.wikifin.be

In 2017, the www.wikifin.be website was visited close to 2.1 million times. That represents an increase of 12.6 per cent compared with the previous year. Visitors viewed over 3.6 million pages. Since its launch in 2013, the website has been visited close to 7 million times.

The portal www.wikifin.be aims to provide consumers with neutral, reliable and practical financial information in language that is easy for everyone to understand. In order to promote the themes covered, the quizzes and the simulators, campaigns are set up to stimulate the public's interest in financial matters. The website is constantly updated and its content added to. That work is most often done by FSMA experts, but sometimes also in conjunction with a number of external partners, from government institutions and professional associations, or people who work in the field.

The sections on the portal on 'inheritance tax', 'inheritance' and 'pensions' (pension saving, statutory pension, paying in to a pension, pension-related tax matters, etc.) have been very successful. This once again goes to show that citizens are seeking information to allow them to better plan for their financial future in a general sense. The most popular tools on www.wikifin.be are the savings account simulator (529,129 visits in 2017), the inheritance simulator (193,207 visits in 2017) and the real estate simulator (253,000 visits in 2017).

Wikifin.be does not only continuously work on developing its tools and extending its themes, but also sends out a newsletter, which currently has 16,500 subscribers.

Money Week

In 2017, the FSMA organized the second edition of Money Week, in conjunction with the newspapers De Tijd and L'Echo, and with Radio 1 and RTBF. Just as was the case with the first edition in 2016, in 2017 many others joined in with this initiative. The aim of Money Week is to enable money matters to be discussed as widely as possible and to devote extra attention to financial education. During this themed week, Wikifin.be again embarked on a range of initiatives and took on the role of coordinator among the many stakeholders.

Between 27 March and 2 April 2017, Wikifin.be and its many partners set up a diverse range of activities across the whole country, both for schools and for the public. By pooling the forces of different public institutions and others active in the field, a wide range of financial education themes were able to be covered. An overview of all these activities can be found on the www.deweekvanhetgeld.be / www.lasemainedelargent.be website. The main theme of the second edition was 'To save or not to save?'

On 27 March 2017, Money Week started with the conference '(R)evolutions in society: the role of financial education'. This national themed week kicked off in the Euronext building in Brussels with the 'Ring the Bell' event in the presence of several ministers. The event was also attended by Her Majesty the Queen, who above all emphasized in a highly acclaimed speech that nobody should be left behind when it comes to financial education in schools in Belgium.

During the conference, the main stakeholders in the area of financial education in Belgium debated the challenges for financial education and the role of society therein. In parallel with this, the results of an FSMA survey among 1,000 Belgians on their attitude to saving were unveiled. These survey results[62] mainly revealed that one in three Belgians does not save. Furthermore, the survey also looked into the reasons why people put money aside (essentially to be able to cover unexpected outgoings) and it contributed to forming a clearer picture on the savings buffer that Belgians have and their general sentiments about their saving behaviour.

During the conference, Wikifin.be also revealed the laureates of the Wikifin@School Challenge. That contest, which was held among second-year students at secondary school, proposes projects encouraging them to estimate risks, draw up a budget and choose the best credit or savings formula. The pupils were encouraged to manage a budget by themselves and got the opportunity to explain in a creative way what they had learned thanks to the Wikifin.be materials.

During Money Week, more than 50,000 primary-school students played the budget game at school. This educational tool seeks to teach children from a young age that they can only spend every euro once, an important lesson which may save them financial worries later on. Studies show that in terms of learning healthy spending habits, the earlier these are taught to children the better. In total, more than 2,500 school classes have played the budget game. Around 50 FSMA employees volunteered to go to several schools to liven up the game. Especially in Flanders, some of those active in the field, such as the 'Budget in Zicht' partnership, promoted the budget game, which generated a snowball effect. Moreover, the evaluations indicated that the game was highly valued by the teachers who used it.

During the entire Money Week, the FSMA was also available on the Infomarkets organized in Brussels, Liège and Antwerp. Experts from various partners[63] were on hand to answer questions from the public on money matters, such as on pensions, debt mediation, social security contributions, digital payments, and insurance. On the Infomarkets, there was also a special course designed for students in the third year of secondary school, which was met with resounding success at the schools. More than 1,000 students completed the course. Wikifin.be also used the Federal Truck of the Chancellery of the Prime Minister to visit different schools across Belgium with a series of interactive animations. The aim was to encourage pupils to think more about money matters.

62 The results of all Wikifin.be surveys can be found (in French and Dutch) on the Wikifin.be website.

63 The Federal Pensions Service (FPS), the FPS Economy, FPS Finance, the National Bank of Belgium, Febelfin, Assuralia, the Belgian credit and debt observatory, the Vlaams Centrum Schuldenlast [Flemish centre for over-indebtedness], Student@Work (NSS), BudgetInZicht (BIZ), BROCOM and the Steunpunt voor de Diensten Schuldbemiddeling [Support centre for debt mediation services] of the Brussels-Capital region.

The success of the second edition of Money Week, the great interest from the public and the press, and the positive reactions from the different participants, including schools, have led the FSMA and its partners to decide to organize a new edition of Money Week in 2018.

Schools

Since the beginning, the younger generations have formed an important target market for Wikifin.be. Learning to manage money and picking up healthy financial habits should start as early as possible. In order to successfully appeal to this target market, the FSMA works closely with the educational sector.

The 'Wikifin@School' platform[64], launched at the end of 2015, and which can be accessed via the www.wikifin.be website, counted more than 3,000 teachers in 2017. This platform contains a range of educational materials, which can be accessed free-of-charge by teachers and pupils. These include, for example, teaching worksheets with clear tips for teachers and suggestions on how to use them in the classroom, videos, and tools on a range of themes linked to financial education and responsible consumption. Since the launch of the platform, more than 24,000 teaching worksheets have been downloaded.

The FSMA also organized various campaigns with the intention of raising awareness of its work among this group. Those campaigns included regularly publishing a newsletter to inform teachers about new initiatives, actively participating in the various educational fairs in Belgium, organizing (in the field) training days for teachers, as well as an array of activities in primary and secondary school classrooms during Money Week. To inform teachers about Wikifin.be's initiatives and to help them with their 'financial education' and 'responsible consumption' lessons at school, the FSMA took part in the 'Salon de l'Education' in October 2017.

In the Wallonia-Brussels Federation, the Parliament passed a resolution in 2016 on developing financial education and responsible consumption in compulsory education. This resolution provides for an integration of the development of economic and budgetary knowledge, proficiency and knowhow, and for education on responsible consumption. It applies both to primary education and to general, technical and vocational education. Wikifin.be contributed a lot of work in this respect by organizing training on responsible consumption for teachers from different school networks.

The FSMA forms part of the steering group set up to formulate concrete proposals to respond to the resolution and to optimally integrate financial education and responsible consumption in education.

For French-language technical and vocational education, Wikifin.be worked with the Centre de Didactique Economique et Sociale (CeDES) (social and economic teaching centre)[65] to provide the materials necessary for the new 'social and economic education' course.

64 www.wikifin.be/nl/wikifin-at-school and www.wikifin.be/fr/enseignants.

65 Initiative of the University of Namur and more specifically, the Faculty of Economics, Social Sciences and Business Administration (FSESG). CeDES offers academic support and provides ready-to-use teaching materials for both transitional and vocational programmes.

Moreover, since 2017, the FSMA has a member of staff from the educational sector with 25 years' experience as an economics teacher in secondary education, who enables Wikifin.be to respond even better to the expectations of teachers.

The Flemish school system has made further preparations for a major reform, including to update the teaching materials for secondary schools. A public debate on the subject concluded that financial education should be included in the learning outcomes. Learning outcomes establish the objectives that students must attain in terms of understanding, knowledge and proficiency.

Although in the Flemish school system the learning outcomes have not been updated for a long time, the Flemish Parliament approved a new decree in January 2018 establishing the scope of the new learning outcomes and defining the 16 key skills that should be integrated into the learning outcomes. In practice this means that each secondary-school student must learn these different key skills, irrespective of their study options, before they receive their diploma. One of these new key skills is 'financial literacy'.

The FSMA is delighted that the Flemish government has in this way laid down new standards for financial education in secondary schools and that it has made financial education a key aspect of each student's basic education. During the debates on the subject of the educational reform, Wikifin.be, along with other players, provided all of its expertise to policymakers to fuel and refine the reflection on the content of financial education. Committees with representatives from organizations that work in the educational field, experts and others from the sector will now need to work further on the definition and specific implementation of the guidelines agreed. However, a number of matters still have to be worked out, such as what the scope of financial education will have to be, what level of competence will be required of the different age groups, based on which aspects it will be assessed whether the required skill level has been acquired, and during which lessons and at which times financial education need to be given in classes. Wikifin.be will continue to be available to the various players on the field to help them give a concrete shape to financial education for schools.

In parallel, Wikifin.be has continued to work with the research centres of KU Leuven and the University of Antwerp on Financial Literacy@School, their joint project for strategic basic education. That project aims to raise the level of financial education of students in secondary school and to research the most efficient educational methods in that respect. In view of this, the project focuses on developing methods to make the most out of each individual child's qualities and places an emphasis on differentiating the teaching materials. The research seeks to develop innovative teaching materials along with new training packages for teachers who need to increase their level of knowledge of financial education. The intention is also to more closely involve the parents of pupils in classroom activities and thereby positively influence the level of financial literacy of both parents and pupils. The project is led by researchers from the universities of Leuven and Antwerp and is financed by the Flanders Fund for Scientific Research (1.3 million euros over four years). Wikifin.be is one of the partners of the project and works towards enhancing and disseminating the results of the research, by for example placing particular importance on the quality of the provision of information to schools. As part of this first stage of the project, in 2017, Wikifin.be selected 400 classrooms in the second year of primary school. They will be the first to test out new methods of financial education in the classroom using scientific methods.

The Wikifin Chair in Financial Literacy was launched in 2016 by the FSMA and granted to the Faculty of Economics and Business of KU Leuven, which works with the Faculty of Psychology and Educational Sciences from the Free University of Brussels. The aim of this Chair is to fine-tune research into financial literacy to come to more harmonized policies and activities in the field in light of the needs established, primarily for vulnerable groups and taking into account socio-economic factors. This project has great visibility, both through the publication of academic studies and the organization of scientific congresses all over the world. This Chair forms a genuine motor for – and apportions genuine authority to – the Wikfin.be programme and its offshoots, given the great synergies between the various segments of the programme. Wikifin.be, KU Leuven and the

Free University of Brussels are convinced that by closely working together they deliver an essential contribution to financial literacy in Belgium.

FOCUS 2018

In 2018, preparations will continue for the future Financial Education Centre, which should open its doors in 2019. The aim of building this centre is to give a concrete hub to financial education in Belgium and to promote financial education. This initiative is now entering a decisive phase, both on the technical front with building works starting soon and on a content front, with the FSMA teams hard at work to prepare the exhibitions and activities that will take place there, all in conjunction with a partner in the domain of culture in a broad sense. The centre will be next to the FSMA offices and will be devoted in the first place, but not solely, to education. Visitors to the centre can expect both an individual and collective experience with the focal point being the various aspects that can influence a person's financial choices and the consequences thereof. At the end of the visit, a teacher will put the course followed in a broader perspective during a debriefing. The future Financial Education Centre will also be equipped with an auditorium which will offer educational opportunities. In 2018 the FSMA will therefore have to make an all-out effort to ensure that this ambitious project may start under the best possible auspices.

Finally, in 2018, a new edition of Money Week will be organized. The various participants in this themed week will welcome new partners, and a new game will be able to be played at schools. That new game, called 'Just in Budget' is specifically directed at pupils from the 5th and 6th years of primary school and offers the younger pupils the chance to learn, in a fun way, about terms such as budget, savings, interest or credit.

INTERNATIONAL ACTIVITIES

Europe

The FSMA is involved in the preparation and transposition of the new financial legislation and regulations in the **European Union**. It lends its expertise to the preparation of the Belgian position in the Council of the European Union. As soon as new European legislation is introduced, the FSMA contributes greatly to transposing it into Belgian legislation.

In the wake of the financial crisis, three new European authorities were set up in 2011 to contribute to the stability of the financial system, properly functioning financial markets and the protection of financial consumers. The European Securities and Markets Authority **(ESMA)** focuses on the securities markets and market participants (stock exchanges, investment firms, funds etc.). The European Insurance and Occupational Pensions Authority **(EIOPA)** is primarily involved in insurance companies and institutions for occupational retirement provision. The European Banking Authority (EBA) works in the area of credit institutions, financial conglomerates and payment institutions. The FSMA is a member of ESMA and a permanent representative in EIOPA.

The European Systemic Risk Board **(ESRB)** operates as macro-prudential supervisor of the EU's financial system as a whole. The ESRB supervises whether risks arise, for example from a sharp rise in lending, the emergence of new financial products or the interconnectedness of financial institutions across borders. If the ESRB finds that certain members of the EU could improve their supervision, they receive a recommendation on the subject. The FSMA has a seat in the General Board, the main body of the ESRB, led by the Chair of the European Central Bank.

International

The Financial Stability Board **(FSB)** is an international organization whose main task is to promote financial stability. It was set up in 2009 by the G20, the group of the major economies. The FSB coordinates a range of reforms aimed at preventing a new financial crisis. A more robust financial sector, in which banks do not need to be saved again in the future with taxpayers' money, less risky derivatives markets and the phase-out of shadow banking are all subjects on the table. The FSMA is involved in this work.

The International Organization of Securities Commissions **(IOSCO)** is a network of over 120 national supervisory authorities, including the FSMA. IOSCO was set up in 1983 to promote correct and sound market practices worldwide. It does so by setting international standards and reinforcing cooperation between market supervisors, especially in terms of enforcing legislation and regulations and sharing information about aspects such as market abuse. In this way, IOSCO wishes to contribute to investor protection and to the integrity of the financial markets.

The International Association of Insurance Supervisors **(IAIS)** is a network of over 210 supervisory authorities for the insurance sector. The IAIS, set up in 1994, aims to contribute to safe and financially stable insurance markets. It does so by setting international standards and reinforcing cooperation between market supervisory authorities. The FSMA is a member of this network along with the National Bank of Belgium.

The International Organisation of Pension Supervisors **(IOPS)** is an independent international body, founded in 2004, of supervisory authorities of supplementary pensions from 76 countries, including the FSMA.

The internationalization of the financial markets has led to financial regulations increasingly being set at a European or international level. International cooperation and collaboration between supervisors has, as a result, gained in importance. The FSMA is a member of several European and international organizations which are instrumental in setting new rules and standards for the financial sector worldwide.

EU

A number of new legal texts proposed or handled in 2017 are key to the FSMA's supervision[66]. The European Union reached an agreement about the review of the Anti-Money Laundering Directive. To combat terrorist financing and tax evasion, the EU is stepping up the fight against money-laundering practices. The revision of the Directive brings with it new obligations as regards transparency for financial companies.

In 2017, the EU approved a new regulation on securitization. This practice enables financial institutions to take risks off their books and transfer them to third parties. Securitization offers institutions more opportunities to engage in lending. The EU is laying down a general framework for a simple, transparent and standardized way of securitization. Financial institutions that join that framework are rewarded for doing so. They have to set aside less capital to absorb any potential issues that could arise from securitization. Certain securitization practices had come under criticism following the financial crisis.

The European Commission launched a proposal for a European supplementary pension. The Pan-European Pension Product comes over and above the offer of statutory, supplementary and individual pensions that we already have in Belgium. The new product is intended to make it easier for citizens across the European Union to have access to individual pension products. In this way, the European Commission seeks to make it more attractive and cheaper for EU citizens to save for their retirement.

The European Commission made proposals for the review of the operation of the European supervisory authorities ESMA, EIOPA and the EBA. Changes in the decision-making bodies of the agencies seek to improve their operation in the area of sound governance. Institutions under the control of the agencies will in the future directly contribute to their financing. Other proposals relate to a potential extension to the powers of the European supervisory authorities.

66 To see an overview of the legislative initiatives, see this report p. 147 et seq.

ESMA

The FSMA took an active part in the activities of European supervisory authority ESMA. In 2017, the FSMA was reappointed as the Chair of its Financial Innovation Standing Committee (FISC).

The Committee monitors and analyses trends in financial innovation. FISC advises on measures to prevent inappropriate financial innovation causing a disadvantage to consumers or threatening the stability of the financial system.

In 2017, FISC in particular analysed the developments in connection with virtual currencies, blockchain technology and other innovations in the field of financial technology. The work of this committee was partly behind ESMA's publication on Initial Coin Offerings (ICOs) with which companies gather money through the sale of digital tokens. ESMA warned about the risks run by investors when they invest in such businesses and pointed out the legislation and regulations that could apply[67].

FISC conducted preparative work for the pan-European warning that ESMA published along with the EBA and EIOPA on virtual currencies. In this warning, the three authorities point out the risks that consumers run when purchasing virtual currencies[68].

ESMA announced that it would take measures in 2018 based on the MiFID II conduct of business rules in the area of product intervention. ESMA is concerned about the dangers of risky and complex products for consumers. This is why it wishes to take measures to protect retail clients. In this respect, ESMA is considering a ban on the sale of binary options as well as placing restrictions on the sale of certain CFDs[69].

ESMA published opinions in the wake of Brexit. In this way, it contributed to a consolidated approach by supervisory authorities from the EU27 regarding applications from British companies to relocate their business to the EU27. For the supervisory authorities in the EU27, ESMA set up a forum for handling operational questions regarding such a relocation.

ESMA devotes increasing attention to the convergence of supervisory practices in the European Union. The supervisory authority is trying to achieve that goal through the publication of guidelines.

ESMA approved guidelines on product governance that fit in with the new conduct of business rules under MiFID II[70]. ESMA and the EBA published guidelines on the suitability requirements for directors[71].

To reach more convergence in supervisory practices, ESMA also conducts peer reviews. In 2017 it looked into how national supervisory authorities integrated their guidelines on the compliance function, as laid down in the MiFID rules, in their supervisory practice. ESMA also reviewed the implementation of the guidelines on the supervision of financial information. The supervisory authority assessed the extent of convergence and showed where there were still opportunities for convergence.

67 ESMA, Statements on Initial Coin Offerings (ICOs), 12 November 2017.

68 ESMA, EBA and EIOPA warn consumers on the risks of Virtual Currencies, 12 February 2018.

69 Call for Evidence – Potential product intervention measures on contracts for difference and binary options to retail clients, 18 January 2018.

70 Guidelines on MiFID II product governance requirements, 2 June 2017.

71 Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, 26 September 2017.

The three European supervisory authorities handled cross-sectoral matters in the Joint Committee and sub-committees. The FSMA participates in this regard in a sub-committee which examines topics relating to consumer protection and financial innovation. For the entry into force of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, that sub-committee prepared implementing measures.

ESMA is tasked with direct supervision of certain market operators, namely credit rating agencies and trade repositories. It is possible that there will be more supervisory tasks to come for ESMA, especially as regards the supervision of central counterparties.

EIOPA

EIOPA conducted a thematic audit of the commissions and retrocessions that asset managers and insurance companies pay each other in connection with life insurance products linked to class 23 investment funds. That research focused on three points: the existence and the characteristics of financial incentives and remuneration, the management of conflicts of interest by insurance companies and the structuring of products linked to investment funds by insurance companies.

The goal of that audit, which started in 2016, was to identify the aspects that could be disadvantageous for consumers. More specifically, EIOPA wanted to ascertain whether the remuneration paid by asset managers influenced the investment choices of the insurers in a way that could potentially be disadvantageous to consumers.

In the analysis of the questionnaires concerned, EIOPA established that the practice of retrocessions between asset managers and insurance companies is rife. Of the insurance companies that participated in the audit, 80 per cent seemed to have received financial incentives or remuneration from asset managers in 2015.

The data gathered show that the way in which the companies manage the assets of investment funds linked to life insurance policies can be disadvantageous for consumers. The companies call on a limited number of asset managers and do not always have a governance framework solid enough to enable them to appropriately comply with their fiduciary and supervisory obligations.

Even the measures taken by the companies to remedy conflicts of interest and act in the best interests of their clients show deficiencies that are disadvantageous to consumers. The insurance companies appear to keep approximately 70 per cent of the financial incentives and therefore only pay out 30 per cent fully to the policyholders. EIOPA has published an opinion on the subject and invites the national supervisory authorities to conduct the necessary supervisory action in light of the new European legislation and regulations.

EIOPA published an opinion in the wake of Brexit. It set up a forum for the supervisory authorities from the EU27 to handle all questions in relation to the exit of Great Britain from the European Union. Insurers and pension funds must be prepared for this on time. They need to work to pursue their activities in accordance with the rules even after Brexit and be prepared for any potential fallout from an agreement about Brexit.

EIOPA publishes an annual report on consumer trends[72]. The 2017 report places an emphasis on the importance of adequate and transparent information for consumers in the area of accrual of their pension rights. The FSMA's research on the communication of the costs charged and the returns obtained from supplementary defined contribution pension plans came under the spotlight here. The results of that research feature in a communication that gives an overview of the expectations and recommendations on financial transparency in defined contribution pension plans[73].

The FSMA led a working group on the review of the Budapest Protocol[74]. This Protocol determines the methods for cooperation between competent authorities for the supervision of cross-border activities of pension funds. It is due for review because a new European Directive[75] contains a number of amendments and new provisions for cross-border activities.

The FSMA took part in the EIOPA consultation on the provision of information on supplementary pensions. EIOPA organized the consultation at the same time as the consultation on the draft ECB regulation on statistical reporting requirements for pension funds. Both initiatives will have a major impact from the end of 2019 on the reporting obligations of pension funds vis-à-vis supervisory authorities.

ESRB

In 2017, the ESRB identified the repricing of risk premia in global financial markets as the main risk to financial stability in Europe. In a context in which the high valuation of many asset classes is paired with very low volatility, interest rate shocks or shocks relating for instance to geopolitical uncertainties, can have dire consequences for the financial system.

Vulnerabilities within the banking sector, especially as regards returns, are another source of risks on which the ESRB focuses attention. For this reason, the ESRB has examined the issue of the many non-performing loans on the balance sheets of European banks, which represent more than 5% of the total amount of loans granted. The report[76] containing the ESRB's analysis proposes a step-by-step plan to remedy the issue of non-performing loans.

72 EIOPA's Sixth Consumer Trends Report, 11 December 2017. See the website of EIOPA: https://eiopa.europa.eu/Publications/Reports/Sixth%20Consumer%20Trends%20report.pdf.

73 See this report, p. 96.

74 Protocol of 30 October 2009 relating to the Collaboration of the Relevant Competent Authorities of the Member States of the European Union, in particular to the Application of the Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORPs) Operating Cross-Border Activity.

75 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).

76 Resolving non-performing loans in Europe, July 2017. See the website of the ESRB: http://www.esrb.europa.eu/pub/pdf/reports/20170711_resolving_npl_report.en.pdf.

The ESRB has also published a second report on shadow banking[77]. At the end of 2016, the total assets of the shadow banking system came to 40,000 billion euros, representing approximately 38% of the entire financial sector in the EU and 272% of the EU's GDP. In 2016, the total assets increased by 2.6% in the EU, which constitutes a sharp drop in the rhythm of growth compared with the previous years: between 2012 and 2015 that growth was 8.3%.

A great number of the assets that come under the qualification of shadow banking (34%), come from investment funds. The investment funds sector has seen considerable growth, not just in the EU but also worldwide. It will, however, continue to grow in Europe as part of the Capital Markets Union, which wishes to strengthen the role of investment funds as regards financial intermediation. According to the ESRB, the practices used by certain investment funds as regards liquidity transformation and leverage could further increase the risks to financial stability. That is why the General Board of the ESRB approved recommendations regarding the systemic risks ensuing from liquidity gaps and from the use of leverage by investment funds[78].

In 2017, the General Board of the ESRB also approved the unfavourable scenario that it had drawn up with the ECB as part of the stress tests conducted by EIOPA at a European level by institutions for occupational retirement provision[79]. The General Board published a position paper on the macro-prudential aspects associated with a framework for recovery and settlement of central counterparties[80].

The General Board also discussed the results of different research papers analysing the derivatives markets in the EU based on the data available via the trade repositories introduced by EMIR. EMIR provides for the possibility for the ESRB and ESMA to gain access to the entire data file at an EU level. The General Board pointed out that the quality of the data concerned still had to be further improved to be able to gain a better insight into the operation of the derivatives markets. In that way, potential sources of systemic risks can also be better identified, and adjusted macro-prudential policies can be drawn up. The research papers that formed the basis for this reflection are available in the ESRB Working Paper Series[81].

FSB

A working group of the FSB conducted research into the functioning, vulnerabilities and future challenges for private pension schemes. This temporary working group looked into the impact of the private pensions sector in Europe on financial stability. In it, all forms of supplementary pensions (second-pillar pensions) and individual pensions (third-pillar pensions), managed by insurers, pension funds, banks and other institutions were thoroughly researched.

77 *EU Shadow Banking - Monitor*, No 2, May 2017. See the website of the ESRB: http://www.esrb.europa.eu/pub/pdf/reports/20170529_shadow_banking_report.en.pdf?07a2e372f760d6ab92ae8cf63c0dab76.

78 *Recommendation on leverage and liquidity in investment funds*. See the website of the ESRB: http://www.esrb.europa.eu/news/pr/date/2018/html/esrb.pr180214.en.html.

79 See this report, p. 103.

80 *Opinion on a central counterparty recovery and resolution framework*, July 2017. See the website of the ESRB: http://www.esrb.europa.eu/pub/pdf/other/170725_ESRB_opinion_counterparty_recovery_resolution_framework.en.pdf.

81 The research papers from the *ESRB Working paper Series* are available on the ESRB's website: http://www.esrb.europa.eu/pub/working-papers/html/index.en.html.

The FSMA played an active role in the research and in the preparation of the research report. The FSB report highlights the scale and diversity of the European private pensions sector both for supplementary and individual pensions, and includes an overview of the European legislation and regulations that could have an impact on the pensions sector. The report acknowledges the role of pension institutions as long-term investors and the potential role that they could play as a stabilizing force in volatile financial markets, which has a beneficial effect on the economy and financial stability.

The report points out the considerable divergence within Europe between private pension schemes and the context in which they operate. As a result, the extent to which risks are distributed between the various stakeholders also differs. The report advocates that promotion of pension products should reflect their potential stabilizing role for financial markets. The maintenance of multi-pillar pension systems, where funded pension plans complement public schemes in providing retirement income, contributes to diversifying risk and can be also advisable to promote the stabilizing role of the pension systems.

IOSCO

The FSMA is very active within IOSCO. The Chairman of the FSMA, Jean-Paul Servais, fulfils a considerable number of important mandates within this network.

Since 2016, he is also Vice-Chair of IOSCO and of the IOSCO Board. Since October 2014 he chairs the European Regional Committee of IOSCO and its Financial and Audit Committee.

As Vice-Chair, he represents IOSCO within a number of other international organizations. As a result, he is a member, and since March 2017, Chairman of the IFRS Monitoring Board. This body supervises the International Accounting Standards Board (IASB), which prepares international reporting standards for annual reports and annual accounts. He also forms part of the Official Sector Steering Group (OSSG), which works on reforming financial reference indexes such as the Euribor and the Libor.

The FSMA participated in a number of IOSCO's working groups. Their work resulted in recommendations on liquidity management in portfolio management. These recommendations were directed at investment fund managers. They should seek to ensure that liquidity management occurs in the interest of investors, even in situations of market stress[82].

The FSMA contributed to the IOSCO initiatives on the offer of binary options and other leveraged products to retail investors. IOSCO put forward a series of measures to limit the risks of such products for investors and ensure that such products are not sold without the requisite authorization[83].

These measures form part of a broader strategy by IOSCO with policy proposals in the area of investor education and of enforcement as regards companies that offer these products without an authorization.

82 IOSCO, Recommendations for Liquidity Risk Management for Collective Investment Schemes, 1 February 2018. In line with these recommendations, a report was published containing good practices addressed to supervisory authorities, the industry and investors: Final Report, Open-ended Fund Liquidity and Risk Management - Good Practices and Issues for Consideration.

83 Report on Retail OTC Leveraged Products, Consultation report, 13 February 2018.

Other IOSCO publications concerned supervision of rules of conduct on the professional market[84], points for attention for users of financial reference indexes[85] and ICOs[86].

In 2017, IOSCO and its members organized the first World Investor Week (WIW). A weeklong campaign was conducted all over the world around the theme of investor education. As part of the WIW, the FSMA organized a conference on this theme, highlighting the work of Wikifin.be.

Since 2005, the FSMA is part of IOSCO's Multilateral Memorandum of Understanding. Over the past few years, a sharp rise can be seen worldwide in the number of requests for information and assistance based on this Memorandum of Understanding. Since 2017 there is a second, more extensive Memorandum that allows IOSCO's members to share a broader range of information.

The FSMA forms part of IOSCO's new work on data analysis and cyber security. Through this work, it wishes to acquire and share knowledge and experience on the approach for these challenges.

84 *Final report 07/2017 IOSCO Task Force Report on Wholesale Market Conduct*, 13 June 2017.
85 IOSCO *Board, Statement on Matters to Consider in the Use of Financial Benchmarks,* 5 January 2018.
86 IOSCO *Board Communication on concerns related to initial coin offerings* (ICOs), 18 January 2018.

NEW DEVELOPMENTS AND CHALLENGES

The financial sector is going through a series of changes, some of which resulting from technological advances. The FSMA keeps a close eye on these changes. Some of these developments and challenges are explained below.

Fintech

The financial sector is, like many others, faced with technological advances. Digitalization is changing the behaviour of customers, who are increasingly using their computers and mobile phones to compare prices, check their account balances, make payments, or execute transactions on the markets. Combining finance and technology, these developments are collectively referred to as 'FinTech' and require established players (such as banks, insurers, and asset management companies) to adapt their business models. They also attract many new entrepreneurs who want to carve out a place for themselves in the new ecosystem that is emerging.

The sponsors of these projects are, however, not always aware of the regulatory framework that applies to the financial sector. For this reason, in June 2016 the FSMA launched a FinTech portal on its website, through which companies operating in the financial sector can get in touch with the supervisory authority. This approach gives companies the opportunity to become acquainted with financial legislation and to ask any questions they may have; it allows the FSMA to closely monitor FinTech developments in Belgium. Among the contacts initiated in 2016, two companies were authorized as alternative finance platforms in 2017.

In April 2017, the portal set up by the FSMA evolved into a shared portal for both the FSMA and the NBB. FinTech players, who are not necessarily familiar with the Twin Peaks supervisory model in force in Belgium, are thereby provided with a single point of contact (SPOC) and do not have to first identify the "right" supervisory authority to whom to address their questions. The questions addressed to the FinTech SPOC are jointly handled by FSMA and NBB teams; this allows for a rapid response from the supervisory authority which is best placed to deal with the issue, but also to jointly deal with cases falling under both the NBB's and the FSMA's supervision. The development of this SPOC also responds to a wish expressed by the "Brussels Financial Centre", a consultation forum commissioned by the Minister of Finance, in which the FSMA participates.

The FinTech portal has been contacted nearly a hundred times since its launch in June 2016. The subjects concerned are wide-ranging: from robo-advice to crowdfunding and price comparison. In 2017, many questions pertained to payments and to the entry into force in early 2018 of the second Payment Services Directive (PSD2). These queries were handled by the NBB. During the second half of 2017, and probably in the wake of the extreme price surge experienced by bitcoin, the portal has received a lot of questions about virtual currencies (or "cryptocurrencies"), particularly about schemes designed to facilitate the purchase and use of these cryptocurrencies by the general public. On this subject, the FSMA has often cautioned that the FSMA Regulation of 3 April 2014 bans the distribution in Belgium to retail clients of financial products the return on which depends, directly or indirectly, on virtual money.

The portal is of course not the only means through which the FSMA monitors FinTech developments. In addition to participating in several Belgian and international conferences, the FSMA monitors international work in this area, notably by chairing the Financial Innovation Standing Committee (FISC) within ESMA. It is this committee which, for example, drafted the report on the use of the Distributed Ledger Technology (DLT) in the financial markets[87]. The FSMA also contributed to a hearing of the European Economic and Social Committee (EESC) on the digitalization of financial services. It also participated in two roundtables organized by EIOPA concerning InsurTech, i.e. the development of technologies in insurance.

Cryptocurrencies

In 2017, the FSMA, like the other national and European supervisory authorities, also closely monitored developments in cryptocurrencies. The technological advances at the basis of cryptocurrencies provide opportunities that both the financial sector and the consumer can take advantage of, but which also entail risks. The FSMA, the NBB and other supervisory authorities have on several occasions already issued warnings on this subject. The FSMA has also drawn attention to these risks whenever it has been sent questions, notably in view of bitcoin price fluctuations, and of the growing interest for cryptocurrencies among the general public.

In 2017, the FSMA also issued a warning about Initial Coin Offerings (ICOs). These are crowdfunding campaigns through which the creators of a project raise money by offering digital tokens. These tokens usually have to be paid for with a cryptocurrency. Depending on how the ICO is structured, certain financial regulations may apply. But many ICOs are not subject to any legislation and so for the moment lie outside of any supervision. In the warning, the FSMA indicates that anyone who participates in an ICO should therefore be aware that there may be no rules governing it and no consumer protection.

This warning by the FSMA coincided with the publication of two documents by ESMA. ESMA also published a warning to alert potential ICO investors to the risks involved. In addition, ESMA issued a communication directed at companies involved in ICOs to draw their attention to the rules that may apply.

87 *The Distributed Ledger Technology Applied to Securities Markets*, 7 February 2017. See the ESMA website: https://www.esma.europa.eu/system/files_force/library/dlt_report_-_esma50-1121423017-285.pdf.

Shadow banking

Throughout the world, we are witnessing a shift towards a more market-oriented financial system, in which financial intermediation takes place outside the banking sector. This financing method offers an alternative to raising money from banks and helps to support the real economy. But it can also give rise to systemic risks. The FSMA and the NBB wrote a joint report on this phenomenon at the request of the Minister of Finance and of the High Level Expert Group on the future of the Belgian financial sector.

Financing via markets can take various forms. At the request of the High Level Expert Group, the report by the FSMA and the NBB focused on asset management and shadow banking. The expert group recommended that the risks associated with these activities and their interconnectedness with other sectors be better monitored.

The FSMA and the NBB calculated the scale of the shadow banking activities in Belgium based on the definition given by the Financial Stability Board. The total financial assets in this category amounted to EUR 128 billion at the end of last year. These assets consist mainly of money market funds and non-equity investment funds. The vast majority of these funds are under the supervision of the Belgian authorities.

In the current state of affairs, no substantial systemic risks have been identified that are associated with asset management and shadow banking. The developments in both activities and the links with other sectors of the economy require further close monitoring, including for potential reputational risks to financial groups (the so-called step-in risk).

The FSMA and the NBB consider it very important to gather data not hitherto available concerning asset management and shadow banking. They recommend that shadow banking in Belgium be monitored periodically and that international developments in this area continue to be followed. Mitigating the liquidity risks of Belgian investment funds and the interconnectedness of asset management and shadow banking with other sectors are other key recommendations.

LEGISLATION AND REGULATIONS

The FSMA is closely involved in the transposition of new legislation and the drafting of new rules for the financial sector. The following presents an overview of the most important developments over the past year.

Transposition of the European MiFID II

The Law of 21 November 2017[88] transposes MiFID II[89] into Belgian law. The transposition is supplemented by the Royal Decree of 19 December 2017[90], which more specifically introduces a regulation for giving or receiving inducements, using algorithmic trading, providing a direct electronic access to trading venues, holding financial instruments and client funds and dividing clients into categories. That Royal Decree also transposed the delegated Directive of 7 April 2016[91] into Belgian law.

MiFID II handles different subjects, all of which are related to the financial markets. Apart from provisions on markets for financial instruments and on investor protection, it also contains rules on access to the business of investment services and the conditions for authorization of investment firms.

The Law of 21 November 2017 also transposes MiFIR[92] into Belgian law, the provisions of which are of direct application in the Belgian legal order. This European Regulation regulates in particular the disclosure of trade data, reporting of transactions to the competent authorities, trading of derivatives and shares on organized venues, and the provision of investment services or activities by third-country firms after an equivalence decision by the European Commission. MiFIR furthermore deals with the powers of the competent authorities, ESMA and the EBA in the area of product intervention and position limits.

The provisions of the Law of 21 November 2017, the Royal Decree of 19 December 2017 and MiFIR entered into force on 3 January 2018. The Royal Decree of 3 June 2007 was abrogated on that same date[93].

88 Law of 21 November 2017 on the market infrastructures for financial instruments and transposing Directive 2014/65/EU.

89 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

90 Royal Decree of 19 December 2017 laying down detailed rules for implementing the Markets in Financial Instruments Directive.

91 Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

92 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

93 Royal Decree of 3 June 2007 laying down detailed rules for implementing the Markets in Financial Instruments Directive.

Approach followed for the transposition

The legislature has opted to consolidate all the aspects relating to market infrastructures for financial instruments within the Law of 21 November 2017. This Law therefore contains all the provisions of the Law of 2 August 2002[94] on the regulated markets and market operators, as well as the passages from the Royal Decree of 3 June 2007 on MTFs.

The other aspects of MiFID II, i.e. the provisions on access to the business of investment services, the conditions and procedure for authorization of investment firms and the conditions for business operation that must guarantee investor protection (now called the 'conduct of business rules'), are transposed into Belgian law through amending provisions of the laws that regulate these various aspects in Belgian law.

In the preparation of the Law of 21 November 2017 and the Royal Decree of 19 December 2017, the government opted for the most faithful possible transposition into Belgian law of the provisions of MiFID II and of the delegated Directive of 7 April 2016. The legislature has therefore sought to impose as few as possible additional requirements to those of the Directives. A number of acquisitions arising from existing law are however maintained, mainly relating to the rules for regulated markets and the organizational and governance requirements for investment firms.

Markets for financial instruments

Because of the status of regulated markets, the principle of a separate authorization for market operators and regulated markets has been abandoned. The legislature has opted for a single authorization for the regulated market, which the Minister of Finance still grants if the market concerned and its market operator comply with the conditions laid down by law.

New requirements are introduced for regulated markets, primarily regarding the mandates managers may accumulate, and the set up of an appointments committee within the governing body of significant market operators. The FSMA may, however, grant a derogation where the market operator forms part of a group in which an appointments committee is set up that complies with the legal requirements, and that is competent for the market operator concerned.

The Law also includes new requirements on the resilience and capacity of the trading systems of the regulated market. It should be possible for the markets to reject orders that are clearly erroneous or exceed volume thresholds, or to temporarily suspend or restrict trading in the case of considerable price movements on the market. MiFID II also includes specific measures to create a framework for algorithmic trading.

Still with regard to trading venues, the Law of 21 November 2017 introduces a new category of multilateral trading facilities: OTFs. The greatest differences between OTFs, and regulated markets and MTFs, are the order execution methods. By contrast to the regulated markets and MTFs, the operator of an OTF has discretionary power on the way in which transactions are executed. On an OTF, only certain financial instruments are traded (bonds, structured financial instruments, emission allowances and derivatives).

94 Law of 2 August 2002 on the supervision of the financial sector and on financial services.

The Law of 21 November 2017 also introduces a framework for providing core services for financial market data. Three different statuses are introduced, each for one specific type of information disclosure:

- the status of 'approved publication arrangement', with an authorization to provide the service of publishing trade reports;
- the status of 'consolidated tape provider', with an authorization to provide the service of collecting trade reports for financial instruments; and
- the status of 'approved reporting mechanism', with an authorization to provide the service of reporting details of transactions.

The aim is to enable users to gain the right picture of the trading activity on the financial markets and to enable the competent authorities to receive accurate and detailed information on certain transactions.

Finally, the Law of 21 November 2017 introduces a supervisory system for the commodities derivatives market, as a result of which the competent authorities must impose position limits, and transparency requirements are introduced as regards positions held.

Access to the activity of providing investment services and authorization of investment firms

As regards access to the activity of providing investment services, the Law of 21 November 2017 transposes the exemptions introduced by the European legislature, mainly regarding trading for own account, into Belgian law. New conditions are associated with these exemptions, with a distinction being made based on the activity of commodities derivatives, emission allowances or derivatives relating to emission allowances, or other sorts of financial instruments.

The existing rules for investment firms governed by the law of third countries are for the most part maintained, except for some amendments to bring them into line with the new MiFID II and MiFIR. The list of categories of clients to which those firms may offer their services in Belgium without establishing a branch there, is in line with the terms 'eligible counterparties' and 'professional client' from MiFID II.

The changes to the conditions for authorization for investment firms are characterized by a fine-tuning of the governance requirements. Some provisions of the CRD IV[95] were declared applicable to investment firms, and new governance requirements for the governing body and new rules on the accumulation of mandates are imposed.

MiFID II also provides for new organizational requirements, mainly for investment firms that develop financial instruments for sale, and for investment firms that do algorithmic trading, that offer direct electronic access to trading venues or that act as general clearing members.

95 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

Finally, for investment firms and credit institutions that offer investment services, a new obligation is also provided for to record telephone conversations and electronic communication regarding the transactions entered into for certain investment services or activities. This obligation should make supervision by regulators more efficient.

Investor protection

Just as in MiFID I, improving investor protection is also one of the key elements to MiFID II.

Ever more investors are active on the financial markets and they are offered an increasingly complex and diverse range of services and instruments. Given that personal recommendations remain of importance to clients, and financial services and instruments are becoming increasingly complex, the European legislature considered it necessary to tighten the rules of conduct to better be able to protect investors.

This occurred first of all through the introduction of new rules on product governance. Investment firms and credit institutions must be better able to understand the characteristics of the financial instruments they offer or recommend. They must also establish effective policies and rules to determine to which category of clients products and services may be offered.

Thanks to new rules on inducements, investors are guaranteed that their interests are better taken into account. To give clients more clarity on the service they receive, the Law of 21 November 2017 limits the possibility for companies that offer independent investment advice and portfolio management to accept or receive from third parties remuneration, commissions or monetary and non-monetary benefits, primarily from issuers or offerors of products.

Only small non-monetary benefits are allowed, on the condition that those benefits are clearly disclosed to the client, that they can improve the quality of the service and that they cannot be considered to take away the investment firms' ability to act optimally in the interest of their clients.

This entails that all fees, commissions or monetary benefits paid or offered by a third party must be transferred in their entirety to the client, as quickly as possible after the company receives the payment thereof.

When providing other sorts of investment services, the only inducements allowed are those that aim to improve the quality of the provision of service to the client, and that do not take away from the regulated undertaking's compliance with the obligation to act honestly, fairly and professionally in the interests of its clients. The Royal Decree of 19 December 2017 sets out the conditions which the fees, commissions or non-monetary benefits must meet in order to be considered to aim to improve the quality of the provision of client services.

In any case, the client must be informed accurately and – where necessary – regularly on all fees, commissions and compensation that the company has received in connection with the investment service provided to the client, and which the company has transferred to the client.

The transparency to clients in relation to the costs and fees owed by them as part of the provision of investment or ancillary services is also enhanced. Investment firms and credit institutions will from now on be obliged to inform their clients accurately on all costs and fees of the provision of service concerned and of the recommended or traded financial instrument concerned, and on the cumulative effect of those costs and fees on the return on investment.

The Law of 21 November 2017 also includes new rules on investment advice. So that investors receive relevant information, the investment firms and credit institutions that offer investment advice must from now on disclose to their clients how much their advice costs and clarify what they base their advice on. They will in particular have to state which product range they take into account in the formulation of personalized recommendations to their clients, whether they give investment advice on an independent basis, and whether they provide their clients a regular assessment of the suitability of the recommended financial instruments.

Where advice is provided on an independent basis, sufficient products from different product offerors will have to be assessed prior to giving a personal recommendation. As a result, the range of financial instruments may not be limited to financial instruments that are issued or offered by entities that have close links with the investment firm or are in another close legal or economic relationship, such as a contractual relationship, that is so close that the independent basis of the advice given may be jeopardized.

To further protect the consumer, investment firms and credit institutions are no longer allowed to reward staff performance by setting sales targets or providing other incentives to give preference to recommending or selling a particular financial instrument, even if another instrument ties in better with the needs of the client.

Finally, the Law of 21 November 2017 also provides for the transposition into Belgian law of the new requirement that employees who give advice to retail clients on investment products, or sell these, must possess sufficient knowledge and expertise with regard to the products offered. Investment firms and credit institutions must give their staff sufficient time and means to acquire this knowledge and expertise and to use it when providing services to clients.

Recommendations from the High Level Expert Group

On 13 January 2016, the High Level Expert Group set up by the Minister of Finance published its recommendations for the future of the Belgian financial sector. This contained recommendations about the requirements regarding the fitness and propriety of the managers of companies active in the financial sector and recommendations on compliance.

Fit & proper

In accordance with the various sectoral laws that regulate the status of financial institutions, the senior management of these institutions is conferred on persons who possess the requisite professional integrity and appropriate expertise for the exercise of their role. This refers to what is usually called the fit & proper nature of the senior managers.

The FSMA supervises compliance with the requirements for regulated undertakings subject to its prudential supervision. Those same requirements apply to the intermediaries active in the lending sector, the insurance sector and the banking and investment services sector.

In the consecutive amendments to the law, those requirements were extended to all members of the statutory governing body and those responsible for the independent control functions (internal audit, compliance, risk management).

The High Level Expert Group recommended that the process for continuous assessment of the fit & proper requirements be promoted and that even more attention be paid to the conduct of managers in the exercise of their functions.

The law provides for the continuous assessment of the fit & proper requirements. The fit & proper requirements must permanently be complied with, just like the other conditions for authorization.

The FSMA can decide to re-assess the fit & proper nature of the managers following findings or analyses in the exercise of its supervisory task. This re-assessment can for example arise from the identification of breaches of the legal or regulatory requirements, or from reports or findings on the behaviour of the persons concerned. This can for example concern repeatedly or knowingly not following up on recommendations from the FSMA, lack of availability to attend meetings, providing incomplete or inaccurate information to the FSMA or shareholders, and not cooperating with the FSMA.

Outside of these findings, the person or institution concerned must also straight away report to the FSMA every relevant new fact that could have an influence on the fit & proper nature of all persons subject to these requirements. They are after all required to recruit and employ experts who have professional integrity. This can concern the following relevant new facts or aspects: investigations launched by administrative or judicial authorities in the broad sense (including investigations on facts that could lead to being barred from conducting professional activity), aspects that could lead to disciplinary penalties etc.

To fit in with the recommendations of the High Level Expert Group, the principle of continuous assessment of the fit & proper nature is further tightened through changes in the law. Those changes are introduced by the Law of 5 December 2017 containing miscellaneous financial provisions introduced in various sectoral laws relating to the supervisory powers of the FSMA.

In these laws, it is now specifically stated that the regulated undertakings, intermediaries and their managers must straight away inform the FSMA of every fact or aspect that entails a change to the information provided at the time of application for registration or authorization, and that could have an effect on the suitability or professional integrity required for the exercise of the role concerned. It is also reminded that, where the FSMA is aware of such a fact or aspect in the exercise of its supervisory task, it may proceed to reassess compliance with the fit & proper requirements. Although this prerogative is not expressly reiterated for the other requirements imposed by or pursuant to the same law, it is clear that it also applies for those other requirements.

Compliance function

As regards compliance, the High Level Expert Group has a general aim to further create a framework for the compliance function in regulated undertakings, to thereby contribute to a reinforcement of the integrity of the financial sector and to the trust of consumers in that sector. The High Level Expert Group equally came to the conclusion that the approaches of the FSMA and the NBB as regards assessing the requirements of fitness and propriety should be more closely aligned with each other.

The FSMA (as supervisor of the conduct of business rules) and the prudential supervisory authority (the NBB, ECB or FSMA based on the undertakings concerned) must assess the fitness and propriety of the persons who will be tasked with the responsibility for the compliance function in regulated undertakings. The supervisory authorities have a certain margin of discretion.

For the aspects relating to the rules of conduct, the FSMA has established a regulation for the approval of compliance officers. The methods for this approval and the conditions thereof are defined in a regulation of the FSMA[96]. One of the conditions for approval entails that the candidate compliance officer must comply with the conditions of fitness and propriety, experience, qualifications and professional knowledge.

Compliance with the requirement of professional knowledge is demonstrated by a pass certificate of an exam on rules of conduct recognized by the FSMA. Compliance officers and their staff must also continuously follow training courses.

The High Level Expert Group advocates the point-of-view that the exam that the FSMA has introduced in the approval regulation for compliance officers can be used by the prudential supervisory authority as an assessment of the requirement of expertise for the responsibilities under the compliance function.

More specifically, this means that the person who is a candidate to take responsibility for the compliance function must, to be able to meet the requirements of expertise, at least deliver proof of having passed an exam recognized by the FSMA and the NBB. The methods for that exam, from the recognition thereof by the NBB and the FSMA, to the continuance of professional education, should be clarified in two regulations, which the FSMA and the NBB will have to adopt each for their own areas of supervision. For the FSMA that would entail amending the current regulation of 27 October 2011 on the approval of compliance officers.

That regulation would serve to establish the conditions for recognition of the training centres that organize the continuing professional education of compliance officers.

This reform would contribute to greater administrative transparency as regards the minimum requirements the supervisory authority must take into account, and allow those responsible for the compliance function to make the necessary preparations for their assessment. Legal certainty should also be promoted by ensuring that the respective competent authorities do not take conflicting decisions.

The various sectoral laws that regulate the status of financial institutions are amended by the Law of 5 December 2017 containing miscellaneous financial provisions. That amendment served to expressly provide that the prudential supervisory authority may establish, by way of a regulation, the minimum conditions that must be met as regards the requirement of appropriate expertise, including the methods for assessing that requirement.

96 Regulation of the FSMA of 27 October 2011, implementing Article 87bis of the Law of 2 August 2002.

Transposition of the European Anti-Money Laundering Directive

The Law of 18 September 2017[97] transposes the European anti-money laundering directive[98] and the international standards[99] of the Financial Action Task Force (FATF) in Belgian law. By way of this law, the preventive system to combat money laundering and terrorist financing (AML/CFT) is fully updated, following major developments that have occurred in this respect on a European and international level.

The Belgian legislature has opted to entirely replace the Law of 11 January 1993[100]. The replacement of the Law of 11 January 1993 with a new law has enabled the legislative text to be restructured more logically.

The following are the essential amendments to the legislative text:

- **Risk-based approach**
  The Law of 18 September 2017 places the emphasis on the risk-based approach, which forms an essential part of the international standards of the FATF and AMLD4. It introduces an important change by introducing a "cascade" procedure for identification and assessment of the risks by the European Commission, the Member States and the obliged entities.

  For the obliged entities, the risk-based approach entails that they must identify, assess and understand the risks of money laundering and terrorist financing (ML/TF) to which they are exposed, and that they take AML/CFT measures based on the risks. The obliged entities must conduct enhanced customer due diligence if those risks are greater. If the risks are lower, they may conduct simplified customer due diligence.

  In that respect, the European Supervisory Authorities (ESAs) have published guidelines on risk factors[101]. Those guidelines describe the factors that the obliged entities must take into consideration where they assess an ML/TF risk linked to a business relationship or occasional transaction. They also describe how the obliged entities must adjust the extent of their customer due diligence to the ML/TF risks identified.

97 Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

98 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

99 International standards to combat money laundering and terrorist financing and proliferation.

100 Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorism financing.

101 Common Guidelines pursuant to Article 17 and Article 18, paragraph 4 of Directive (EU) 2015/849 regarding simplified and stricter customer due diligence and the factors that credit institutions and financial institutions must take into consideration when assessing money laundering risk and the risk of terrorism financing linked to individual business relationships and occasional transactions.

- **Due diligence obligations**
  The aspects that form part of the due diligence obligations remain unchanged. Contrary to the Third Directive, AMLD4 provides for the application of the risk-based approach on all aspects that form part of the due diligence obligation, including the obligation to identify customers, agents and their beneficial owners, and to verify their identity.

- **Enhanced due diligence measures for high-risk third countries**
  In accordance with the provisions of the Third Directive on relations with third countries it had to be determined whether these third countries had 'equivalent' AML/CFT systems as those of the European Union. By virtue of that information, exemptions could then be granted for certain aspects of the due diligence obligations as regards customers. Given the new provisions on risk analysis, AMLD4 no longer includes provisions on the equivalence of third countries, as the application of exemptions based simply on geographical criteria becomes less relevant.

  Article 9 of AMLD4 empowers the European Commission to draw up a list of the third countries with AML/CFT legislation and regulations which have strategic deficiencies that pose significant threats for the financial system of the Union. Those countries are referred to as 'high-risk third countries'. Obliged entities must from now on take enhanced due diligence measures for customers established in third countries on that list.

- **Information on beneficial owners**
  This area constitutes one of the major changes for the AMLD4. The Law of 18 September 2017 imposes the obligation on corporate and other legal entities to obtain and hold information on their beneficial ownership and to provide this to the obliged entities. This information must also be stored in a central register of beneficial owners (hereinafter referred to as the 'UBO'[102]register), held and managed by the General Treasury Administration and accessible to obliged entities.

  These new transparency measures will make it easier to identify ultimate beneficial owners. However, these measures do not dispense the obliged entities of their due diligence obligations, because they are not based solely on the UBO registers and the application of a risk-based approach.

- **Broadening of the notion of 'politically exposed persons'**
  The Law of 18 September 2017 broadens the notion of 'politically exposed persons' regarding which enhanced due diligence measures must be applied. That notion includes all persons who exercise (or who have exercised) important public functions abroad, and the senior managing officials of international organizations. From now on, that notion also includes all persons who exercise (or who have exercised) important public functions on the national territory.

- **Protecting and keeping data**
  Obliged entities must keep the necessary information and supporting documents they obtain as part of the exercise of their obligation of due diligence relating to their customers and the transactions they execute. This should enable them to fully be able to cooperate with AML/CFT and to be able to respond quickly to requests for information from the FSMA or authorities competent for investigations and criminal prosecution. Pursuant to the Law of 18 September 2017, the amount of time for which data need to be kept is increased progressively: from the current 5 years to 7 years in 2017 and thereafter one more year up to 10 years from 2020.

102 Ultimate Beneficial Owners.

AMLD4 clarifies that the processing of persona data it implies is deemed a public-interest task within the meaning of the European Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data[103]. The Law of 18 January 2017 describes the aim of collecting data, namely the prevention of ML/TF, prohibits any later processing incompatible with the aforementioned aim, and finally confirms that this processing is necessary for the exercise of a public-interest task.

Whistleblower alerts

Several European regulations and directives, including the Market Abuse Regulation[104], require that competent authorities in Member States introduce effective mechanisms for whistleblower alerts. This should enable actual or potential infringements of European and national legislation to be alerted of.

Whistleblowers can draw attention to new information on the basis of which a competent authority can better uncover infringements and act against them. For this reason it is essential that appropriate rules exist to allow whistleblowers to alert the competent authority of potential infringements and to better protect them against retaliation.

The Law of 31 July 2017[105] introduced such mechanisms for whistleblower alerts to the FSMA. That Law also completed the implementation of the Market Abuse Regulation, which was already to a great extent implemented by the Law of 27 June 2016[106]. It is primarily concerned with introducing and improving a number of the FSMA's investigative powers and the measures it may take in case of an infringement of the provisions of the Market Abuse Regulation and therefore also a whistleblower regulation.

A new Article 69bis of the Law of 2 August 2002 introduces the basis for a whistleblower regulation. This regulation does not limit itself to alerting of infringements to European and national legislation and regulations which introduce such a regulation. The whistleblower regulation is broadly applicable to all rules referred to in Article 45 of the Law of 2 August 2002, for which the FSMA is the competent authority. The new Article 69bis lays down that the FSMA must set up effective mechanisms to enable itself to be alerted of actual or potential infringements to these rules.

The same Article provides for the protection of people who make such an alert to the FSMA in good faith. These persons are protected against civil, criminal and disciplinary action as well as professional sanctions because of such an alert. They are not considered to be contravening any restriction to disclosing or communicating information and may not be held liable for the communication of this information.

103 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

104 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

105 Law amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services, implementing Regulation (EU) No 596/2014 on market abuse and transposing Directive 2014/57/EU on criminal sanctions for market abuse and Commission Implementing Directive (EU) 2015/2392 as regards reporting to infringements, and containing miscellaneous provisions.

106 See the 2016 FSMA annual report, p. 115.

The Article also prohibits retaliation, discrimination and other forms of unfair treatment or disadvantageous measures against an employee as a result of – or in connection with – alerting of an infringement in good faith. If it can reasonably be suspected that the employer was aware of – or made a decision based on – the fact that the employee in question had alerted the FSMA of an infringement, the burden of proof that such action or measure did not have any connection with – and was not a consequence of – that alert rests with the employer for a period of 12 months.

If the employer still unilaterally ends the employment relationship or the terms and conditions of employment of an employee who alerts of an infringement, the employee may ask to be reinstated by the company. That must occur under the same conditions as before and with back pay. The employee may also claim compensation equal to six months' gross salary or equal to the damage actually incurred. The FSMA may confirm the whistleblower status of the person in employment disputes. Statutory members of staff and persons employed by persons other than employers, such as self-employed staff, benefit from the same level of protection.

Article 69bis of the Law of 2 August 2002 also provides that the FSMA must protect the confidentiality of the whistleblower. The Article moreover provides that the FSMA shall establish procedural rules by way of a regulation for receiving and handling whistleblower alerts. The FSMA has drawn up such as regulation[107].

The Regulation provides for the designation within the FSMA of staff specifically to work on handling such alerts of infringements. It also specifies which information the FSMA includes on its website on receiving and handling alerts of infringements. The Regulation sets out the procedures that apply to these alerts, including the possibility of alerting of an infringement anonymously.

The Regulation describes the channels through which the alerts may occur and provides a framework for the way in which alerts are registered and saved. It describes in detail how the FSMA safeguards the confidentiality of the whistleblower's identity. The Regulation introduces four special communication channels for alerting of infringements, including an electronic option.

The FSMA's Whistleblowers' point of contact was launched on 28 September 2017.

The Law of 31 July 2017 also introduced a new Article 69ter to the Law of 2 August 2002. By virtue of that Article, institutions and persons with an authorization or registration with the FSMA or NBB must introduce appropriate internal procedures for alerting of actual or potential infringements to the rules as referred to in Article 45 of the Law of 2 August 2002[108]. Whistleblowers may opt to address their alert directly to the FSMA without first having to alert of the infringement internally.

107 Regulation of the FSMA of 5 September 2017 laying down further procedural rules for receiving and handling alerts of infringements, approved by Royal Decree of 24 September 2017.

108 For more information about this obligation, see the FSMA's circular of 24 November 2017 on the appropriate internal procedures for reporting infringements (in French or Dutch).

PRIIPs Regulation

Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation) is applicable since 1 January 2018[109]. This Regulation obliges the developer of a packaged retail or insurance-based investment product (PRIIP) to draw up a key information document. This document must be published before a PRIIP is allowed to be offered to retail clients.

The Law of 18 April 2017 containing various provisions on the economy[110] inserted Article 37sexies to the Law of 2 August 2002. This provision designates the FSMA as the competent authority for the supervision of compliance with the PRIIPs Regulation and its implementing decrees.

The provision also obliges the PRIIP developer or the person who sells the PRIIP to provide the key information document to the FSMA in advance if a PRIIP is to be traded in Belgium. The terms of this obligation are clarified by Royal Decree[111] (notification decree). This Royal Decree clarifies who is responsible for this prior provision, when this should occur and what language version must be provided to the FSMA.

Furthermore, the notification decree contains several technical amendments to the Royal Decree of 14 November 2003 on life insurance activities and the Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients. The aim of this is to ensure coherence with the provisions of the PRIIPs regulation and Directive 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (IDD).

The most important amendment is the deletion of title 2 on the information document and of several provisions of title 3 on advertisements, including the provision on the risk label. These provisions were after all difficult to harmonize with the European regulations provided for in the PRIIPs Regulation and the IDD. That also meant that the FSMA Regulation of 3 April 2014 on the technical requirements of the risk label was no longer relevant. On 24 October 2017, the FSMA enacted a regulation abrogating the Regulation of 3 April 2014. This regulation was approved by the Royal Decree of 25 December 2017[112].

109 This was originally intended for 31 December 2016 but was postponed until 1 January 2018 by Regulation (EU) No 2016/2340 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products as regards the date of its application.

110 Published in the Belgian Official Gazette of 24 April 2017.

111 Royal Decree of 25 December 2017 clarifying the obligation of prior provision of the key information document to the Financial Services and Markets Authority and containing miscellaneous provisions (Belgian Official Gazette, 29 December 2017).

112 Royal Decree of 25 December 2017 approving the regulation of the Financial Services and Markets Authority abrogating the regulation on the technical requirements of the risk label (Belgian Official Gazette, 29 December 2017).

Insurance Distribution Directive (IDD)

The Insurance Distribution Directive[113] contains several sections:

- it regulates the status of insurance and reinsurance intermediaries and imposes requirements on insurance and reinsurance companies regarding knowledge, expertise and integrity of staff who are directly involved in distribution;
- it includes information and conduct of business rules that apply to all insurance distributors (insurance companies and insurance intermediaries). In addition to certain rules of conduct and disclosure obligations that apply to the distribution of all sorts of insurance policies, the IDD also includes additional requirements for insurance products with an investment component (classes 21 and 23). It should be noted that some of the provisions concerned from the Directive apply to insurance under second-pillar pensions.

The IDD is a recast of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation. In that Directive, minimal harmonization is opted for, meaning that Member States can impose stricter provisions than those of the Directive. The IDD is supplemented by delegated regulations, which are directly applicable in Belgian law.

In 2017, at the request of the Minister of Economy and Consumer Affairs and of the Minister of Finance, the FSMA organized a consultation on the draft bill transposing the IDD into Belgian law.

The IDD must be transposed by 1 July 2018 into Belgian law. The regulation provided for in the Directive will enter into force on 1 October 2018.

New Prospectus Regulation

The European Parliament approved the Prospectus Regulation on 5 April 2017[114]. The European legislature considers this Regulation to be a key aspect to building a capital markets union. The aim of the capital markets union is to offer undertakings a more diversified access to finance, to make markets work more efficiently, and to offer investors and savers more opportunities to make a return on their capital to stimulate growth and create jobs.

113 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution.

114 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

The fact that the European legislature has opted for a regulation rather than a directive arises from its wish to achieve better harmonization of the legislation on the publication of information when offering securities to the public or when admitting securities to trading on a regulated market.

The new rules differ in some major aspects from the current prospectus regulation:

- the main difference is the thresholds above which the obligation to publish a prospectus will apply. From now on, Member States will be prohibited from requiring a prospectus for public offers of securities if the total consideration amounts to less than 1 million euros. However, Member States may impose alternative obligations on publication, in so far as these do not cause disproportionate or unnecessary burdens. The new threshold will enter into force on 21 July 2018;
- Member States will also be able to opt to grant an exemption to the obligation to publish a prospectus for offers to the public with a total consideration amounting to between 1 million euros and 8 million euros. These exemptions do not apply to admissions to trading on a regulated market, for which a prospectus must be drawn up, irrespective of the amount of the transaction;
- the Prospectus Regulation also contains other new provisions on exemptions to the obligation to publish a prospectus for admissions to trading on a regulated market. The obligation to publish a prospectus therefore no longer applies for the admission to trading of securities that may be exchanged for securities already admitted to trading on the same regulated market, as long as these securities represent, for a period of twelve months, less than 20% (no longer 10% as before) of the number of securities already admitted to trading on the same regulated market. Furthermore that exemption applies to all sorts of securities and no longer only to shares. The new Prospectus Regulation applies a ceiling of 20% for the admission of shares arising from converting or exchanging other securities, or from exercising rights conferred by other securities, where those shares belong to the same category as the shares already admitted to trading. Such a restriction was not previously provided for by the Prospectus Regulation and the Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets. The new provisions apply since 20 July 2017, meaning that the corresponding provisions of the Law of 16 June 2016 are implicitly abrogated;
- Finally, the publication obligations for admissions to trading on a particular regulated market of securities already admitted to trading on another regulated market are limited. Moreover, the new Prospectus Regulation introduces the rule of the 'Universal Registration Document', on the basis of which an issuing institution whose securities are admitted to trading on a regulated market or an MTF may be eligible under certain circumstances for shorter approval timescales for the prospectus. A specific more flexible arrangement is also introduced (the 'EU Growth prospectus') for SMEs and certain other small-scale issuing institutions. The contents of the prospectus will also be fully overhauled. The legislative work on this is still currently underway at a European level. This final part of the new regulation will apply from 21 July 2019.

At the request of the Minister of Finance, the FSMA organized a public consultation from 24 November 2017 to 15 January 2018. The aim of this consultation was to provide information about the position of the parties involved on a draft bill and a preliminary draft royal decree, which primarily serve to take the necessary measures for the application of the Prospectus Regulation in Belgium.

This consultation covered subjects such as the threshold above which the obligation to publish a prospectus will apply from 21 July 2018, and alternative publication obligations for offers to the public that come under that threshold. A number of changes are also proposed in relation to the regulation of takeover bids.

The texts in which the proposed changes are incorporated will be approved in the summer of 2018.

Completion of the implementation of the Market Abuse Regulation

The Market Abuse Regulation[115] is directly applicable in Belgian legal order since 3 July 2016. However, a number of provisions had to be implemented into Belgian law. The Law of 27 June 2016 already introduced a number of necessary changes to the law from 3 July 2016[116].

The Law of 31 July 2017[117] also provided for the completion of the implementation of the Market Abuse Regulation. That occurred primarily by introducing or enhancing a number of investigative powers of the FSMA and measures it may take in case of an infringement to the provisions of the Market Abuse Regulation. A number of these changes also immediately served to transpose MiFID II[118]. This Law also introduced the whistleblower regulation[119]. Finally, this Law also further transposed the directive on criminal sanctions[120] This Directive establishes minimum requirements for criminal sanctions for market abuse and obliges Member States to provide for criminal sanctions in their national laws for at least the most serious and deliberate forms of market abuse.

As regards the investigative powers of the FSMA and the measures it may take, the Law firstly amended the existing powers of the FSMA's investigations officer to proceeding with seizure outside a home. This primarily relates to the aims and objectives of the seizure. The Law also introduced the power for the FSMA's investigations officer to ask an examining magistrate to conduct a search in a home and to proceed with seizure. A framework was established with the necessary guarantees for such searches and seizures in a home, in addition to the intervention of the examining magistrate.

A different term was also provided for the existing power of the FSMA's investigations officer to request details of electronic communications from operators and service providers. This term varies based on the type of data and the type of infringement. There are also additional guarantees provided for as well as an amendment to the data that may be requested.

115 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

116 See the 2016 FSMA annual report, p. 115.

117 Law amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services, implementing Regulation (EU) No 596/2014 on market abuse and transposing Directive 2014/57/EU on criminal sanctions for market abuse and Commission Implementing Directive (EU) 2015/2392 as regards reporting to infringements, and containing miscellaneous provisions.

118 See also this report p. 148 et seq.

119 See also this report p. 157 et seq.

120 Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive).

The Law explains the possibility for the FSMA to impose, in the case of market abuse by a legal person, an administrative fine cumulatively to the legal person, and to the natural person who committed an infringement on behalf of the legal person, and to any other natural person involved in the legal person's decision. Finally, the Law abrogates the automatic barring from conducting professional activity under Article 20 of the Banking Law[121] in the case of imposing an administrative fine for infringements such as to the prohibition of market abuse. This abrogation came out of the fact that barring someone from conducting professional activity, because of its automatic nature, did not always enable specific circumstances to be taken into account. This abrogation does not change the fit & proper assessment by the FSMA or the NBB.

121 Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms.


NIAGARA

THE ORGANIZATION OF THE FSMA

Structure and bodies of the FSMA

Management Committee

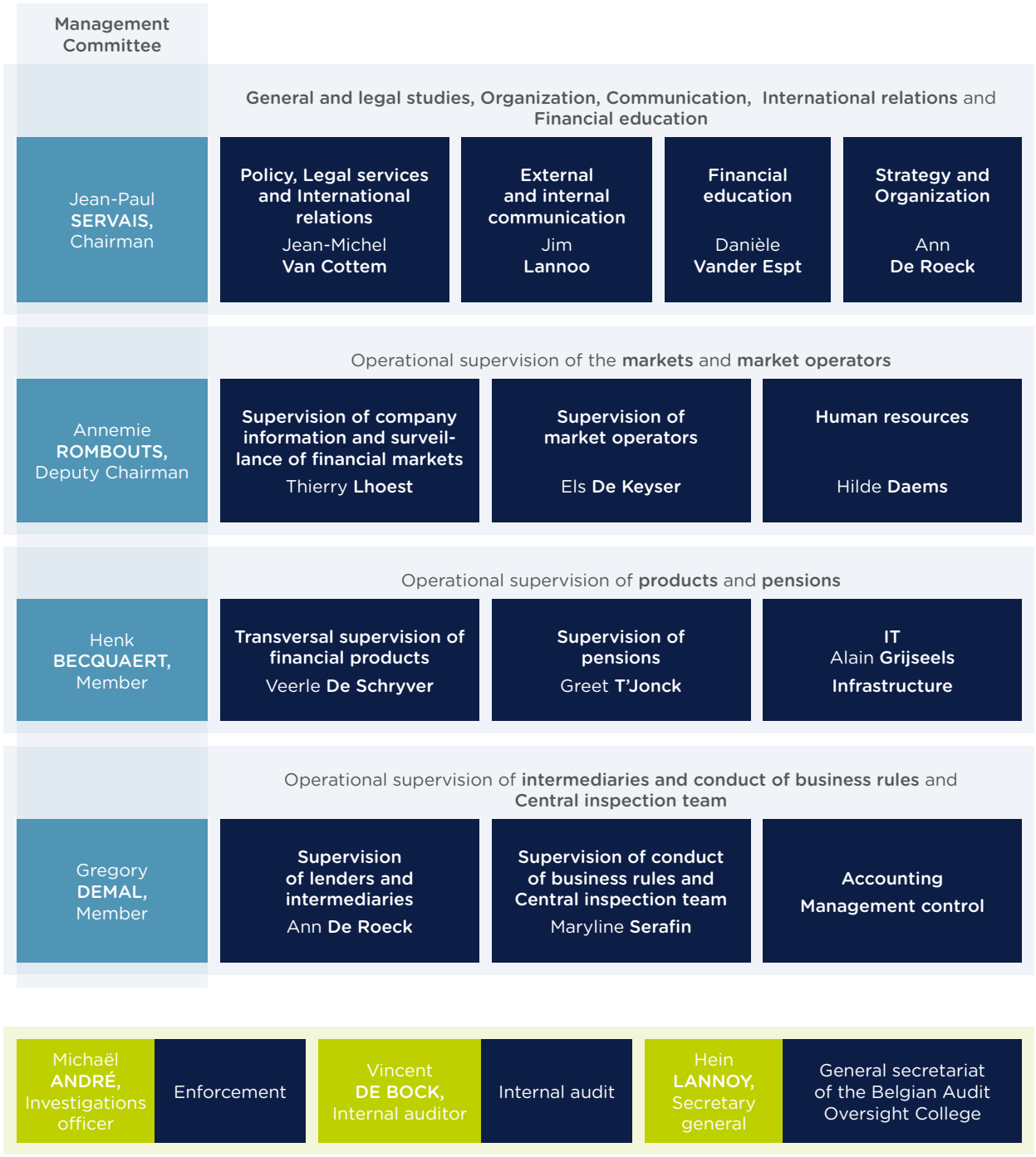
Jean-Paul **Servais, Chairman**

Annemie **Rombouts, Deputy Chairman**

Henk **Becquaert, Member**

Gregory **Demal, Member**

Organization chart of the departments and services



Supervisory Board

Composition

Dirk **Van Gerven, Chairman**

Jean **Eylenbosch**

Roland **Gillet**

Deborah **Janssens**

Pierre **Nicaise**

Frédéric **Rouvez**

Kristien **Smedts**

Reinhard **Steennot**

David **Szafran**

Jan **Verhoeye**

Report on the Supervisory Board's exercise of its statutory tasks

Composition and operation of the Board

In 2017, Kristien Smedts, David Szafran and Jan Verhoeye were appointed as new Members of the Supervisory Board[122]. The mandates of Deborah Janssens, Jean Eylenbosch and Frédéric Rouvez were also extended. Reinhard Steennot replaces Marnix Van Damme to complete the latter's mandate.

122 Royal Decree of 14 June 2017, Belgian Official Gazette, 21 June 2017.

The members thank the outgoing members of the Board, Marieke Wyckaert, Jean-François Cats and Marnix Van Damme, for their expert contribution to the Supervisory Board.

The Members elected Kristien Smedts, Pierre Nicaise, Frédéric Rouvez and Reinhard Steennot as members of the Audit Committee.

In 2017, the Supervisory Board met eight times and used the written procedure twice. The average attendance rate of the Members of the Supervisory Board was 80 per cent of meetings.

The Board wishes to thank the Management Committee and the FSMA staff members for their collaboration in the execution of the Board's tasks.

Implementation of the FSMA's tasks

Thanks to the explanations given by the Management Committee, the Supervisory Board found out about the action plans for the various supervisory services of the FSMA and discussed the implementation of these plans. The Board also devoted attention to the activities of the supporting services and in particular discussed the IT strategy for the coming years, as well as risks related to IT.

At the end of 2017, the Board discussed the FSMA's action plan for 2018. In this respect, the Board supports the planned enhancement of the risk models used by the FSMA, based on a more thorough analysis of a broader array of data.

The Members also received several opportunities to exchange ideas on the FSMA's initiatives in the area of financial education. The Board is pleased that the European Commission will grant funding to the FSMA as part of its Structural Reform Support Programme, for innovative tools in financial education.

In line with the findings of the High Level Expert Group on the future of the financial sector, the Supervisory Board regularly exchanged views with the Management Committee on the FSMA's role in tightening financial supervision as an asset for Brussels as a financial centre.

Regulatory developments

The Members were informed on the relevant regulatory developments including the transposition and implementation of a number of European rules such as MiFID II and the PRIIPs Regulation.

By virtue of its statutory task contained in Article 49, § 3, of the Law of 2 August 2002, the Supervisory Board advised the Management Committee on different regulations including the regulation to create a framework for the whistleblower scheme. The Members of the Board also provided advice on the regulation concerning the information on costs and fees in insurance policies, and they formulated a number of suggestions to clarify this regulation.

The Members were also informed on the European Commission's proposals on reinforcing supervisory convergence within the EU, which will go hand-in-hand with greater accountability for national supervisors like the FSMA towards ESMA and EIOPA.

Functioning of the FSMA

In 2017, the Supervisory Board approved changes in both the internal regulations of the FSMA and the internal rules of the Audit Committee.

As part of its statutory tasks, the Board approved the FSMA's 2018 budget. The budget also shows the outgoings for the supervision of company auditors, for which the FSMA provides the Secretariat.

The Board approved the annual accounts for the year 2016 on 26 April 2017 and the annual accounts for 2017 on 19 April 2018.

The Members also exchanged views on a wide range of topics that concern the organization, HR policy and internal operation of the FSMA. The Board provided suggestions for the design of the structure of the new FSMA website and for the new layout of the FSMA's annual report. The 2016 annual report was approved on 26 April 2017 whilst the present report, as regards the competences of the Supervisory Board, was approved on 19 April 2018.

Report on the Audit Committee's exercise of its statutory tasks

In June 2017 the Supervisory Board changed the composition of the Audit Committee and elected Kristien Smedts, Pierre Nicaise, Frédéric Rouvez and Reinhard Steennot as Members of the Audit Committee. On 29 June 2017 the Audit Committee re-elected Pierre Nicaise as Chairman.

The Audit Committee met seven times in 2017. During its meetings, the Audit Committee audited the 2016 accounts prepared by the Management Committee and the budget for 2018 and advised the Supervisory Board to approve these. The Members also discussed the new presentation of the annual report and provided suggestions in this respect.

In application of Article 48, § 1*ter*, first paragraph, 3° of the Law of 2 August 2002, the Audit Committee handled several internal audit reports, including the report on the overview of registrations and supervision of lenders and credit intermediaries (mortgages and consumer credit) and the report on the overview of teleworking at the FSMA. The Audit Committee discussed the follow-up to the recommendations from previous audit reports. It approved the new internal audit charter.

The Management Committee furthermore provided explanations to the Audit Committee on a number of new developments such as the preparations for the Financial Education Centre. The Audit Committee also discussed the IT strategy for the coming years with the Management Committee.

The Audit Committee reported on its activities to the Supervisory Board. On its advice, the internal regulations of the audit committee were amended by the Supervisory Board.

The internal audit function at the FSMA

The Supervisory Board exercises general supervision of integrity, compliance, appropriateness and effectiveness of the FSMA's operations[123]. In the exercise of this supervisory task, the Supervisory Board is assisted by an Audit Committee composed of members from within its midst. That Audit Committee is in turn supported by internal audit in the exercise of its tasks.

Internal audit is an independent and objective activity that offers the FSMA's management reasonable certainty as to the control of the action it undertakes, that provides advice as to how to improve this action and contributes to achieving added value. With its work, internal audit contributes to achieving the objectives of the FSMA, by supporting the Management Committee in managing the risks to which it is exposed, through an evaluation of the processes defined within the institution for sound governance, risk management and supervision.

Every audit report is presented for discussion and sign-off to the Management Committee by the manager of internal audit. These reports are then sent and presented to the Audit Committee along with the measures taken by the Management Committee to implement these audit recommendations.

In 2017, a thorough investigation was conducted on the operation of internal audit within the FSMA itself. For a large part of the year, work was ongoing on a review of the organization and the operation of internal audit, an investigation into the compliant application of the principles of 'sound governance', an update to several documents (including the audit charter), and on evaluating, updating and extending a work method focusing on the requirements under internal audit standards and a risk-based approach. A quality programme has also been set up.

The first audit task, which completed in 2017, focused on teleworking at the FSMA. Teleworking was introduced in the FSMA in 2010. This new way of working was evaluated in light of the recent evolutions in the employment market, where there is a significant trend among employers towards teleworking as it constitutes a key factor for both current and future employees. This evaluation was conducted from the point-of-view of seeking compliance, effectiveness and efficiency.

Following this audit, the management of the FSMA reviewed certain aspects of the application of teleworking. At the request of the Members of the Management Committee, internal audit evaluated the new methods during a test phase at the end of 2017. The idea is that these methods be applied uniformly across the entire institution in 2018.

Internal audit also focused on the FSMA's financial education programme launched in January 2013, which is known under the name Wikifin.be, and more specifically on its regulated savings accounts simulator. That functional audit's main aim was to assess how the primary data – the data from banks on interest rates, maturity dates etc. – are input in the FSMA's central database to later be included in the Wikifin.be simulator. Internal audit opted for a risk-based approach for this task. It analysed the audited process from the point of view of the risks and identified the checks that should apply to compare them with the checks that are in practice applied. It also analysed the design effectiveness and operating effectiveness of those checks to verify their efficiency.

123 Article 48, § 1, 7° of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

In addition to these different tasks, internal audit conducted a number of follow-up audits on the application of the measures taken following its recommendations under the audit tasks on management control, supervision of market operators (regulated real estate companies, asset managers, bureaux de change and independent financial planners), the basic concepts of data management or the audit of the registration and operational supervision of lenders and credit intermediaries for mortgages and consumer credit.

Finally, the audit committee audited internal audit's half-yearly activity reports in 2017 and approved the action plan of that department for 2018.

Auditor

André Kilesse[124]

In accordance with Article 57, second paragraph of the Law of 2 August 2002, the FSMA's accounts are inspected by one or more company auditors. They are appointed by the Supervisory Board for a renewable term of three years, and on condition that they not be included on the list of auditors accredited by the FSMA and not exercise any function with a company subject to the FSMA's supervision. The auditors verify and certify every element specified by the regulations on covering the FSMA's operating expenses as referred to in Article 56 of the above-mentioned Law.

124 Appointed in accordance with Article 57, second paragraph, of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

Sanctions Committee

Composition

Michel **Rozie**, Chairman

Honorary first president of the Antwerp Court of Appeal,
member of the Sanctions Committee in the capacity of magistrate who is neither a counsellor at the Supreme Court nor at the Brussels Court of Appeal

(end of term of office: 2 February 2021)

Martine **Castin**

Member of the Sanctions Committee with appropriate expertise in the area of statutory audits of annual accounts

(end of term of office: 17 September 2023)

Veerle **Colaert**

Member of the Sanctions Committee

(end of term of office: 14 October 2017)[125]

Erwin **Francis**

Counsellor of the Supreme Court,
Member of the Sanctions Committee at the recommendation of the first president of the Supreme Court.

(end of term of office: 2 February 2021)

125 On 14 October 2017, the term of office of five members came to an end. In accordance with Article 48*bis*, § 3, third paragraph of the Law of 2 August 2002, failing renewal, the Members shall continue to serve under the Sanctions Committee first meets in its new composition.

Guy **Keutgen**

Member of the Sanctions Committee

(end of term of office: 2 February 2021)

Jean-Philippe **Lebeau**

President of the Commercial Court of Hainaut,
Member of the Sanctions Committee in the capacity of magistrate who is neither a counsellor at the Supreme Court nor at the Brussels Court of Appeal

(end of term of office: 14 October 2017)[125]

Christine **Matray**

Counsellor of the Supreme Court,
Member of the Sanctions Committee at the recommendation of the first president of the Supreme Court.

(end of term of office: 14 October 2017)[125]

Pierre **Nicaise**

Member of the Sanctions Committee

(end of term of office: 14 October 2017)[125]

Philippe **Quertainmont**

Counsellor of the Council of State,
Member of the Sanctions Committee at the recommendation of the first president of the Council of State

(end of term of office: 2 February 2021)

Reinhard **Steennot**

Member of the Sanctions Committee

(end of term of office: 2 February 2021)

Kristof **Stouthuysen**

Member of the Sanctions Committee with appropriate expertise in the area of statutory audits of annual accounts

(end of term of office: 17 September 2020)

Marnix **Van Damme**

Chamber President of the Council of State,
member of the Sanctions Committee at the recommendation of the first president of the Council of State

(end of term of office: 14 October 2017)[125]

In 2017, two new Members were appointed to the Sanctions Committee[126]. Martine Castin and Kristof Stouthuysen were appointed as Members of the Sanctions Committee with appropriate expertise in the area of statutory audit of the annual accounts as referred to in Article 48bis, § 1, second paragraph, 5° of the Law of 2 August 2002 on the supervision of the financial sector and on financial services[127].

Decisions by the Sanctions Committee

Exercise of the activity of insurance intermediation without registration - Infringement identified - Publication with names

On 23 March 2017, the Sanctions Committee for the first time ruled on the subject of exercise of the activity of insurance intermediation without registration.

126 Pursuant to Royal Decree of 25 May 2017, published in the Belgian Official Gazette of 8 June 2017.

127 Article 48bis, § 1, second paragraph, 5° was introduced in the Law of 2 August 2002 on the supervision of the financial sector and on financial services by Article 88, first paragraph, 1° of the Law of 7 December 2016 on the organization of the profession and the public supervision of auditors.

The accused person in this matter was known to the FSMA because he had already done insurance intermediation in different capacities (in his own name, in the form of a company, as a broker and as a sub-agent).

After the FSMA was informed by the person's professional liability insurer that his professional liability insurance had been cancelled in September 2013, it asked this person to remedy the situation.

When the person concerned did not respond to the letters addressed to him and the notice of default, the FSMA's Management Committee took note of the automatic expiry of his registration in January 2014. The FSMA informed the person concerned of this fact by registered letter.

The FSMA's investigations officer determined that the person concerned, despite being struck off from the register, had still started, renewed or extended 17 insurance policies with one of the insurance companies with which he usually worked[128].

The Sanctions Committee then noted that infringements had been committed and decided to publish its decision with names. In view of the specific and documented insolvency of the person concerned, the Sanctions Committee did not impose an administrative fine.

There was no appeal against the decision of the Sanctions Committee.

Misuse of inside information - no sanction

On 31 August 2017, the Sanctions Committee cleared a couple of the charge of misuse of inside information in the acquisition by a spouse of shares of a company in which his spouse was employed at the time of the events.

The spouse was suspected to have provided her spouse with inside information on a major transaction which was about to be executed.

Consequently, the spouse was notified of the charge relating to the infringement under Article 25, § 1, first paragraph, b) of the Law of 2 August 2002 as applicable at the time of the events, because it was suspected that she had informed her spouse – outside of the normal conduct of her work, profession or duties – of information she knew to be inside information. The other spouse was equally notified of the charge relating to the infringement under Article 25, § 1, first paragraph, b) of the Law of 2 August 2002 as applicable at the time of the events, because he was suspected to have used this inside information to acquire shares in the company to which the inside information applied.

The Sanctions Committee determined that the information the spouse was suspected to have communicated to her spouse was privileged. The materiality, specificity and sensitivity of this information was disputed by the accused parties. The Sanctions Committee however ruled that those aspects were proven in view of the facts in question.

128 Article 5, § 2 of the Law of 27 March 1995 on insurance and reinsurance intermediation and the distribution of insurance, and Article 262, § 3 of the Law of 4 April 2014 on insurance prohibit insurance and reinsurance companies headquartered in Belgium from calling on an intermediary who is not duly registered in the registers kept by the FSMA. In light of these provisions, the investigations officer conducted an investigation into the insurance company concerned. The Sanctions Committee was not informed of the charges notified to the insurance company concerned, as on 3 May 2016, the Management Committee accepted an agreed settlement for 75,000 euros (see the 2016 annual report, p. 83). The agreed settlement was published on the FSMA's website.

The Sanctions Committee also pointed out the pertinence and validity of the method that uses a precise and consistent set of indications to demonstrate that misuse of inside information was committed in the absence of direct proof.

However, by applying this method, the Sanctions Committee found that in this case, the indications collected by the FSMA was in and of itself inadequate to prove that it was only the possession of this inside information that led the spouse to execute the disputed transaction.

Operation

In 2017, the Sanctions Committee met three times in a plenary meeting. During those meetings, the Sanctions Committee in particular deliberated on its new powers vis-à-vis company auditors and the impact of the extension of its powers on its operation and organization. Furthermore, the Sanctions Committee deliberated on the transposition of the Market Abuse Directive and the amendment of certain procedural aspects.

With a view to completing the dossiers on company auditors, on 18 September 2017, the Sanctions Committee adopted a new set of internal rules. Those new rules were approved by Royal Decree of 9 October 2017, which was published in the Belgian Official Gazette on 16 October 2017.

The new internal rules do not only include a number of clarifications following the extension of the powers of the Sanctions Committee vis-à-vis company auditors, but also amends various aspects of the procedures for the Sanctions Committee. These include:

- the introduction of an optional fast-track written procedure;
- the introduction of the possibility for the Chair of the Sanctions Committee to determine the timescale of the procedure, if necessary after completion of a preliminary hearing convoked by the Chair;
- the introduction of the possibility to communicate the accused's remarks and exhibits for the proceedings electronically (in so far as the signed original of the written remarks and the inventory of the exhibits for the proceedings are provided to the Chair at the latest on the day of the hearing).

The organizational structure in practice

Human resources management

Staff complement

In 2017, the FSMA welcomed 35 new members of staff. Taking into account the employees who retired or left, the year ended with a headcount of 348.

Table 6: Staff complement

	31/12/2017	31/12/2016
Number of staff members according to the staff register (number)	348	328
Number of staff members according to the staff register (FTE)	329.43	311.48
Number of operational staff members (FTE)	320.84	303.99
Maximum number of staff members[129] (FTE)	399	369

The FSMA places a high priority on diversity. Because it is tasked with the exercise of public authority, its supervisory tasks are also reserved for EU residents.

The number of statutory and contractual members of staff of the former ISA fell to 17 because of the retirement of one member of staff. The average age of this group of staff is 52 years, the youngest of which is 42.

The average age of FSMA members of staff is 42.

In 2017, there was a slight predominance of female members of staff, both in terms of staff with university and bachelor's education and within the management.

At the end of 2017, 59% of FSMA staff had a university education and 28.5% had a bachelor's degree.

The qualifications of university graduate staff are the following:

Table 7: Qualifications of university graduate staff

Law	47.64%	Science	3.77%
Economics	36.32%	Other	12.26%
Several diplomas/specializations			54.72%

Approximately 30% of staff have some form of part-time work arrangement.

129 See Royal Decree of 17 May 2012 on the operating expenses of the FSMA as amended by the Royal Decree of 28 March 2014.

Graph 28: Distribution of women/men

Graph 29A: Distribution of women with a bachelor's or master's degree

57
Bachelors

112
Masters

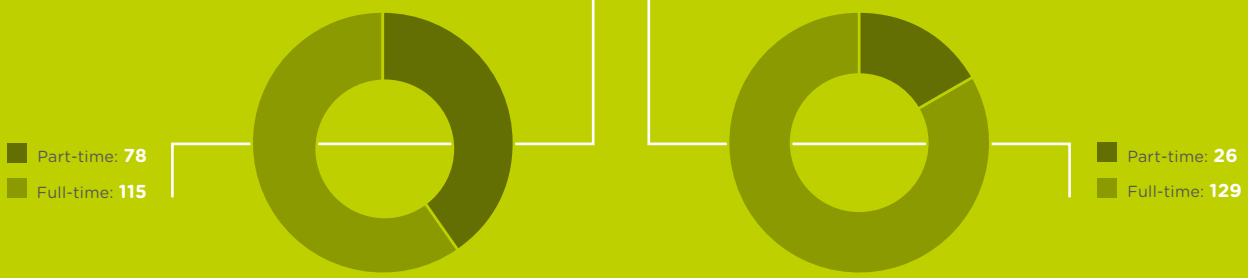
Graph 29B: Distribution of men with a bachelor's or master's degree

42
Bachelors

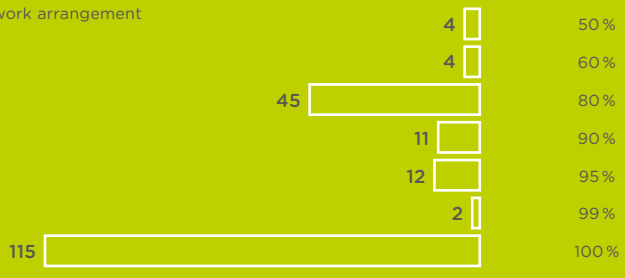
93
Masters

Graph 30: Distribution of staff per age group

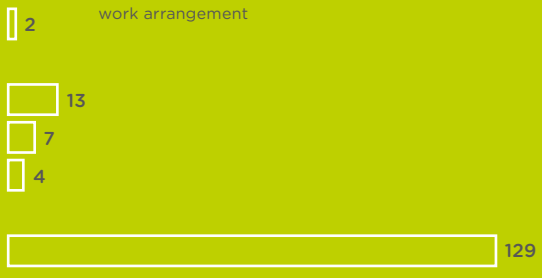
Graph 31: Distribution of women/men per work arrangement



Graph 32A: Distribution of women per work arrangement



Graph 32B: Distribution of men per work arrangement



Language complement

As a public institution, the FSMA is subject to the legislation on the use of official languages in government affairs. The beginning of 2018 saw the publication of the royal decrees that establish the hierarchical grades and the linguistic framework for the FSMA[130]. University graduate staff constitute a single linguistic grade, a provision that guarantees a level career path.

The proportion between the official languages is set, on the basis of detailed calculation, at 43.85% French-speaking and 56.15% Dutch speaking staff members within each language grade, with the exception of the management level, where the proportion is 50/50 with 20% officially bilingual members.

These linguistic grades are valid for a maximum of six years[131].

Apart from the linguistic role to which they belong, FSMA staff are encouraged to further develop their knowledge of the second official language of the country.

For each type of role, a target level in terms of language proficiency is determined to facilitate the smooth handling of dossiers and communication within the service. As the role involves increased responsibility or external contact, the target level also increases. The language proficiency for management roles is adapted to the level determined by a recent Royal Decree for holders of management roles and staff roles in the federal government services[132].

For staff members who have not (or not yet) reached the target level, a training pathway is proposed. Even staff who have reached the target level may continue to hone their language skills via internal initiatives (conversation table, language buddy, inter-departmental meetings on language use etc.) or through language courses.

Ethics

Both the members of the FSMA's staff and the members of the Management Committee must comply with a code of ethics approved by the Supervisory Board.

This code of ethics especially lays down the prohibition of trading in the financial instruments of companies subject to the FSMA's permanent supervision. The code is also aimed at eliminating any other potential conflicts of interest.

The number of questions from members of staff on the interpretation of the code relating to the execution of financial transactions remains fairly high. Alongside a number of common and more general questions, there were also more specific questions on investments in products linked to funds, such as Class 23 products. In comparison with 2016, there were more applications for authorizations for buying and selling shares. One authorization was requested for a defensive transaction. Members of the FSMA's staff are not allowed to invest in virtual currencies because of their speculative nature.

130 Royal Decree of 9 January 2018 establishing the linguistic framework of the Financial Services and Markets Authority, published in the Belgian Official Gazette of 25 January 2018 and Royal Decree of 9 January 2018 establishing the hierarchical grade of the Financial Services and Markets Authority, published in the Belgian Official Gazette of 25 January 2018.

131 Article 43, § 3, of the consolidated laws of 18 July 1966 on the use of language in administration, published in the Belgian Official Gazette of 2 August 1966.

132 Article 43ter, § 7, of the consolidated laws of 18 July 1966 on the use of language in administration, published in the Belgian Official Gazette of 2 August 1966 and Royal Decree of 24 February 2017 implementing the aforementioned Article 43ter, § 7.

A few members of staff asked for authorization to carry on additional roles linked to the powers of the FSMA. One member of staff wished to extend a term of office as assistant in a Belgian university. The Management Committee continues to support this type of additional role given that it provides a link to the academic world and contributes to the FSMA's renown. The Management Committee was, however, unable to give authorization to one member of staff who wished to take on directorships in three different undertakings. Acting in these roles could have led to conflicts of interest or to the impression of conflicts of interest.

This year, the FSMA received somewhat fewer notifications from members of staff who wished to take on a role not connected to the powers of the FSMA. This can for example be participating in the editorial committee of a law publication for a leading publishing house.

In 2017, several members of staff also received authorization to give presentations as guest speakers, for example in colleges, or to publish an article they had written.

Human resources management

In 2017, the FSMA primarily continued to work on the integration and training of new staff, on the continuing employability of its staff and on a consistent appointments policy.

Since its foundation on 1 April 2011, the FSMA has recruited 193 new members of staff. This creates certain challenges for managers as regards training and integration. After all, supervision cannot be learned from books. Aside from knowledge of the legislation and regulations, it requires insights and reflexes that can only be learned from handling various dossiers and situations. To be able to transfer these insights and reflexes as much as possible, the FSMA has set up mechanisms to contribute to a proper orientation and training framework for new staff, and it continues to emphasize among managers and coordinators the importance of permanent feedback.

The areas of competence of the FSMA are very diverse and the legislation and regulations it supervises, and the applications it uses to process information and handle dossiers, are constantly and quickly evolving. In this context, the continuing employability of staff is not a matter of course. The FSMA strives for continuing employability by concentrating on the training needs of all categories of staff, and by encouraging internal mobility.

Explaining the expectations that the FSMA has of its staff, as regards knowledge, conduct and proficiency is all the more important now that the proportion of new staff is very high. In 2017, the FSMA worked further on a 'skills model' and a lot of energy was focused on streamlining evaluations by managers, and decisions to appoint staff in a higher grade.

As regards salary and employment terms and conditions in general, it should be noted that the FSMA of course offers fully equal opportunities to men and women.

Consultation on social matters

A new sectoral agreement for 2017-2018[133] was jointly entered into[134]. The main changes compared to the former sectoral agreement related to the increase of buying power via ecocheques,[135] and in view of the later retirement age, to the deferral of additional days off for older members of staff[136 137].

With a view to making work manageable and workable, as explained in the policy statement of the Minister responsible for employment, the employer representatives developed a flexible arrangement as regards part-time work for older staff and exchanged views on career guidance and the right to be unreachable.

At company level, negotiations[138] concluded on a new medical expenses insurance and guaranteed income insurance for all staff. A 'social benefits' working group was also started, which concentrates on the possibilities for the modernization of certain benefits, while meeting the conditions of budget neutrality and administrative simplicity.

This year the coordinators (or managers) were asked, following the employee satisfaction survey conducted at the end of 2015, to focus more attention on the action plan implemented by the service and the best practices introduced following the results of the transversal working groups (administrative account managers and information flow).

The results of the career assessments with staff of 50+ were discussed with the employee representatives and integrated into the work opportunities plan[139]. In total, 67 staff were interviewed, which comes to approximately 20 per cent of staff. From the anonymous report drawn up by consultants it transpired that as regards their wellbeing, the majority of the staff of 50+ felt highly motivated and engaged with their work, which is very positive. The points for attention given are primarily at an organizational level. The ambitions people have and the working rhythm aimed for over the last few decades (or years) of a career, differ greatly from person to person. This requires a case-by-case approach.

Finally, at the end of 2017, the draft decisions that translated the changes to the federal civil servant status into the specific context of the FSMA were put forward for discussion to the representatives of the public service staff.

133 The FSMA is part of the employer representatives in Joint Committee 325, along with the NBB, Delcredere Ducroire, the Participation Fund, the Federal Participation and Investment Corporation, and Credibe.

134 Collective employment contract of 27 November 2017 on the sectoral agreement 2017-2018,

135 Ecocheques are now granted each year recurrently. The maximum authorized amount is 250 euros per year for a full-time member of staff. Previously, the sectoral agreements provided for the issue of ecocheques every two years for a value of 210 euros per year for a full-time member of staff. This new commitment made for an indefinite term was included in a separate CLA.

136 Older members of staff receive additional holiday to make it easier for them to continue working until their retirement.

137 The deferral of the accrual of these additional holidays for older members of staff applies to staff who reach the age of 55 years from 2018 and equals 1 day per year from the age of 55 years, a second from the age of 57, a third from the age of 59, a fourth from the age of 60 and a fifth from the age of 61. The original Article 14 of the CLA of 30 March 2006 provided for the accrual of 5 additional days of holiday between the 55th and 59th birthday.
Two other CLAs regarding these additional holidays were extended up to the end of 2019. There is a new option in both CLAs to adjust the application by industry (Article 13 of the CLA of 23 April 1987 and Article 1 of the CLA of 22 May 1995).

138 See the 2016 FSMA annual report, p. 133.

139 In implementation of the collective labour agreement No 104 of 27 June 2012.

Developments in IT

The implementation guidelines for the IT strategy adopted up to 2019, which were previously agreed, were laid down in 2017. This strategy is based on the following pillars:

- The launch of a Case Management Tool (CMT). This tool is to enable services to define in a transparent manner the procedures for performing the statutory tasks assigned to the FSMA and to track their completion. Aside from the process, the CMT also integrates the management of information (documents, data, etc.) pertaining to a specific case. New architecture was implemented for this purpose. This allows micro-applications to easily manage data in the FSMA's databases; it also provides for a secure integration of internet and intranet applications. Guided by the processes in the CMT, the FSMA can in this way rapidly handle information received from external parties.
- The introduction of architecture allowing for automatic data import and export. This applies to data provided by or to the sector (surveys, reports, databases) and the distribution of reports or the transmission of validated information to various external organizations (NBB, ESMA, etc.). In the short term, this architecture will allow most information to flow to and from the FSMA in an automated and secured way.
- The provision of existing or newly gathered information (surveys in particular) in a workbench. In this way, each service can, autonomously or supported by the IT service, develop or produce reports or even develop more complex analytical risk models, such as R, which can then be used for evaluating or detecting certain phenomena or incidents in the financial sector.
- The first premises of data modelling were laid down in order to define a consistent data model for financial products and counterparties. This will serve as a basis for data in various existing and future developments.

A series of significant projects were started in 2017 or earlier. Some of them will be carried on in 2018:

- PictoBIS: renewal of the outsourcing contract for the data centre. The specifications-based assessment and tender procedures were finalized in December 2017. The implementation of and migration to the new data centre are to be completed in June 2018. At the same time, a SOC (Security Operations Centre) will become operational and will permanently ensure IT infrastructure and data security at the FSMA. This project also takes into account the mobility of knowledge workers in order for them to be able to work securely from any place.
- FINPRO: modernization of the way in which information about financial products and accompanying marketing material and brochures can be forwarded to the FSMA via a secure internet application. A first version of this application became operational on 1 January 2018 for the transfer of PRIIPs KIDs. The application will be further expanded in 2018.
- Whistleblowers: a secured application allows whistleblowers to communicate sensitive information to the FSMA through its website for further investigation. Reports can be anonymous or nominative. The application came online on 27 September 2017.
- MCC-CABRIO: web application for the registration of intermediaries. The application became operational in 2017. In 2018, it will be systematically extended to other types of intermediaries.
- Surveys and reports: surveys are developed and launched to gather data from the sector on different financial topics. These data are used for reporting and risk-analysis purposes. This data collection process will take place from 2018 through a workbench which will enable the various services to further develop their reports and risk analysis.
- An external tool was purchased to process Euronext data so that permanent supervision can be exercised on potential market manipulations.

These developments will further evolve in 2018. They will be complemented by tools for analysing phenomena on the internet (semantic crawling). These tools will enable an insight to be gained on a number of problems related to digital markets that are hidden on the internet (cryptocurrencies, ICOs, robo-advice, complaints on blogs or social networks, etc.). It will be possible to aggregate those data with other available information. This improvement will create a broader basis for holistic risk management and deeper analysis.

The FSMA dedicated special attention to cyber security and GDPR legislation, and has therefore taken the necessary steps to meet the requirements expected from an authority in these matters.

Sustainability

Sustainability has an important place in the FSMA's internal management.

Even though its staff increased by 17% from 2013 to 2017, the FSMA managed to achieve significant progress in a number of areas.

Through a series of energy initiatives, ranging from additional insulation, improved adjustment of heating and cooling systems, awareness-raising campaigns, a lightbulb replacement programme, to the purchase of more energy-efficient appliances, electricity consumption decreased by 20% and gas consumption by 25% since 2013. Moreover, the electricity used is 100% renewable.

The FSMA offers meals to its staff. The number of meals served has increased by a quarter from 2013 to 2017. In 2017, an emphasis was placed on preventing food waste, using seasonal vegetables, offering a vegetarian option, plus organic meals and fair-trade desserts. All coffee is fair trade and certified organic.

Paper use has been significantly reduced at the FSMA. From 2013 to 2017, the number of printed pages fell by 19% whilst the volume of outgoing post fell by 47%. This has all been made possible through motivating the staff, introducing 'printing with a badge' and increasing electronic communications with the industry.

After a rise in 2014, water consumption reduced again thanks to the renovation of kitchens and small water-saving measures. From 2015 to 2017, it decreased by 9%.

The FSMA wishes to take its sustainable development beyond these measures. In this spirit, it has introduced sustainability criteria into its specifications and, where possible, seeks ecological alternatives for its purchases.

In 2017, efforts were also made to reduce waste. In new contracts with suppliers, the FSMA opts for an even more selective waste collection process. Equipment in usable condition (old hardware, furniture, etc.) is donated to organizations such as "Close The Gap" or "Televil".

To further support its many sustainability initiatives, the FSMA has applied for the "Ecodynamic Company" and "Good Food" labels.

ANNUAL ACCOUNTS FOR THE 2017 FINANCIAL YEAR

Pages 188-197 and footnotes 140-150 are not translated into English, but are available in **French** and **Dutch** on the FSMA's website.

ABBREVIATIONS

For purposes of readability we have used abbreviations throughout the annual report, for which the full official names are given below:

ADS	American Depository Shares
AIF	Alternative Investment Fund
AMF	Autorité des Marchés Financiers (the French financial regulator)
AML/CFT	Anti-money laundering and combating the financing of terrorism
AMLD	Anti-money laundering Directive
CFD	Contract for difference
CRD	Capital Requirements Directive
DB2P	Supplementary pensions database
DLT	Distributed Ledger Technology
EBA	European Banking Authority
ECB	European Central Bank
EEA	European Economic Area
EESC	European Economic and Social Committee
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European Market Infrastructure Regulation
EMMI	European Money Markets Institute
EONIA	Euro OverNight Index Average
ESA	European Supervisory Authority
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
Euribor	Euro Interbank Offered Rate
FAQ	Frequently asked questions
FATF	Financial Action Task Force
Fintech	Financial technology
FISC	Financial Innovation Standing Committee
FSB	Financial Stability Board
FSMA	Financial Services and Markets Authority

IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
IBR/IRE	Institut des réviseurs d'entreprises/Instituut der Bedrijfsrevisoren (Belgian Institute of Registered Auditors)
ICO	Initial Coin Offerings
IDD	Insurance Distribution Directive
IFRS	International Financial Reporting Standards
IOPS	International Organization of Pension Supervisors
IORP	Institution for Occupational Retirement Provision
IOSCO	International Organization of Securities Commissions
KID	Key Information Document
KIID	Key Investor Information Document
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
ML/TF	Money laundering and terrorist financing
MTF	Multilateral Trading Facility
NBB	National Bank of Belgium
OSSG	Official Sector Steering Group
OTF	Organized Trading Facility
PRIIPs	Packaged Retail and Insurance-based Investment Products
PSD	Payment Services Directive
RP	Responsible person (for distribution)
SME	Small and medium enterprises
SPOC	Single point of contact
STORI	Storage of Regulated Information
UCI	Undertaking for Collective Investment
UCITS	Undertaking for Collective Investments in Transferable Securities
WAP/LPC	The Belgian Law on Supplementary Pensions
WIW	World Investor Week

www.fsma.be