FSMA

FINANCIAL SERVICES AND MARKETS AUTHORITY

ANNUAL REPORT 2018

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ANNUAL REPORT 2018

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FOREWORD

Dear readers,

I have the honour to present to you the annual report of the Financial Services and Markets Authority (FSMA). The report sets out how in 2018 the FSMA performed the tasks which lawmakers have entrusted to it with a view to contributing to proper financial service provision and to ensuring that the financial system deserves the trust of its users.

In order to carry out this mission, the FSMA has a complementary set of legal competencies. These include: the supervision of financial products, of the conduct of business rules for financial actors, of financial markets, of a large number of financial intermediaries and of supplementary pensions. The FSMA is also tasked with contributing to financial education and to combating fraud and unlawful offers of financial products and services.

The FSMA performs its activities in a proactive manner, in the public interest and with the consumer as its central focus. In this report, you can read about the actions which the FSMA took in 2018 in all its areas of competence.

Product and conduct supervision contribute to fewer complaints

One of the pillars of the FSMA's supervision of financial products is the supervision of advertising for such products. In 2018, the FSMA screened 3,289 advertising materials for funds, regulated savings accounts and insurance products. Under the terms of its proactive and consumer-focused approach, the bulk of these advertisements must be submitted to the FSMA in advance. The ex ante approval of advertising is given in 90 per cent of cases within 72 hours, and prevents many problems and complaints afterwards.

The moratorium on the distribution of particularly complex products is based on the same proactive perspective: by ensuring that particularly complex products are not brought to market, situations are avoided where consumers invest in products that they do not understand. The moratorium, which was drawn up in 2011 at the initiative of the FSMA, also ensures that certain new types of products are simple and easy to understand for retail clients. Thus, last year the FSMA rejected 16 of the 39 structured products with novel features because they did not fulfil the criteria of the moratorium and were thus deemed too complex. Thanks to the moratorium, the complexity of structured products has fallen significantly. The moratorium has also made for a level playing-field for structured products that are packaged as banking and insurance products.

I am delighted that Ombudsfin, the ombudsman in financial matters, refers in its annual report to the moratorium as one of the factors that has led to a decrease in the number of complaints about financial instruments. Another factor mentioned by Ombudsfin is the MiFID conduct of business rules, which is among the aspects that the FSMA examines during its on-site inspections.

New rules for the insurance sector

At the end of 2018, the legislation transposing the European Insurance Distribution Directive (IDD) entered into force. The IDD comprises rules of conduct for distributors of insurance products that are equivalent to the MiFID rules for the banking sector. The Directive also lays down rules governing information obligations. The FSMA, anticipating the new legislation's entry into force, began already in 2018 to conduct inspections at a number of insurance companies focusing on the topic of conflicts of interest and inducements. Based on its observations during these inspections, the FSMA published a report in 2019 offering a number of recommendations for the sector.

In the report, the FSMA adopted a position on, among other things, the practice whereby insurance companies offer pleasure trips to insurance intermediaries if they sell investment insurance products. So doing can exert a negative effect on the quality of service provision to clients and should therefore be avoided. Since the publication of the report, the insurance companies and sectoral organizations now have to take this position into account when they draw up the codes of conduct regarding inducements that the IDD requires them to draw up in the course of the year 2019. The said code thus addresses the main concerns of the FSMA.

Combating money laundering is a priority

Another important task in 2018 involved with the legislation and regulations governing the combating of money laundering and terrorist financing. The FSMA drew up a Regulation that supplements the regulatory framework in this area. During 2018, one of the FSMA's priorities was thus to support various players in the financial sector in the implementation of this new framework. To this end, it published a circular and various newsletters explaining the approach to be taken.

In those documents, the FSMA sets out in an accessible manner how the new legislation and regulations are to be put into practice. The method is based on a risk-based approach, meaning that financial players must inventory, assess and understand the risks to which they are exposed. They must also take measures that are proportionate to those risks. In 2019 as well, supervision of compliance with the new provisions on combating money laundering and terrorist financing will be a priority for the FSMA.

Preparations for Brexit

Another important focal point in 2018 was Brexit. The United Kingdom announced that it would be leaving the European Union. But in the course of 2018 there was uncertainty as to whether an agreement would be reached on the modalities of the UK's departure from the EU. Without such an agreement, the impact on financial players offering services in the EU from within the UK, and vice versa, could be considerable. Consumers in the EU who are clients of a British financial provider could also be impacted.

The FSMA anticipated these problems by taking various initiatives to prepare for Brexit. It engaged in regular contacts with representatives of the British financial sector and took an active part in the work of the European supervisory authorities. The latter drew up agreements with the British supervisors to guarantee continued collaboration where necessary.

Furthermore, the FSMA contacted all British insurance companies, asset managers and pension funds that are active in Belgium, to find out what measures these providers had taken to prepare for Brexit. The FSMA also took initiatives regarding Belgian insurance intermediaries that work with British insurers and regarding British players who offer investment instruments in Belgium.

The FSMA also collaborated on the preparation of a draft law on Brexit. The legislation is intended to make it possible for all necessary measures to be taken to ensure that after Brexit, to ensure the continued performance of all contracts entered into with British financial institutions. In addition, as part of the preparations for Brexit, the FSMA contributed to setting up a new category of insurance intermediaries, known as mandated underwriters.

The importance of international presence

As Brexit indicates, developments in the Belgian financial sector cannot be seen separately from international events. That is why the FSMA invests in a significant presence on international fora. Thus, in 2018 the FSMA was once again chosen to chair IOSCO, the international organization of securities commissions. The FSMA is also chair of the European Regional Committee of IOSCO. Within the European supervisory authority ESMA, the FSMA leads the activities in the area of financial innovation. The FSMA also chairs the IFRS Monitoring Board, the body that supervises the International Accounting Standards Board (IASB), which draws up international reporting standards for annual financial statements used by more than 6,000 European business groups.

This international presence permits the FSMA to be informed first-hand of the situation and of good practices in other countries, as well as enabling it to address questions beyond the domestic level. A fine example is the introduction in 2018 of a European ban on the distribution of binary options. With this action, ESMA was following the example of Belgium, where the distribution of these products was banned, by a Regulation of the FSMA, since 2016.

Another example is the work of the Financial Innovation Committee of ESMA on cryptoassets, under the leadership of the FSMA. Based on this research, ESMA decided that a pan-European approach to this problem was advisable. Fraud with cryptocurrencies was a significant focal point for the FSMA in 2018, and among its actions in this regard it published several warnings against cryptocurrency providers in the course of the year.

Further developments in service to financial education

In addition to its supervisory tasks, the FSMA has also been entrusted with the mission to contribute to financial education. To this end, in 2013 it launched a programme named Wikifin. One of the pillars of this programme is the website www.wikifin.be. In addition to offering a treasury of information on money matters, the site also provides a number of handy tools. In 2018, a new, cost comparison tool was developed to compare the costs of the various payment (or current) accounts available on the Belgian market. The tool was launched at the beginning of 2019.

In 2018, significant developments also took place in another pillar of the Wikifin programme: schools. In Flanders, the decision was made to incorporate"economic and financial skills" as a key skill in the educational outcomes for the first year of secondary schools in the Flemish school system. These new educational outcomes will be applied as from the 2019-2020 school year. In the Wallonia-Brussels Federation as well, the incorporation of certain financial skills in the curriculum is being discussed. The FSMA has steadily worked for the inclusion of financial education in the curricula. It has designed materials and made available know-how to help give concrete shape to financial education in the schools.

In 2018, work began on the construction of our financial education centre, named Wikifin Lab. The Wikfin Lab will be an experiential learning centre aimed primarily for secondary school students. They will be able to visit free of charge for a trajectory centred on various financial themes. The Wikifn Lab will be based in a building next to the offices of the FSMA and will also draw on FSMA staff members to accompany the students.

Sustainability

Sustainability is high on the agenda today, including in the financial sector. At international and European level, there are various initiatives in progress to move the financial sector towards greater sustainability. The FSMA is delighted to see these initiatives and is fully supportive of these efforts, including by way of its membership in different international networks. In this regard, in 2018 the FSMA signed on as a supporter of the recommendations of the Task Force on Climate-related Financial Disclosures, a private initiative on reporting relating to climate change.

As in the past few years, the FSMA has also continued its efforts on behalf of sustainable business practices. Despite an increase in the number of staff, both the use of paper and energy consumption have continued to fall. The initiatives taken in recent years earned the FSMA in 2018 an ecodynamic label with two stars from the Brussels environmental agency Bruxelles Environnement/Leefmilieu Brussel.

In addition to the topics addressed in this foreword, the present report describes numerous other initiatives and activities of the FSMA in is various areas of competence. In 2019 as well, the FSMA will continue its efforts unabated to make a contribution in each of those areas toward a reliable financial system.

I wish you pleasant reading.

Jean-Paul SERVAIS
Chairman

THE FSMA IN 2018

Mission and vision

The FSMA works towards maintaining a reliable financial system. This entails that financial services run properly, markets are transparent, financial products are in line with the wishes and needs of their users and the financial industry serves society and contributes to a sound financing of the real economy.

The FSMA places the interests of consumers at the centre. This is why it is constantly on the lookout for 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, defining clear priorities and monitoring performance and results;
- developing a modern organization;
- optimizing the management and use of information available.

Every year, the FSMA establishes an action plan regarding the way to 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.

Supervision / Financial landscape

Supervision

118
credit institutions, insurance companies and stockbroking firms governed by Belgian law

191 listed companies

24,935 registered intermediaries

199
pension funds

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

Financial landscape

Deposits with **credit institutions** governed by Belgian law[1]:
€ 637.2 billion

Pension fund balance sheet total:
€ 35.15 billion

Assets under management by **funds** governed by Belgian law:
€ 147 billion

Market value of **Euronext Brussels**:
€ 362 billion

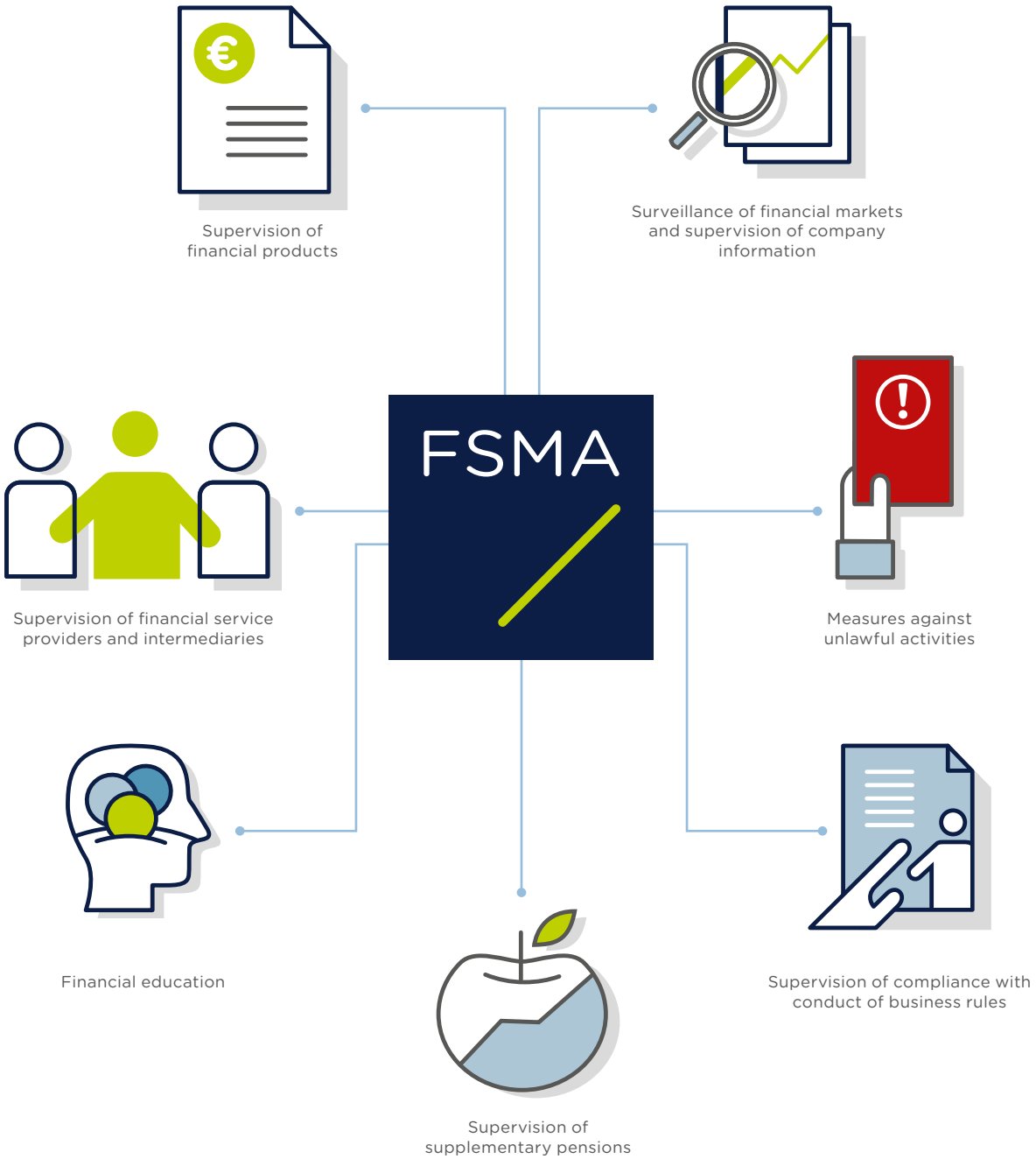
Credit institution balance sheet total:
€ 1,038.6 billion

Premium income on the Belgian insurance market:
€ 27.1 billion

All the figures in this report relate to the situation as at 31 December unless otherwise indicated.

1 September 2018

The powers of the FSMA



A few key dates

3 January: MiFID II enters into force. This Directive tightens the rules for investor protection and the transparency of financial markets.

22 February: The FSMA publishes its first warning to draw attention to the dangers of fraudulent cryptocurrency trading platforms.

12-18 March: The FSMA organizes the third edition of Money Week. Wikifin and its many partners provide a range of activities and more than 70,000 pupils play the two budget games "Budg€tPRET" and "Just'in Budget" in class.

22 March: The FSMA supports the recommendations of the Task Force on Climate-related Financial Disclosures, a private initiative for climate change-related reporting. These non-binding recommendations include guidelines for companies on how to communicate transparently on their climate change-related risks.

27 March: ESMA, the European Securities and Markets Authority, prohibits the marketing, distribution or sale of binary options to retail investors and restricts the sale of CFDs to these investors. In doing so, ESMA follows Belgium's example, where strict measures were adopted to combat unlawful offers of binary options and CFDs.

29 March: The FSMA and FPS Economy publish a warning against certain financing arrangements for the purchase of property.

14 May: Jean-Paul Servais is re-elected Vice-Chair of IOSCO, the international organization of supervisory authorities of financial markets, and Chair of IOSCO's European Regional Committee.

5 June: A campaign commences, on the initiative of the Minister of Consumer Affairs, to warn against various forms of online fraud. The FSMA actively participates in this campaign.

8 June: The FSMA publishes its 2017 annual report.

9 July: The FSMA accepts an agreed settlement with an institution for occupational retirement provision (IORP) for an amount of EUR 250,000 following infringements of the legal obligation that pension institutions must provide certain data on an annual basis to the supplementary pensions database, also referred to as the 'DB2P'.

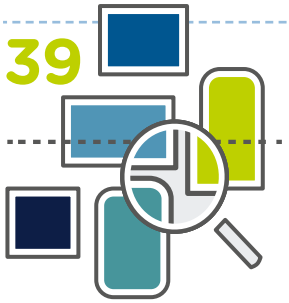
1 October: The second edition of IOSCO's World Investor Week begins. As an active member and Vice-Chair of IOSCO, the FSMA supports this initiative.

5 October: A Royal Decree is published in the Belgian Official Gazette that modernizes the Belgian takeover legislation.

25 October: The FSMA and the NBB publish an update to their study on non-bank financial intermediation.

20 December: The FSMA publishes its first study on the Belgian crowdfunding market. This reveals a steady growth in this market.

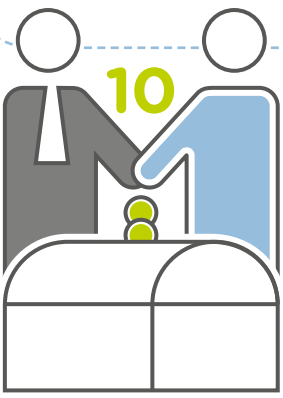
The FSMA in 2018: in brief



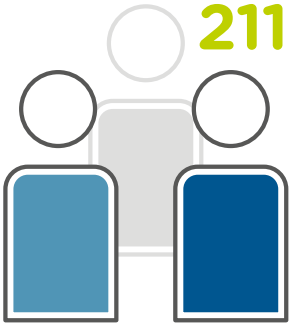
The FSMA subjected **39 structured products with novel features** to a thorough examination. The FSMA deemed 16 products to be particularly complex. These products were, as a result, not sold on the retail market. 4,959 structured products have been marketed in Belgium since the introduction of the moratorium in 2011.

The advertisement dossiers for funds, regulated savings accounts and insurance products related to a total of **3,289 advertisements.**

More than **70,000 primary-school pupils** played the two budget games "Budg€tPRET" and "Just'in Budget" in class. The FSMA developed these two games to teach youngsters how to manage a budget.

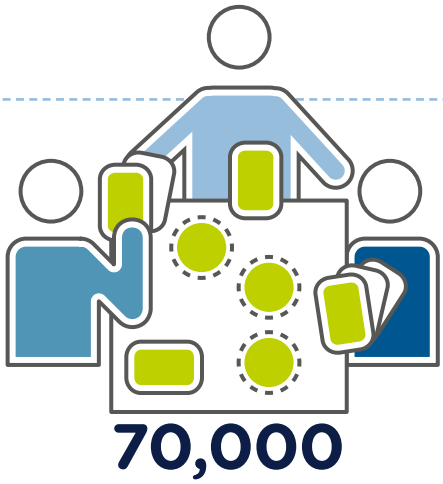


The FSMA approved **ten agreed settlements** in administrative sanction proceedings. These settlements entail the payment of a fine and a publication, with names, on the FSMA's website. These agreed settlements brought in a total of **1,084,500 euros** for the Treasury.



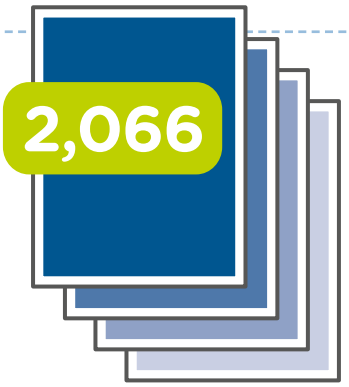
The FSMA launched **90 preliminary or full analyses** of potential market abuse. It suspended trading in a share 38 times.

The FSMA published **144 warnings**. These publications warn the public of the dangers of (potentially) unlawful offers.



The FSMA received **2,061 notifications** of managers' transactions.

The FSMA struck off **211 intermediaries** from the register.



The FSMA received **2,066 messages** from consumers on a wide range of financial subjects. Almost half of the messages were about fraud and unlawful offers of financial products and services. One in seven messages was on the subject of pensions. One in nine was on the subject of investments.


VINCE
Kleinschalig project op een boogscheut van centrum Gent
Ook interessant voor de belegger!
TE KOOP
GENT
TE KOOP
GENT
TE KOOP
KWAREMONT
TE KOOP
WONDELGEM
TE KOOP
GENT

HONEST AND FAIR TREATMENT OF CONSUMERS

Financial products that are easy to understand and trustworthy

The FSMA supervises financial products to ensure that consumers do not struggle to understand financial products and consequently remain unaware of the financial risks they are taking. It 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

Information must be accurate, clear, balanced and easy to understand

The FSMA supervises the marketing 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 investment instruments, such as structured debt instruments and derivatives, come under this supervision.

Supervision of advertising 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[2] lays down the substantive rules for advertising financial products to consumers. The advertising material must meet a number of criteria. The information must be accurate. The advertisement should explain the risks and costs. Advantages and disadvantages of a product should be presented in a balanced manner. Advertisement 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 or distributors who offer the public certain investment instruments, such as structured debt instruments.

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

Prior checks allow the FSMA to intervene at the right time, i.e. before investors sign up on the basis of inaccurate, incomplete or misleading information or advertisements. The system of prior approval aims to ensure that the investor does not suffer loss due to advertisements that have not been prepared with care, so that there is no need to subsequently remedy the error by lodging a complaint or involving the judicial authorities.

For insurance products, there is no prior approval of advertising messages by the FSMA. However, the FSMA may conduct ex-post checks.

In 2018, the FSMA screened 3,289 advertisements for funds, regulated savings accounts and insurance products. An advertisement is any form of provision of information of a promotional nature for a financial service or a financial product. The FSMA sent 2,156 emails with remarks on advertisements for funds, regulated savings accounts and insurance products. These remarks often refer to the obligatory minimum content of advertisements and the presentation of historic returns. In 90% of cases, the advertisements submitted to prior FSMA approval, with a complete dossier, were approved within 72 hours.

In 2018, the FSMA handled 1,411 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 785 dossiers in that category.

Table 1: Supervision of advertising in 2018

	Number of dossiers	Website dossiers	Number of advertisements	Number of emails from the FSMA
Funds	785	199	2,639	1,768
Regulated savings accounts	79	52	200	131
Insurance products	171	108	450	257
Structured debt instruments and derivatives	376	N/A	N/A	N/A
Total	**1,411**	**359**	**3,289**	**2,156**

Marketing materials for insurance products reveal shortcomings

Checks on advertisements for insurance products have revealed that certain shortcomings appear repeatedly. The marketing materials contain insufficient information. They contain 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, for example, be mentioned legibly in a font size that is at least as large as that used to present the benefits.

The FSMA checked 171 dossiers, primarily of insurers and intermediaries. Within these dossiers, it analysed the websites and other marketing documents such as brochures, emails, articles, and radio and TV spots. It identified shortcomings in 60% of the dossiers. The insurers and intermediaries concerned adjusted their advertisements to comply with the regulations or are taking measures to do so.

New advertising rules for investment products

Since the beginning of 2018, there is new European legislation that applies to a large number of investment products and insurance products with an investment component, which is intended to help consumers better understand these products and more easily compare them.

Companies that offer packaged retail investment products such as structured debt instruments and Class 23 insurance contracts (PRIIPs) to retail clients must prepare a Key Information Document (KID) for these products. They are obliged to do so under the European PRIIPs Regulation.

The KID must contain all important information that a consumer needs to be able to evaluate a PRIIP. Performance scenarios must help the consumer with this. There are favourable, moderate, unfavourable and stress scenarios. For insurance products with an investment component, there is an extra scenario with information on payouts for beneficiaries of insurance policies.

The performance scenarios in the KID must state the average annual return—after deducting all costs—that consumers may achieve in the various scenarios on the amount they have invested. These are estimates of future returns based on assumptions on the basis of the performance over the past 5 years.

Offerors of financial products that fall under the PRIIPs Regulation must, in their advertisements, refer to or include the performance scenarios contained in the KID. Sometimes, in their advertisements, they combine the performance scenarios with examples as illustration. In practice, it appears that there can be major differences between the examples and the performance scenarios of the PRIIPs.

The FSMA recommends[3] that the advertisement explain, in simple and comprehensible language, the formula used to calculate the product's return. In this way, retail clients can gain insight into how the product works. This also allows them to better understand any potential restrictions that could diminish returns.

The FSMA also recommends using illustrative examples in advertisements to explain products. In these examples, returns are calculated on the basis of assumptions that are different from those used for the returns in the performance scenarios. Equally, they do not offer any kind of guarantee of the actual returns from the products. As a result, it is best that companies avoid giving examples that are too positive.

As far as the FSMA is concerned, there is no inherent incompatibility between the illustrative examples and the performance scenarios. Because they have distinct principles and aims, the illustrative examples can be interpreted as different and supplementary information. Illustrative examples included in the advertisements do have to be clearly separated from the performance scenarios of the PRIIPs and presented under a separate heading.

3 See Circular FSMA_2015_16 – Rules that apply to advertisements when marketing financial products to retail clients.

Supervision of investment products

The moratorium reduces complexity of products

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. They 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 drew up 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 made a commitment 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 there are any doubts as to whether or not a structured product should be considered particularly complex, the product is analysed in detail.

In 2018, such a detailed analysis was conducted on 39 products which contained new characteristics, and the calculation formula used for the purpose was based mostly on a customized index.[4] 16 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 13 new customized indexes was examined.

Since the launch of the moratorium in 2011, 4,959 structured products have been distributed in Belgium (see Table 2). A little over half of these (2,492 structured products) fall under the moratorium. The other 2,467 structured products fall under the opt-out regime[5].

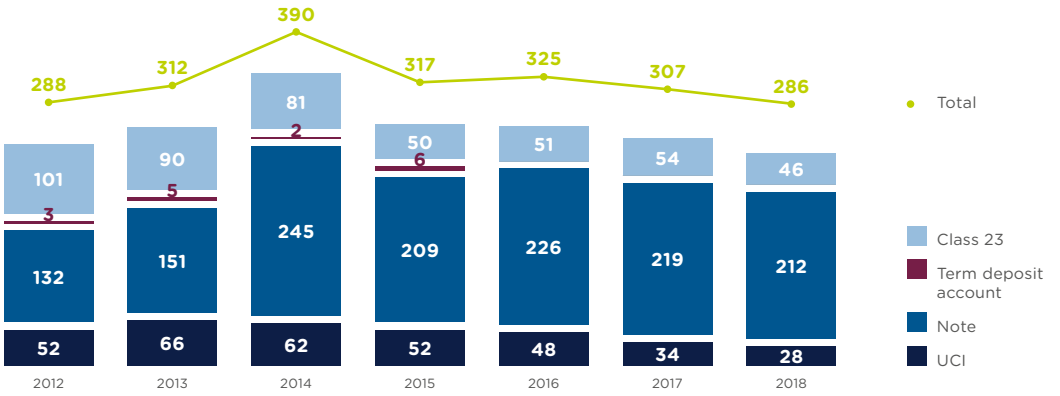
Since 2016, the annual number of products distributed with a right to repayment of the capital on maturity is increasing. The same trend can be seen for the issue amount, although to a lesser extent. Even against a backdrop of very low interest rates, the right to repayment of capital at maturity is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

In 2014 and 2015, increasing numbers of structured products were issued in US dollars following the interest-rate differential in favour of the dollar. Although that interest-rate differential still existed in 2017, the figures showed that between 2016 and 2017, the percentage of products issued in US dollars fell in terms of issue amount. In 2018, the percentage of products issued in US dollars remained more or less constant as compared with 2017.

4 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.

5 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.

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



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.

Table 2: Structured products distributed since the launch of the moratorium (1 August 2011-31 December 2018)

	Number of products since the launch of the moratorium	Issue volume (in EUR million)[6]
Class 23	**487**	**17,385.25**
Under the moratorium	486	17,385.25
Opt-out	1	N/A
Debt instrument (Note)	**1,510**	**17,737.36**
Under the moratorium	1,449	17,737.36
Opt-out	61	N/A
Term deposit account	**18**	**245.48**
Under the moratorium	18	245.48
UCI	**383**	**12,298.13**
Under the moratorium	370	12,298.13
Opt-out	13	N/A
Private Note[7]	**2,561**	**N/A**
Under the moratorium	169	N/A
Opt-out	2,392	N/A
Total	**4,959**	**47,666.23**

6 These figures also take into account products that have reached maturity, were terminated early or were sold.

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

Returns from moratorium products on maturity

Since the launch of the moratorium[8], the FSMA keeps a database of all structured products distributed in Belgium to which the moratorium applies. In 2017, 138 of these products matured. The FSMA has decided to analyse the performance[9] of these structured products. The return on these products is, after all, important to investors. This analysis also fits into the European Commission project regarding the costs and performance of investment products. On 10 January, ESMA published its first report on the costs and performance of retail investment products, which also addressed structured products. It reported that there is insufficient useful data available on the performance of structured products.

According to the information on the website www.structuredretailproducts.com, the sample group analysed only represented, in terms of products, a little under a third and, in terms of issue volume, a little under a quarter of the structured products that matured in 2017.

The structured products examined from the sample group delivered investors an average return[10] of 4.78 per cent (after deducting entry fees). The volume-weighted average return came to 5.50 per cent. For more than 89 per cent of the products, there was a positive return. Still according to the information on the website www.structuredretailproducts.com, this same trend was also seen for structured products that matured in 2017 and that do not form part of the sample group.

The return must be seen against the background of developments on the financial markets. In the 2012-2017 period, which corresponds to the maturity of most structured products in the sample group, the stock markets performed well. The Euro Stoxx 50 Net Return delivered an annual gross return of almost 10 per cent in the period from the beginning of 2012 to the end of 2017.

In light of the good performance of the stock markets in the 2012-2017 period, products with equity underlyings (baskets[11] or share indexes[12]) seem to have delivered better returns than products with other underlyings (interest rates, inflation index or gold).

Trends on the financial markets also show the importance of timing (including the launch date and the duration of exposure to an underlying). The products launched in 2012 that matured in 2017 delivered a higher average return (6.25 per cent) than the products launched in 2011 or after 2012.

The sample group also allows a comparison of the average return from the different legal forms. Although certain Class 23 products and certain UCIs do not offer a right to repayment of the capital on maturity, they have all still repaid at least the initial capital.

It should be noted that the relationship between complexity, risks and return is not linear. Greater complexity measured based on the number of mechanisms is not in all cases synonymous with a higher return. The products with three mechanisms delivered the highest average return, followed by the products with one single mechanism. The products with two mechanisms delivered the lowest average return. It should be noted that the products without mechanisms still all delivered a positive return. If we look at the various mechanisms used, the products with a multiplier as a mechanism appear to have delivered a higher average return. This can be explained by the good performance of the stock markets in the 2012-2017 period.

Finally, the FSMA also looked into the volume sold before maturity and the link that exists with returns. It transpires from this that the products that performed well are more often sold before maturity.

8 The moratorium entered into force on 1 August 2011.

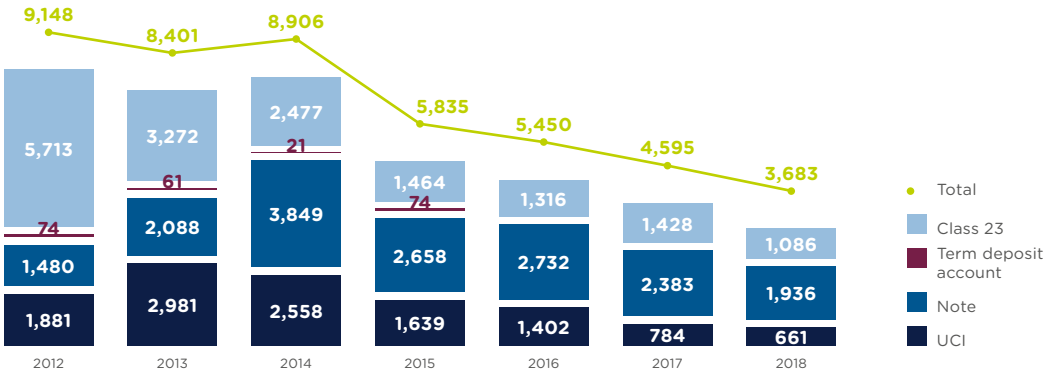
9 In this analysis, the performance is calculated as actuarial performance.

10 The average return is calculated on the basis of the number of products and does not take into account the issue volume or the volume repaid on maturity.

11 The term 'basket' refers to a combination of underlyings which are defined and established at the time of the launch of the product.

12 These relate only to benchmark indexes. No products with an index that the moratorium qualifies as a customized index reached maturity in 2017.

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



Since 2013, offerors have distributed more structured products with customized indexes. This trend continued into 2017. In 2018, the percentage of structured products with a customized index as an underlying remained more or less constant as compared with 2017. The FSMA is closely following that trend, especially as regards the selection of the components of those customized indexes.

Reform of benchmarks: consequences for investors in structured products

The planned reform of the Libor and Euribor financial benchmarks may have an effect on investors in structured products that are subject to the moratorium[13]. Their investments can be adjusted or repaid early.

Nine billion euros. That is the value of Belgian investments in structured products with returns linked to the London Interbank Offered Rate (Libor) or the Euro Interbank Offered Rate (Euribor). In total, these come to 471 products sold in Belgium since the enactment of the moratorium on particularly complex structured products in 2011.

Ninety-eight per cent of these nine billion euros relates to structured products with returns that depend on the Constant Maturity Swap (CMS). That is a reference index based on Euribor or Libor. Eleven per cent relates to structured products with a return determined by Euribor (6 per cent) and by Libor (5 per cent).

Libor and Euribor are being reformed. The method of calculation of the financial benchmarks is being adjusted so that more account is taken of the data from real transactions. The reform comes in the wake of several scandals which revealed that banks had manipulated data for the calculation of indexes to their advantage.

Various reform projects were discussed for both Libor and Euribor, ranging from adjustments to their elimination to replacement by other indexes.

Given the volume of contracts which could be impacted by the reform of Libor and Euribor, the FSMA closely monitors this topic and invites the sector to consult with it on the subject.

13 For more information, see this report, p. 80.

Any change could, in particular, have consequences for the structured products sold in Belgium, with returns directly or indirectly determined by Libor or Euribor. There is a risk that contracts may be amended or repaid early in the case of changes to indexes or their replacement by other indexes.

Since mid-2017, distributors of structured products must include warnings in their prospectuses and marketing documents for products with returns determined by Libor.

Sustainable investment products require more transparency

As an administrative authority, it is not up to the FSMA to judge the appropriateness of transactions. However, climate change is a game changer[14].

The financial sector is addressing the issue of climate and is increasingly bringing more "sustainable" investment products to market. It is important to the FSMA that investors properly understand these products. They must be aware of the sustainability strategies of such investment products and their investment objectives. The FSMA wants to prevent investors falling victim to mis-selling and buying products that do not fit in with their profile, especially now that "sustainability" is often used as a marketing tool.

The FSMA supervises the quality of the information of a great number of investment products. It checks that the information provided does not mislead investors. The FSMA checks the prospectus, the key investor information as contained in the Key Information Document (KID) and the Key Investor Information Document (KIID), or the contractual terms of a product. It also checks the pre-contractual information such as advertisements, announcements and other documents regarding an offer of financial products to consumers.

The FSMA strives to ensure that these documents should be as transparent and easy to understand as possible. The provision of specific information may be appropriate, for example, for sustainable investment products. A warning is advisable if the consumer's outlay is not specifically and directly invested in assets that meet sustainability criteria. Abbreviations relating to sustainability criteria should be explained. It is certainly useful to include examples of the criteria that are taken into account for an investment, the selection method used (exclusion criteria, best in class, engagement, impact approach, etc.) and information on the people or entities responsible for this selection.

Often, SRI and ESG are referred to as sustainability criteria. SRI stands for sustainable and responsible investment. ESG stands for environmental, social and governance and refers to critical factors for assessing the sustainability and ethical impact of an investment.

When an investment is packaged as a structured product or insurance, the developer must state a target market in its KID. To be able to determine the target market, the ESG characteristics of the financial product must be taken into account.

14 See this report, p. 134.

KIDs allow consumers to compare financial products

In 2018, the FSMA drew up the first inventory of all Key Information Documents (KIDs) it had been notified of. In total, the FSMA received 284 KIDs for investment products[15] and 1,169 KIDs for insurance products with an investment component[16].

Since 1 January 2018, it is mandatory for offerors of these PRIIPs to provide a KID to all retail clients. This information document comes under the FSMA's supervision.

The KID is a brief document that must contain the essential information about a PRIIP in language that is easy to understand. Besides information about the nature and characteristics of the PRIIP, the KID contains various performance scenarios and information on the risks and costs it entails. The content and form of a KID is standard. This allows consumers to compare the KIDs of different PRIIPs.

Two-thirds of the 284 investment product KIDs notified related to structured debt instruments (192). Notifications of these KIDs came from Belgium (101), France (51), Luxembourg (37), the Netherlands (28), the United Kingdom (28), Germany (23), Switzerland (15) and Cyprus (1).

The 1,169 KIDs for insurance products with an investment component related to 184 different contracts sold in Belgium. The other 985 documents came from individual investment options linked to these contracts. Most insurers that have notified such KIDs came from Belgium (17) and Luxembourg (11). An Irish and British insurer also notified KIDs.

Duplicate disclosures

In principle all PRIIPs must have a KID. However, a number of investment products are exempt from the rules for PRIIPs. The exemption applies in Belgium to harmonized investment funds (UCITS) and non-harmonized investment funds (public AIFs)[17].

The exemption came about because since 2011, there is an obligation to prepare a document with key investor information for these products. That information document is known as a a Key Investor Information Document (KIID). A KIID is comparable to a KID.

The exemption for UCITS and public AIFs is temporary. It ends on 31 December 2019. This means that as from 1 January 2020, when selling these products to retail investors, these funds must prepare both a KID and a KIID. The FSMA is not keen on duplicate disclosures.

The European supervisory authorities ESMA, EIOPA and the EBA warned in a joint document addressed to the European Commission that duplicate disclosures are not in the interest of retail investors[18]. The overlap of details between the two information documents could be confusing. Instead of helping investors with an investment decision, using two documents could in fact hinder the decision-making process.

15 Situation in November 2018.

16 Situation on 31 October 2018.

17 For more information on UCITS and public AIFs, see this report, p. 31.

18 See joint document, 1 October 2018: https://esas-joint-committee.europa.eu/Publications/Letters/JC%202018%2055%20Joint%20letter%20to%20EC%20on%20PRIIPs.pdf.

As part of the evaluation of the PRIIPs rules, European authorities are looking into whether the legislation needs to be amended and what measures are necessary to ensure that disclosures run smoothly.

Supervision of funds

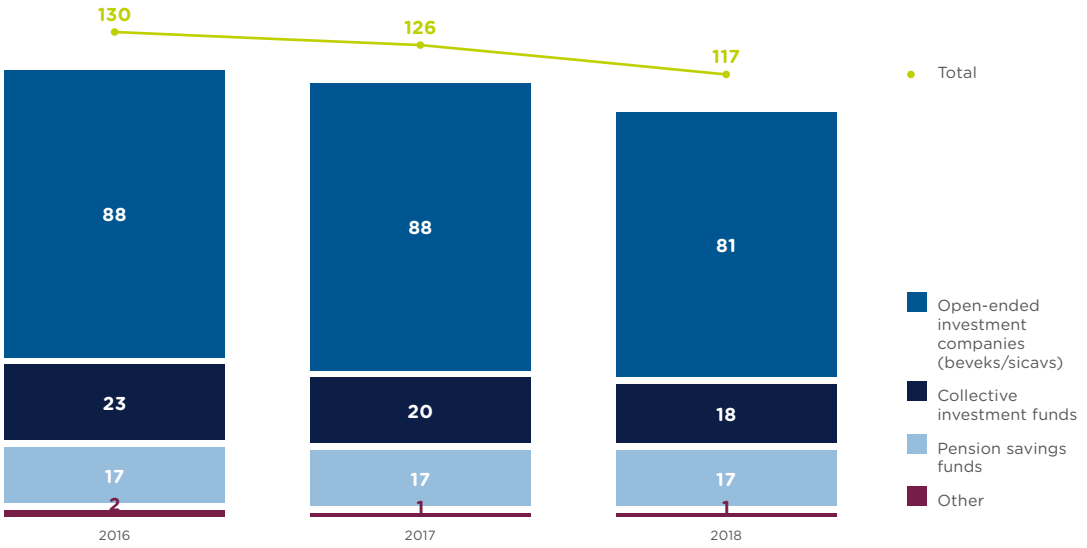
Collective investment funds, Belgian open-ended investment companies and pension savings funds

UCIs are institutions that collect capital from investors and manage that money collectively following an established investment policy. The FSMA is responsible for the supervision of public UCIs. 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 documents such as the prospectus, key investor information, and advertising material. The FSMA's approval of the majority of this information is a prerequisite for the distribution of these UCIs.

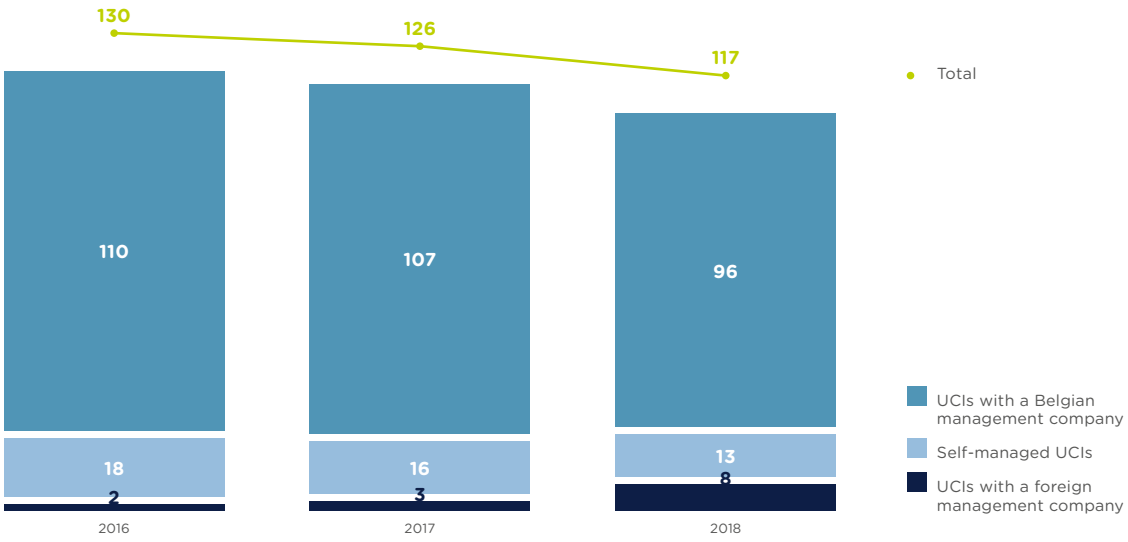
The FSMA also supervises the organization and operation of Belgian public UCIs. Public UCIs in Belgium are primarily in the form of collective investment funds and open-ended investment companies, which are also called beveks or sicavs. These UCIs are almost all open-ended. That means that their capital increases or decreases as investors enter or exit[19].

Graph 3: Evolution of the number of Belgian public undertakings for collective investment classified by legal form



19 The statistics on UCIs may in the future be adjusted if the registration of a UCI and/or sub-fund of a UCI is withdrawn on a particular date, starting on the date of 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 4: Evolution of the number of Belgian public undertakings for collective investment classified by type of management and nationality of the management company



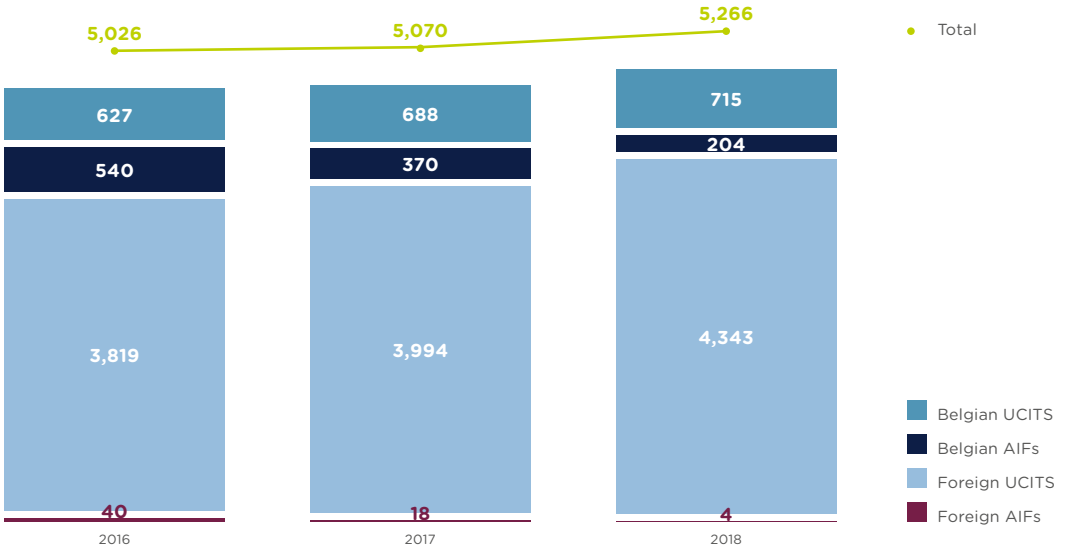
One specific type of public collective investment fund in Belgium is the pension savings fund. An investment in a pension savings fund represents the part of the pension that is personally accrued, which is termed the 'third pillar'. In order to promote individual pension saving, there are certain tax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

The number of UCIs with a Belgian management company decreases

The large majority of Belgian public UCIs are managed by a management company. That is always the case for collective investment funds, which have no legal personality. Even UCIs in the form of an investment company can appoint a management company. In that case, the management company takes charge of the management of the investment portfolio, the administration and the trading of units. Investment companies that do not appoint a management company are self-managed UCIs. They must have a governance structure that is appropriate to their activity.

Belgian UCIs can have either a Belgian or a foreign management company. The number of UCIs with a Belgian management company and the number of self-managed UCIs is falling (see Graph 4). A clear trend in 2018 is the increase in the number of UCIs with a foreign management company.

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



Belgian and foreign UCIs

Number of sub-funds on the rise

Most public UCIs are composed of several 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[20].

At the end of 2018, there were 5,266 sub-funds of public open-ended UCIs registered with the FSMA. Of these, 4,347 were sub-funds of foreign UCIs and 919 were sub-funds of Belgian public UCIs[21] (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). UCITS have a European passport allowing them to be traded freely within the EEA.

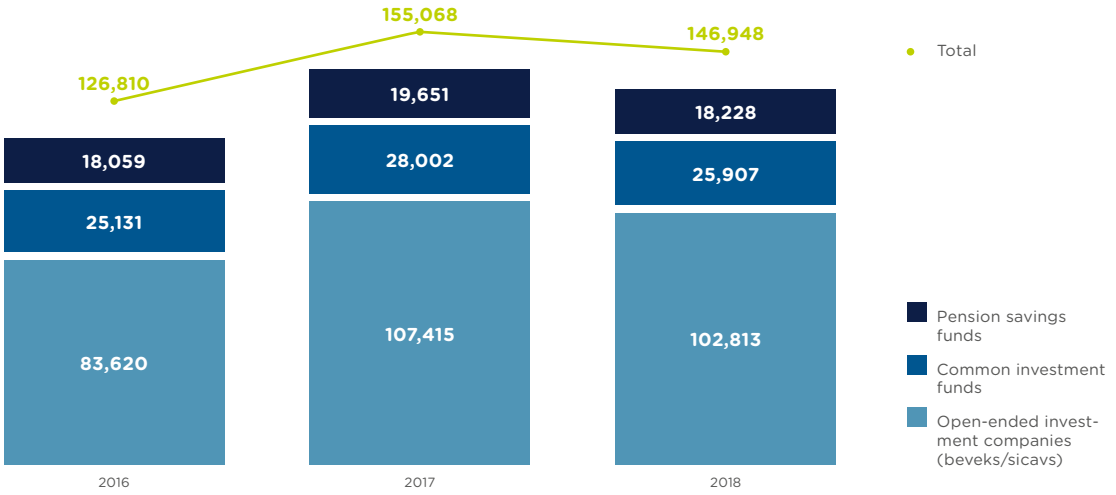
There are also public alternative investment funds (AIFs), for which there is no harmonized European supervisory regime or passport scheme. Foreign AIFs offered to the public in Belgium are supervised by the competent authority of their home country and by the FSMA.

In 2018, 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 among both the Belgian and the foreign UCIs.

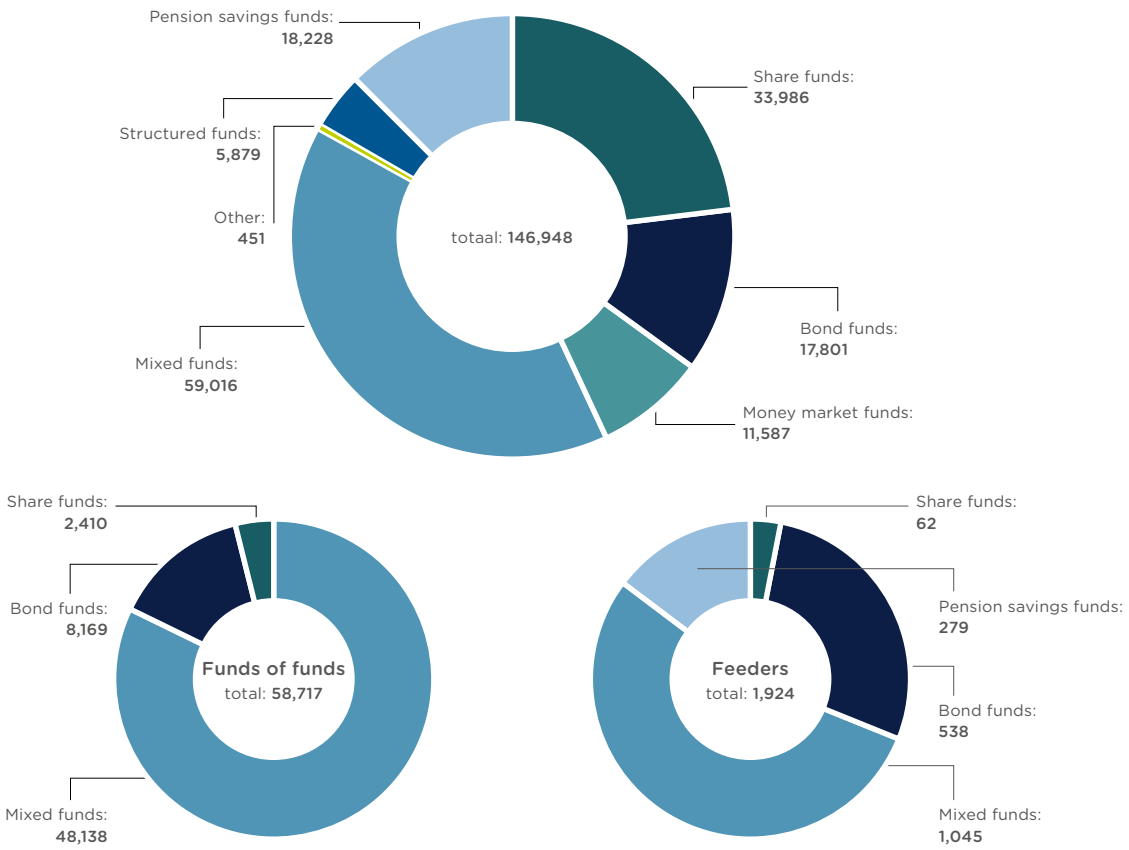
20 It is also possible to create, under certain conditions, classes of units within a UCI or sub-fund, which are for example expressed in different currencies or have different costs. The different classes of units may be offered to different target groups.

21 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.

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



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



Belgian UCIs

Negative returns on investments makes the value of the fund sector fall

The total value of the net assets[22] of Belgian public open-ended UCIs fell in 2018 to 147 billion euros. Although more investors subscribed than exited, the value of the Belgian fund sector fell. This fall is due mainly to the negative returns on the financial instruments the UCIs had in portfolio over this period. At the end of 2017, there was a remarkable growth in total net assets compared to the previous year (see Graph 6).

The investment policy determines the sort of assets in which the UCIs may invest and how they seek a return. The Belgian fund 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[23] (see Graph 8).

Mixed funds and share funds come top

Mixed funds have experienced continuous growth over the past few years. Now they are by far the third largest category in the Belgian fund sector, representing 40 per cent of the total net assets for the sector. Their growth in 2018 can be explained by the greater number of entries than exits in this category. Mixed funds invest primarily in both shares and bonds[24].

The second largest category is that of share funds. This category represents 23 per cent of the total net assets for the sector. The value of the assets of share funds and their significance fell sharply in 2018. At the end of 2017, share funds represented 27 per cent of the sector. The fall in their net assets in 2018 is attributable both to their negative result and to their increased exits.

Pension savings funds constitute the third largest category, representing 12.4 per cent of the total net assets for the sector. In contrast to previous years, their net assets fell slightly during 2018. This fall is primarily the consequence of the negative return on the investment portfolio. A net surplus in subscriptions and exits was seen.

The net assets of bond funds fell in 2018, primarily because of a negative result. The relative significance of bond funds remained stable. They continued to be the fourth largest category.

22 Total net assets are the value of the UCI's assets after deducting any debts.

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

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

Exposure of Belgian funds to specific political and financial uncertainties

In 2018, the FSMA examined the extent to which Belgian UCIs had invested in particular assets and transactions with certain counterparties. More specifically, this related to Turkish, Greek and Italian assets, and transactions with counterparties from these countries, as well as exposures to European financial institutions.

The FSMA did not identify any problems. The exposure of the funds to Turkey and Greece was limited, with the exception of one sub-fund with an investment policy targeting Turkey. The exposure to Italy was also limited. A number of sub-funds did have a substantial exposure to Italy, within the boundaries of their investment policy.

The examination also revealed that the funds had significant exposure to European financial institutions. However, this exposure was in line with the standard operation or the investment policy of these funds.

The examination also revealed that UCI managers with exposures to events on the financial markets properly kept track of these. They took measures in line with their assumptions and estimates on the evolutions to be expected and took into account the significance of their positions and investment strategy.

Money market funds rise sharply

The net assets of money market funds rose sharply in the period under review. At the end of 2018, the money market funds represented almost 8 per cent of the total net assets for the sector. At the end of 2017, it was only 2 per cent. Money market funds try to offer a return close to that of the money market and they invest predominantly in money market instruments. Money market funds attract investors who attach importance to a relatively stable investment and being able to exit any day.

The strong increase in the net assets of money market funds is entirely attributable to an increased number of subscriptions to these funds. Over the course of 2015, there were similar movements within the Belgian fund sector. At that time as well, there was a strong increase in the net assets of money market funds and a strong decrease in the net assets of share funds. More volatile market conditions often temporarily lead to investments in money market funds.

Number of structured funds falls

Structured funds offer investors returns 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 fallen in recent years. This is because over this period, more structured funds matured than new funds were launched. At the end of 2018, structured funds still represented 4 per cent of the total net assets for the sector.

Funds of funds popular among mixed funds

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 UCIs are also called funds of funds. At the end of 2018, Belgian funds of funds represented 40 per cent of the total net assets for the sector and belonged mainly 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 a sub-fund thereof. At the end of 2018, Belgian feeders, primarily mixed funds and pension savings funds, represented close to 1.9 billion euros in net assets (see Graph 7).

Workshops on statistics reporting

Since October 2017, new standards apply to the reporting to the FSMA of statistics for certain public UCIs. These new standards enable the FSMA to collect more information on the potential risks of UCIs.

The FSMA identified that for various UCIs, the reporting did not meet the content requirements determined by the FSMA or the European authority ESMA. For this reason, the FSMA organized a number of workshops in 2018.

Using real-life examples, the FSMA reiterated the principles of reporting, communicated its findings on the reported data and gave some tips on good practice. These workshops were addressed in the first place to employees in the UCI sector who are responsible for reporting.

Additional liquidity instruments for funds

Swing pricing, anti-dilution levy and redemption gates

Fund liquidity risks constitute a specific focal point for international supervisory bodies such as the FSB and the International Monetary Fund. These institutions warned that fund liquidity risks could lead to systemic risk. They recommended a broadening of the liquidity instruments available.

In light of these recommendations and the appeal from the fund sector to introduce certain changes, the Belgian government took measures to provide additional liquidity instruments[25]. A broader offer of liquidity instruments gives fund managers more opportunities to better manage UCIs' liquidity risks.

Besides the possibility to proceed, in case of liquidity problems, with suspending a fund's entries and exits and more generally, with applying a charge upon entry or exit to the benefit of the UCI, it is from now on also possible to use swing pricing, an anti-dilution levy and redemption gates.

25 Royal Decree of 15 October 2018 introducing additional liquidity instruments and amending provisions regarding securities lending by certain undertakings for collective investment.

Entries and exits by unit-holders in a fund could have an impact on the net asset value of the fund. Swing pricing prevents this impact becoming negative. If the net 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. The same is true in reverse: 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.

An anti-dilution levy, just like swing pricing, is a technique that aims to eliminate the potential negative impact of 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.

With the use of redemption gates, the fund chooses to execute the orders of exiting unit-holders only in part if a previously established threshold is exceeded. This measure comes over and above the possibility that already exists to proceed, under certain circumstances, with a complete suspension of entries and exits.

If a fund or its management company wishes to make use of one of these new liquidity instruments, it must draw up a policy for this purpose. It must also devote specific attention in its conflict of interest policy to the conflicts that could arise from the use of these instruments.

The fund or its management company must also include certain information on the use of these instruments in its regular reports and in the prospectus. If it wishes to apply the new liquidity instruments, it is likely to have to adjust the articles of association or the fund rules.

Marketing documents for funds that make use of swing pricing or an anti-dilution levy must contain the necessary information on the subject. Upon each application of redemption gates, the FSMA must be informed as quickly as possible. Unit-holders in a fund must also be notified and, where necessary, the competent authorities of other EEA Member States. The information on the concrete application of this instrument must also be shown on the website included in the fund prospectus.

New rules for money market funds

In July 2018, the new European Regulation on money market funds came into force[26]. The aim of this Regulation is to preserve the integrity and stability of the European internal market by establishing harmonized rules for the operation of money market funds.

The harmonized measures for money market funds supplement the measures provided for under the UCITS Directive and the AIFM Directive. They apply to all undertakings for collective investment that have the same characteristics as money market funds. The aim of that broad scope is to target all funds that seek to generate a return in accordance with money market prices, or that aim to safeguard the value of the investment by investing in short-term assets such as money market instruments or deposits.

These rules, which are essentially "product rules", relate to the composition and diversification of the portfolio of money market funds, to liquidity management and to organizational requirements.

26 Regulation 2017/1131 of the European Parliament and of the Council on money market funds entered into force on 21 July 2018.

The Regulation includes specific provisions on stress tests. In this regard, ESMA published guidelines in March 2018 for a common, uniform and consistent application of these stress tests. These guidelines establish common reference parameters for stress test scenarios.

The Regulation also includes specific provisions on reporting obligations. It provides for different transparency rules for both investors and the competent authorities.

The managers of money market funds must provide investors, on a weekly basis, with a number of details on the portfolio of the money market funds (solvency, maturity, total net assets, returns).

Every manager must provide, for every money market fund it manages, certain information to the authorities competent for these funds, such as the type of money market funds and the characteristics thereof, the portfolio indicators, the stress test results, information on assets, etc. The frequency with which that has to happen is determined based on the scale of the money market fund's net assets.

At European level, in May 2018, the European Commission published the template developed by ESMA for the reporting of that information. In 2019, ESMA will additionally publish guidelines on the way in which that reporting must happen. The first reports by the managers of UCIs are expected in the first quarter of 2020.

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 as well as to 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 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 that has been 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 and preventing risks at one or more companies or in the insurance sector as a whole.

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 its estimates, the FSMA uses its own findings from inspections or sectoral audits. It also acquires data from the annual report of the Insurance Ombudsman, information from the FPS Economy and data and information from insurers. Additionally, it also consults information from stakeholders and consumers, as well as the experiences and studies of the European authority EIOPA or other supervisory authorities.

Thematic audits offer the FSMA the opportunity to supervise the activities of individual insurers. The audits also allow for a comparison of different companies and for dialogue on the subject with the insurance sector. Ultimately, the FSMA strives to mitigate risks in the insurance sector. Amending policy, new legislation, publishing good practices or communications and recommendations to professionals and consumers all contribute to this.

New audit of Class 23 life insurance products

In 2014, the FSMA conducted a sectoral audit of the quality of the financial reports on investment funds that insurers distribute to individual policyholders via Class 23 life insurance policies. Following that audit, which was completed in 2015, comments and recommendations were made for the audited entities. These entities seemed to place little importance on the financial reports: often these reports appeared not to exist or to be of poor quality.

In 2019, the FSMA will prepare a new report on the quality of financial reporting. The purpose of this is to look into whether insurers took into account the previous comments and recommendations in their subsequent financial reports, and whether the quality of the financial reports has progressed in this respect. Such financial reports are very important: they are after all meant to inform policyholders on the status of their investment during the entire term of their insurance policy.

Problem-based supervision

Potential problems inherent in a particular insurance product or in specific transactions of an insurer 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. A wide range of enforcement instruments is available where there are grounds for action.

European legislation and regulations do not in principle allow the FSMA to conduct ex ante supervision on insurance products. The FSMA can mostly act only when a consumer has already incurred a loss after subscribing to a non-compliant product. To prevent a breach of trust in the insurance sector, the FSMA opts for getting the insurer's voluntary cooperation so that it may obtain ex ante information on certain dossiers. In this way, it can prevent any problems or shortcomings that may occur during the distribution of insurance products, among other things. Voluntary cooperation with the FSMA also prevents the consumer from suffering loss.

Correction to an insurer's marketing communications

At the end of 2015, an insurer proposed that its insureds convert their existing contracts into a new type of contract. Most insureds agreed to this and converted their contract. However, at the beginning of 2018, it transpired that the insurer had sent incomplete and misleading information to the insureds who had not converted their contract. In this way, the insurer wished once again to persuade them to convert their contracts. These occurrences date from 2016, 2017 and January 2018.

After the FSMA's intervention, the insurer remedied the incomplete and misleading information and sent its clients an amended communication with an objective representation of the advantages and disadvantages of the new contract. The insureds who had converted their contracts on the basis of the inaccurate and misleading information were given a term of 30 days to reverse this conversion.

Laguna Life takes over Ethias' 'First A' portfolio

In 2018, Irish insurer Laguna Life acquired the 'First A' insurance portfolio from Ethias. The Irish company launched a buyback offer.

The buyback offer for Laguna Life was for a buyback of Class 21 insurance products that enjoyed a relatively high guaranteed interest rate. Insureds received a bonus if they agreed to the offer and allowed their insurance contract to be redeemed early.

In such transactions, the FSMA sees to it that insureds have the information they need to be able to make an informed decision on the offer.

Opinion, information and legislation

Apart from its activity of overseeing the insurance sector, the FSMA provides advice to other organizations on specific insurance dossiers. The FSMA regularly publishes its opinions in fulfilment of its task of informing the sector. The FSMA also offers advice on regulatory and other initiatives in the area of product supervision.

Questions relating to an insurer's price rise

Non-work-related health insurance is in principle lifelong. The law dictates that insurers may not cancel such health insurance. Equally, insurers may no longer amend the technical bases for the premium or the conditions for coverage after the policy has been entered into, unless this is done in the interest of the insureds and at the request of the principal insured person. The premium, exemption or benefits may only be adjusted 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 the health insurance prices are—or are at risk of becoming—loss-making. In that case, the National Bank of Belgium (NBB) has the power to require an insurance company to adjust its prices. The NBB may only impose a price increase after consulting with the FSMA.

In the period under review, there was such a dossier for which the NBB asked the FSMA for an opinion. The FSMA gave this opinion after an insurer established that the price for a particular health insurance product from its range was loss-making.

The FSMA remarked in its opinion that questions could arise as to the loss-making nature of the product's price. In that respect, the FSMA noted, inter alia, that a price increase[27] could only be justified in very exceptional circumstances and to protect the financial solidity of the company. When taking such a measure, the interest of the company must be weighed up as a whole against the individual interest of the insureds.

For its product, the insurer asked that there be a recurrent price increase every year over and above the medical index, with no time limit. The FSMA considered that such a price rise could be used to circumvent the insurance legislation.

27 A price rise is allowed pursuant to Article 504 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies: if an insurance company informs the National Bank that the application of one of its prices is loss-making or risks becoming so, the National Bank may require that the company concerned restore the balance as regards this price.

In its opinion, the FSMA expressed concerns as to the method of calculation of an annual price rise. Insureds would not be able to ascertain the specific impact of the increase or accurately estimate future premium increases. An annual increase would after all be applied on the latest annual premium, which would likewise change based on the evolution of the medical index or the consumer price index.

The FSMA emphasized the need for effective and clear information to be provided to the insureds concerned as to the measures and the specific impact thereof on their contract.

Beneficiaries of funeral service insurance

The FSMA asked a number of insurers to adjust the beneficiary clause in their funeral service insurance to the benefit of the consumer.

Following a complaint, the FSMA established that certain clauses in the conditions of an insurer's funeral service insurance were in breach of the law. More specifically, this related to provisions that stated that on the insured's death the insurer's benefit is paid out to an undertaker.

Such provisions are in breach of the law. After all, the law gives insureds themselves the absolute right to specify one or more beneficiaries of the insurance. The insurer may not oblige the insured to specify a particular beneficiary.

The complaint revealed that the insurer contravened this principle and did not allow the insured to specify a beneficiary that is not an undertaker. Other insurers also committed this fault and violated the right of insureds to specify a beneficiary. The FSMA asked the insurers concerned to adjust the conditions of their funeral service insurance and also brought the problem to the attention of Assuralia, the industry federation.

Burden of proof in general terms and conditions

The FSMA asked a number of insurers to adjust the general terms and conditions of certain insurance policies to the benefit of the consumer.

In an audit of the general terms and conditions of Class 21 and Class 23 insurance policies, the FSMA determined that several insurers obliged beneficiaries to prove that a certain exclusion did not apply to them. This means that a beneficiary had to provide negative evidence.

Such clauses are not permitted. It is insurers that must prove that an exclusion from an insurance policy applies, not the consumer or the insured.

Opinion on the preliminary draft of the law on compensation for victims of terrorism

The FSMA issued remarks on the preliminary draft of the law on providing better and faster compensation to victims of terrorist attacks. The text of the law comes in response to a recommendation from the Parliamentary Committee regarding the attacks of 22 March 2016 in Belgium.

At the request of the Minister of Economy, the FSMA organized a consultation on this text. The opinion included a number of comments, inter alia as to the speed of the payout of the compensation to the victims and the nature of the insurance benefits. The notion of "personal insurer" and the way in which the declaration had to be made were also addressed in the opinion.

Opinion on the draft law on personal injury

The FSMA provided an opinion on the draft bill to improve compensation for victims of personal injury.

The draft law's explanatory memorandum stated that someone who falls victim of an accident and suffers injury and damage is often faced with a number of hurdles. Sometimes it takes years for legal proceedings to be settled. In the meantime, costs accumulate and the victims must advance these expenses by their own means.

Insurers award advances but these are often too low to cover costs. It is suspected that these advances are sometimes knowingly kept low to put victims in a difficult position, making them more inclined to agree to a settlement in order to avoid ending up with financial problems.

The drafter of this draft law wishes to remedy some of these problems and achieve a smoother process for the settlement of claims. For this purpose, the draft law provides for a code of conduct to be drawn up for personal injury as well as guidelines to help determine the amounts a victim is entitled to, as well as the amounts of acceptable advance payments. The draft bill also aims to introduce a penalty system in case an insurance company refuses to pay such reasonable advances.

The FSMA made a range of remarks in an opinion on the draft law. It has sent its opinion to the Parliamentary Committee for Economy.

FOCUS 2019

The FSMA published a communication to clarify the **burden of proof** in insurance policies for insurance companies and consumers. In 2019, the FSMA will oversee this theme.

Compliance with conduct of business rules and inspections on the subject of prudential legislation

The FSMA is responsible for the supervision of compliance with rules of conduct. This supervision occurs both on-site and off-site. There are also on-site inspections in relation to other legislation supervised by the FSMA as well as on behalf of the Belgian Audit Oversight College.

In 2018, 5 inspections were conducted regarding compliance with the rules of conduct and 14 inspections regarding other areas of supervision of the FSMA[28] or on behalf of the Belgian Audit Oversight College[29]. Following these inspections, the FSMA issued 35 orders, adopted 2 specific measures[30] and formulated 66 recommendations and 15 points for attention. For the measures regarding company auditors, it is the Belgian Audit Oversight College that is competent rather than the FSMA[31].

Compliance with conduct of business rules

As regards the conduct of business rules, certain important changes came about in the legislation in 2018, including the transposition of MiFID II and the IDD.

Companies under the FSMA's supervision must act honestly, fairly and professionally in the best interests of their clients. They should have an appropriate organization and follow certain procedures to guarantee that their clients are treated with due care and attention. The FSMA conducts inspections to verify whether companies comply with these conduct of business rules.

28 These are inspections of institutions for occupational retirement provision, bureaux de change and portfolio management and investment advice companies.

29 These are inspections of company auditors who exercise statutory audit mandates in public-interest entities such as credit institutions, insurance companies and listed companies.

30 This measure is only taken vis-à-vis institutions for occupational retirement provision.

31 More information on these measures can be found in the annual report of the Belgian Audit Oversight College, available on the website of the College: www.ctr-csr.be (in Dutch and French only)..

Progress as regards compliance with MiFID rules

On 3 January 2018 the new MiFID II rules[32] came into force. They seek to better protect financial consumers and further improve the transparency of financial markets. As regards consumer protection, for the conduct of business rules, Directive 2014/65/EU was transposed into Belgian law through the Law of 2 August 2002, and for the organizational rules through the Law of 25 October 2016[33]. The new MiFID II rules contain obligations regarding product governance (specifying an identified target market) and rules on inducements (prohibition of remuneration for portfolio management and independent investment advice). They also impose the obligation of providing a suitability statement for each transaction that comes out of investment advice and include the new concept of "independent" investment advice.

As part of the MiFID rules of conduct, the FSMA continued its on-site inspections in 2018 on the themes of "duty of care" and "best execution". During these inspections, the FSMA examined whether regulated undertakings act honestly, fairly and professionally and serve the best interests of their clients when providing investment advice, offering portfolio management services or when simply executing orders. It also looked into whether the predetermined "best execution" policy was adhered to when executing orders. In particular, the suitability (for investment advice or portfolio management) and/or the appropriateness (for complex financial instruments) of the transactions was examined. The FSMA conducted inspections of different types of regulated undertakings. In certain cases, this entailed an inspection of a regulated undertaking that had already been inspected on this theme. The aim of the new inspection was to evaluate the effectiveness of the action plan prepared. Ten years after the introduction of the MiFID conduct of business rules, the picture remains divergent. In certain areas great progress has been made over the past few years, whilst in other areas there continue to be a lot of problems. The shortcomings relate to the suitability and appropriateness of the transactions in light of the client profiles, as well as to other rules of conduct such as record-keeping by the companies or the organization of control functions.

In 2018, the FSMA also launched a transversal inspection on the theme of "reporting to clients". For the purpose, it asked 13 regulated undertakings that differed from each other in terms of size, status and offer of investment services, to provide it with certain procedures and some examples as regards the various mandatory reports to clients. Depending on the investment service provided by the regulated undertaking, they were asked for different things. In this way, the FSMA obtained a clear picture of the level of implementation of different reports within the sector and could compare the reports of the various companies concerned. As a result, the FSMA could identify certain aspects that required more elucidation of the regulations. The initial results showed that there is a great disparity in the approach to, for example, the suitability statement and prior reporting on costs. As a result, the FSMA decided to discuss certain specific aspects with other European supervisory authorities to achieve as much convergence as possible. The results of the transversal inspection will be explained in a sectoral report which will be published in 2019. The regulated undertakings concerned will each receive an individual report.

32 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and Delegated Regulation (EU) 2017/565 of the Commission of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

33 Law of 25 October 2016 on access to the activity of investment services and on the legal status and supervision of portfolio management and investment advice companies.

Reinforced supervision of insurance

In 2018, the focus for the insurance sector was on the transposition of the IDD[34,35,36] into Belgian law. This Directive is a recast version of the Insurance Mediation Directive[37], termed the 'IMD'. The IDD contains information obligations and rules of conduct that apply to all distributors of insurance products (insurance companies and insurance intermediaries). It also contains specific requirements for insurance products with an investment component. In this respect, the IDD aligns the rules of conduct with those that apply in the banking sector in accordance with MiFID and MiFID II. However, some differences remain.

For companies operating on the Belgian territory, the enforcement of the conduct of business rules determined by the IDD will not entail any major changes but rather a continuation of an evolution that was implemented with the approval of the AssurMiFID conduct of business rules. These aimed to reinforce client protection and to provide for a deeply ingrained integrity and compliance culture in the insurance sector. Some new rules should increase that level of protection even further. That is for example the case with governance obligations for insurance products (identification of the target group for a product), which are comparable with the governance obligations in MiFID II.

The transposition of the IDD into Belgian law is a major step for the regulation of the distribution of insurance products, following on from the initiatives taken previously by the Belgian legislature with the AssurMiFID rules. The FSMA will supervise compliance with these regulations by conducting on-site inspections of distributors of insurance products.

In 2018, just before the transposition of the IDD, the FSMA had already started a transversal inspection of various insurance companies on the theme of "conflicts of interest and inducements"[38]. Following this transversal inspection, a report was drawn up listing a number of good practices. That report was published on the FSMA's website. Individual letters were also sent to the companies inspected, and various remedial measures were imposed, in accordance with the methods that the FSMA usually applies when it establishes infringements.

As part of this transversal inspection, the FSMA examined, inter alia, compliance with the applicable conduct of business rules of a range of incentives offered by insurance companies to brokers who distribute their products, including trips and other events. Often, these are exclusive events in which the training component is limited and partners are also invited. Moreover, these events are "paid for" via a points system based on quantitative sales criteria. The FSMA therefore considers that these inducements are not only used for broker training or for networking purposes but primarily to motivate brokers' performance. The trips are such that they could certainly constitute a financial incentive for the insurance intermediaries. As a result, they will be inclined to offer clients an insurance product that generates extra points for the trip, and therefore also potentially offer them a product other than the one that best suits their needs. The FSMA is of the opinion that the offer of such trips, or discounts on those trips, could negatively influence the service to clients and consequently that they could be a prohibited inducement. The high value of the trip, the fact that the trip is an objective to be achieved based on quantitative sales criteria, and the combination of the

34 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution.

35 Law of 6 December 2018, which transposes this Directive into Belgian law and thereby amends the Law of 4 April 2014 on insurance, was published in the Belgian Official Gazette on 18 Directive 2018.

36 See also this report, p. 158.

37 Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

38 The inspections were focused only on conflicts of interest and inducements relating to Class 23 insurance for retail clients.

trip with other monetary remuneration, for which quantitative sales criteria are also key, reinforce this potentially negative impact. In the analysis of non-monetary remuneration, these aspects are, according to the FSMA, even more important than, for example, the destination of the trip itself.

The insurance companies and the organizations that represent the insurance sector will need to take into account the FSMA's position on this matter. Pursuant to the new Article 287 of the Law of 4 April 2014, amended by the Law transposing the IDD, these representative organizations must draw up a code of conduct on the subject of inducements, by mutual consultation. This code of conduct must set out criteria used to be able to assess whether companies that receive inducements comply with the obligation to act honestly, fairly and professionally in the interest of the client. They must also include a non-exhaustive list of inducements that are prohibited because they adversely affect the quality of the service to the client. The King will determine the date of entry into force of that code of conduct and make it binding by way of a royal decree adopted upon the recommendation of the FSMA.

Convergence in the approach to compliance officers

The FSMA considers the role of compliance officer at a regulated undertaking to be a key function. That function after all gives certain guarantees as to compliance with conduct of business rules and thereby contributes to the protection of consumers. In light of this, in 2018 the FSMA worked on achieving greater convergence between the approval of compliance officers and the procedure that should enable the prudential supervisory authority to verify the expertise (the "fitness") of the compliance function. This greater convergence was one of the recommendations from the High Level Expert Group set up by the Minister of Finance in 2015. The requirements as regards appropriate experience and professional knowledge were clarified and adjusted to guarantee a robust and experienced compliance function, and at the same time further the aim of simplifying administration[39].

The exams that form part of the system for the FSMA's approval of compliance officers must from now on also be approved by the NBB. Moreover, passing the exam is one of the points taken into consideration by the NBB and the FSMA as prudential supervisory authorities to assess the requisite expertise of those responsible for the compliance function. Several exam modules have also been developed to better be able to align the situations of the candidate compliance officers to the type of company in which they are going to work. As for the continuing education of compliance officers, from now on individual training courses will no longer be approved. The FSMA will henceforth approve the training centres. Lastly, the FSMA publishes, centrally on its website, a programme of all training courses available for the continuing education of compliance officers.

The compliance function is an essential link in the control chain and compliance officers are the FSMA's preferential contacts within regulated undertakings. The FSMA is therefore happy with this reform, which occurred with a focus on quality and convergence.

39 See the FSMA Regulation of 28 February 2018 as approved by Royal Decree of 15 April 2018, and amending the FSMA Regulation of 27 October 2011 on the approval of compliance officers and the expertise of those responsible for the compliance function. See this report, p. 165.

Warning against certain financing arrangements for the purchase of property

In 2018, the FSMA and the FPS Economy took a joint initiative to warn the public about certain formulas for mortgage lending with capital accrual, in which a life insurance policy is contracted. Because these formulas combine a mortgage with an insurance product, it seemed advisable to take joint action: the FPS Economy is competent for the supervision of the conduct of business rules that intermediaries in mortgage loans must comply with, whilst the FSMA is competent for the conduct of business rules relating to insurance.

The warning follows the finding that certain lenders or intermediaries in mortgage loans offer clients who wish to finance a property purchase a combination of a mortgage loan with a fixed term and a conventional mortgage loan. For the conventional mortgage loan, the client pays off part of the capital every month plus interest at a fixed or variable rate. For the fixed-term loan, the client only pays the interest back on a monthly basis. Parallel to this combination of loans, the client is offered a life insurance contract and must pay a premium to enable him/her to build up the borrowed capital again by the maturity date of the fixed-term mortgage loan. This life insurance policy may be Class 21 or Class 23 insurance. The difference between these two types rests primarily on the level of risk the client faces. Usually, this insurance policy is offered to the client as a formula for financing the purchase of property in an advantageous way because the monthly payments come to less than if he/she financed the purchase entirely through a conventional mortgage loan.

However, this formula needs to be handled with care. It only seems suitable for a very specific and limited public, especially when used to finance the purchase of a principal residence. Formulas in which the purchase of property is fully or partially financed with a fixed-term mortgage loan with capital accrual, in which a life insurance policy is contracted, could be extremely risky and disadvantageous for clients with insufficient expertise. After all, such products always require a good knowledge of life insurance policies and the risks they entail, and sufficient experience with such products. The borrower's financial situation must also of course be such that he/she can withstand the risks: his/her income and net assets (movable and immovable) must be sufficient after deduction of any loans. Finally, the products must fit in with the client's investment goals. Only if these conditions are met is that formula suitable for the clients and therefore recommended. Lenders and credit intermediaries must inform consumers clearly as to all the aspects of these products and especially as to the costs and fees associated with that formula, to be able to guarantee the necessary transparency as to the return required to build up the capital again. Lenders and credit intermediaries must take into account the interests of their clients and the specific risks related to these products and offer the most suitable credit. Failure to comply with these obligations may lead to criminal prosecution or administrative sanctions.

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In 2019, the FSMA will further adjust some of its supervisory tools in light of the **new requirements introduced by MiFID II and the IDD**. The work programmes published on the FSMA's website will, where necessary, be updated. Several transversal analyses or inspections will be organized to evaluate the enforcement of the obligations that arise from the Directives. Moreover, the FSMA will evolve towards an efficient administrative sanctions policy for serious cases of non-compliance of the conduct of business rules, both from a dissuasive and a punitive angle.

Inspections on the subject of prudential legislation

As regards prudential legislation and regulations, the FSMA conducted on-site inspections primarily as part of the supervision of the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash (hereinafter referred to as the "anti-money laundering legislation"), and the Law on institutions for occupational retirement provision (hereinafter IORPs)[40].

In 2018, as part of the anti-money laundering legislation, the FSMA conducted a series of on-site inspections at a number of bureaux de change. It conducted these inspections based on random samples of more than 100 transactions by both natural and legal persons. It devoted attention to key aspects of the Law such as identification and verification of identity, ongoing due diligence obligations, compliance with embargoes and reporting of suspicious transactions to the CTIF-CFI. The 2017 legal provisions are a logical progression from the requirements that were in force since 1993. The major change is, however, the risk-based approach that every obliged entity must apply, with the overall risk assessment as a starting point. On-site supervision, in combination with other sources such as the 2018 AML survey, allowed the FSMA to get a feel for the assimilation of this new notion as well as for the practical application thereof. In this respect, the results of the FSMA's audit work aim to contribute to transposing the risk-based approach to the specific reality of each of the supervised entities that meet the requirements of the legislation.

Additionally, the insights the FSMA gains from its on-site inspections can be used to prepare additional legislative texts. In that respect, the FSMA assisted with work on the Regulation of 3 July 2018[41] on the prevention of money laundering and terrorist financing and the Circular of 7 August 2018[42] regarding the application of the risk-based approach.

The FSMA also took part in the training courses for the sector to give further clarification on the FSMA's expectations in terms of the application of the aforementioned Law.

In 2018 the FSMA continued its inspections of IORPs. The focus lay on the decision-making process and the monitoring 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. During these analyses, the points brought to the attention of the IORPs were the importance of sound management, and particularly that of a suitable decision-making process and appropriate monitoring. The aim of this cycle of inspections is therefore also to ascertain how the decision-making process and the monitoring of investments are managed in the IORPs in question. On the basis of a risk assessment, the FSMA selected five companies to inspect in 2018.

40 The Law of 27 October 2006 on the supervision of institutions for occupational retirement provision.

41 In full "Regulation of the Financial Services and Markets Authority of 3 July 2018 on the prevention of money laundering and terrorist financing, approved by Royal Decree of 30 July 2018".

42 In full "Implementation of a risk-based approach to combating money laundering and terrorist financing".

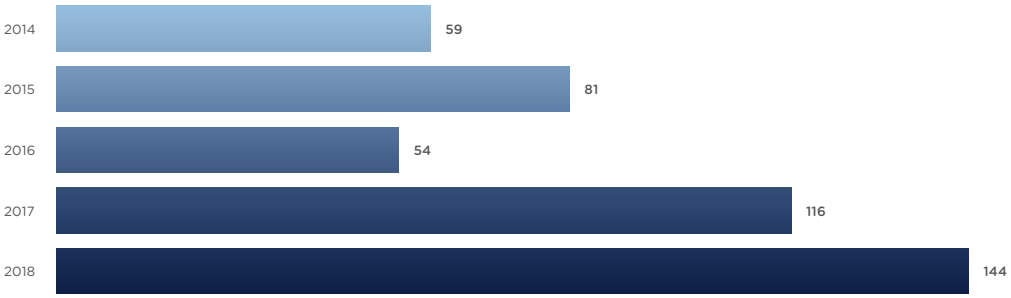
Measures against unlawful activity

Financial consumers can be a target for fraudsters. The FSMA is tasked with warning consumers against unlawful activity such as boiler room fraud, binary options, virtual currencies or pyramid schemes. It investigates indications of suspicious offers. It does so on the basis of information from third parties, reports from consumers or its own findings. Apart from publishing warnings, an investigation may lead to sanctions or measures to stop the unlawful activity.

Cooperation with judicial authorities and publication of warnings

If the FSMA suspects that financial products or services are unlawful, it may decide to commence an investigation. If, during this investigation, criminal offences come to light, it may forward the dossier to the judicial authorities. Often this concerns indications of investment fraud, mostly in an international context. For this, extensive investigative measures are required, which should preferably lead to criminal prosecution. If a criminal investigation effectively leads to prosecution by a criminal court, that court may, unlike the FSMA, also rule on joined civil claims and grant compensation to the victims who have put themselves forward as plaintiffs.

Graph 8: Warnings



Alongside its cooperation with judicial authorities, the FSMA publishes warnings on its website to alert the public to the dangers of certain offers. In 2018, it published 144 such warnings. The year before there were 116. That rise can be explained by the sharp increase in cryptocurrency fraud, against which the FSMA repeatedly warned the public in 2018.

In addition to its own warnings, the FSMA also publishes the warnings of its European counterparts. These are provided by ESMA. In 2018, there were 464 of these. Furthermore, the FSMA's website includes links to warnings from non-EU supervisory authorities that are members of IOSCO.

Measures against unauthorized lenders

As announced in the previous annual report, in 2018 the FSMA looked into lenders working without authorization, which is illegal. This action forms part of the task conferred on the FSMA since 2015 of supervising access to the activity of mortgage lender and consumer credit intermediary. In the first phase, existing lenders and credit intermediaries were given a transitional period of 18 months, from 30 April 2017, during which they had to submit an application for registration or authorization. New market players had to submit such a request immediately.

After the transitional period had elapsed, it transpired that a number of lenders and intermediaries had not submitted a request. The FSMA contacted these parties to find out which activities they still exercised. Lenders who still had a credit portfolio with no intention of transferring it were obliged to submit an application for authorization. A number of players reported that they had put a stop to their lending activities.

This action fits in within the broader supervision exercised by the FSMA to be able to act if lenders grant credit to Belgian consumers without having the requisite authorizations and competence.

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In 2019, the FSMA will continue to be firmly engaged in combating the various unlawful investment offers. Given the scale of the problem of cryptocurrency fraud, it will continue to closely supervise this. It will also devote specific attention to the problem of **cloned firms**.

Cloning is a form of fraud in which swindlers assume the identity of reliable companies. This is something that is becoming increasingly frequent. Fraudsters claim to be operating on behalf of companies authorized in Belgium or abroad to gain consumers' trust and more easily extract money from them. These fraudsters openly refer to supervisory authorities such as the FSMA, from which they have supposedly obtained authorization. This is an outright lie. In fact, it is nothing but fraud.

To avoid financial loss, it is crucial for consumers to carefully check the contact details of the person they are dealing with as well as their web addresses. If there is the slightest difference or discrepancy with the details available via the official channels, utmost vigilance should be exercised. The FSMA will do everything possible to hinder such practices and help consumers not fall prey to them. It is equally always ready to provide any clarifications to anyone who has the slightest doubt as to the identity of someone they are in contact with.

Problem of fraudulent cryptocurrency trading platforms

In 2018, many Belgian consumers became victims of fraudulent cryptocurrency investments. These investments come in many forms: purchase of cryptocurrencies, cryptocurrency savings accounts, management agreements, Initial Coin Offerings (ICOs), etc. Whatever formula the fraudsters offer, in the end, the investor is always at risk. The fraudsters usually use the same scenario: they offer consumers an investment which is supposedly safe, simple and very lucrative and they emphasize that they need not be an expert to invest in cryptocurrencies. But in the end, investors never get their money back. Sometimes, repayments are indeed made, but only to convince investors to invest even more money. If they make these additional payments, they never see that money again.

On 22 February 2018, the FSMA published a warning against this type of fraud. Its website also features a testimonial by a duped investor as well as a warning list of websites for which indications of fraud exist. Over the course of the year, the FSMA repeated this warning several times and meticulously updated the list of fraudulent platforms. At the end of 2018, there were 113 websites on the warning list.

In 2018, the FSMA received a total of 334 questions and complaints about cryptocurrencies. Losses reported to the FSMA due to cryptocurrency fraud came to 4.5 million euros in 2018. That figure is, however, only the tip of the iceberg. In many cases, victims do not report these frauds. The FSMA always strives to answer consumer questions in detail to ensure they are as well-informed as possible. Consumers who have already paid funds are in the first place encouraged to make sure they absolutely don't pay any more. A common tactic by fraudsters is to promise repayment to their victims once they have paid one final amount (supposedly to contribute to taxes, exit fees, insurance fees, etc.). These are only pretexts to cheat their victims out of even more money.

The FSMA already does everything it can to put a stop to advertisements for such offers. It systematically reports wrongdoing to the judicial authorities and conducts investigations itself to trace the fraudsters behind these offers. One of the ways in which it does this is by verifying money trails.

For this purpose, consumers are encouraged to contact the FSMA before getting embroiled in this type of investment, to find out whether the proposed investment is legal. It urges the public to be extremely vigilant because appearances can be deceptive. Some companies have no qualms about blatantly claiming that they have an authorization from the FSMA or about usurping the identity of another company that does have an authorization. The FSMA constantly reiterates that investors should always be wary of promises of huge returns.

Consumers who have fallen prey to such fraudsters are strongly recommended to immediately submit a complaint, with as much detail as possible, to the police or the judicial authorities.

Campaign to raise awareness about online fraud

The FSMA and the FPS Economy launched a large-scale national campaign in 2018 to raise awareness about online fraud. The slogan for this campaign was: 'If it sounds too good to be true, it is!' The focus here was on three types of fraud:

- cryptocurrency fraud
- investment fraud and
- "friend fraud" (also known as "farcing").

This was a proactive campaign focused on preventing online fraud. Investors were alerted to the dangers of this type of fraud, were taught certain reflexes to avoid falling into these traps and were encouraged to report online fraud to the FPS Economy's contact point or to the FSMA. The reason for this joint initiative was the significant increase in the number of reports of online fraud. Victims of this type of fraud suffer substantial losses.

A website was developed for this campaign: www.temooiomwaartezijn.be (in Dutch) or www.trop-beaupouretrevrai.be (in French). Additionally, there were videos, posters and banners. There was also publicity for this campaign on the radio and TV, in newspapers and on social media.

The FSMA took advantage of this joint action to once again reiterate its main pieces of advice on how to avoid fraud:

- check who you're dealing with;
- never give out personal information;
- request clear and accurate information;
- do not trust promises of excessive profits.

Social media and dubious investments

The FSMA has identified the fact that social media is increasingly being used for fraudulent offers of financial products and services. Consumers receive unsolicited messages with an offer of dubious investments or fraudulent loans. What the FSMA has noticed is that youngsters are often enticed with photos of flashy cars or other products that they can aspire to if they enter into certain fraudulent constructions. What it has noticed too is that many pyramid schemes make use of social media to communicate on closed discussion groups. Classified ads websites are also used for fraudulent offers of financial services.

Social media can be misused to pressure consumers or to spin them a web of lies. It should equally be noted that no checks are carried out before products are offered through social media, or on the advertisements for these products.

To tackle this problem, the FSMA has a proactive warning and awareness-raising policy. Investors who receive offers of financial products or services through social media are advised to do the following:

- be wary when someone contacts you to offer you an investment;
- check the e-mail address of the person contacting you: professional offerors usually have a professional e-mail address;
- gather additional information on offerors: look them up with the usual search engines and check whether they are known by the FSMA. Be wary of identity fraud!

The FSMA also takes concrete measures to try to put an end to false advertising.

Handling alerts from whistleblowers

A whistleblower is someone who identifies breaches of the financial legislation supervised by the FSMA and alerts the FSMA of these. Usually, whistleblowers work in the financial sector. If they report wrongdoing in good faith, they are protected from any reprisals from their employer.

On 28 September 2017, the FSMA put its "Whistleblowers' point of contact" online[43]. In 2018, it received a number of alerts, mostly through the dedicated online form on its website. A number of these alerts were anonymous.

Because it is bound by professional secrecy, the FSMA cannot give any individual feedback to whistleblowers on investigations it conducts following these alerts.

Sometimes, alerts are personal complaints or relate to matters for which the FSMA is not competent. Potential whistleblowers can find useful information on the FSMA's website to work out if a particular malpractice should or should not be notified via the Whistleblowers' point of contact. It also explains the information and evidence the FSMA needs to be able to take steps.

43 See the 2017 FSMA annual report, p. 47, 157 and 158.

Consumer notifications

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

Fraud and unlawful offers are the main subjects

In the period under review, the FSMA received 2,066 notifications from consumers on various financial subjects. That is one-fifth more than in 2017. In that year, the FSMA registered 1,710 questions and complaints.

Almost half of the messages were about fraud and unlawful offers of financial products and services. In total the FSMA received 998 notifications in this category. Most of these notifications are about cryptocurrency fraud and pyramid schemes. Other notifications were about boiler rooms and recovery rooms, credit fraud and diamond fraud.

The FSMA also received notifications about binary options and CFDs. However, the number of these fell in the period under review. Since 2016, the FSMA prohibits the sale of binary options and CFDs to consumers[44].

287 messages were sent by consumers on the subject of pensions. They called on the FSMA's expertise as supervisory authority of supplementary pensions. Consumers complained about late payments of supplementary pensions and about the lack of communication and information.

The FSMA received 229 messages on investments. Those related to questions and complaints about securities, investment funds, investment insurance and asset management.

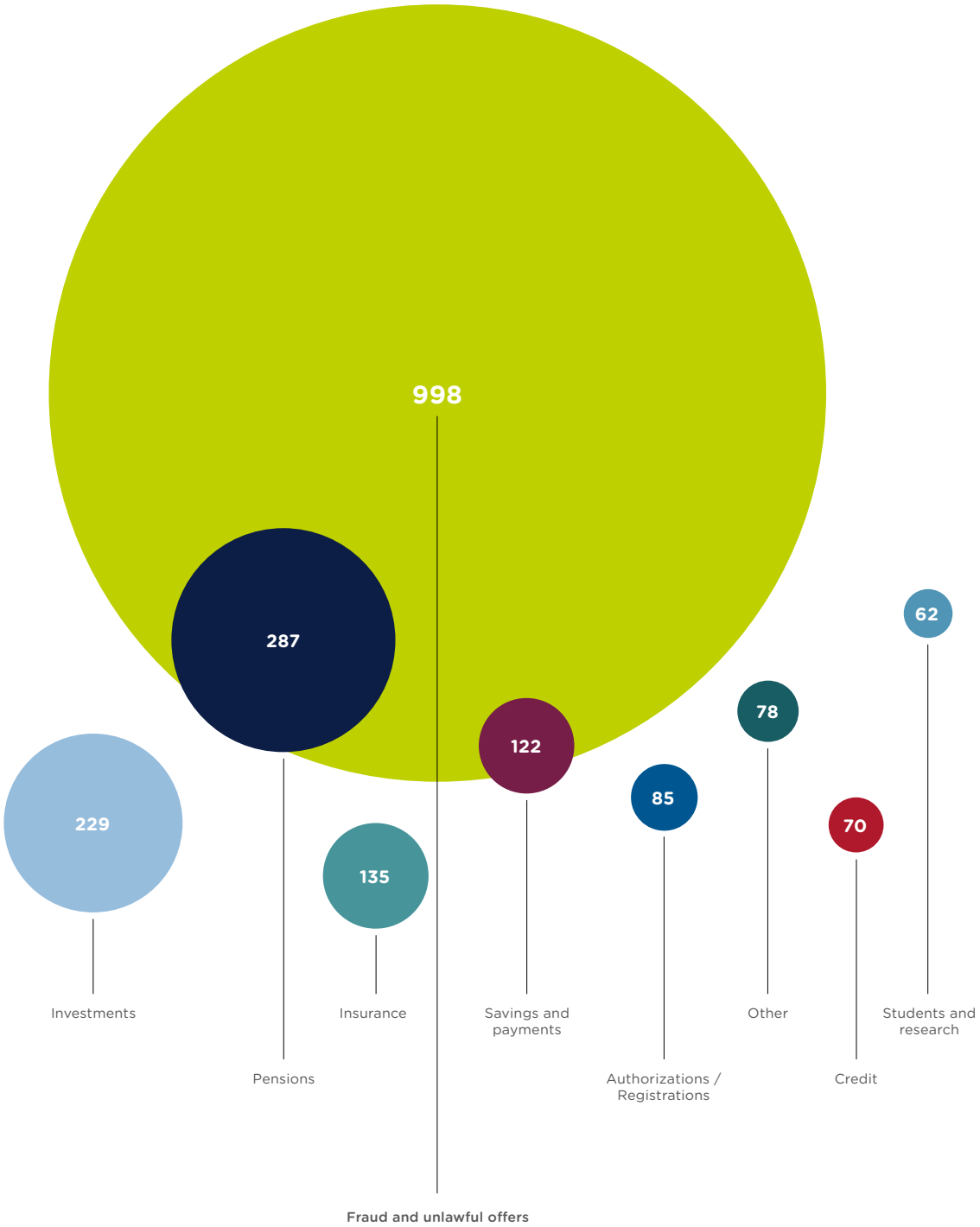
Messages from consumers are a major source of information for the FSMA. They offer an insight into problems with financial products and services. In this sense, they are important signals for the FSMA's supervision of the financial sector.

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

44 See also this report, p. 136.

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 NBB, the FPS Finances and the FPS Economy. The FSMA is a partner of the FPS Economy Contact Point for Fraud.

Graph 9: Number of consumer notifications by category



TRANSPARENCY OF FINANCIAL MARKETS

Investors need accurate information on companies to be able to make well-informed investment decisions. The FSMA sees to it 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. Additionally, the FSMA checks the information from unlisted companies at the time of a public issue of securities with the purpose of collecting money from investors.

Supervision of transactions of listed companies

Listed companies that offer shares or debt instruments to the public 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 2018, the FSMA approved the information provided on several transactions of listed companies.

The information in a prospectus must comply with legal requirements and be thorough, easy to understand and consistent. The FSMA places particular emphasis on clearly identifying risks to investors in the prospectus. These risks should be shown in a separate section of the prospectus. If necessary, they are reiterated on the front page of the document. This is to make potential investors aware of the risks the company faces and of the risks associated with these securities, and take these into account when deciding whether or not to invest.

Issuances and initial public offerings

In 2018, there was only one IPO on Euronext Brussels: for the company FNG. It was not their first IPO: FNG had already been listed on Euronext Amsterdam. Because the company wanted to relocate to Belgium, it halted its listing in Amsterdam and made an initial public offering in Belgium. FNG collected 60 million euros with its IPO.

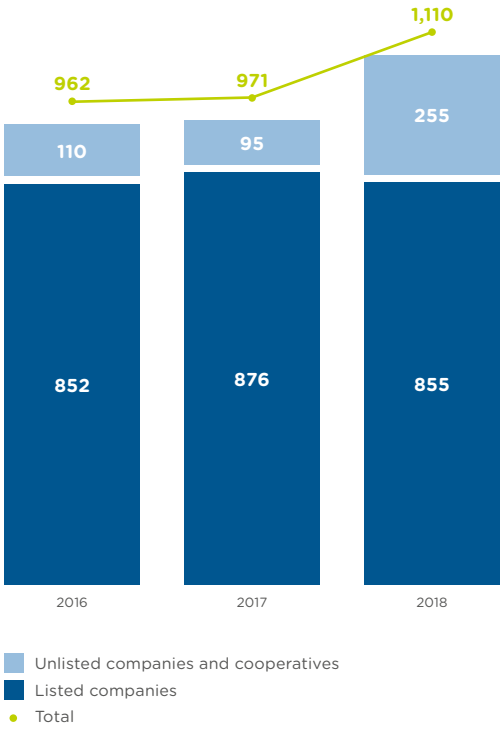
The listed companies Hamon, Tinc, Retail Estates, Xior, Cofinimmo, Leasinvest Real Estate and Intervest Offices & Warehouses launched capital increases. The FSMA approved the prospectuses concerned.

Four other companies had a listing prospectus approved. Such a prospectus has to be published when a listed company asks to list securities not issued publicly. Usually, these are securities that have been the subject of a private placement with institutional investors for which no offer prospectus has to be published. One of the three companies, Titan Cement International, has been established to acquire the shares, in a public exchange bid, from the Greek company Titan Cement Company, which is listed on the Greek regulated market. This was the first listing for Titan Cement International. Given that the exchange bid did not raise the predetermined minimum, the bid was unsuccessful and the application for listing was withdrawn.

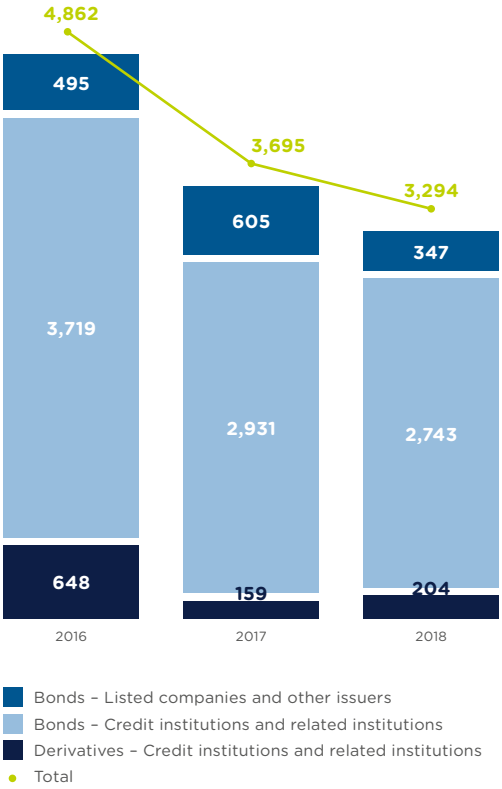
The listed bond market was also very active in 2018. The companies Atenor, VGP and Immobel issued listed bonds, which were also placed with retail investors. An application for listing was submitted for five *Euro Medium Term Notes* programmes and five bond issues for institutional investors. For all issues or listings of debt products, an FSMA-approved prospectus was published.

Lastly, in 2018, 12 listed companies submitted a registration document for FSMA approval. Such a document is prepared independently of an issuance or listing and allows the company to work much faster when it is obliged to prepare a prospectus, as they would then only have to prepare a securities note and a summary. The securities note, summary and registration document together form the prospectus. It should be noted that pursuant to the Prospectus Regulation, as from 21 July 2019, frequent issuers that have submitted two consecutive Universal Registration Documents for approval no longer need to have their registration document approved before publication.

Graph 10: Share issue volume (in EUR million)



Graph 11: Issue volume of bonds and derivatives (in EUR million)



Numerous dossiers concerning takeover bids

Third parties made four voluntary takeover bids for the companies Ablynx, TiGenix, Realdolmen and Banimmo. Three voluntary takeover bids were made by the reference shareholders of the offeree companies, namely, 2Valorise, Connect Group and Vastned Retail Belgium. The latter takeover bid was the first made in Belgium for a regulated real estate company (SIR/GVV). The legislation in force for an offeree company with the status of a regulated real estate company (SIR/GVV) required that the FSMA grant derogations for the bid to be made.

Only one of these offers failed to attain the desired result. It transpired that for Vastned Retail Belgium, the pre-condition established by the offeror for the success of the bid was not fulfilled. For the offers for Ablynx, TiGenix, Realdolmen and 2Valorise, the threshold for a squeeze-out bid was attained. If after a voluntary bid, the offeror has a total of 95 per cent of the securities and has acquired 90 per cent of the securities to which the bid relates, it may require, as long as it expressly provided for this possibility, that all remaining security holders transfer their securities to it at the price of the bid. After the squeeze-out bid, the securities of the issuers concerned are delisted.

Disclosure of intended bids

The FSMA was contacted by one company that wanted to make a bid for a Belgian listed company. That potential offeror had repeatedly expressed an interest in the company concerned to its board of directors. The board of directors had rejected it each time. Because the planned bid entailed a substantial premium over the market rate, the potential offeror deemed it advisable to inform the market of its plans, which included conditions linked to the offeree company's cooperation.

When the FSMA checked the accuracy of the facts with the offeree company, it learned that the company, in the opinion of the board of directors, had not been valued correctly for the bid. In view of the premium established and the significance of the information for the whole market, the FSMA, in line with its powers in this matter, asked the potential offeror to make its intentions known.

As a result, the FSMA suspended the listing of the offeree company's shares and asked it to react. It deemed that, for transparency's sake, it was important for the market to be fully informed of the bid, of the conditions for the bid and of the rejection of the offeree company for the bid to be considered positive.

The listing was resumed after publication of both press releases.

Given that the situation remained unchanged, after two weeks, the FSMA required the potential offeror to clarify its intentions within a period of ten days, either by submitting a bid dossier or by publishing its intention not to make a bid.

Three days after that requirement by the FSMA, another offeror came to the fore, offering a substantially higher premium than the first offeror. That new bid was well received by the Chair of the board of directors of the offeree company. The new offeror immediately submitted an official dossier to the FSMA. The first offeror did not submit a higher bid.

A mandatory bid was made for Global Graphics, a company listed in Belgium and governed by UK law, after one of its shareholders exceeded the threshold of 30 per cent of the voting securities. That cross-border bid required close cooperation between the two competent supervisory authorities, namely, the Takeover Panel in the UK and the FSMA.

The FSMA also had to exercise its powers regarding takeover bids in two specific dossiers.

In the first dossier, an offeror that controlled the offeree company and had already informed the market of its intention to make a bid, informally submitted a draft prospectus to the FSMA to ask for it to be examined before submitting an official dossier. At the same time, the independent expert was finishing the report, the draft text of which was also submitted to the FSMA. The FSMA does not object to making an initial set of comments regarding a draft prospectus pending all formalities being fulfilled for the submission of the dossier, on the condition that the market is informed of the planned bid and of the bid price. However, it is not acceptable for an offeror to submit its dossier only at the last minute. In that way, the shareholders and the market are denied the application of the conditions that are valid only once the dossier is effectively submitted. One of these conditions is that the offeror is prohibited from withdrawing its offer except in cases strictly defined by the legal provisions. The FSMA also let the offeror know that it would no longer respond to new draft prospectuses or new draft reports from the expert until the dossier was officially submitted. The FSMA also informed the offeror that if the dossier was not quickly officially submitted, it would consider requiring it to express its intentions as regards the bid again. In response, the offeror formally submitted the dossier, after which it could be examined according to the letter of the law.

Another listed company informed the FSMA that it had been contacted by a potential offeror in relation to a non-binding and conditional bid. The board of directors of the offeree company found the bid price too low to serve as an opening gambit for negotiations. After the information was leaked, the FSMA suspended trading and asked both the offeree company and the potential offeror to publish information on the precise state of affairs of the negotiations, including the bid price. The listing resumed after these communications.

Rules on takeover bids and the Market Abuse Regulation

To allow offerors and offeree companies to manage their communication and actions as well as possible under the Market Abuse Regulation, the FSMA published a list of FAQs in January 2018. These include the question of when a potential offeror must publish its intention to launch a bid, the information that must be included in such a press release, the application of the provisions on the publication of inside information during the period in which the bid is prepared, and the possibility of acquiring securities during that period.

Supervision of regulated information from listed companies

The FSMA supervises not 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.

191 issuers

The number of listed issuers whose regulated information is supervised by the FSMA remained stable in 2018 with the figure coming to 191 compared to 192 in 2017. Specifically, there were 184 Belgian issuers and 7 foreign issuers. For 157 of these issuers the securities were listed on Euronext and for 27 on Euronext Growth, with 7 on European regulated markets. There were 126 issuers of shares and 65 issuers of other securities. The full list of issuers can be consulted on the FSMA's website.

Supervisory approach

As stated in the FSMA's 2017 annual report, the main purposes 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. That supervision is chiefly conducted ex post as part of a supervisory plan based on a risk model.

As every year, attention is devoted during the ex post supervision to ESMA's primary focal points. This concerned in particular the indication of the expected impact of the new standards for their first implementation (IFRS 9 Financial Instruments, IFRS 15 Revenue recognition from contacts with customers and IFRS 16 Leases), specific aspects in relation to IFRS 3 (Business combinations) and certain aspects of statements of cash flows (IAS 7). As part of this supervision, the FSMA's services also devoted particular attention to other aspects such as the impact of Brexit, non-financial information and alternative performance measures.

In 2018, several interventions took place relating to financial information. These interventions related primarily to:

- inadequacy of the quantitative information provided on unobservable inputs to determine the fair value of property investments;
- the lack of a description of the bookkeeping method used for uncertain tax positions, even though that was a key point of the audit;
- inadequacy of the information on the counterparty in the context of contingent payments for a purchase, the determination of the fair value of that contingent payment, and the lack of information on the impact of that contingent payment on the company's liquidity;
- problems with the presentation of the profit and loss account and the inaccurate application of the notion of "recurrent results".

The FSMA sent a letter to companies with a substantial amount of property investments reported on their balance sheet, which were valued at fair value, addressing the quantitative information that must be provided pursuant to IFRS 13. It is crucial that the notes on the balance sheet accurately inform the market on the valuation assumptions and techniques used to determine fair value. After it had identified that there was a lot of room for improvement in the quantitative information on unobservable parameters, the FSMA reiterated the principles that apply to those companies. These principles entail that the valuation techniques be described, that quantitative information be given on the most important unobservable inputs used for the assessment and that a description be given of the main (especially quantitative) characteristics of the assets concerned. This should allow users of the financial information to form an opinion on the valuation used.

Interviews with business managers of listed companies

The FSMA had to react several times after the publication of interviews with senior executives of listed companies. Those interviews, in which indications were given of the value of the company or the evolution thereof, elicited questions as to the information provided and the sometimes substantial impact thereof on the share price.

The FSMA strongly emphasized to the managers concerned that certain statements could be deemed implicit purchase recommendations. It is unadvisable for a manager of a listed company to make statements during interviews on the value of the company or on sensitive information about which no official press release is published. For the market, it is often difficult to distinguish whether the opinion or information is provided in the capacity of director, shareholder or analyst, or whether the information concerned is public or not. It was pointed out once again to the managers in question that such statements come under the definition of “price manipulation” or “investment recommendation” within the meaning of the Market Abuse Regulation.

The FSMA emphasizes that all important information on a listed company and its evolution in the context of regulated information must be published. That information must be based on objective aspects that should be appropriately explained and illustrated with pertinent figures. The interviews given by company representatives may not disclose sensitive information that has not previously been published in the issuer’s official press releases.

If new statements are nevertheless made, the FSMA may make use of its administrative sanctioning powers.

The FSMA also dealt with issuers in the context of the supervision of compliance with the rules on inside information. More particularly, it verified that the information on inside information was published as quickly as possible, including all aspects essential to understanding the facts.

In a number of dossiers, the FSMA pointed out to independent directors the importance of their role in transactions involving the reference shareholder, and that this could lead to conflicts of interest. It is useful to refer in this context to the FAQs prepared by the FSMA on contributions in kind, mergers, demergers and transactions equivalent thereto. In particular, the FSMA reiterates in this context the essential role of the independent directors responsible for compliance with the rules on equal treatment of the shareholders as well as that of the statutory auditor. Their critical viewpoint on the transactions and the information provided thereon allows the general meeting to make well-informed decisions and enables shareholders who may feel disadvantaged by those decisions to lodge an appeal before the competent judicial authorities.

As communicated in its 2017 annual report, The FSMA has decided to conduct more horizontal thematic studies. In 2018, it put the wheels in motion for two of these studies, one on the recasting and allocation of results of regulated real estate companies (SIR/GVV), and one on the reporting of non-financial information. Both studies were completed in the first quarter of 2019. The study on the result of regulated real estate companies (SIR/GVV) was provided to the sector for consultation, and the study on non-financial information was published.

From 1 January 2020, issuers will have to use the European Single Electronic Format (ESEF) for the preparation of their annual financial reports. The consolidated financial statements prepared in accordance with IFRS will include XBRL tags and be easily processed by all users of these financial data. To inform the issuers and the parties concerned with the preparation, audit and presentation of these financial statements as thoroughly as possible, the FSMA, XBRL Belgium vzw/ASBL and the National Bank of Belgium organized an information session on the subject. Representatives of listed companies with experience of XBRL, legislators and an ESMA representative were asked to share their insights during this information session.

Supervision of transactions of unlisted companies

New in 2018: information notes

The new Prospectus Law of 11 July 2018 provides for the preparation of an information note for offers to the public with a total consideration that is less than or equal to 5 million euros or 8 million euros, depending on the case, as well as for admission to Euronext Growth and Euronext Access. This information note is much shorter than a prospectus. That rule aims to make it easier for small companies to have access to financing and at the same time guarantee that investors receive sufficient information. On 22 June 2018, the FSMA published a communication containing an overview of the main aspects of the regulations introduced by the draft law on public offers and admissions to listing.

The information note must be made available to the public by the start date of an offer. It must also be filed with the FSMA at the latest at the same time as it is made available to the public. On 20 July 2018, the FSMA published a communication on the practical methods for filing an information note with the FSMA in accordance with Article 18 of the Law of 11 July 2018. Any supplement to the information note must also be filed with the FSMA.

Between 21 July and 31 December 2018, 131 information notes were published on the FSMA's website. An information note is not comparable to a prospectus. The FSMA does not as a result exercise ex ante supervision on the information note, which is also not first approved by the FSMA. However, the FSMA is responsible for checking the content of the information note and for taking administrative measures or imposing administrative sanctions if the information note does not meet the requirements set by or pursuant to the law. Those checks therefore need to be conducted after the publication of the information note. At the top of the information note, it must be stated in a prominent place that the FSMA has not conducted any ex ante check of that note. The advertisements for offers to the public and admissions to trading for which an information note must be published are also subject to an ex post check.

Issuances in 2018: 26 prospectuses

As part of the supervision of prospectuses of unlisted issuers, the FSMA approved 26 prospectuses in 2018, 8 of which concern the issue of shares by cooperatives, 4 concern employee share ownership plans, 1 concerns the issue of bonds and 13 concern tax shelters. In 2017, the FSMA had approved 36 prospectuses. The fall in this figure is a consequence of the entry into force on 21 July 2018 of the new rules for securities notes.

Change in rules for cooperatives

The former exemptions for offers of shares in cooperatives, contained in the Law of 16 June 2006, were not taken over in the Law of 11 July 2018. Since 21 July 2018, an information note must in principle be prepared for these transactions, in so far as the "de minimis" rule does not apply[45].

Article 18, § 1, a) and i) continued, however, to apply until 21 October 2018 to public offers of shares in cooperatives already in progress on 21 July 2018. The new rules therefore applied to such offers from 21 October 2018.

The FSMA contacted certain cooperatives that had made use, between 1 January 2017 and 21 July 2018, of the exemption from the obligation to publish a prospectus for a public offer of shares in cooperatives as provided for in Article 18, § 1, a), of the Prospectus Law of 16 June 2006. In doing so, the FSMA wanted to ascertain whether the offer of shares in these cooperatives extended beyond 21 October 2018 and if so, under which terms. The issuers which extended their offers after 21 October 2018 without preparing an information note or a prospectus were advised once again as to the applicable rules. They were also asked to put a stop to subscriptions until the information note was published.

Tax Shelter

The FSMA has identified a considerable rise in the number of rejected tax certificates in the Tax Shelter sector. In each of the dossiers concerned, the issuer was asked to assess whether that situation constituted a major new fact that could affect the assessment of the issuer and the risks associated with the transaction. If that was the case, the issuers were obliged to publish a supplement to the prospectus containing useful information on that new fact. The publication of a supplement to the prospectus entitles investors, for a period of at least two days, to withdraw if they had already agreed to subscribe to this financial product on the date of publication of the supplement. This is on the condition that the new fact communicated in the supplement occurred before the signature of the special agreement.

Every year, the FSMA conducts a sectoral study to ascertain the state of affairs as regards the rejected fiscal certificates for each Tax Shelter to be able to take this into account in the examination of prospectuses.

45 The "de minimis" rule was introduced for offers to the public with a total consideration of 500,000 euros or less, calculated over a period of twelve months, in so far as (i) every investor may subscribe to the offer for a maximum of 5,000 euros and (ii) all documents relating to the public offer state the total consideration. For such offers, no information note needs to be published and therefore of course, no prospectus needs to be published. This "de minimis" rule also means that there is no obligation to make a disclosure to the FSMA.

Supervision of financial markets

Real-time supervision and detecting market abuse

In 2018 there was a major change in the tools for market surveillance following the implementation of MiFIR Transaction Reporting in January. A much more complete format was chosen for reporting stock exchange transactions. Transactions in securities executed all over Europe with Belgium as the reference market are disclosed to the FSMA. This information also contains the identity of the ultimate beneficial owner, which makes it much easier to analyse suspicious behaviour.

The FSMA has updated its monitoring tool in light of the new Euronext reporting format and has developed a tool for tracing profits and losses on the market. With the help of that tool, atypical results can be isolated to ascertain whether they are caused by unauthorized behaviour.

As part of its analyses, the FSMA has noted that the use of products with a leverage effect, such as spread bets, has become more frequent. It also appears that fake news or premature information is published more often. The organization of the FSMA's real-time supervision enables it to act quickly, especially by suspending listing. A suspension gives issuers a chance to communicate fully and unequivocally.

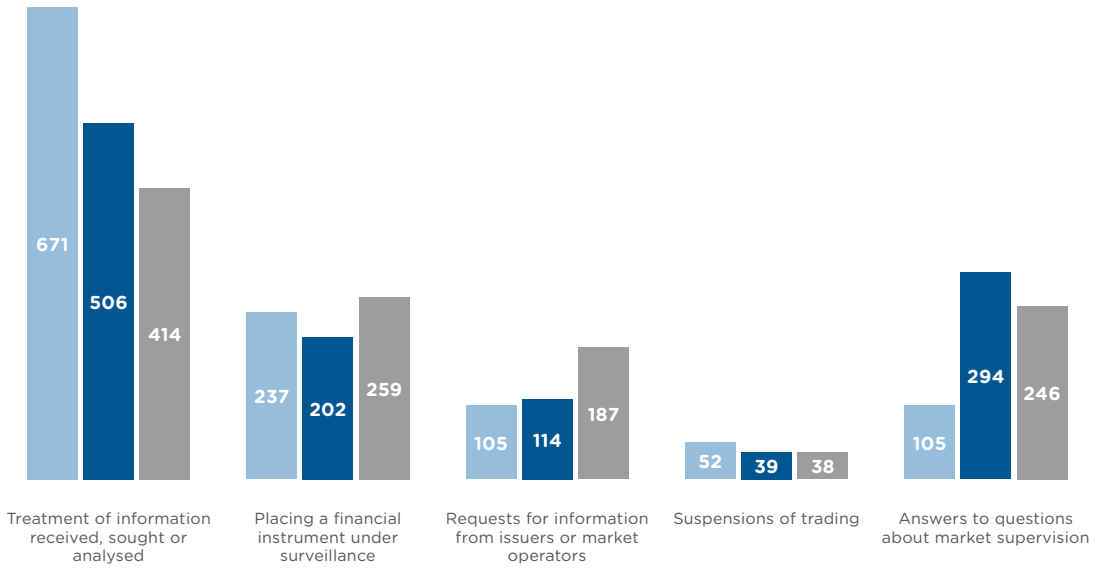
Suspensions

While stock markets were open, an article in the press announced that a listeria contamination from certain products of a listed issuer had caused the death of nine people. As soon as it became aware of the information, the FSMA suspended trading in the shares and asked the issuer concerned to communicate about the situation. When the issuer communicated in detail on the subject, on the following day, trading resumed.

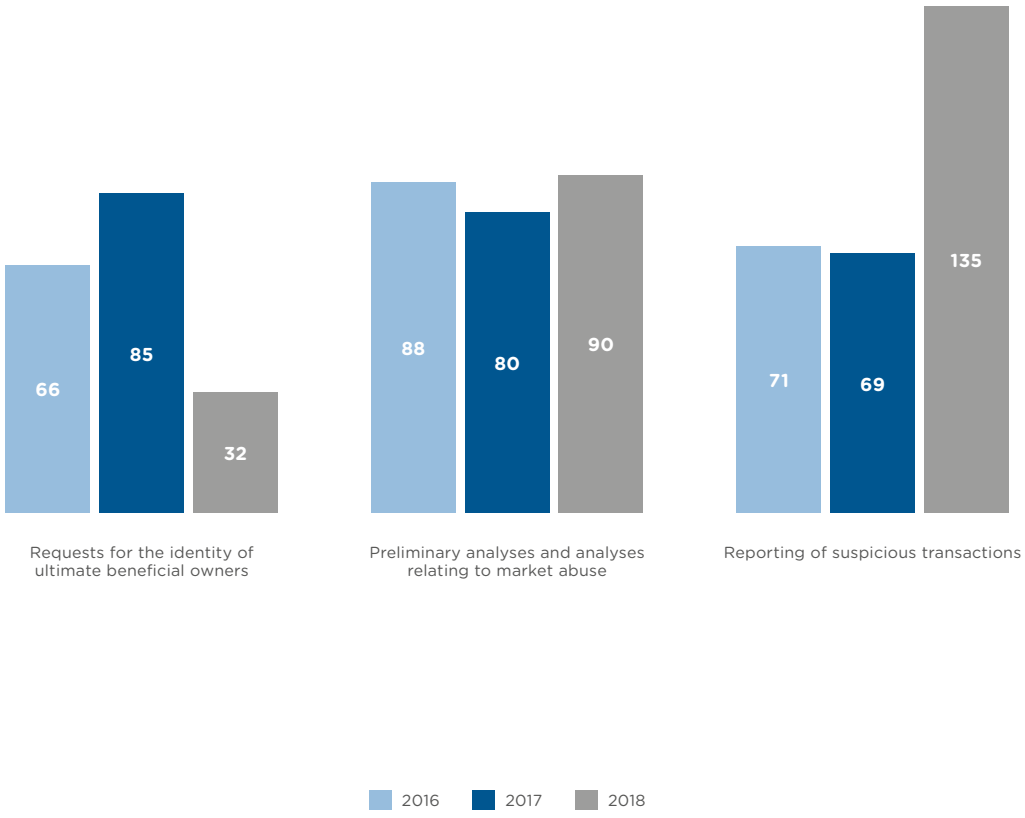
Suspension is a technical measure that prevents transactions being executed in a non-transparent market. It gives the issuer the necessary time to publish complete and accurate information. Such a measure does not of course mean that the FSMA may not investigate, after the fact, whether the issuer concerned correctly applied the rules on inside information and, where applicable, conduct an investigation that may lead to administrative sanctions.

The statistics on real-time supervision and detecting market abuse for 2018 are as follows:

Graph 12: Real-time supervision



Graph 13: Detecting market abuse



Rise in the number of reports of suspicious transactions

In 2018, the FSMA's services conducted an investigation into the procedures and systems for tracing and reporting suspicious transactions or orders, among Belgian intermediaries who execute buy or sell orders. In accordance with the Market Abuse Regulation, intermediaries must develop systems enabling them to trace transactions or orders that could be deemed market abuse (misuse of inside information or price manipulation). They must also have appropriate procedures to report these transactions or orders to the FSMA. That investigation, which concerned 53 Belgian intermediaries, will be followed up in 2019 with on-site inspections.

Reports of suspicious transactions are an important source for indications of market abuse. In 2018, the FSMA received 135 of these reports, 41 from Belgian intermediaries and 94 from European intermediaries, compared to 69 in 2017. All of these reports were analysed and an analysis was started following many of these reports.

The number of useful reports of suspicions of market abuse has continued to rise, which is encouraging. This rise may be a direct consequence of the aforementioned investigation, which made Belgian intermediaries more aware of this problem and their obligations in that respect. By reporting cases of market abuse to the FSMA themselves, market operators show that they also consider themselves to be responsible for integrity in the way the financial markets operate.

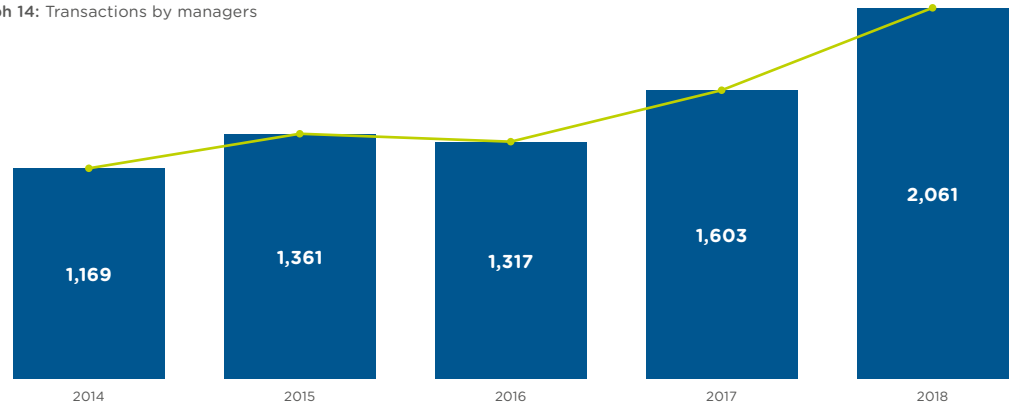
Managers' disclosure obligations

In accordance with the Market Abuse Regulation, managers of listed companies must disclose their transactions in the securities of their company. In 2018 the number of disclosures once again rose sharply.

FOCUS 2019

In its **supervisory activity in 2019**, the FSMA will focus on providing appropriate guidance for the implementation of the final phase of the Prospectus Regulation, fine-tuning the tools for detecting market abuse, finishing and implementing thematic inspections and integrating ESMA's priority areas.

Graph 14: Transactions by managers



Supervision of company auditors

Company auditors play a major role in ensuring the provision of accurate information to the markets. After all, they contribute to giving the necessary certainty to suppliers, lenders, investors, clients and company employees that the annual accounts give a true and fair view of the financial situation of a company.

For this reason, the legislature has entrusted the supervision of company auditors to a specially established 'Belgian Audit Oversight College'. That College's main task is to supervise the quality of auditing tasks conducted by company auditors. That supervision occurs through a system of quality checks on company auditors and by handling supervisory dossiers including the investigation of complaints about company auditors.

The FSMA contributes substantially to the operation of the Belgian Audit Oversight College. For more information on this contribution, see the FSMA's 2017 annual report[46]. The Belgian Audit Oversight College's operating expenses are paid by the FSMA and claimed from the sector via the Institute of Registered Auditors. A budget of 2.8 million euros, indexed annually, was established by royal decree for these operating expenses, which provided that any potential surpluses be refunded to the sector. Since the College was set up in 2017, the FSMA has been able to refund a substantial part of this budget.

In 2018, the general-secretariat of the College was further reinforced. The FSMA also lent a great deal of support to the work of the College for the application of the new legislation and regulations. In the first place, this related to the new legislation and regulations on data protection (GDPR) and on combating money laundering.

In 2018, the FSMA also started its inspections of audit firms. The method for these inspections was already developed in 2017 and put into practice in 2018 for on-site inspections. For these inspections, the College uses the FSMA's Central Inspection Team. The inspections of audit firms with public-interest entities as clients were among inspection team's major activities in 2018.

As preparation for this cycle of inspections, the FSMA helped create specific training for auditors. This training contributed to allowing the sector to adapt to the new methods used by the FSMA. The FSMA's inspections are more time-consuming than previously, which made the necessary impact on the field for audit firms.

The Sanctions Committee of the FSMA is responsible for handling the disciplinary proceedings of company auditors. In 2018, the College submitted its first of such dossiers on auditors to the Sanctions Committee[47].

A full overview of the activities of the Belgian Audit Oversight College in 2018 can be found in the College's annual report[48].

46 See the 2017 FSMA annual report, p. 66.

47 To see an overview of the activities of the Sanctions Committee, see this report p. 176.

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

HONESTY AND INTEGRITY OF THE FINANCIAL SECTOR

All consumers must be able to trust their financial companies. They must be sound and their employees must have expertise and integrity. The FSMA oversees different types of companies in the financial sector. The checks it carries out are on different subjects such as organization and business continuity, fitness and propriety and expertise of the directors, sound governance, compliance with training requirements, and compliance with the law on money laundering and terrorist financing.

Supervision of market operators

The FSMA supervises the activities of various market operators. It oversees the management companies of investment funds, portfolio management and investment advice companies, independent financial planners, bureaux de change, crowdfunding platforms and administrators of financial benchmarks.

The Belgian market in figures

Table 3: Belgian companies with an FSMA authorization

	2015	2016	2017	2018
UCITS management companies	7	7	7	8
AIF management companies	7	9	9	13
Portfolio management and investment advice companies	19	19	17	16
Independent financial planners	5	6	7	5
Bureaux de change	11	12	10	10
Crowdfunding platforms			6	6

Table 4: Foreign companies with a European passport[49]

	2015	2016	2017	2018
Branches of investment firms	14	12	13	11
Branches of UCI management companies	10	13	14	12

These companies have an authorization from another supervisory authority in the European Economic Area (EEA). As a result, they get a 'European passport' to establish a branch in Belgium. For these branches, the FSMA supervises the conduct of business rules as well as the combating

49 This table only shows branches under the FSMA's supervision. Investment firms that provide services which are reserved to stockbroking firms in Belgium must register their branches with the National Bank of Belgium.

of money laundering and terrorist financing. For the rest, these companies are supervised by the supervisory authority of their Member State of origin.

Table 5: Foreign companies under the free provision of services

	2015	2016	2017	2018
EEA UCI management companies	98	108	116	127
EEA investment firms	2,886	2,990	3,005	3,158
Third-country investment firms	84	84	90	98

Foreign authorized companies established in the EEA get a second type of "European passport". Through this, they may be active in Belgium without having established a branch. This system is called the "freedom to provide services". These companies are supervised by the supervisory authority of their Member State of origin. The large majority are investment firms from the United Kingdom.

Supervision of Belgian companies

Asset management requires a robust organization

The FSMA supervises management companies of investment funds. It ascertains whether each company's management is fit and proper and sufficiently available. In particular, it examines the distribution of tasks between 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.

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 prevent staff from taking 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[50].

50 See this report, p. 42.

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 the year under review, it conducted an investigation into the organization of risk management, the distribution and the development of investment products (product governance) of a management company.

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 European Central Bank.

Four new authorized management companies

There are two types of authorization for management companies, depending on the type of investment fund under management: undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs). 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.

In 2018, the FSMA granted AIF authorizations to three managers of non-public funds. One of these companies already had the status of small-scale manager[51]. Another company manages specialized property investment funds.

Following the authorization dossier, the FSMA published an opinion[52] on the distinction between portfolio management and work relating to the assets of an AIF when managing property. The distinction between these two management tasks is important because portfolio management may be delegated only to a regulated undertaking. For work relating to the assets of an AIF, that condition does not apply.

In 2018, the FSMA granted an AIF authorization to one manager of a public fund. That company also obtained authorization to manage UCITS. In the period under review, the FSMA also received another application for authorization for the management of a UCITS but that dossier was not completed in this period.

51 For more information about small-scale managers, see this report, p. 78.

52 This opinion of the FSMA can be consulted on its website [in French and Dutch].

Focus on product governance

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

Rules also apply to these 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. This 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 2018, it checked whether the companies possessed the necessary authorizations for all the services they actually provide and whether they had the appropriate organization.

In the period under review, the FSMA asked these portfolio management and investment advice companies about product governance. Investment firms must, since the entry into force of MiFID II, 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. In 2019, the FSMA will communicate the results of these questions.

In 2018, the FSMA did not receive any new applications for authorization as a portfolio management and investment advice company.

One company relinquished its authorization in the past year. This company's parent company will pursue its activities in Belgium in the form of a branch.

A portfolio management and investment advice company submitted an application for registration as a small-scale manager. The two statuses are not in principle incompatible. However, the portfolio management and investment advice company must exercise the additional activity as small-scale manager in a way that is compatible with its original status.

The data from the dossier showed that the portfolio management and investment advice company would execute orders for the account of clients as a small-scale manager. The company did not have an authorization for this investment service. As a result, the FSMA made the registration as small-scale manager dependent on extending the authorization with this investment service. The company had to show that it was appropriately organized for the new activity and especially that it could also comply with the rules on product governance and MiFID conduct of business rules.

Small-scale managers of AIFs: an ever-larger group

Small-scale managers of AIFs constitute an outlier for the FSMA in the group of asset management companies. These companies only have a disclosure obligation. The FSMA registers them. The companies are not under its supervision, except as regards the rules on combating money laundering and terrorist financing.

Small-scale managers of AIFs are companies that may only manage funds that are not publicly sold and the total managed assets of which do not exceed a particular legally established threshold. In 2018, the FSMA handled 28 applications for small-scale managers of AIFs.

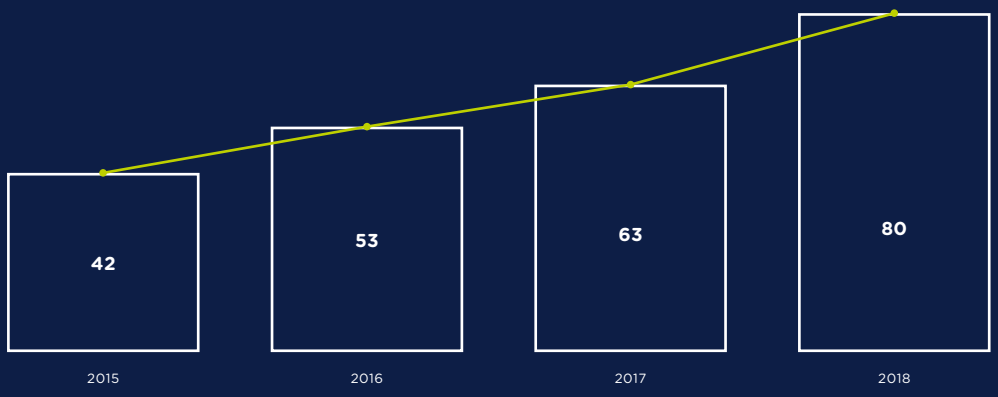
What stands out is the success of private equity closed-end investment companies. Eleven companies with this status came to the FSMA for registration. A limited number of investors may professionally and collectively manage an investment, through a private equity closed-end investment company, in small and medium-sized enterprises, without the fiscal disadvantages of a direct individual investment. The government made this status more appealing in the 2018 financial year. It granted tax relief, inter alia, for capital losses upon distribution of the company's assets for shares of private equity closed-end investment companies set up after 1 January 2018.

The FSMA does not supervise the status of private equity closed-end investment company. The Federal Public Service Finances publishes the list of private equity closed-end investment companies. Unless they can prove that they meet one of the exceptions in the AIF law, managers of private equity closed-end investment companies must register with the FSMA as small-scale managers or as an authorized management company of AIFs.

A similar distribution of tasks between the FSMA and the Federal Public Service Finances exists for specialized property investment funds in existence since 2016. The FSMA does not supervise the funds, but does handle their managers' applications. In 2018, there were four registrations: three as small-scale managers and one as authorized AIF manager.

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. Small-scale managers may voluntarily opt to apply for authorization because they expect a further rise in their assets under management or because they want to be eligible for a European passport. In 2018, a small-scale manager opted for the first time for a transition to the status of authorized management company[53].

Graph 15: Number of small-scale managers of AIFs



53 See also this report, p. 76.

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In 2019, the FSMA will devote special attention to **the robustness of companies** that work in portfolio management, including as regards the management of operational risks and product governance. This theme was already high on the agenda in 2018. The standards for an appropriate organization in micro-structures was an important focal point in 2018 and is on the agenda again in 2019. The FSMA will also proceed with risk-based supervision for **combating money laundering and terrorist financing**[54]. This will happen for all sectors under their supervision.

Financial planning with or without a specific authorization

Five companies have the status of independent financial planner. They have an authorization from the FSMA which allows them to give financial planning advice.

Independent financial planners, their managers, and the persons who are allowed to give advice on financial planning on behalf of the company must possess the requisite professional integrity and appropriate expertise. Their controlling shareholders must be able to guarantee 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.

Two independent financial planners relinquished their authorization in 2018. One company identified that its activity was not in line with the legal description of financial planning. The other company had not yet commenced any activity in Belgium.

The FSMA rejected one application for authorization in 2018. The senior manager of the company did not have the requisite expertise, especially as regards the rules on combating money laundering and terrorist financing. The candidate was able to re-apply on the condition that it could be proven that he had acquired sufficient knowledge on this subject. This company also showed other shortcomings. To eradicate these, the FSMA ordered that a second senior manager be appointed. The FSMA placed great emphasis on the independence of this second person, to counterbalance the first senior manager.

The limited number of authorized independent financial planners does not mean that there is little financial planning activity in Belgium. There is a large group of companies active in this field. These are companies that are already regulated and as a result do not need any further authorization for financial planning. Credit institutions, investment firms, insurance companies, institutions for occupational retirement provision, banking and insurance intermediaries, and management companies of AIFs and UCIs belong to this category. They have to adhere to the rules of conduct for financial planning.

54 See elsewhere in this report, p. 84.

Supervision of bureaux de change

The FSMA sees to it that bureaux de change adhere to the terms and conditions for the exercise of their activities. Bureaux de change must actively cooperate in combating money laundering practices. They must report any suspect transactions to the Belgian Financial Intelligence Processing Unit.

Bureaux de change must have a manager 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 due diligence, they may not enter into business relationships with the client in question or they must put a stop to the existing business relationship. In 2018, the FSMA inspected two bureaux de change.

At the end of 2018, there were seven bureaux de change in our country. These are under the supervision of the FSMA. Three payment institutions also exercise the activity of bureau de change. These are under the supervision of the National Bank of Belgium (NBB).

Last year, the FSMA received one application for authorization from a new bureau de change, from a subsidiary of a Dutch company. The company withdrew its application after it established that its organization did not meet the requirements of the Belgian legislation.

Crowdfunding for investors

The FSMA supervises crowdfunding activities for investors. Platforms that distribute investment instruments fall under its supervision. Companies that offer this activity require a separate authorization as an alternative finance platform. The FSMA processed one application for authorization in 2018. One application was still pending completion during the period under review.

Investors can contribute capital or lend money to a company through crowdfunding. These are the two types of crowdfunding supervised by the FSMA since February 2017. An FSMA study revealed that crowdfunding activity continues to rise in Belgium[55].

Supervision of 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 2018, there were major developments in the management of the Euribor and Eonia.

A hybrid methodology for 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. The European Money Markets Institute (EMMI) is the manager of this benchmark and calculates the benchmark every working day based on estimates from a panel of 19 European banks.

55 See this report, p. 150.

In 2018, the EMMI developed a hybrid methodology to calculate the benchmark based primarily on financial transactions. If a panel bank has insufficient financial transactions, it can provide estimates to the EMMI. The EMMI tested this hybrid methodology using input data sent by banks, and published a consultation paper with the main findings.

Tests showed that the hybrid methodology met the Benchmarks Regulation. It is however crucial that the panel banks effectively take part in the transition from the current Euribor to the hybrid benchmark. As a result, the EMMI asked the banks from the Euribor panel to sign a declaration of intent to stay in the panel and be ready from an operational standpoint. One bank decided to leave the panel. Because this bank was not sufficiently active in the underlying money market that the benchmark reflects, the FSMA decided not to oblige this bank to stay in the panel.

An alternative to Eonia

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

The FSMA took part in the debate on the choice of a risk-free interest rate benchmark for the eurozone within the Risk Free Rate working group. The Euro Short-Term Rate (Ester) was opted for, and the ECB will publish it from October 2019.

In 2018, the Risk Free Rate working group focused on scenarios for the transition of Eonia to Ester. It published a consultation paper in December. The main recommendation is that the EMMI link the Eonia methodology to Ester and publish this until the end of 2021. During the transition period, market participants will gradually replace Eonia with Ester as the reference index.

The FSMA chairs the Euribor/Eonia college of supervisors

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

Given that the FSMA supervises compliance with the Benchmarks Regulation by the only Belgian panel bank, in 2018, the FSMA developed a supervisory plan for the supervision of panel banks and coordinated this with the college, to create a harmonized framework for supervision.

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Managers of benchmarks must apply for authorization before 1 January 2020. The FSMA expects that the EMMI will submit the **authorization dossiers for Euribor and Eonia** in 2019.

Supervision of financial market infrastructures

Authorizations for Central Securities Depositories

Central Securities Depositories (CSDs) are institutions that operate securities settlement systems, record securities in a book-entry system or issue and maintain securities accounts at the top tier level. Belgium has two CSDs, namely Euroclear Belgium and Euroclear Bank.

In 2014, the CSD Regulation was approved. ESMA's regulatory technical standards are in force since 2017. The Regulation determines that all European CSDs must apply for authorization within six months after the entry into force of a number of relevant regulatory standards.

The NBB is competent for the authorization of Belgian CSDs and responsible for supervision of these institutions. As a supervisory authority of the trading venues, the FSMA has a number of specific competencies. It is competent for supervising compliance with a number of rules of conduct.

Euroclear Belgium and Euroclear Bank submitted authorization dossiers to the NBB in 2018. The FSMA has an advisory role vis-à-vis the NBB for supervising compliance with the aspects of the CSD Regulation that come within its competencies.

The FSMA takes part in the EMIR colleges of foreign central counterparties

Central counterparties (CCPs) are institutions that offer clearing services for financial transactions. These companies act as a buyer for the seller and as a seller for the buyer to reduce both parties' counterparty risk.

The FSMA is a member of six "EMIR colleges"[56] of foreign CCPs that are important to the Belgian financial market. This membership has several angles. For some foreign CCPs, the FSMA supervises CSDs with an affiliated CCP, and for others it supervises the trading venue that the CCP operates.

The EMIR college gives advice to the national authority on extensions to an authorization, material changes to models and parameters for determining coverage obligations, withdrawals of authorizations and entry into new interoperability rules between two CCPs.

56 EMIR stands for the European Market Infrastructure Regulation, a European Regulation on, inter alia, the activity of central counterparties.

The FSMA supervises institutions equivalent to settlement institutions

Institutions equivalent to settlement institutions are institutions that are responsible for full or partial operational management of the services provided by a central securities depository. A credit institution that primarily offers safekeeping of financial instruments can also opt for this status.

The FSMA verifies whether these companies take appropriate measures to prevent conflicts of interest being damaging to their clients. It also oversees the data that these institutions keep on their services and activities. In that way, they can comply with their obligations to their clients and take appropriate measures to safeguard the rights of their clients in case of insolvency.

Three institutions equivalent to settlement institutions came under the supervision of the FSMA in 2018. A fourth institution submitted an application for authorization to acquire the status of an institution equivalent to a settlement institution. One application was still pending completion during the period under review.

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 intermediary registers. It holds these public registers and verifies that the intermediaries adhere to the legal conditions for the exercise of their profession.

The FSMA also supervises access to the business of lender and the way in which they comply with the conditions for authorization.

Stricter approach to money laundering and terrorist financing

Preventing money laundering and terrorist financing was high on the FSMA's agenda in 2018. The transposition into Belgian law of the new European legislation[57] led to a stricter approach and additional obligations for intermediaries and lenders. The FSMA expects permanent vigilance from them.

The new legislation places the emphasis on a risk-based approach to prevent money laundering and terrorist financing. This means that the intermediaries and lenders concerned must inventory, assess and understand the risks they face and that they should take measures commensurate with these risks.

This new approach is one of the main changes in this legislation. It entails changes in the area of organization and procedures for the entities concerned. More particularly, these concern insurance intermediaries who sell life insurance products or manage a portfolio with life insurance products, brokers in banking and investment services and lenders under the supervision of the FSMA.

To be able to properly assess risks, they must know their customer. They must analyse their products and services, as well as the countries or geographical areas in which they offer their products or services, or with which their customers have links, and the distribution channels they use. As part of their customer due diligence, they must take into account the objective and nature of the customer relationship. They must also gauge their customers' transaction volume and the scale of their other financial assets.

57 Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

Only after this general assessment of risks is complete, may the intermediaries and lenders concerned determine how they must organize themselves and how they must develop their policy, procedures and control measures. This is a one-off exercise. The ways in which money is laundered and terrorism is financed is in a constant state of flux. Criminals can exploit weaknesses in the control system. This means that an activity with little risk can all of a sudden entail a higher risk. The intermediaries and lenders concerned must be vigilant of this. They must heed warning signals and be able to adjust to new circumstances or a new type of customer.

In the year under review, the FSMA took several measures to facilitate the application of the new legislation. It also published several newsletters and news flashes to inform the sector and raise awareness.

For insurance intermediaries it offered a toolkit on its website and a practical guide. This toolkit included a handy overview of all the focal points covered in the voluminous legislation. For smaller companies, this is a handy tool to assess the risk of its own regulated activities.

All entities concerned received a questionnaire. This list of almost 150 questions enabled the FSMA to evaluate the extent to which the sector complied with combating money laundering and terrorist financing. For the entities, the questionnaire constituted a major stimulus to keep the risk assessment of their activities updated. As the FSMA expected, those that had already completed this exercise could complete the questionnaire fairly easily.

The FSMA was delighted with the response to the questionnaire. In total it sent out 8,719 questionnaires. At the end of 2018, virtually all intermediaries concerned and all lenders had completed the questionnaire.

The questionnaire gave the FSMA information as to the risks of each entity and the measures it had taken to manage these risks. Based on the answers and the data from various other sources, the FSMA determined a risk profile for each entity. This analysis allowed a supervisory plan to be prepared and priorities to be set for its supervision. The new legislation obliges the FSMA to take a risk-based approach to its oversight activities.

Combating money laundering and terrorist financing also requires closer cooperation between supervisory authorities. In this context, the FSMA regularly consults with representatives of the National Bank of Belgium and of the Belgian Financial Intelligence Processing Unit. Regular consultation with sectoral federations enables a focus on the FSMA's expectations and raises awareness among the sector.

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In 2019, the FSMA oversees how intermediaries and lenders comply with the legislation on **preventing money laundering** and terrorist financing. It also acts to raise awareness on the subject among the sector.

Overview of intermediaries and lenders

On 31 December 2018, 11,054 insurance intermediaries, 2,560 intermediaries in banking and investment services and 14 reinsurance intermediaries were listed in the FSMA's registers. The FSMA also registered 4,516 intermediaries in mortgage loans and 6,791 intermediaries in consumer credit.

For intermediaries in mortgage loans and consumer credit, the FSMA saw a slight fall in 2018 of 4.4 per cent and 1.5 per cent respectively (see Graphs 16 and 17).

For insurance intermediaries, the FSMA noted a slight fall of 3.3 per cent in one year (see Graph 18). Since the entry into force of the law on insurance intermediation, there has been a continuing fall in the number of insurance intermediaries. In 1996, there were around 28,000 insurance intermediaries in the register. The figures from 2018 show a stabilization.

The main reasons why intermediaries put an end to their activities appear to be consolidations in the sector. The advancing age of intermediaries and reorganizations in distribution models also play a role.

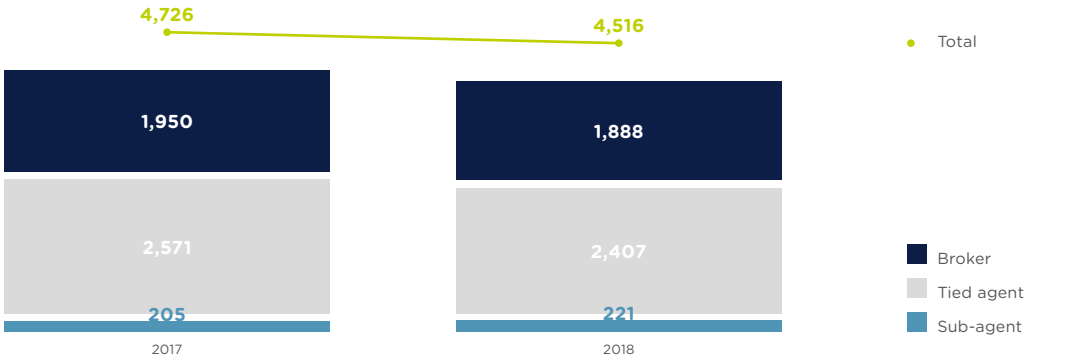
The reorganization of the banking landscape of a large credit institution also appears to be the main reason for the relatively large decrease in 2018 of 15.4 per cent in the number of intermediaries in banking and investment services (see Graph 20).

Generally, in around 95 per cent of cases, the intermediaries themselves took the initiative to terminate their registration, or the termination was requested by the central institution at which an intermediary was collectively registered.

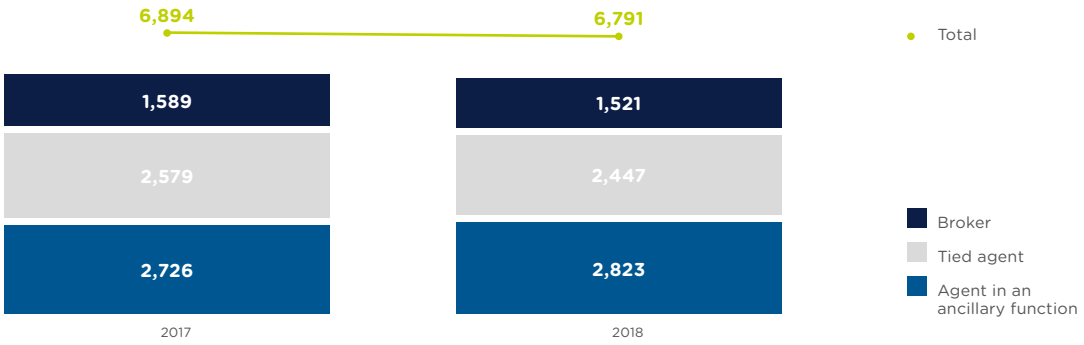
The FSMA also struck off an intermediary from the register at its own initiative[58].

58 See this report, p. 91.

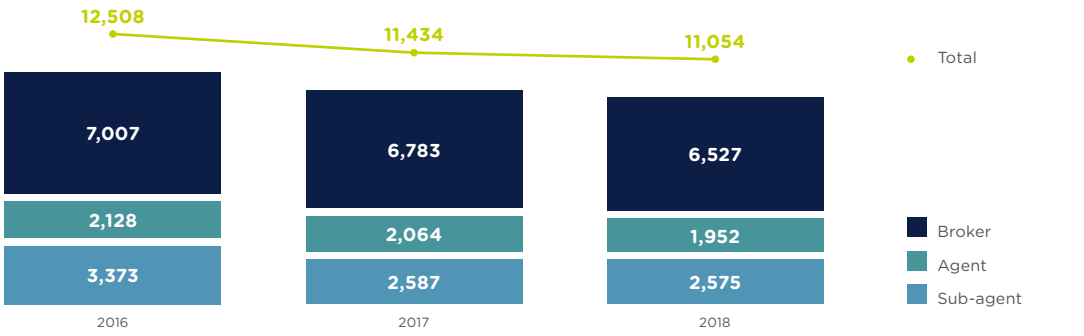
Graph 16: Intermediaries in mortgage loans



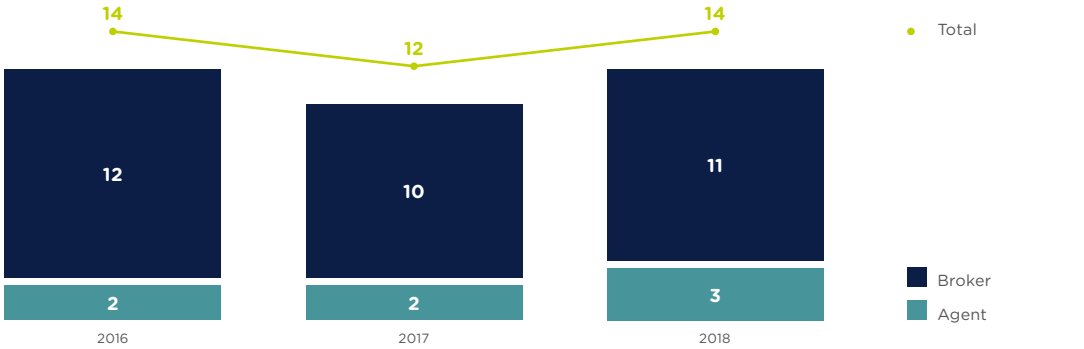
Graph 17: Intermediaries in consumer credit



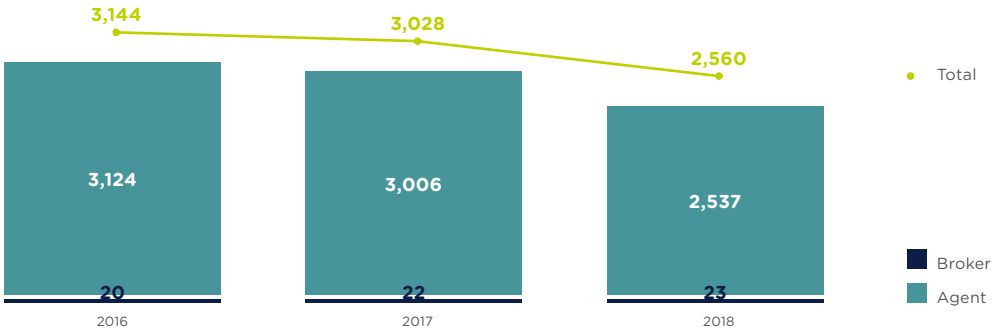
Graph 18: Insurance intermediaries



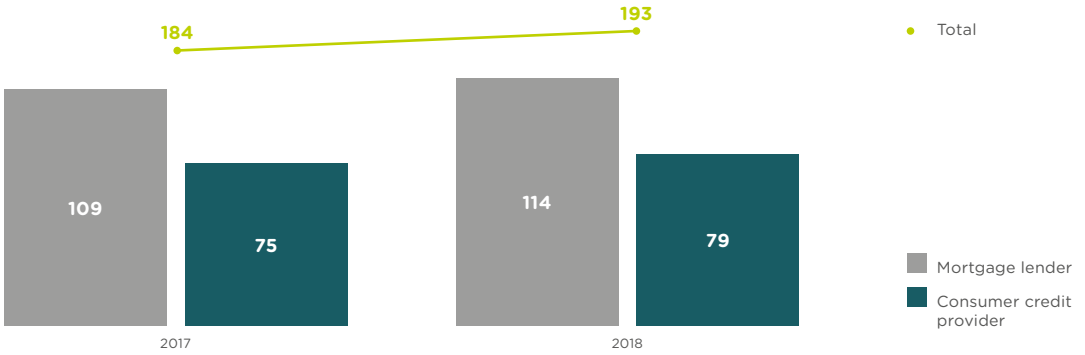
Graph 19: Reinsurance intermediaries



Graph 20: Intermediaries in banking and investment services



Graph 21: Lenders



Who are intermediaries or brokers?

Table 6: 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			
Insurance intermediaries			x		

There are different activities in which intermediation may occur. For each activity there are several categories of intermediaries or brokers:

- 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 all of part of his/her 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.
- The core business of **ancillary insurance intermediaries** is to sell goods and provide services of a non-financial nature such as holidays, telephones, bicycles and cars. They offer insurance products as a supplement to these goods and services.

Who are lenders?

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 in Flanders, Brussels, or Wallonia that provide credit agreements either at an interest rate lower than the market rate or with no interest, or with more advantageous conditions than market terms and conditions; These are under the supervision of the FSMA;
- 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 to integrity and suitability conditions as regards their senior managers and directors. These are under the supervision of the FSMA.

New role and new category of insurance intermediaries

The Belgian law[59] transposing the European IDD (Insurance Distribution Directive) introduces reforms in the insurance and reinsurance distribution and intermediation sector. Inter alia, it changes the rules of conduct to which the insurance and reinsurance distributors have to adhere and has an impact on the various statuses of insurance and reinsurance intermediary.

Below, we go through a number of the changes introduced by this law.

A new regulated role is introduced within insurance and reinsurance intermediary legal persons. From now on, a senior manager must be appointed who bears the de facto responsibility for the activity of insurance or reinsurance distribution. In addition to the requirements that already existed for the role of senior manager, this person must comply with the requirements of professional knowledge.

The Law also creates a new category of insurance intermediary: the ancillary insurance intermediary. This category includes all distributors for whom the sale of insurance constitutes only a supplement to their other commercial activities. Examples of this are car rental companies or travel agencies.

59 Law of 6 December 2018 transposing Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution. This law entered into force on 28 December 2018. See also this report, p. 158.

The Law clearly lays down, as prescribed by the IDD, the conditions a person must meet to be able to obtain the status of ancillary insurance intermediary. Less strict obligations are attached to this role than to the other statuses, at least as regards certain specific areas such as continuing education.

Separate category for mandated underwriters

In 2018, the FSMA examined the activities of mandated underwriters, or, as they are called in French and Dutch respectively, “agent souscripteur” or “assuradeur”. These are insurance intermediaries who analyse and take on risks on behalf of and for the account of an insurer. They have the power to underwrite an insurance policy and thereby contractually bind the insurer.

The Belgian market contains a limited number of mandated underwriters. In connection with Brexit, a number of new mandated underwriters have been established in Belgium. The FSMA talked to a number of them as part of its market research. This showed that their activities were very diverse.

Often, these are specialized firms that focus on niche markets such as insurance against cyber risks, transport risks, maritime risks, risks associated with the operation of power plants and wind turbines or directors’ and officers’ liability cover.

The current categories of insurance intermediaries are not sufficient to encompass these companies. Their activities differ greatly from those of the traditional broker, agent or sub-agent.

The FSMA gave the competent Minister technical advice for the set-up of a separate category for these insurance intermediaries. A separate category recognizes the distinctive nature of this activity and makes a clear distinction from the traditional intermediary.

The creation of a separate category allows the rules to be fine-tuned to better encompass the special risks entailed by this activity.

Compliance with the conditions for registration

The FSMA strikes intermediaries off the register

Intermediaries must comply with a number of conditions for registration. They must possess the requisite professional knowledge. They must be suitable and have professional integrity and they must have professional liability insurance for their intermediation activity. The FSMA rejects the registration of intermediaries who do not meet the registration conditions.

The conditions for registration continue to apply even after registration. If the FSMA ascertains that an intermediary no longer complies with the registration requirements, it urges the intermediary to comply by a specific deadline. If this does not occur, the FSMA strikes the intermediary off from the register or temporarily suspends his/her registration. These measures constitute a ban on the exercise of intermediation activity.

In 2018, the FSMA struck off 211 intermediaries from the register. The FSMA temporarily suspended registration of four intermediaries. Table 7 provides an overview of the reasons for these measures.

Table 7: Removals and suspensions

	Removal	Suspension
Registration dossier not in order	93	
Fitness and propriety not fulfilled	8	4
Professional liability insurance not in order	81	
Insufficient cooperation with ombudsmen	1	
Collaboration with principal ceased	13	
Intermediary bankrupt	15	
Total	**211**	**4**

Registration dossier always up-to-date

The FSMA has identified that intermediaries do not automatically regularly submit changes to their registration dossiers. This is despite all intermediaries being legally obliged to do so. They must immediately submit changes through the Cabrio application. The registration dossier must be up-to-date at all times. It is essential for the supervisory authority to always be in possession of the most recent data.

The FSMA ensures that managers are fit and proper

Consumers must have confidence in the financial sector. For this purpose, every intermediary must be fit and proper. That is also in the sector's interest. The improper behaviour of some, both in a private and professional sphere, should not undermine consumer confidence in the sector.

Therefore, suitability and professional integrity are conditions that are necessary to register as an intermediary or to stay registered as such. For legal persons, these conditions for registration apply to senior managers and those responsible for distribution.

The term 'fit' refers to the competence to exercise the role, whilst the term 'proper' refers to moral integrity. If it deems that an intermediary is no longer fit or proper, the FSMA strikes that intermediary off.

The FSMA may use its own discretion to take such a measure. In doing so, it takes all pertinent aspects into account. The FSMA is not bound by a ruling from a criminal court on this matter. For example, if an intermediary is acquitted in criminal proceedings based on procedural errors or because there is, technically speaking, no criminal ruling, the FSMA can still strike the intermediary off if the criminal court responds in the positive to the question of guilt, or finds evidence of wrongdoing.

Certain conduct means that the FSMA no longer has confidence in an intermediary in the interest of consumers. In 2018, the FSMA identified that some intermediaries drew up false documents and manipulated invoices to increase premiums. They also repeatedly failed to respond to the FSMA's questions.

A repeat of certain failures may lead to loss of registration. The FSMA repeatedly urged one intermediary to comply with the rules. This intermediary did not have civil liability insurance. He didn't pay his contribution to the FSMA's operating expenses and did not answer the ombudsman's questions. Although he remedied each failure after being urged to do so, the FSMA found that the repeated nature of the infringements pointed to a structural problem in the intermediary's organization. This was expressly stated to the intermediary and he was asked to take the necessary measures to prevent such problems. Nevertheless, the FSMA later identified further infringements. The FSMA decided that the intermediary was no longer fit and struck him off.

Fitness can also be evidenced by the care with which an application for registration is prepared. In one dossier, the FSMA identified that not all questions in the questionnaire were duly completed, even though the FSMA had repeatedly pointed out this problem. The candidate intermediary had not filled in some questions, and had answered others very briefly or incompletely. This conduct was indicative of a lack of a serious attitude vis-à-vis the regulatory obligations and a lack of the professionalism that the FSMA expects from an intermediary. Lack of due care constituted part of the negative decision as to the application for registration. According to the FSMA, the applicant was not suitably fit.

Fitness and propriety are conditions for every status under supervision. When the FSMA deems a person not to be fit or proper, this can have consequences for other positions of responsibility exercised by this person. Insurance intermediaries that pursue their activity without being registered, are likely to be considered to have insufficient integrity to be registered or remain registered as a credit intermediary or as an intermediary in banking and investment services.

Cabrio: digital platform for intermediaries and lenders

All individual intermediaries and lenders may, since 2018, fully manage their registration with the FSMA online through the Cabrio application. This application enables them to quickly and efficiently keep their administration dossier up-to-date. In this way, the platform simplifies the administration for the sector. This approach fits into the government's digital strategy.

The FSMA launched Cabrio in 2015. In that year, lenders and credit intermediaries were able to submit and manage their registration application entirely online. In 2017, the application was extended to the new registrations of insurance and reinsurance intermediaries and intermediaries in banking and investment services.

In 2018, the FSMA further extended the application to all other groups of intermediaries. It migrated the data of more than 6,800 companies to Cabrio. The intermediaries received a secure activation code to give them access to the digital file. They can only make changes to their registration dossier through Cabrio.

The FSMA used the opportunity of the migration to ask each intermediary for a professional email address. Giving a professional email address to the FSMA is a legal obligation since 1 June 2017 as well as a condition for registration, to which intermediaries must permanently adhere in order to stay registered.

Intermediaries were asked to check and update their registration dossier. The FSMA received more than 2,200 change requests. A large number of the email addresses were not up-to-date. A lot of information on key people within the intermediary such as senior managers or those responsible for distribution was updated.

New obligations for brokers in banking and investment services

In the year under review, the FSMA published a circular[60] on new obligations in the area of organization and good governance for brokers in banking and investment services. These obligations relate to aspects such as an appropriate management structure, clear segregation of duties within that structure, the remuneration policy, the management of conflicts of interest, recording telephone conversations and keeping records of electronic communication. These arise from the entry into force of the MiFID II rules. The circular reiterates which activities brokers in banking and investment services may exercise and how they can comply with the new obligations.

Continuing education of increasing importance

Properly trained employees with thorough expertise are important for consumer confidence in the financial sector. The FSMA attaches increasingly greater importance to this subject.

Professional expertise is ever more important in the financial sector. This is because the legislation has become more intricate and the market context more complex. Intermediaries must be prepared for this. They must have proper training to work in the financial sector with the necessary knowledge. Continuing education is equally of great importance. Continuing education helps intermediaries keep their professional knowledge up-to-date.

60 Circular FSMA_2018_10 of 19 July 2018 to clarify the permitted activities and some organizational obligations for brokers in banking and investment services.

This is why continuing education forms an important part of the application of the new legislation and regulations. In the year under review, the IDD entered into force for insurance intermediaries. This Directive obliges intermediaries to take at least 15 hours per year of continuing education about the products they sell.

The obligation of continuing education is additional to a general exam on the basic principles of the new Directive. This low-threshold exam is aimed at employees who have no diploma that allows them to be automatically exempt from this test. The FSMA has made agreements on the subject with the professional organizations of intermediaries.

The FSMA will in the future scrutinize the offer of continuing education and the organization thereof and fine-tune its expectations in this respect. It will take a leading role in the new steering committee for exams and continuing education, which it will set up with the sector.

In an effort to achieve greater certainty and clarity regarding professional knowledge, the FSMA advised the competent Minister to achieve, wherever possible and opportune, harmonization as to the requirements of knowledge for the various statuses of intermediary (intermediaries in banking and investment services, insurance intermediaries and credit intermediaries).

The FSMA took a first important step in the direction of a harmonized approach for credit intermediaries.

Reform of continuing education for credit intermediaries

Intermediaries who are natural persons and people who exercise certain legally regulated key functions for a credit intermediary that is a legal person must possess the requisite professional knowledge and regularly follow continuing education.

Persons in Contact with the Public must follow continuing education with their employer in accordance with the rules the employer adopts for that purpose. For other people who are obliged to follow continuing education there are clear rules on continuing education. These prescribe that they must collect a particular number of credits. The exact number of credits depends on the sector in which they work.

Before 1 April 2018, the FSMA had to approve each continuing education course on intermediation in mortgage lending and consumer credit. Now however, the FSMA accredits the training providers. It already works like this with the insurance and the banking and investment services sector. Once accredited, these training providers may offer continuing education that the FSMA no longer needs to approve.

In its efforts towards harmonization, the FSMA now also applies the rules of conduct in existence and the FAQs for the continuing education of insurance intermediaries and intermediaries in banking and investment services to the credit sector. It does however take into account this sector's distinctiveness. The rules of conduct and FAQs offer accredited training providers a clear and sound framework to ensure a high level of quality in the training courses.

Checks carried out

Checks on the professional knowledge of staff of credit intermediaries

Since 1 November 2015, the FSMA is responsible for the access to the profession of credit intermediary. For credit intermediaries already active before that date, there was a transitional period for registration until 30 April 2017. Credit intermediaries who submitted their application for registration during this period could also, under certain conditions, be granted exemptions during this period.

It is important for the sector that these exemptions be correctly applied to ensure a level playing field for these intermediaries. As a result, the FSMA checked the correct application of these exemptions.

Credit intermediaries may register in one of two ways with the FSMA: individually or collectively. A collective registration is organized by a central institution. This central institution is responsible for submitting the application. Even after approval of the application for registration, the central institution remains responsible for supervising permanent compliance by a credit intermediary with all conditions for registration. The central institution is, consequently, responsible for first-line monitoring. It ascertains whether the application for registration is complete and ready to be submitted to the FSMA. The central institution is deemed to have fully verified the application and must keep all records available for the FSMA. These records include proof of professional knowledge, of fitness and propriety and of professional liability insurance.

The FSMA examined whether the rules for obtaining exemptions from certain requirements of staff's professional knowledge were applied in the same way for both groups. The FSMA checked more than 3,300 staff of around a thousand credit intermediaries that had submitted applications for collective registration during the transitional period both for consumer credit and mortgage lending. The checks focused particularly on the requirements of professional knowledge for "Persons in Contact with the Public".

The FSMA was satisfied with the results of these checks: the exemptions were correctly applied for the large majority of those checked.

Checks of foreign insurance intermediaries

The FSMA checked the websites of a selection of insurance intermediaries registered abroad that offer services in Belgium via a European passport. For their activities in Belgium, these intermediaries must take into account a number of legal obligations such as the provisions of general interest and certain rules regarding the advertising of financial products for consumers. The FSMA checked whether they complied with these legal and regulatory provisions.

It ascertained whether the commercial offers of these companies were in line with the notification of their activity by their supervisory authority to the FSMA. It looked at whether the information on their websites was not misleading and whether the advertisements on these websites were compliant with Belgian regulations. In general, it checked whether their activity could in any way cause damage to Belgian consumers. In some cases, the information to the consumer was unclear or inaccurate. In those cases, the FSMA contacted the supervisory authority of their country of establishment to ask it to act.

PROTECTION OF SUPPLEMENTARY PENSIONS

The FSMA is responsible for the supervision of supplementary pensions that employees, the self-employed and company directors may accrue through their professional activities. Accrual of these second-pillar pensions occurs through Institutions for Occupational Retirement Provision (IORPs), also referred to as pension funds, and through insurance companies. The FSMA supervises these pension institutions' compliance with the social legislation applicable to second-pillar pensions as well as that of the organizers of supplementary pension schemes. 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

The social legislation supervised by the FSMA is intended to mitigate risks for members. These risks may relate to non-allocation or non-payment of pension rights, 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 supervisory 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 various forms. Firstly, where necessary, the supervisory action results in individual enforcement processes for the pension institutions or the sponsoring undertakings that appear, following the investigation, to disregard the legislation. In the wake of its supervisory action, the FSMA also often publishes a communication which aims 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.

Correct reports to the DB2P

At the end of 2016, DB2P, the database for supplementary pensions, was launched to the public through the website mypension.be. 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. This is why it is crucial for citizens to be able to find complete and reliable information on it. Over the past few years, the FSMA has attached a lot of importance to the quality of reporting by pension institutions and the timeliness of reports. After various specific awareness-raising campaigns, the FSMA took stricter action, from 2017 onwards, against pension institutions that did not correctly meet their obligations. Although a noticeably positive change was noted between 2016 and 2018, reporting by pension institutions to the DB2P remain an important focal point for the FSMA.

Unpaid pension rights

When 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 timely communication to members, pension rights risk being "forgotten" and consequently not paid out.

Over the past few years, the FSMA has focused particularly on the problem of benefits that are not paid when a member dies. Thanks to its intervention, problem dossiers were able to be regularized and a new data flow from DB2P could begin in which pension institutions are informed of the death of members. In 2017, the regularizations were closely monitored and the sample group of examined institutions was extended to the entire sector. In 2018, this was completed. Although the results achieved are very positive and considerable progress has been made, certain structural obstacles still seem to stand in the way of pension institutions making certain payments. This is for example the case when beneficiaries cannot be identified or found. In this respect, the FSMA advocates that pension institutions should be able to consult data regarding descendants and partnership in the civil register through SIGeDIS in the case a member's death. The partner and/or children of a member are after all in many cases the beneficiaries upon death.

Then the FSMA conducted a similar investigation into the payout of pension benefits at the time of retirement. It established through this investigation that there were a substantial amount of pension benefits not paid out. Many pension institutions equally seem to have made insufficient efforts to inform beneficiaries. They also appear not to have made use of their access to the Civil Register of natural persons to search for the necessary personal details of beneficiaries. In light of these findings, the FSMA required the institutions that remained in breach to do everything in their power to trace beneficiaries, to inform them of the pension benefits owed and pay out the pending amounts as quickly as possible. Thanks to the myriad actions taken, the amount of unpaid pension rights still pending payout was already able to be halved.

In 2019, the FSMA will focus on the cases in which pension institutions still fail to pay out despite all the efforts undertaken. If structural causes come to light, policy recommendations will be made wherever necessary.

Lawfulness of reserve transfers

Certain legal rules apply to transfers of pension reserves, for example when employees leave their employer. The FSMA checked the declarations of transfers to the DB2P database to see whether the rules that apply to these transfers had been complied with, such as the prohibition of paying out the reserves or transferring them to an individual savings product. No structural problems came to light. Some ad-hoc problems and issues with the declaration of transfers by pension institutions to the DB2P database were identified. As a result, the FSMA decided to contact all pension institutions to underline the importance of accurate reporting on reserve transfers.

Financing of defined benefit pension plans via group insurance policies

After the preparatory work in 2017, the main supervisory action regarding the financing of defined benefit pension plans via group insurance policies continued in 2018. The aim of the FSMA's services was to assess compliance with the externalization obligation. That obligation entails that the pension reserves accrued are granted to an entity that is independent from the organizer, which limits risks for members. That aim of this supervisory action was to ascertain whether group insurance benefits from a similar protection as pension commitments managed by IORPs, despite the differences in the applicable regulatory framework. The FSMA wished, in particular, to ascertain the financing methods of group insurance policies, and whether the reserves resulting from these methods suffice to finance the vested rights and benefits.

To this end, the FSMA has provided 14 insurance companies with a comprehensive qualitative and quantitative questionnaire pertaining to a sample group of 217 pension plans. These plans are worth 6.8 billion euros in vested reserves, which amounts to 60 per cent of the market for defined benefit plan pension commitments managed by insurers. In the first few months of 2018, the reporting was tested on a test group. The final reporting, which took into account remarks from the sector, was sent in March 2018 and had to be returned to the FSMA by 31 July.

Now, the FSMA's services are looking into the financing methods used by insurers and the parameters used therein. They are also verifying the internal control of the financing of pension commitments at insurers. The aim of this is to ascertain the extent to which the financing methods used offer sufficient protection for members' pension rights. This supervisory action is a large-scale project that should culminate in the publication of a sectoral report.

Additional FAQs on supplementary pensions

The FSMA realizes that, alongside its role as a supervisory authority, it can also fulfil an important role in informing citizens on supplementary pensions. A lot of information on pensions can already be found on the website of Wikifin.be, the FSMA's programme on financial education. In parallel, the FSMA also provides additional information on its website in the form of frequently asked questions (FAQs).

These FAQs are intended for members who need easy-to-understand and accessible explanations on often very complex subjects. The explanations should allow them to make properly informed decisions at crucial times, such as upon exit or retirement. These FAQs should make it easier for members to understand the pension details available, since the opening of DB2P on mypension.be, and where necessary to apply this information to their individual pension situation.

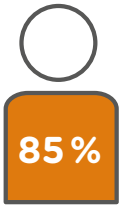
In 2018, the FSMA added to the information in the FAQs. A new section was added with information for employers. These are, after all, not always experts in the field of supplementary pensions and they must therefore also have access to independent and objective information on the potential choices they have when introducing a supplementary pension plan. That new section is available since the beginning of 2019. In parallel, the FSMA updates the FAQs, both to make them easier for consumers to use and following certain changes in the law that require an update to the information provided.

Annual sectoral overview of second-pillar pensions

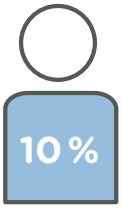
To be able to rapidly give the public key details on second-pillar pensions, in 2018, the FSMA for the first time published a sectoral overview. The aim of this is to provide a basic overview of the way in which the second pillar is structured. The details used come from the DB2P database and reflect the situation as of 1 January 2018.

3,678,962

people are members of a
supplementary pension plan



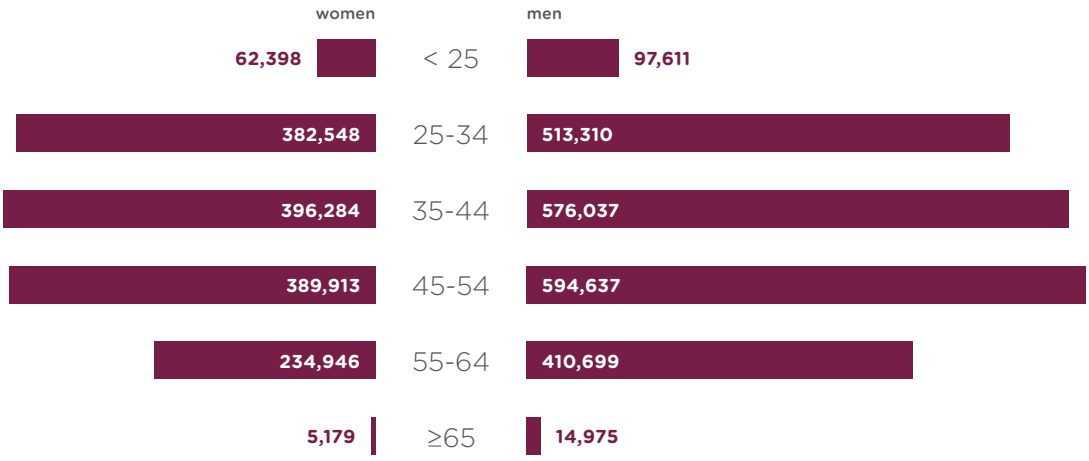
3,124,042
accrue supplementary pension rights as
employees



362,299
accrue supplementary pension rights as
self-employed

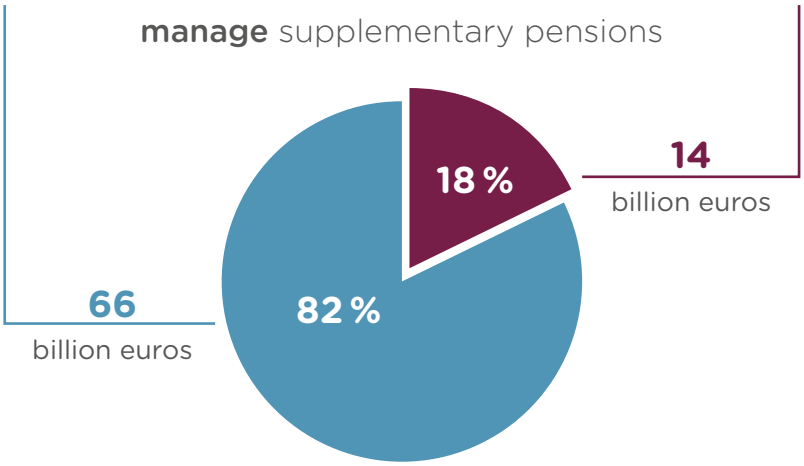
192,621
accrue supplementary pension rights as
employees + self-employed

Graph 22: Members by age and gender



24 insurers and 179 IORPs

manage supplementary pensions



The accrued right is the amount of pension reserve that members have already built up at a particular time in their career and that is accrued. When the member leaves an employer, this amount can be transferred to another pension institution.

Accrued rights

Employees		Self-employed
€ 13,456,231,345	IORP	€ 887,379,112
€ 42,591,469,427	Insurer	€ 23,397,185,841
€ 56,047,700,772	**Total**	**€ 24,284,564,952**

70 %

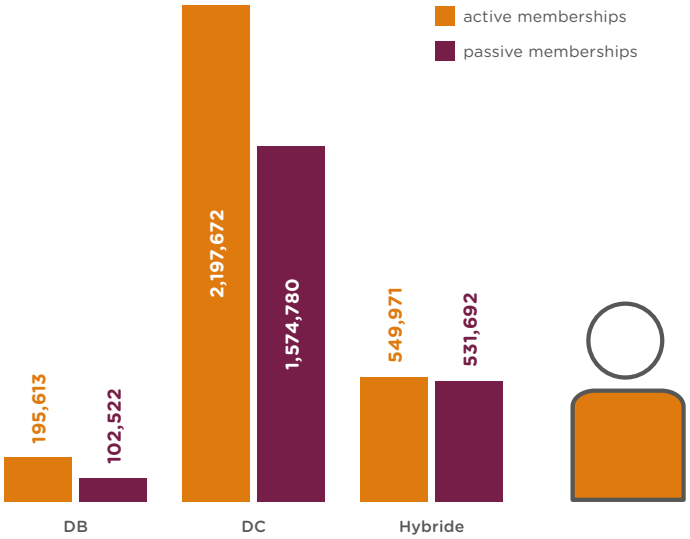
30 %

80.3 billion euros

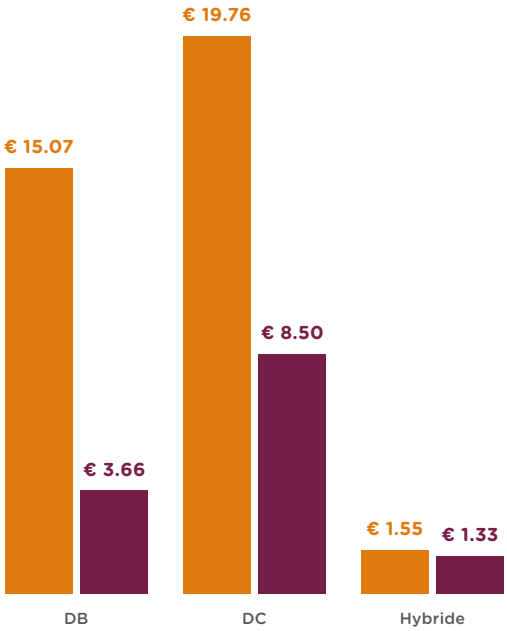
is the **total amount** of **accrued pension rights**
that members have already built up in accrued rights

Employees

Graph 23: Number of members (*)



Graph 24: Amount of accrued rights (in EUR billion)

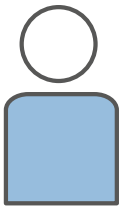


** The number of members does not represent single members. One individual can be a member of several plans and may therefore be counted several times.*

The number of members of DC pension plans is much higher (73%) than with DB pension plans (6%). In terms of accrued rights, the difference between the two is much smaller (DC 57% and DB 38%).

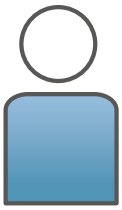
DC stands for Defined Contribution. DB stands for Defined Benefit.

Self-employed



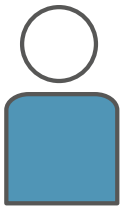
339,913

self-employed build up pension rights under the supplementary pension for the self-employed scheme **(VAPZ/PLCI)**



131,871

self-employed build up pension rights as a **self-employed company director** under the supplementary pension for the self-employed scheme **(VAPZ/PLCI)**



83,136

self-employed build up pension rights as a **self-employed company director**

7.5
billion euros

in accrued rights under the supplementary pension for the self-employed scheme (VAPZ/PLCI)

Average accrued rights: **15,793 euros**

17
billion euros

in accrued rights for **self-employed company directors**

Average accrued rights: **78,627 euros**

Assistance with the preparation of legislation

The FSMA provides technical assistance to the strategy unit of the Minister for Pensions with the preparation of legislation. In 2018, this work was mainly on the following aspects:

- transposition of the information obligations of the IORP II Directive. These obligations are already transposed into the Belgian IORP law through the Law of 11 January 2019[61]. In Belgium, information obligations regarding supplementary pensions are, however, considered an integral part of social and employment law. Consequently, they must also be included in the social pension legislation (Law on Supplementary Pensions, the Law on Supplementary Pensions for Self-Employed, the Law on Supplementary Pensions for Company Directors, etc.) In that way all members are guaranteed to have the right to the same information, irrespective of whether an IORP or an insurance company manages their pension plan. The transposition into social legislation will occur through a separate draft law, planned by the government as part of the legislative process for the transposition of the IORP II Directive.
- the preparation of the implementing Decree to the Law on Supplementary Pensions for Self-Employed Natural Persons. The Law allows the King to establish the rules, with a view to protecting self-employed people who have entered into a pension agreement as a self-employed natural person, regarding the financial products with which such agreements may be offered, and regarding pre-contractual information.

Publication of Opinions on the interpretation of the legislation

The FSMA also pursues the practice, since 2015, of immediately publishing new Opinions[62] regarding supplementary pensions. This practice contributes to the legal certainty and predictability of the FSMA's actions. In 2018, it published advice on the conversion of pension capital into a temporary and/or deferred income payment, on the option when exiting to choose death cover equal to the accrued rights, and on not being allowed to apply a transfer incentive if payment takes place after retirement. Both of the latter Opinions followed questions to the FSMA on the correct application of the Law of 18 December 2015[63].

61 Law of 11 January 2019 transposing 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) and amending the Law of 27 October 2006 on the supervision of Institutions for Occupational Retirement Provision.

62 The FSMA's Opinions can be consulted on its website.

63 The Law of 18 December 2015 to ensure the sustainability and social character of supplementary pensions and to strengthen the supplementary character with regard to retirement pensions.

Increase in the number of questions and complaints about supplementary pensions

In 2018, the FSMA received 366 questions or complaints dossiers on supplementary pensions. That is 31 per cent more than in 2017 and 44 per cent more than in 2016.

Both consumers and professionals can come to the FSMA with their questions and complaints. The large majority of the dossiers handled related to the Belgian law on supplementary pensions for employees.

The question and complaint dossiers concerned a wide range of subjects. The themes that in 2018 most often led to questions and complaints were the same as in 2017.

The most frequent were the questions and complaints on the declarations to the DB2P database and the data that citizens can consult on the basis thereof on mypension.be. The opening of the DB2P database on 6 December 2016 may have had an impact on the number of consumer questions in general. The ability to consult the information on mypension.be contributes to raising awareness among citizens on the accrual of their supplementary pension rights.

The second most frequent subject to come up was the payout of supplementary pensions upon retirement. The number of questions and complaints on this subject tripled compared to 2017. Since 1 January 2016, the general rule is that the supplementary pension is paid out at the time of retirement, which is, in other words, 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. It is also no longer possible to postpone the taking of a supplementary pension until after the person concerned has retired. This means that the supplementary pension is paid out automatically at the time of retirement. Members often ask the FSMA whether early withdrawal of the supplementary pension is still possible. A number of members also complained of losses (including from a tax perspective) from mandatory withdrawal of the supplementary pension before reaching the retirement age laid down in the pension agreement or pension scheme.

FOCUS 2019

As part of the social supervision of supplementary pensions, the FSMA has a number of major new projects in the pipeline for 2019.

First and foremost, the FSMA will pay particular attention to certain pension products that **do not offer any guaranteed returns**. In 2018, new pension statuses came about; the supplementary pension for self-employed natural persons, and the voluntary supplementary pension for employees. These statuses do not provide a guaranteed minimum return to be paid by the organizer or the pension institution. Consumers can also be expected to run greater risks under these statuses. As a result, the FSMA plans to closely monitor these new types of supplementary pension, especially to prevent too-risky products being offered and to ensure that consumers are sufficiently informed as to the risks they face.

In parallel to this, the FSMA will specifically supervise compliance with the legal provisions on the **payout process**, which are in force since 1 January 2016. These provisions stipulate that the payout of the supplementary pension is linked to the statutory pension start date, and that pension institutions must also pay out within 30 days after receiving the data required for payment. The FSMA will verify the information that is provided to members in the phase prior to retirement.

Over the past few years, the FSMA has devoted a lot of attention to supervising employee pension plans. After all, these represent the biggest group of members within the second pillar. However, it never loses sight of the fact that more than half a million citizens accrue a supplementary pension as self-employed persons and that for many self-employed, the supplementary pension forms a substantial part of their total pension income. This is why in 2019, the FSMA will place an emphasis on the **voluntary supplementary pension for self-employed persons**. It will in particular examine whether the self-employed are correctly informed on the evolution of their pension rights through their annual pension information sheet. In addition to this, the FSMA will also add to the FAQs on its website with information on pension products for the self-employed.

Prudential supervision

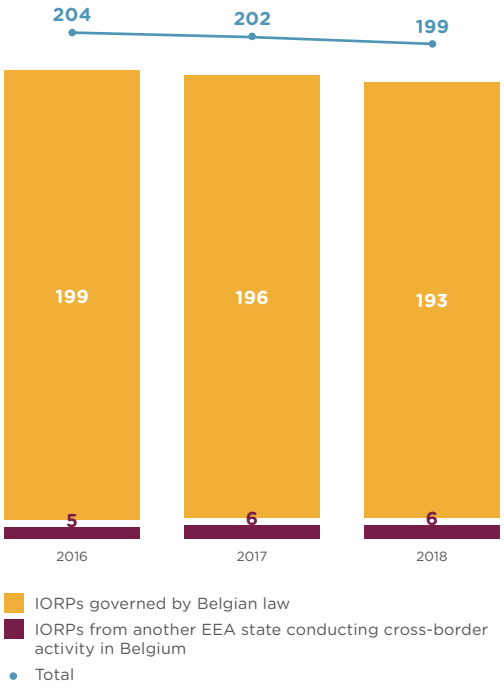
The FSMA exercises prudential supervision on IORPs, generally known as pension funds. This supervision focuses on four key aspects, namely:

- prudent valuation of pension liabilities, perfectly corresponding with the return on investment and taking 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.

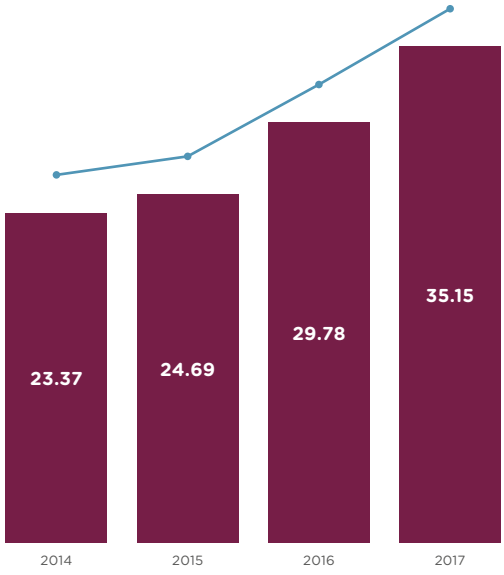
Belgium has 193 pension funds governed by Belgian law. In addition, six pension funds from other Member States of the European Economic Area manage pension plans subject to Belgian social and labour legislation.

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

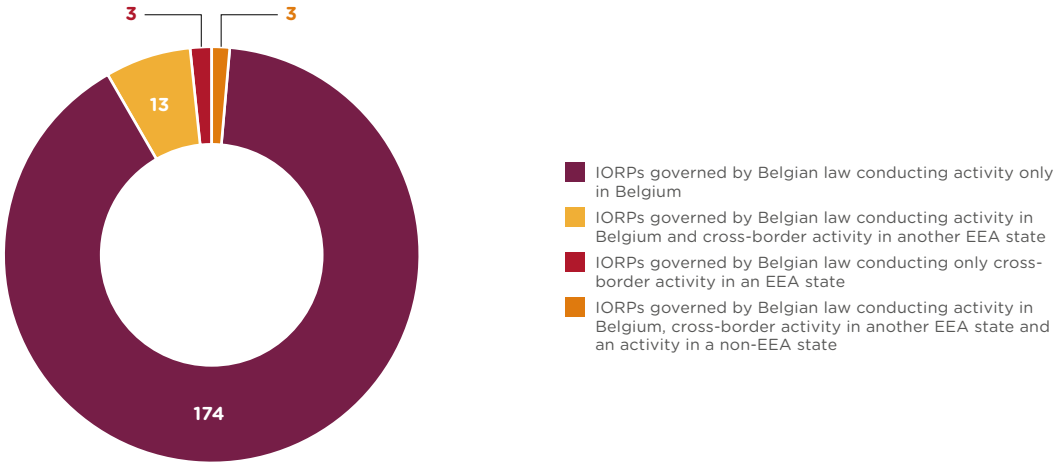
Graph 25: Number of IORPs



Graph 26: Balance sheet total of IORPs governed by Belgian law (in EUR billion)



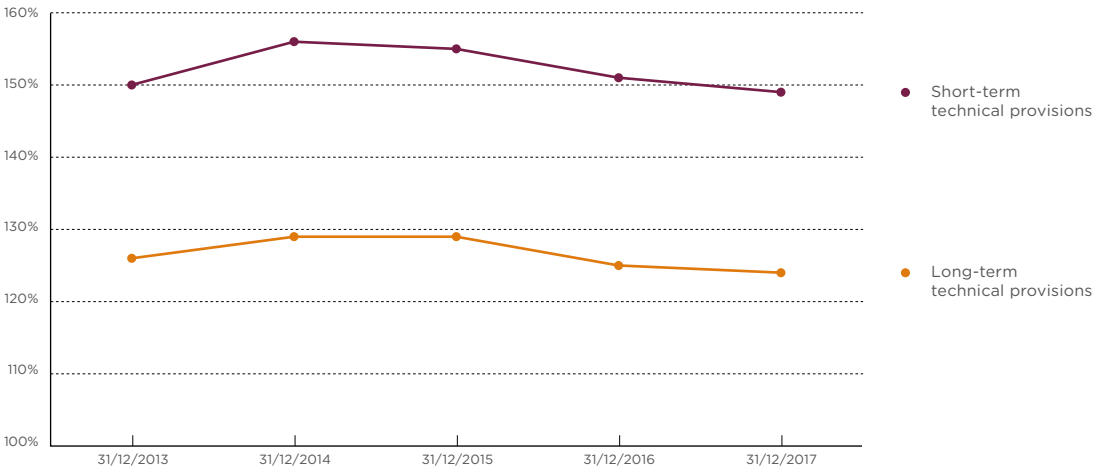
Graph 27: Number of IORPs governed by Belgian law (in 2018)



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 technical provisions of the IORPs and the realistic nature of the expected return. 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 the IORP appears 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.

Graph 28: Evolution of the level of coverage



As part of this supervisory task, more than 40 per cent of the Belgian IORPs that manage pension plans with one or another form of promised returns were 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 2018, the FSMA closely monitored this and checked that the IORPs took the appropriate steps and introduced the necessary measures. The FSMA will continue to monitor the situation in 2019 among the IORPs that have still taken insufficient measures.

Recovery and reorganization measures

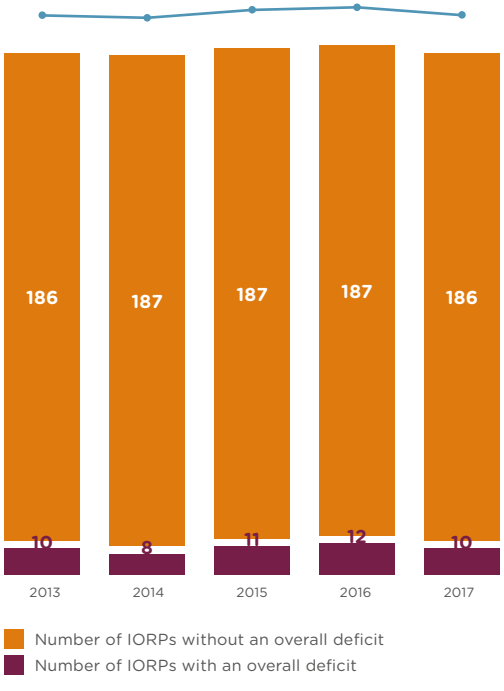
Pension funds with a funding gap must take the necessary recovery measures, or in other words, the necessary measures to remedy that gap. A gap may occur at the level of the fund as a whole or at the level of the pension plan of one or more sponsoring undertakings. In the first case, recovery measures are taken; in the second, reorganization measures.

As shown by graphs 29 and 30, only limited recovery and reorganization measures were necessary in 2017. Only close to five per cent of the total number of pension funds must take such measures. Moreover, only two IORPs had a deficit in respect of the short-term technical provisions. That figure remained stable compared to previous years.

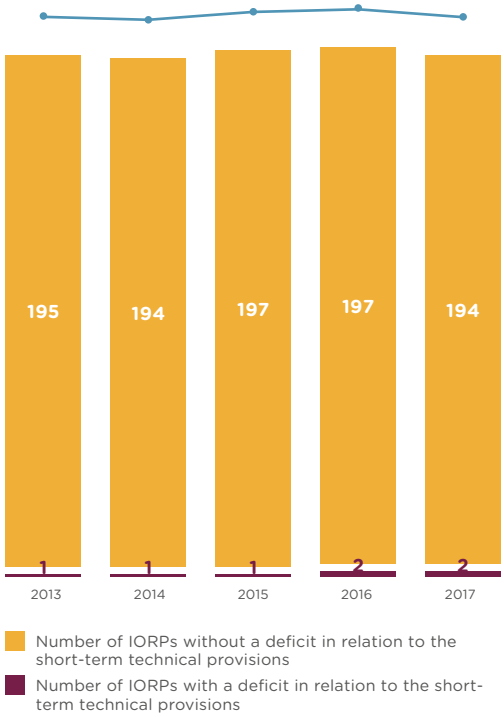
On 31 December 2017, eight pension funds had recovery measures underway and three pension funds had reorganization measures underway. Over the course of 2017, 13 IORPs succeeded in ending their recovery plan (4) or reorganization plan (9). Following a new gap at the end of 2017, two IORPs had to take recovery measures and five 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.

Graph 29: Number of IORPs with/without an overall deficit



Graph 30: Number of IORPs with/without an overall deficit in the short-term technical provisions



Importance of accredited statutory auditors and appointed actuaries

The FSMA considers accredited statutory auditors and appointed actuaries to be major players in the field. After the FSMA made known its expectations of them via circulars in 2015 and 2016, it decided to more systematically integrate the findings of accredited statutory auditors and appointed actuaries in the field into its risk-based approach. It analyses all reports of these players to filter out the focal points for its prudential supervision of IORPs. These analyses enable it to identify certain signals, as well as to assess the quality of the work that the accredited statutory auditor and the appointed actuary do. In this way, it can closely monitor the way in which these key functions are fulfilled. In 2018, this led to one auditor being struck off.

Cross-border activities and Brexit

In 2018, the FSMA approved four notification dossiers for cross-border activity. These four dossiers were for IORPs that already engaged in cross-border activity. Two of these dossiers were submitted following a change in the existing cross-border activity. The two other dossiers related to a new activity in a new host country. One IORP, which had never engaged in cross-border activity despite having received authorization to do so, was wound up.

In the context of Brexit, which the services of the FSMA has kept an eye on over the past year[64], we note that one Belgian IORP engages in a cross-border activity in the United Kingdom. It remains to be seen whether the British social and labour legislation on supplementary pensions will or will not allow a foreign IORP to manage a British pension plan. According to the Belgian prudential legislation, this would still be possible.

EIOPA peer review regarding the Prudent Person Principle

The EIOPA Review Panel conducted a peer review in 2017 and 2018 of the theme of supervision of the application of the Prudent Person Rules (PPR) by IORPs. The aim of this was to ascertain what precisely this aspect of supervision by supervisory authorities entails, as well as to promote a degree of convergence in this supervisory practice. EIOPA also wanted to highlight good practices to further broaden this supervision of PPRs as well as to conduct it in concrete terms.

The Review Panel gave an especially positive assessment of the FSMA's supervisory practices developed to oversee IORPs' application of the PPRs. It mainly valued the thematic analyses created by the FSMA to monitor individual and general vulnerabilities of IORPs and to assess the evolution of the Belgian pension fund sector. In addition, the Review Panel praised the risk model used by the FSMA which allocates a score to several risks divided into four categories: financial, assets, actuarial and governance.

64 See this report, p. 146.

The Review Panel formulated a recommendation on the reporting by IORPs on their investments in undertakings for collective investment. It is of the opinion that the FSMA should require more frequent and more detailed reporting on the underlyings of these undertakings for collective investment.

On-site inspections on the theme of conflicts of interest

In 2018 the FSMA continued its inspections on the theme of IORPs. The focus lay on the decision-making process and the monitoring of the investment policy, more particularly as regards mitigating conflicts of interest relating thereto[65].

Transposition of the IORP II Directive

The European IORP II Directive introduces a number of changes, including the rules for cross-border activity, governance and information obligations. As specified,[66] the Law of 11 January 2019 had already transposed a range of provisions in the Belgian IORP law. There are also some implementing measures of the Belgian IORP law that still need to be adapted.

The FSMA intends to issue a number of circulars in 2019 to clarify how to fulfil legal requirements, new or otherwise. The aim is to rework existing circulars, such as the circular on sound governance, to take into account the changes in the law, and to draw up new circulars on themes such as the Systematic Investment Plan (SIP), the financing plan and the Own Risk Assessment (ORA).

The FSMA also felt it was useful to already publish a communication[67] in which it draws the attention of IORPs to a number of points such as the transitional measures and the aspects that have immediate consequences for the procedures for notifications to the FSMA.

FOCUS 2019

In terms of prudential supervision, in 2019 there is a reorganization underway for **reporting by IORPs**. That development is steered by the new requirements imposed by EIOPA and the ECB on the subject as well as by the changes introduced by IORP II.

At the same time, the FSMA wishes to adjust the **prudential supervisory framework** for IORPs to take into account the changes introduced by IORP II. It will do everything in its power to assist the sector with guidelines, including on risk management.

65 For more information on those inspections, see this report p. 47.

66 See this report, p. 104.

67 Communication FSMA_2019_03 of 8 January 2019.


Cash in

SANCTIONING FINANCIAL INFRINGEMENTS

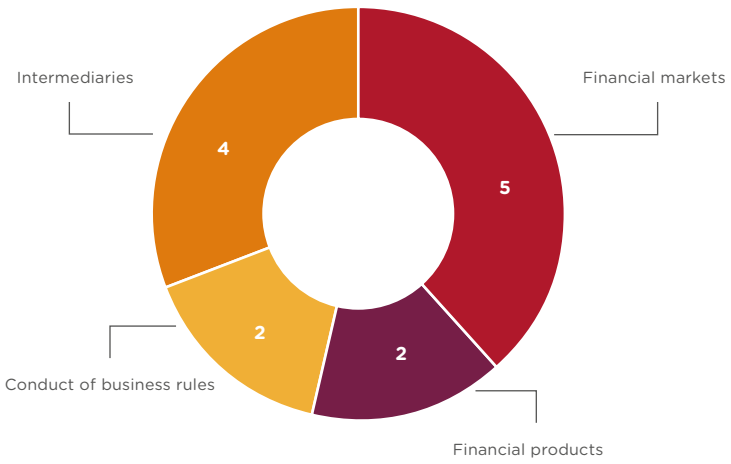
The FSMA may impose administrative sanctions in the case of infringements to the financial legislation. These sanctions take the form of administrative fines imposed by an independent Sanctions Committee, or of agreed settlements.

13 new investigative dossiers in 2018

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 case[68]. This decision is sometimes made on the basis of indications sent by the FSMA's supervisory services. Sometimes this can also happen following a complaint or a report.

In 2018, the Management Committee opened 13 new investigations[69].

Graph 31: Thematic overview of investigative dossiers opened in 2018



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

69 The investigative dossiers opened by the FSMA when it receives a request for cooperation from a foreign supervisory authority are not included in these figures. For more information on the follow up to such requests, see this report p. 121.

The term "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 a practice which could lead to an administrative sanction. These dossiers relate to facts rather than people. It is therefore possible that once these facts are investigated, the number of people concerned needs to be adjusted.

The members of the team led by the investigations officer investigate the facts. The Law provides for a range of investigative powers for this purpose. The FSMA may for example ask to be given information in writing, it may question a person, ask for details of telecommunications, or seize certain data[70].

Once the investigation is complete, the investigations officer provides the final report to the Management Committee[71]. Based on that report, the Management Committee then decides on the outcome to that dossier[72]. The Management Committee may require further investigative duties to be carried out, it may transfer the dossier to the Sanctions Committee, accept an agreed settlement or close the dossier with no further consequences. In parallel to the proposals for an agreed settlement addressed to the Management Committee[73], in 2018, the investigations officer sent four investigation reports to the Management Committee.

Ten agreed settlements in 2018

The law provides for the possibility of closing a dossier with an agreed settlement[74].

The decision to accept an agreed settlement is made by the Management Committee. Those involved must have collaborated with the investigation and have agreed in advance to the proposed settlement.

In 2018, the Management Committee, on the proposal of the investigations officer, accepted ten agreed settlements for a total amount of EUR 1,084,500. These involved both natural and legal persons.

70 Article 78 to 85bis of the Law of 2 August 2002.
71 Article 70, § 2 of the Law of 2 August 2002.
72 Article 71 of the Law of 2 August 2002.
73 See the point below specifically about the agreed settlement.
74 Article 71, § 3, of the Law of 2 August 2002.

Description of some of the agreed settlements closed in 2018

In 2018, the Management Committee accepted agreed settlements in investigations concerning different supervisory areas. For illustration purposes, there is a description below of some of these agreed settlements[75]. The texts of these settlements that were closed in 2018 can be found on the FSMA's website.

Agreed settlement with an insurance broker

On 30 April 2018 the Management Committee approved an agreed settlement with a company registered as an insurance broker. This insurance broker advertised and disseminated information via a website. However, it wasn't possible to purchase products online on this website.

The FSMA had determined that the information given via this website was not in line with the legal and regulatory provisions on insurance and advertisements stated in the Law of 4 April 2014[76] and the Royal Decree of 25 April 2014[77]. For example, an infringement was identified of the rule that advertisements that relate simultaneously to various types of financial products must make a clear distinction in both form and content between the information relating to the various types of financial products. Other details on the website were, according to the FSMA, inaccurate or misleading or did not comply with the minimum content requirements.

At the end of 2015, the FSMA had provided the company with its initial observations regarding the website. The company amended certain parts of the website in accordance with these. However, in April 2017, the FSMA decided that all the applicable legal requirements were not yet complied with.

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. The company had in the meantime amended its website.

75 The only agreed settlements described here are those that contain information of a general nature.

76 Law of 4 April 2014 on insurance.

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

Agreed settlement regarding the function of compliance officer at an insurance company

On 20 September 2018, the Management Committee accepted an agreed settlement with an insurance company.

Insurance companies must appoint a compliance officer and immediately inform the FSMA as to any appointment of a compliance officer and any change in the function of compliance officer. They must also submit an application for approval to the FSMA before they appoint someone as a compliance officer.

After dismissing its approved compliance officer, an insurance company had appointed someone else to temporarily fulfil this function. Afterwards, they had conferred this permanent role to another person. Then the insurance company had submitted an application to the FSMA to approve the person to whom they had conferred this permanent role of compliance officer.

The FSMA deemed that the insurance company had not complied with its obligation to immediately inform the FSMA of any change in the function of compliance officer and to submit an application for approval to it before appointing one or more people as a compliance officer. This irregularity lasted for 22 months.

The agreed settlement provided for the payment of a sum of EUR 75,000 to the Treasury and a publication with names on the FSMA's website.

Agreed settlement with a manager of a listed company following indications of market abuse

On 14 February 2018, the Management Committee accepted an agreed settlement with a manager of a Belgian listed company.

That company had published a press release stating that another company was planning on launching a takeover bid for its shares and warrants. That press release also stated that the majority shareholders and the board of directors supported this potential bid. The bid entailed a premium compared to the average closing price during the last 3 and 12 months.

One manager, who featured on the list of people with inside information that the company held in connection with the potential takeover bid, had made seven purchase transactions in the company's shares. The FSMA was of the opinion that these transactions constituted abuse of inside information. The FSMA also found that this manager had never previously notified it of earlier transactions in the company's shares, which is in breach of the disclosure requirements for managers of a listed company.

The agreed settlement provided for the payment of a sum of EUR 55,000 to the Treasury and a publication with names on the FSMA's website for a duration of 6 months.

Agreed settlements with Institutions for Occupational Retirement Provision

On 9 July and 9 October 2018, the Management Committee accepted two agreed settlements with Institutions for Occupational Retirement Provision (IORPs).

In both dossiers, the facts related to the legal obligation of pension institutions to provide certain data on an annual basis to the supplementary pensions database, also referred to as the 'DB2P'[78]. This database collects information on the pension rights built up by employees, self-employed persons and civil servants in second-pillar pensions.

In order for this database to fully fulfil its role as a reliable source of information, pension institutions are legally obliged to report certain information (including the contractual conditions and the annual statements of the individual accounts of the pension rights to members) to the database administrator.

Since 6 December 2016, citizens have direct access to their supplementary pension details in DB2P through the website of mypension.be. Now, via this website, they can immediately see the pension rights they have built up in the second pillar.

In one of the dossiers, the pension institution concerned was an insurance company. It was obliged to report to the database administrator, by 31 December 2015, the contracts regarding the supplementary pension rights of employees who had exited the pension scheme before 1 January 2004. The pension institution was also obliged to submit to the administrator the individual account balance for these agreements every year before 30 September.

At the beginning of 2017, the FSMA established that certain details on the supplementary pension rights of employee members, who had exited the pension scheme before 1 January 2004, had not been communicated on time. The investigations officer's investigation showed that the shortcomings related to the individual account balances on 1 January 2016 and affected 60,460 people. The account balances were entered with an 8-10 month delay. The pension institution cited operational issues as a reason for the delay.

The agreed settlement provided for the payment of a sum of EUR 250,000, and provided for the pension institution committing not to pass on this sum in any way whatsoever to its members. This decision was published with the company's name on the FSMA's website.

The other dossier related to a pension institution that was linked to a Belgian listed company. This pension institution had entered certain data for the 2017 evaluation year with several months' delay. These related to 6,500 declarations. The lateness of the declarations was caused by a sub-contractor's technical issues. The problem was thoroughly analysed and resolved.

The agreed settlement provided for the payment of a sum of EUR 50,000, and provided for the pension institution committing not to pass on this sum in any way whatsoever to its members. This decision was published with the company's name on the FSMA's website.

78 See the 2016 FSMA annual report, p. 68 and the 2017 FSMA annual report, p. 93.

Agreed settlements with regard to the legislation on credit intermediation

On 4 December 2018, the Management Committee accepted an agreed settlement with two airlines and a Belgian lender.

The parties concerned had developed a credit card together. Each payment with this credit card earned air miles from the lender for the airlines' loyalty programmes.

The airlines advertised this credit card on their websites. Furthermore, on those websites there was a link to the lender's website to apply for this credit card. The airlines referred to themselves as the "credit intermediaries" or "agents" for this. Third parties consulted the websites in question and clicked on the link to the lender's website.

The FSMA ruled that in this way, the airlines were engaging in consumer credit intermediation activities. Given that these two airlines were not registered with the FSMA as consumer credit intermediaries, they were in breach in this respect of the legislation on credit intermediation. This legislation determines that nobody may engage in consumer credit intermediation activities in Belgium or use the title of credit intermediary before first being registered with the FSMA.

The lender in turn breached the legislation because it used airlines as credit intermediaries, when they did not have the requisite registration with the FSMA for this purpose.

The agreed settlement provided for the payment of a sum of EUR 75,000 to the Treasury, equally divided among the three parties. The agreed settlement was published with the company's name on the FSMA's website.

Legal proceedings

Supreme Court judgments of 9 November and 13 December 2018

In the 2015 Annual Report[79], the FSMA reported on two judgments of the Brussels Court of Appeal of 24 September 2015 which ruled on the appeal against two decisions of the Sanctions Committee of 17 June 2013 on (inter alia) market manipulation. In the first judgment of 24 September 2015, the Court of Appeal overturned the first decision by the Sanctions Committee and, by way of a new judgment, imposed administrative fines. An administrative fine of EUR 250,000 was imposed on a listed company that, at the time, formed part of a bancassurance group, for an infringement of Article 25, § 1, first paragraph, 4° of the Law of 2 August 2002 and Article 5 of the Royal Decree of 14 November 2007. Apart from that, an administrative fine of EUR 200,000 each was imposed on two managers of that company, for an infringement of Article 25, § 1, first paragraph, 4° of the Law of 2 August 2002. In the second judgment, of 24 September 2015, the Court of Appeal had partially revised the second decision by the Sanctions Committee by confirming the infringement of Article

79 See the 2015 FSMA annual report, p. 127-128.

25, § 1, first paragraph, 4° of the Law of 2 August 2002 by a third manager but not imposing an administrative fine and publication with names.

The parties who were the subject of this judgment lodged a Supreme Court appeal against these two judgments from the Brussels Court of Appeal.

In a judgment of 9 November 2018, the Supreme Court rejected the applications for cassation against the second judgment of the Court of Appeal. That judgment thereby became final. In a judgment of 13 December 2018, the Supreme Court also rejected the company's application for cassation against the first judgment of the Court of Appeal. This judgment thereby became final against the company concerned.

These rulings by the Supreme Court put an end to the sanctions proceedings against the listed company, which had been started by the Management Committee of what was at the time the Banking, Finance and Insurance Commission (CBFA) in September 2009. The reason for this was a previous investigation into the external communications of a listed company on the process for implementing its solvency plan and on its solvency prognoses in the period from January to June 2008 which contained, according to the Management Committee, serious indications of price manipulation. These sanction proceedings resulted in the two aforementioned decisions by the Sanctions Committee and two judgments by the Court of Appeal against which the Supreme Court appeal had been lodged.

By way of reminder, the Sanctions Committee, supported by the Court of Appeal, had ruled on the content of this dossier that the company in question and its spokespeople had repeatedly infringed Article 25, § 1, first paragraph 4°, of the Law of 2 August 2002 by disseminating information that could give false or misleading signals on the company's share, whilst it knew or ought to have known that this information was inaccurate or misleading. The Sanctions Committee had also ruled that the infringements by the company of Article 25, § 1, first paragraph, 4° of the Law of 2 August 2002, also constituted an infringement of Article 5 of the Royal Decree of 14 November 2007. If an issuer provides false or misleading information to the market, it infringes the obligation of making the necessary information available to the public to ensure the transparency, integrity and proper functioning of the market.

The two executives who had also lodged an appeal for cassation against the first judgment of the Court of Appeal abandoned their appeal in the course of the proceedings. Each of them subsequently filed a new application for cassation, which are still pending before the Supreme Court.

International cooperation

In 2018, the FSMA received 17 requests for cooperation from foreign competent authorities as compared with 20 in 2017. All of these requests were responded to within an average of 47 days. The duration of that period was determined by the nature and scale of the investigative duties to be conducted. Such investigative duties often involve identifying the beneficiary of a transaction. They may also involve gathering information from an issuer or a telecommunications operator, or organizing hearings of people suspected to have committed some type of infringement, or of witnesses.

In 2018, the FSMA sent 44 requests for cooperation to foreign competent authorities, compared to 30 in 2017.

FINANCIAL EDUCATION FOR EVERYONE

Contributing to the financial education of the public is one of the FSMA's statutory tasks. It has set up a programme called Wikifin for this purpose. This programme develops initiatives to improve the population's financial literacy. The programme is based on several pillars. There is an easily understandable website with plenty of information for consumers. Wikifin also runs campaigns for the general public and special programmes for young people.

A new tool on the Wikifin portal

The www.wikifin.be portal was launched in 2013 and aims to provide consumers with neutral, reliable and practical financial information in language that is easy for everyone to understand. The site was met with resounding success and it is increasingly becoming a household name among the Belgian public. Apart from extensive information and explanations, the website also features interactive tools such as the savings account simulator, the inheritance simulator and the real estate simulator. These simulators are very popular: they offer citizens a clear view of the various possibilities and of the impact thereof on their day-to-day finances. In 2018, extensive preparatory work was done on designing a similar comparison tool for payment accounts. This tool will enable comparisons of different payment accounts, also referred to as "current accounts". In this way, citizens receive as clear and accurate a picture as possible of the various conditions and costs associated with each payment account, so that they can make an informed choice. The tool first establishes the user's profile and needs and then provides a simulation of the costs associated with each payment account.

Over the past year, alongside work on the development of the new tool, Wikifin also updated the information and further expanded the content of the website. That is carried out not only by FSMA experts but also in cooperation with many external partners, such as public institutions, professional associations or organizations that are active in the field.

A week of focus on money matters

In 2018, the FSMA, in conjunction with various media partners, organized the third edition of Money Week. As was the case with the first two editions, in 2018 many others joined in 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 for the general public and schools. During this themed week, the FSMA, under the Wikifin moniker, again embarked on a range of initiatives and took on the role of coordinator between the many stakeholders.

This themed week, which ran from 12 to 18 March 2018, was able once again to count on the support of Her Majesty Queen Mathilde. The Queen was present at a meeting between Wikifin and various actors who combat excessive indebtedness on the ground. At a round table meeting, the cooperation between these actors and the FSMA was discussed, experiences were shared and opinions were exchanged. At the beginning of Money Week, the results of the major survey conducted by Wikifin, in conjunction with De Tijd/L'Écho and Radio 2/Bel RTL, among 1,000 Belgians on the theme of "Your credit… worth considering" were made public. The survey results revealed that 66 per cent of Belgians have a credit arrangement and pay off an average of 864 euros a month. The results also show that many people do not consider a credit card as a form of credit arrangement. Surprisingly, many respondents claimed not to be aware that they are registered in the Central Office for Credits to Private Individuals if they don't pay off their credit, or pay it off late. Once again, these findings show the importance of financial education for everyone. The survey opened up a real debate and raised a number of major social issues. Partly because of this, it attracted a lot of attention from the media. On the Belgian radio station Bel RTL, Wikifin, along with a number of other experts such as Febelfin, Assuralia, the Royal Federation of Belgian Notaries and the Belgian credit and debt observatory dedicated a whole day to answering listeners' questions on money matters. Bel RTL listeners asked many and varied questions, to which they received the right response from the experts on hand.

During Money Week, more than 70,000 primary-school pupils played the budget games "Budg€t-PRET" and "Just'in Budget" at school. These educational tools seek to teach children from a young age that they can only spend every euro once, an important lesson which may save them financial troubles later on. Although the Budg€tPRET game has already existed for several years and has met with great success, the Just'in Budget game was specially developed for the 2018 edition of Money Week in close and effective cooperation with the Belgium Overindebtedness Action Group. The game, which is aimed at pupils in the 5th and 6th year of primary school, was met with immediate enthusiasm. Just'in Budget focuses on notions such as cash payments, bank account payments, savings, loans, budget management and the various temptations that can stand in the way of strict budget management. Education professionals and teachers ensured that both games met their needs and enabled a different approach depending on the pupils' ages. Both games were a great success. In class, the games were led by both FSMA staff and staff from organizations that work to combat and prevent debt.

On Wednesday 14 March, 120 1st- and 2nd-year secondary-school classes battled online in an international interactive money quiz. Teachers were able to prepare their pupils for the quiz with educational material developed by Wikifin. In Belgium, the quiz was organized on the initiative of Febelfin and Wikifin. As part of this, the Flemish Minister for Education, the CEO of Febelfin and Jean-Paul Servais, Chairman of the FSMA, visited a school to motivate pupils with the quiz. The winners took part in the European final, in which participants from 29 different countries pitted their wits against each other.

The Infomarkets in Brussels South, Antwerp Central and Ghent Zuid and in a shopping centre in Liège, had experts on hand from various partners to answer questions about money matters from the general public and pupils. The FPS Economy, FPS Finances, the National Bank of Belgium, Febelfin, Assuralia, the Belgian credit and debt observatory, the debt mediation centres, BudgetInZicht, Steunpunt Mens en Samenleving (support centres for people and society) and the platform for insurance brokers Brocom, all came together to inform citizens and pupils on a broad range of financial subjects. At the four Infomarkets, there was also a special educational pathway developed for young people. Approximately 3,000 third-year secondary-school students had to answer questions through a special app developed for that purpose.

Money Week was a resounding success and attracted great interest both from the general public and the media, thanks to the cooperation between the FSMA, the educational sector and the many financial education partners in Belgium.

Construction of the Wikifin Lab

2018 was crunch time for the project of opening the financial education centre, 'Wikifin Lab'. The Wikifin Lab is aimed primarily at secondary-school students, who will be able to attend for free to gain an unrivalled experience of financial education.

The centre will be located at a building adjoining the FSMA's offices in Brussels. Renovation works are fully underway and the building is gradually taking shape.

This innovative project, which rather than being a museum, creates a genuine experience where young people can learn about financial education in an educational, fun and interactive way.

The basic concept of the real-life game environment that young people will be able to experience, rests on three major themes:

- challenges and influences faced by consumers;
- savings and investment choices consumers can make; and
- the consequences to society of the individual choices consumers make.

The FSMA has worked closely with educational experts from various educational networks, teachers, and the academic world in the broad sense, to develop this new experience centre. The development of this trajectory has required quite a lot of research: not only does it need to fulfil the educational objectives of the educational networks in Belgium but also meet the expectations of pupils and respond to current educational trends. This is why numerous tests have been conducted in schools to assess the appropriate nature of the new techniques and methods used.

The Wikifin Lab will be more than just an experiential trajectory, it will also have an auditorium where multi-media material can be used and projected. Finally, a 'knowledge wall' will allow the public to discover the 'knowledge' on which the Wikifin Lab is based. That wall shows unusual objects and other curiosities that refer to economic or financial concepts. The 'knowledge wall' of the Wikifin Lab came about in collaboration with FLiP (First Financial Life Park) in Vienna, which agreed to share its knowledge on the subject.

The FSMA is very much looking forward to the upcoming opening of this financial education centre, which is a one of a kind. It will offer schools the possibility of providing their students with an exceptional experience, and to enable them to acquire important financial skills.

Financial education in the curriculum

Since the very beginning, the younger generations have formed an important target market for the FSMA's programme for financial education. 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.

New!

From September 2019, financial education will enter the school curriculum for pupils in Flemish schools and it is also likely to make an entry into the schools of the Wallonia-Brussels Federation.

In Flanders, the Flemish Parliament approved a new decree in January 2018 that redefines the scope of the new learning outcomes and establishes the key skills that should be integrated into the learning outcomes for the 1st year of secondary education. One of the key skills is "economic and financial knowledge". The FSMA and its partners have prepared a framework for financial education. That vital work served as input for the committees that define what students need to know and be able to do as part of this new key skill. The work for the 2nd and 3rd years of secondary education is now fully underway. In that way, the FSMA pursues its work and provides its know-how to the educational world to shape financial education in classrooms. The FSMA also contributes to training in the Flemish education system. As part of this, it has provided its assistance with a range of training days organized by different educational partners. It is particularly proud of the fact that financial knowledge is specifically being integrated into the school curriculum.

In the Wallonia-Brussels Federation, financial education will have to be integrated into the 'Pact for Excellence'. In this way, it will become one of seven learning streams that make up the general education of all pupils in the common-core syllabus. In practice, this means that if the 'Pact for Excellence' is approved by the Wallonia-Brussels Federation Parliament, all pupils in that common-core syllabus, which runs from the 3rd year of primary education to the 3rd year of secondary education, will be taught certain financial skills. More specifically, financial education will be integrated into the domains that cover transversal subjects and will therefore come up in language lessons, science and technical subjects, human sciences, artistic expression and physical education.

The FSMA sits on the steering committee, which is tasked with formulating concrete proposals for optimal integration of financial education and responsible consumption in the school curriculum. For this purpose, a document has been prepared titled "Financial education skills and responsible consumption", which clearly defines what the lessons on financial education and responsible consumption should include in the common-core syllabus. That document should enable the authors of the new frames of reference for the different learning streams established in the Pact for Excellence to integrate financial education into the frame of reference of their respective learning streams. 2018 was a year of intensive work on the implementation of the objectives relating to financial education in pupils' school curriculum. Parallel to this, the FSMA has pursued its efforts in the area of teacher training on the subject of financial education and responsible consumption. As part of this, it gave around fifteen training sessions in 2018.

2018 was also a year of ongoing work on the Financial Literacy@School project for strategic basic research. That project aims to raise the level of financial education of all pupils and to research the most efficient educational methods in that respect. This project, which focuses on developing innovative teaching material, is being conducted with the help of researchers from Antwerp and Leuven Universities, in collaboration with Wikifin and with financial support from the Flanders Fund for Scientific Research. This project can count on the enthusiasm and interest of countless teachers who seek new material to give shape to financial education in their classrooms.

FOCUS 2019

In 2019, the finishing touches will be added to expanding the Wikifin Lab trajectory and various activities will be installed. Afterwards, the Wikifin Lab will be tested under real circumstances by secondary-school students.

In the run-up to the official opening of the Wikifin Lab, which is planned for the 2019-2020 school year, the FSMA will further expand and train the team of activity leaders. It will also let schools know when they can register online. Furthermore, it will develop a range of educational tools to help teachers further build on what their students have learned during their visit to the Wikifin Lab.

INTERNATIONAL ACTIVITIES

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 international and European organizations which are instrumental in setting new rules and standards for the financial sector.

International

At international level, the FSMA is a member of:

OICV-IOSCO
the International Organization
of Securities Commissions

IAIS
the International Association
of Insurance Supervisors

IOPS
the International Organization
of Pension Supervisors

The FSMA is also involved in the work
of the Financial Stability Board

FSB FINANCIAL STABILITY BOARD

The FSMA's international and European activities

The FSMA places a lot of importance on international and European cooperation. The FSMA sits on the Board of IOSCO, it is a member of IAIS and IOPS and is involved with the work of the FSB. It also sits on the Board of Supervisors of ESMA and EIOPA and is a member of the General Board of the ESRB.

The Chairman of the FSMA, Jean-Paul Servais, holds a considerable number of important mandates within IOSCO and ESMA.

Since 2016, Jean-Paul Servais is also Vice Chair of IOSCO and of the IOSCO Board. In 2018, he was re-elected to these positions for a term of two years. Since October 2014, Jean-Paul Servais chairs the European Regional Committee of IOSCO and its Financial and Audit Committee.

Europe

At European level, the FSMA is involved in drafting and transposing new financial legislation. It is a member of:

esma European Securities and Markets Authority

the European Securities and Markets Authority

eiopa

the European Insurance and Occupational Pensions Authority

The FSMA also takes part in the work of the European Systemic Risk Board

ESRB
European Systemic Risk Board
European System of Financial Supervision

As Vice Chair, he represents IOSCO within a number of other international organizations. Since March 2017, he is the 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 is also part of the Official Sector Steering Group (OSSG), which works on reforming financial reference indexes such as Euribor and Libor and reports to the FSB. He also attended meetings of the FSB Plenary and its Steering Committee.

In 2017, the FSMA was reappointed Chair of ESMA's 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.

The FSMA is very active in international and European organizations and their working groups.

Members of the FSMA's staff took part in the work of various IOSCO working groups. Since 2018, the FSMA is represented on IOSCO's Committee on Emerging Risks. This working group researches risks in the financial markets and devises a risk outlook every year, which forms the basis for IOSCO's work plan.

The FSMA participates in various IOSCO working groups and networks, which closely monitor the latest technological advances. This includes the Data Analytics Group, the ICO Network and the FinTech Network.

The FSMA also plays an active role in other international organizations. As a member of IAIS, it has signed a Memorandum of Understanding that provides for sharing of information between 70 countries.

Recently, the FSMA has also started taking an active part in the work of EIOPA's InsurTech Task Force. This is a multidisciplinary working group composed of EIOPA staff and national supervisory authorities. It focuses on technology and innovation in the insurance sector.

Sustainability high on the agenda

The financial sector plays a key role in the transition towards a sustainable society. It is expected to contribute to mobilizing the necessary funds for sustainable investments and to ensure that financial products are sustainable.

In 2015, the international community endorsed the Paris Climate Agreement and the United Nations 2030 Agenda for Sustainable Development. These international agreements contain commitments for reducing climate change to under 2 degrees Celsius. By the middle of this century, we must achieve a carbon-neutral society. In this way, the most serious consequences of climate change will be halted.

These commitments require major involvement from the financial sector. In order for the transition to a sustainable society to be successful, financial flows must follow the initiatives developed for this purpose. This theme is high on the agenda of the European Union and the European and international supervisory authorities.

Various initiatives are in the pipeline to steer the financial sector towards more sustainability. A G20 Financial Stability Board (FSB) working group made recommendations on taking into account the various types of climate-related risk (see box).

At European level, the March 2018 European Commission action plan on financing sustainable growth promotes transparency and a long-term vision in economic and financial activities and in the integration of sustainability into risk control.

The European Union has an investment gap of 180 billion euros a year in the period until 2030 to finance its climate targets. Governments mobilize funds, but the public sector does not have sufficient means to obtain this funding. This is why Europe has to call on the financial sector. It plays a key role in achieving the climate targets. It can contribute to a low-carbon economy by promoting investments in sustainable technology and business.

To integrate sustainability into risk control, the European Commission action plan provides for varied legislative proposals. One proposal aims to set up a clear and detailed classification system for sustainable business. The classification system must create a common language for all players in the financial sector so that they know precisely what should be understood by "sustainable".

Another proposal arranges for labels to be devised for green financial products. These labels can help investors select green or low-carbon financial products. More transparency about the 'ESG' (environmental, social and governance) factors is another obligation that the European Commission plans to impose on businesses. Insurance and investment firms will have to take into account their clients' sustainability priorities, as well as ESG factors in their advice to clients.

More transparency in climate-change reporting

The FSMA supports the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), a private initiative for climate-change related reporting. These non-binding recommendations include guidelines for companies on how to communicate transparently on their climate-change related risks[80].

In 2018, the FSMA, the National Bank of Belgium and the Belgian Federal Public Service Finances signed a declaration from the TCFD in Brussels at a meeting attended by TCFD Chair Michael Bloomberg.

The TCFD was established at the end of 2015 by the FSB. In mid-2017, the working group published its recommendations to the G20. These recommendations enable investors to compare businesses in the context of the risks they face as a consequence of climate change. In that way, the instigators hope to encourage businesses to make more efforts in favour of—and to switch to—more climate-friendly policies.

80 TCFD, Final Report: Recommendations of the Task force on Climate-related Financial Disclosures, June 2017.

Measures against trading in binary options and CFDs

In 2016, the FSMA prohibited the distribution of a number of products that were harmful to consumers. This measure was followed up at a European and international level in 2018.

The FSMA's prohibition pertained to certain over-the-counter derivative contracts, including binary options and contracts for difference (CFDs). By prohibiting these, the FSMA played a pioneering role in terms of consumer protection. A large number of European Member States followed the Belgian example and tightened their legislation.

The European Union also took measures. The European Securities and Markets Authority (ESMA) prohibited the marketing, distribution or sale of binary options to consumers in 2018 and restricted the sale of CFDs to consumers[81].

Binary options and CFDs are complex and risky products. They are often traded speculatively, mostly via electronic trading venues. There was a rapid rise in the marketing, distribution or sale of binary options and CFDs to consumers over the past few years, throughout the European Union.

ESMA noted that the offer of binary options and CFDs to consumers is increasingly characterized by aggressive marketing techniques and insufficiently transparent information. As a result, consumers are not in a position to understand the risks underlying these products. ESMA expressed major concerns about the increasing number of consumers trading in these products and losing money. These concerns came about through the numerous complaints from consumers from all over the European Union who had suffered significant loss by trading in binary options and CFDs.

As a result of this, ESMA took measures. It prohibited the marketing, distribution or sale of binary options. That prohibition, which was temporary, started on 2 July 2018 for a period of three months. It was extended once again in the year under review. The marketing, distribution or sale of CFDs was also restricted. That measure commenced on 1 August 2018 for a period of three months and was extended once in the year under review.

The matter of binary options and CFDs received international attention too. IOSCO, the international organization of supervisory authorities for the securities markets, consulted its members on the subject. In 2018, it presented a tool box with measures that the national authorities may take to restrict trading in binary options and CFDs by consumers[82].

The following range of measures were included in IOSCO's report:
- the introduction of licencing for companies that sell OTC products;
- leverage limits;
- the obligation for consumers to provide collateral to enter into a contract;

81 ESMA, Notice of ESMA's product intervention decisions on CFDs and binary options, 22 May 2018.

82 IOSCO, Report on retail OTC leveraged products, September 2018.

- countering the risk of consumers losing more than their initial investment;
- more clarity as regards disclosures of costs and charges;
- more openness as to the disclosure of risks of OTC products, including profit and loss ratios;
- a clear method for calculating product pricing and more information on order execution;
- restrictions on certain forms of marketing and sales tactics;
- a full ban on the marketing, distribution or sale of OTC products.

Other methods recommended by IOSCO pertain to financial education, combating illegal activities and warning the population of these.

Leverage limits

A Contract for Difference (CFD) is a derivative financial product that allows investors to take a long or a short position in an underlying asset. The asset may be a share, an index, a currency, a commodity, or another financial instrument. A CFD is concluded between two parties: a buyer and a seller. The contract stipulates that the seller will have to pay the buyer the difference between the value of the asset at the beginning of the contract and its value at the end of the contract. If the difference is negative, the buyer will pay the difference to the seller.

The main characteristic of a CFD is the leverage effect. In general terms, this means that leverage can increase the potential profit for clients, but also the potential loss. National authorities reported that the levels of leverage that apply to CFDs within the European Union varied between 3:1 and 500:1.

For consumers, the application of leverage can make the chance of a bigger loss increase more than the chance of a bigger profit. Specific investigations conducted by national authorities into results for consumers who invested in CFDs unveiled that the majority of them lose money on their transactions. This is why ESMA decided to heavily restrict the leverage that applies to CFDs.

The heaviest restriction applies to leverage on CFDs with cryptocurrencies as the underlying, at 2:1. For commodities, the leverage limit is 10:1. For gold and major financial indexes, there is a maximum leverage of 20:1. For CFDs with major currencies as an underlying, the limit is 30:1.

ESMA also introduced margin close-out protection. This measure should protect consumers from huge losses. It obliges the offeror of CFDs to close the position of their retail clients as soon as a specific limit is surpassed. In exceptional market conditions, there is protection against a negative balance. This measure should protect consumers from losses that exceed the amount of their outlay in a CFD.

“All-or-nothing” contracts

An investor who invets in a binary option puts a certain sum of money on the rise or fall in the value of the price of a selected asset during a given period of a few minutes, hours or days. That underlying asset may be a share, an index, a currency, a commodity or another financial instrument. If the investor’s prediction is fulfilled, he or she recovers the money and receives a payout. If not, he or she loses the entire sum invested. This is wny an investment in a binary option is also known as an “all-or-nothing contract.

Costs and returns of retail investment products

ESMA published the first edition of its statistical report on the costs and history of returns for retail investment products[83]. This report was on the request of the European Commission. In the framework of the Capital Markets Union, it seeks to foster retail investors' participation in the European capital markets. This report can help retail investors with assessing the net returns from retail investment products and the impact of a range of costs and fees.

ESMA examined certain investment funds and structured retail products. Among the investment funds, both UCITS and AIFs for retail investors, also referred to as retail AIFs, are offered. Retail investment products in the EU comprise approximately 30,000 UCITS, 10,000 retail AIFs and five million structured retail products. Within these figures, UCITS constitute the largest market share with 76 per cent, compared to 15 per cent and 9 per cent for retail AIFs and structured retail products respectively.

In its report, ESMA emphasized that there are still major data limitations that impact the scope and content of the report. For example, there are no data on certain costs and fees, or on the performance of certain types of products. For UCITS, the report contained as thorough as possible an analysis of performance and costs, whilst the report on retail AIFs and structured retail products contained only a market overview.

ESMA researchers analysed the historic performance and costs of UCITS in the period 2007-2017 based on data from a commercial database. They found that the annual gross returns from the UCITS followed the performance of underlying asset classes and are therefore prone to fluctuations. Gross returns can also differ greatly among Member States because of differences in market structures. Compared to the gross returns, costs showed less fluctuation. Share funds and funds with an alternative strategy have the highest costs, followed by mixed funds, bond funds and money market funds. Costs are higher for retail investors than for institutional investors, and for actively managed share funds than passively managed funds.

The report showed that 50 per cent of net assets of Belgian UCITS for retail investors are mixed funds. This makes Belgium, in relative terms, one of the countries in which mixed funds are most commonly offered.[84] In Belgium, the level of costs is below average to average for share funds, funds with an alternative strategy and bond funds. The level of costs is above average for mixed funds and money market funds. This latter category of funds, however, represents a limited volume in Belgium.

83 ESMA, Performance and costs of retail investment products in the EU, January 2019.

84 See this report, p. 33.

EU

European legislation and regulations play a fundamental role in the FSMA's supervision. The following proposals for new legislation and regulations were made or being worked on in 2018.

European crowdfunding regime

In the year under review, the European Union devoted a lot of attention to the creation of the European Capital Markets Union. Various proposals were discussed. One of these proposals related to a European crowdfunding regime. Such a status offers crowdfunding platforms the chance to offer their services throughout the European Economic Area. An authorization with a European passport was set out for this purpose. One platform may only have one authorization at any one time, and will have to choose either a European authorization or an authorization from one of the Member States.

A European supplementary pension

The European institutions reached an agreement about the introduction of a European supplementary pension. The Pan-European Pension Product (PEPP) comes over and above the offer of statutory, supplementary and individual pensions that already exist 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 pension.

European supervisory authority review

Another dossier that was handled in 2018 was the review of the operation of the European supervisory authorities ESMA, EIOPA and the EBA. The proposals relate to the powers, financing and governing bodies of these institutions.

ESMA

Investigation of cryptoassets

In 2018, ESMA worked on the theme of cryptoassets and initial coin offerings. Its Financial Innovation Standing Committee (FISC), led by the FSMA, investigated these products and highlighted the risks and advantages thereof. At the beginning of 2019, ESMA offered advice on this theme to the European institutions. This advice clarified the existing EU rules that apply to the category of cryptoassets that qualify as financial instruments and specifies the enforcement issues associated with them. For other types of cryptoassets that do not qualify as financial instruments, the advice considers the pros and cons of further legislation and regulations, for example as regards preventing money laundering, and transparency for investors. ESMA is of the opinion that a pan-European approach to cryptoassets is highly advisable, partly given their cross-border trading.

Development of innovation hubs

The FISC also handles other Fintech innovations. The FISC is working with ESMA, EIOPA, and the EBA on a joint report about good practices regarding initiatives by supervisory authorities to facilitate financial innovation. This report analyses the various national initiatives in which supervisory authorities develop regulatory sandboxes or, like the FSMA, innovation hubs.

Convergence of supervisory practices

ESMA devotes increasing attention to the convergence of supervisory practices in the European Union. New guidelines, opinions and Q&As were published in varying domains such as MiFID II/MiFIR. Many of these Q&As responded to questions for clarification of the European legislation and regulations from market participants or national supervisory authorities. Based on MiFIR, ESMA for the first time took product intervention measures to protect retail investors across the EU (see above).

EIOPA

Pension overview provides information to consumers about supplementary pensions

EIOPA published a report containing guidelines for preparing the information document on supplementary pensions as part of the transposition of the European IORP II Directive[85]. The Uniform Pension Overview must provide consumers with an insight into the accrual of their supplementary pension as well as into their future financial situation. This pension overview gives projections of what consumers will receive as income on their pension date. It includes both a best-case scenario and a worst-case scenario. Consumers must also easily be able to compare pension overviews within Member States. Costs associated with the supplementary pension must be as complete as possible and easy to understand. In the report, EIOPA also makes suggestions for preparing and presenting the pension information.

Cross-border cooperation on supplementary pensions

EIOPA published a decision on cross-border cooperation between the national supervisory authorities of supplementary pensions. These included agreements on:

- the procedures that pension funds must follow for cross-border transfers or activities;
- the supervision of cross-border activities;
- the sharing of information necessary to assess who needs to meet the requirements of integrity and expertise;
- the supervision of cross-border outsourcing of services.

These agreements replaced the former Budapest Protocol. They came about after preparation by a working group under the auspices of the FSMA and come under the scope of the recast IORP II Directive on the activities of pension funds.

85 EIOPA, *Implementation of IORP II*: Report on the Pension Benefit Statement: guidance and principles based on current practices, 13 November 2018.

Cross-border cooperation on insurance distribution

EIOPA published a decision on cross-border cooperation among national supervisory authorities on the subject of insurance distribution. These included agreements on:

- the procedures that must be followed for the registration and notification of insurance or reinsurance intermediaries;
- the sharing of information between supervisory authorities;
- complaints handling.

These agreements replaced the former Luxembourg Protocol.

ESMA, EIOPA and the EBA

Focus on preventing money laundering

The three European Supervisory Authorities, ESMA, EIOPA and the EBA handle joint matters in the Joint Committee. In this respect, the FSMA takes part in the work relating to the implementation of the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs). Within the Joint Committee, the supervisory authorities clarified their expectations from the financial sector regarding the prevention of money laundering. New legislative proposals from the European Commission aim to better harmonize the supervision of the various national authorities. These proposals were handled jointly with a range of other proposals from the European Commission to broaden the tasks of the European supervisory authorities.

ESRB

Financial stability and systemic risks

In 2018, the ESRB regularly indicated that, despite fairly strong and generalized economic growth (especially during the first half of the year), the risks to financial stability remain high, especially against the backdrop of the major political uncertainties both at European and global level. In spite of the improved risk perspectives in the banking sector, especially because of the higher capital requirements, certain Member States remain very vulnerable. This especially includes Member States that continue to suffer from large numbers of non-performing loans and from profitability and overcapacity problems.

The ESRB's focus in 2018 was especially on the insurance and reinsurance sector. Although Solvency II has outlined a new macro-prudential framework at a European level, which has made the sector more resilient, the ESRB examined whether there was a need for a broader macro-prudential framework to better be able to address the systemic risks associated with insurers and reinsurers. The report published on that subject[86] adds to EIOPA's work and comes to similar conclusions.

86 Macroprudential provisions, measures and instruments for insurance, November 2018. See the ESRB's website: https://www.esrb.europa.eu/pub/pdf/reports/esrb.report181126_macroprudential_provisions_measures_and_instruments_for_insurance.en.pdf?e28256bdaaf558010800a275f1c7af66.

Vulnerabilities in the property sector

The ESRB also pursued its investigation into the vulnerabilities in the property sector, especially as regards commercial property. Given its scale and its mutual connectedness with the real economy, this is an important sector in terms of financial stability. The prolonged low-interest-rate environment has made for a rise in prices and a fall in returns from commercial property, compared to the historic averages in the European Union. Moreover, a rise in non-banking finance has been identified in the sector. This is also increasingly cross-border in nature. These subjects and questions as to the lack of coherence and availability of information that enable an accurate assessment of risks in the sector, are addressed in an ESRB report[87].

Cyberrisks

The General Board of the ESRB also discussed the risks to financial stability as a consequence of IT incidents. Certain aspects make "cyberrisks" unique: their nature, the speed with which an incident can occur, the clear desire to create a disruptive effect, the potential scale of the shock that transcends geographical borders, as well as the high probability of success of a cyber attack. The European Systemic Cyber Group, established in 2017 by the General Board of the ESRB has designed a conceptual framework to allow estimates as to when and how a cyber shock may cause a systemic crisis. This work will carry on into 2019. The main aim of this work is to analyse whether certain specific transmission channels could increase the likelihood of a systemic crisis.

IOSCO

Recommendations on UCI liquidity risks

On 1 February 2018, IOSCO published recommendations on liquidity risk management for undertakings for collective investment (UCIs). According to these recommendations, entities that manage undertakings for collective investment must make sure that liquidity is constantly managed with a view to protecting the interests of investors, even when market conditions are tight. Those recommendations replaced the principles published by IOSCO in 2013 on liquidity risk management. Furthermore, they constitute the final step for the enforcement of the FSB recommendations on the liquidity risk of UCIs.

Apart from the recommendations for entities that manage UCIs, IOSCO's final report contained additional guidelines for national authorities tasked with promoting good liquidity management practices at UCIs.

87 Report on vulnerabilities in the EU commercial real estate sector, November 2018. See the ESRB's website: https://www.esrb.europa.eu/pub/pdf/reports/esrb.report181126_vulnerabilities_EU_commercial_real_estate_sector.en.pdf?77fdeb615a42bbf41dbf5a1dcfb053fc.

Recommendations on the leverage effect

On 14 November 2018, IOSCO published a consultation document on the use of the leverage effect by undertakings for collective investment. That consultation document puts forward a range of techniques to measure the leverage effect of UCIs. Through these techniques, the use of the leverage effect can be compared between UCIs, and the risks to financial stability can be assessed. This consultation is the first phase of the enforcement of the FSB recommendations on the leverage effect.

The methodology described in the consultation document is based on a two-stage approach. In the first stage, the different techniques used locally to measure the leverage effect are combined to identify certain UCIs that could constitute a risk for financial stability. During the second phase, the UCIs identified here were more thoroughly analysed.

The consultation should culminate in the publication of recommendations in 2019 on the assessment, by the competent national authorities, of the leverage effect of UCIs.

The FSMA takes part in World Investor Week

In 2018, IOSCO organized the second edition of World Investor Week. The aim of this week is to promote the education and protection of investors worldwide. Supervisory authorities and stakeholders in more than 80 countries take part in World Investor Week through a plethora of activities. The FSMA supported this initiative, not least by participating in the national campaign against fraud.

NEW DEVELOPMENTS AND CHALLENGES

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

Brexit

On 29 March 2017, the United Kingdom announced, to the European Council, its intention to exit the European Union. Unless otherwise agreed between the EU and the UK, this withdrawal, which has been dubbed "Brexit", will occur over the course of 2019. This would mean that, after Brexit, the UK would no longer be a Member State of the EU.

Over the course of 2018, it was unclear whether an agreement would be reached on the methods for the UK's withdrawal from the EU. Without such an agreement, the UK would be heading for a 'hard Brexit' and after withdrawal from the EU, would obtain the status of third country. This would have an impact on financial institutions and intermediaries that offer their services from the UK in the EU and vice versa. Consumers in the EU that are clients of a British financial player or institution would also suffer the consequences of Brexit.

Cooperation at a Belgian and European level

Over the course of 2018, the FSMA embarked on a range initiatives to prepare for Brexit. It had regular contact with representatives from the British financial sector, both in Brussels and in London. The FSMA also took an active part in the work of ESMA and EIOPA to prepare for Brexit. ESMA, EIOPA and the national supervisory authorities of the EU Member States entered into Memoranda of Understanding on sharing information with the British supervisory authorities in the case of a hard Brexit.

The FSMA signed a Multilateral Memorandum of Understanding (MMoU), prepared by ESMA, with the British supervisory authority, the Financial Conduct Authority (FCA). This agreement allows the FSMA, in case of a hard Brexit, to continue to cooperate with the FCA in all areas of supervision of the financial markets. The agreement is also important for the Belgian portfolio management sector given that delegating tasks to entities in the UK is only possible if such a memorandum of understanding exists.

The FSMA has also signed an MMoU for cooperation and sharing of information for insurance activities with the British supervisory authorities the FCA and the Bank of England, and for pensions with the British supervisory authority the Pension Regulator.

As a result of Brexit, the European supervisory authorities, which includes the FSMA, also contribute to a common approach for national supervisory authorities of the 27 EU Member States for companies from the UK that proceed to relocate their activities to the EU.

ESMA published a number of opinions explaining its expectations on the way in which the national supervisory authorities should handle applications from market participants to move their activity to the EU. To ensure follow-up of these opinions and convergence of the actual supervisory decisions, ESMA set up a Supervisory Coordination Network, in which the FSMA plays an active part.

The FSMA also forms part of the Brexit platform, in which EIOPA coordinates enquiries among British insurers on their European activities. These enquiries aim to identify the risks, the EU countries in which the insurers concerned will establish themselves, and the schedule and anticipated timing contained in the insurers' contingency plans.

EIOPA has published four opinions and a recommendation for Brexit. The opinions relate to guaranteeing the continuity of services in the wake of Brexit and to the obligation of insurance companies and intermediaries to inform clients on the potential consequences thereof. The recommendation relates, inter alia, to distribution activities. This recommendation clarifies that national supervisory authorities must ensure that British intermediaries and entities that wish to exercise distribution activities relating to policyholders and risks in the EU, establish and register themselves in the EU in accordance with the provisions in the Insurance Distribution Directive (IDD). It also confirms that these may not be empty shell companies and that the organizational and professional requirements provided for in the IDD must continue to be complied with.

The FSMA also worked closely with the National Bank of Belgium (NBB). Given that both the FSMA and the NBB, each in their own domains, supervise the Belgian financial sector, they have set up a specific arrangement for cooperation and sharing of information relating to Brexit. This cooperation was focused on taking the necessary measures to limit the potential negative impact of Brexit on the sector and to ensure the protection of consumers.

Continuity of insurance contracts

An important aspect of consumer protection is the continuity of insurance contracts with British insurance companies. In 2018, the FSMA contacted all British insurers active in Belgium. It wanted to ensure that insurers would continue to faithfully comply with the agreements entered into before Brexit and that remain valid after Brexit. The FSMA asked 55 British companies for more information on:

- the current portfolio of agreements that cover Belgian risks;
- the measures to be able to guarantee the continuity of the service provision;
- the manner in which Belgian insureds will be informed on the consequences of a "hard Brexit".

From the answers received and the other information, it seemed that not all companies had taken measures to guarantee continuity of their services in the case of a hard Brexit. It also appeared that companies communicated in different ways to their insureds: some wrote personally to their insureds and other companies published FAQs, while others still published a press release. The British insurance companies that had not reacted to this request, were contacted again. The study is still underway at the time of writing.

Impact on insurance intermediaries

Brexit also has a major impact on the insurance intermediary sector. Many specialized insurance intermediaries serve European clients from the UK. These are often insurance intermediaries specialized in certain niche markets and that mainly have big companies as clients. Thanks to the European passport, registration in the UK authorized them to do business in other EU Member States. With Brexit, this possibility would no longer exist. For this reason, a number of companies in the UK have submitted an application for registration with the FSMA. The arrival of Lloyd's Insurance Company in Belgium has made Belgium an attractive location for them.

The FSMA has actively assisted the companies in question with submitting their application and gave guidance as to the legal framework, especially as regards the European Insurance Distribution Directive (IDD). This is important because an insurance company may only use the insurance distribution services of intermediaries registered in an EU Member State.

The FSMA has also given guidance to all Belgian insurance intermediaries with a passport for the UK on their obligations, including on their obligations to their clients. They have to inform their clients promptly about the changes that will occur as a result of Brexit so that they know what they have to do. Insurance intermediaries who work with insurance companies or other insurance intermediaries in the UK must also ascertain the extent to which they can continue working as they are after Brexit.

Provision of investment services

British credit institutions and investment firms that offer investment services in Belgium are also affected by Brexit. The FSMA published a communication for the attention of these companies that wish to continue to offer their services in Belgium post-Brexit. This communication explains the regulatory framework for those offering investment services from non-EU Member States and the impact of Brexit on the companies in question. The communication also covers the continuity of contracts.

The FSMA also assisted with work on an ESMA survey on the extent to which branches of British investment firms established in an EU Member State are ready for Brexit. For this purpose, the FSMA contacted all Belgian branches of British investment firms. It examined whether they had taken the necessary measures to prepare for Brexit and whether they had informed their clients on the measures regarding continuity of contracts and on their future relationship with their clients. The survey unveiled that the branches had taken the necessary measures and informed their clients, or planned to inform them, on the consequences of Brexit.

Preparation of the Brexit law

The FSMA was also involved in the preparation of a draft law on Brexit. This draft includes, inter alia, powers for the King to take the necessary measures, upon the recommendation of the FSMA and the NBB, to ensure performance of the contracts entered into with British financial players before their authorization, registration, accreditation or any other form of admission to work in the EU expired. These powers apply to the entire financial sector.

To guarantee the continuity of the performance of the contracts entered into before Brexit, the King could decide to set a temporary transitional period. In that period, the regulated undertakings from the financial sector, or at least some of these undertakings, would be allowed to further perform on the contracts still in force at the time of Brexit. Those undertakings should notify the competent authorities thereof. That notification would have to include a plan that clarifies how they intend to halt or pursue their activities in Belgium before the expiry of the transitional period.

During that transitional period, the financial service providers concerned must continue to comply, when engaging in activity in Belgium, with the legal and regulatory provisions that apply in Belgium for the undertakings concerned and their transactions, including the rules of conduct.

These transitional provisions aim to safeguard the rights of clients of the undertakings concerned by guaranteeing the continuity of the contracts in force and by offering the competent authorities the possibility of overseeing the extent to which the undertaking takes into account the rights of those clients in its plan to halt or pursue its activity on the Belgian territory, and to what extent these rights are guaranteed to be safeguarded. The competent authorities should also be able to take measures any time the rights of the clients of the undertaking in Belgium are adversely affected or risk being so.

Establishing transitional measures is especially a consideration for the insurance distribution sector and the investment services sector. For the latter sector, a distinction could be made depending on the type of investors concerned, especially in view of the level of risks they run.

FinTech, RegTech and SupTech

The financial sector is, like others, seeing many technological advances. As a result of these developments in finance and technology, collectively referred to as 'FinTech', established players have to adapt their business models.

The FSMA closely follows developments in FinTech in Belgium via its Fintech-portal, through which FinTech players can get in touch with the FSMA. Since 2017, this portal has evolved to become a joint portal with the NBB so that it works as a single point of contact for FinTech players. A lot of contact was had with FinTech players through this portal. This contact was primarily for the purpose of gathering and sharing information. For the time being, this has not yet led to many applications for authorization to the FSMA.

It is not only the financial sector that needs to adapt to this; technology changes how the sector reports to authorities and how the authorities implement their powers and conduct their day-to-day supervision. RegTech can be defined as the use of technology to comply with legal requirements (compliance, risk management, reporting, etc.) in an efficient and effective way. An example of this is the automation of reporting to authorities.

SupTech in turn, is the use of innovative technology by authorities to support supervision. Authorities use more and more insights based on data analytics to broaden their supervision. Examples of such developments are machine-learning applications to identify risks, text analysis, network analysis and web scraping.

The FSMA also uses data analytics in its supervision. Apart from actively developing its own applications, it also keeps an eye on trends and changes in this domain. For this purpose, the FSMA plays an active role in international fora of supervisory authorities to share experiences and expertise with other authorities.

Crowdfunding

In 2018, the FSMA conducted a study on crowdfunding[88]. The study relates to crowdfunding for capital injections or for loans to invest in a project. These two types of crowdfunding are regulated in Belgium by the FSMA. The study covers the period January 2012 to December 2017 and was based on the five main crowdfunding platforms active on the Belgian market.

232 campaigns were successfully financed

The five platforms launched 273 campaigns. Of these, 232 were successfully financed. In 41 campaigns the set amount was not obtained. The 232 successful campaigns collected a total of 40,025,000 euros. The platforms very strictly select the projects eligible for financing. Of the estimated 17,389 projects that were proposed to the five platforms, only 273 passed the selection process.

Steady growth in crowdfunding

Both the number of projects and the total amounts collected have seen sustained growth. Whilst in 2012 only three projects were financed, that number went up to 92 projects in 2017. The amount collected reached 20 million euros in 2017. The strong rise in 2017 is likely to be because of the relaxation of the prospectus rules. The fiscal advantage via the tax shelter that could be benefited from in that year, could have played a role.

Investors are cautious

Those who invest in a crowdfunding project are usually cautious. Each campaign is financed by on average 100 different investors. The average amount per investor and per campaign is EUR 2,871. More than half of investors invest 500 euros or less per campaign, while less than 3 per cent of investors invest more than 5,000 euros per campaign.

Returns vary

The debt-based campaigns delivered investors average returns of 7.42 per cent. In the equity-based campaigns, there were two collective capital withdrawals. One of these delivered a substantial return (100 per cent after deduction of costs), whilst in the other case, investors lost money (-4 per cent). Seven companies financed by way of a capital injection went bankrupt.

88 *Equity and debt-based crowdfunding in Belgium: Developments over the 2012-2017 period*. See the FSMA's website: https://www.fsma.be/sites/default/files/public/content/crowdfunding/2018-12-19_crowdfundingstudy.pdf.

More growth expected

It is expected that investments via crowdfunding will continue to grow, partly as a result of the exemption from the obligation to publish a prospectus for projects under 5 million euros. The tax benefit of a tax shelter introduced in 2017, which provides for a tax deduction of up to 45 per cent for investments in micro-entities, may play a role. Nevertheless, crowdfunding continues to be a marginal source of financing in comparison, for example, with the amount of bank loans granted to companies.

Non-bank financial intermediation

From shadow banking to non-bank financial intermediation

As part of the efforts to strengthen the resilience of non-bank financial intermediation, the Financial Stability Board (FSB) had until now used the term "shadow banking". In October 2018, the FSB announced that it would, from now on, replace this term with "non-bank financial intermediation". The new terminology serves to clarify the use of technical concepts and has no impact on the essence of the supervisory framework or the recommendations and decisions made in the past.

Report of the FSMA and the NBB

In 2017, the FSMA and the NBB wrote a first joint report on asset management and shadow banking, or non-bank financial intermediation, at the request of the Minister of Finance and of the High Level Expert Group on the future of the Belgian financial sector[89]. This report comes as a result of a shift towards a more market-oriented financial system, in which financial intermediation takes place outside the banking sector. A more market-based financial system can offer an alternative to raising money from banks, thereby helping to support the real economy. However, it can also entail certain risks, both for financial stability and for investors.

The 2017 report didn't unveil any major concerns as regards systemic risks, or in the area of investor protection. The report did nevertheless contain a recommendation to further monitor the activities of both sectors. In 2018, the FSMA and the NBB therefore published an updated study on the subject[90].

89 *Report on Asset Management and Shadow banking, submitted to the Minister of Finance of Belgium and the High Level Expert Group on the future of the Belgian financial sector*, September 2017. See the FSMA's website: https://www.fsma.be/sites/default/files/public/content/EN/shadowbanking/2017_report_shadowbanking.pdf

90 *Update on Asset Management and Shadow banking, September 2018*. See the FSMA's website: https://www.fsma.be/sites/default/files/public/content/EN/shadowbanking/2018_update_assetmanagement_shadow_banking.pdf

The FSMA and the NBB calculated the scale of non-bank financial intermediation in Belgium based on the definition given by the FSB. At the end of 2017, the total financial assets in this category amounted to EUR 147 billion, compared to 128 billion euros at the end of 2016. These assets consist mainly of money market funds and other non-equity investment funds that do not qualify as share funds. The vast majority of these funds are under the supervision of the Belgian authorities. According to the definition of the European Banking Authority (EBA), the scale of activities for non-bank financial intermediation in Belgium came to 17.5 billion euros at the end of 2017, compared to 19.4 billion euros at the end of 2016. This EBA definition does not take investment funds into account if they meet certain criteria.

The second report did not unveil any new facts that would lead to any changes in the decisions contained in the 2017 report. The report did not identify any substantial systemic risks that are associated with asset management and non-bank financial intermediation. The developments in both activities and the links with other sectors of the economy still require further close monitoring, including for potential reputational risks to financial groups (the 'step-in risk').

The FSMA and the NBB consider it very important to gather data not hitherto available concerning asset management and non-bank financial intermediation. For this reason the FSMA updated and added to the statistical information that investment funds must send. A royal decree also gives investment funds tools to use in case of any liquidity problems.

ESRB

The European Systemic Risk Board (ESRB) has published a third report on non-bank financial intermediation[91]. At the end of 2017, the total assets of this sector came to 42,300 billion euros, representing approximately 40% of the entire financial sector in the EU, a tiny fall of 0.1 per cent compared to the previous year. In the eurozone, the sector grew by 1.2 per cent to 33,800 billion euros.

The ESRB uses a broad definition of non-bank financial intermediation, which encompasses all assets of the entire financial sector, with the exception of those of banks, insurance companies, pension funds and central counterparties. A major part of the assets that qualify as such according to the ESRB's definition (14,700 billion euros), come from investment funds.

91 *EU Shadow Banking Monitor, No 3, September 2018*. See the website of the ESRB: https://www.esrb.europa.eu/pub/pdf/reports/esrb.report180910_shadow_banking.en.pdf.

LEGISLATION AND REGULATIONS

The FSMA is closely involved in the transposition of the new legislation on the new rules for the financial sector. This chapter presents an overview of the most important developments in 2018.

Combating money laundering and terrorist financing

In 2018, there were significant developments in the Belgian legal and regulatory framework for combating money laundering and terrorist financing (AML/CFT).

On 16 October 2017, the Law of 18 September 2017[92] came into force. This Law transposes Directive (EU) 2015/849[93] into Belgian law and implements the International Standards of the Financial Action Task Force for combating money laundering and terrorist financing and the financing of proliferation, as recast in February 2012.

The Law gives supervisory authorities regulatory powers to supplement certain technical aspects of the provisions and implementing decrees. The FSMA made use of these powers to issue a regulation on 3 July 2018 "for preventing money laundering and the financing of terrorism"[94]. On 30 July 2018 it was approved by Royal Decree. It includes technical details for the overall risk assessment. It also adds to the provisions on organization and internal control, more particularly on the compliance function, the customer acceptance policy, the collection, verification and update of identification details, as well as on the investigation of transactions and tracing of atypical transactions.

The preparation of the FSMA Regulation was based on the Regulation of the NBB of 21 November 2017[95] to offer a coherent regulatory framework for the financial sector as a whole. This was especially needed because a number of obliged entities combine different regulated statuses, meaning that they come under the supervisory powers of both the FSMA and the NBB.

For the FSMA, one of the priorities in 2018 was to support the financial sector with the implementation of this new legal and regulatory framework.

92 Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

93 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.

94 Regulation of the Financial Services and Markets Authority of 3 July 2018 on the prevention of money laundering and terrorist financing, approved by Royal Decree of 30 July 2018.

95 Regulation of the National Bank of Belgium (NBB) of 21 November 2017 on the prevention of money laundering and terrorist financing, approved by Royal Decree of 10 December 2017.

One of the main developments in the AML/CFT regulations is to reinforce the risk-based approach. For obliged entities, this means that all measures they take, at an organizational level and at the level of the due diligence they exercise in respect of their clients and transactions, aim to reduce the risk that they could be abused for money laundering and terrorist financing (ML/TF).

To support the obliged entities with the application of their risk-based approach to AML/CFT, the FSMA published a circular on 7 August 2018[96]. In it, it offers specific implementation measures in the form of a step-by-step plan containing four elements: assessment of the risks to which the financial institution is exposed (overall risk assessment), development of an organizational framework aligned with the risks identified, assessment of the risks faced by individual clients (individual risk assessment) and application of due diligence measures specifically aligned to the risks at hand.

In its newsletter[97] of April 2018, the FSMA had already underlined the importance of a risk-based approach to AML/CFT. In it, it said that the obliged entities should give absolute priority to conducting the general risk assessment, the first step in the plan. This should allow them to introduce effective mechanisms for AML/CFT specifically aligned with the risks they face.

Aware of the more intensive assistance that insurance intermediaries need for their general risk assessment, the FSMA has drawn up a practical guide and table[98] for them. Together, these form an instrument with which the insurance intermediaries can more easily identify and evaluate their ML/TF risks.

The second step of the plan for the risk-based approach is to draw up an organizational framework aligned with ML/TF risks. The FSMA will devote a circular to this subject to explain exactly what it expects from the application of the legal provisions on organization and internal control.

The risk-based approach was not only reinforced for obliged entities but also for the FSMA in its role as supervisory authority for the financial sector. The European supervisory authorities issued joint guidelines[99] on 7 April 2017 on the characteristics of a risk-based approach to the supervision of AML/CFT and the measures that must be taken when supervision occurs on the basis of risk. The FSMA reviewed its supervisory approach to align it with these joint guidelines.

As part of this review, it has tightened its supervisory approach. This approach is based on a risk analysis and the specific characteristics of the sectors of activity it supervises. For this analysis, it has developed a tool with which it can identify and evaluate the risks to which obliged entities are exposed. The information on inherent risks of the obliged entities and on the measures to manage and mitigate these, is collected by the FSMA by way of a regular questionnaire that it asks obliged entities to fill out every year. The answers to the questionnaire are analysed through an automated system. In this way, the FSMA can establish a risk profile of obliged entities or of a cluster of obliged entities (a group of obliged entities with similar characteristics) to then determine where its supervisory priorities should lie. The risk-based approach for ML/TF supervision aims to set up checks with an intensity tailored to the risk-sensitivity of each entity.

96 See Circular FSMA_2018_12.

97 Newsletter of 20 April 2018 - Evaluate your risks.

98 See Handbook FSMA_2018_07 and Excel table 'My overall risk assessment'.

99 In accordance with Article 48, § 10 of Directive (EU) 2015/849.

One of the priorities set by the FSMA for 2019 is to ensure that obliged entities comply with and apply the new legal and regulatory framework for AML/CFT. It will in particular examine whether the obliged entities apply the provisions on the risk-based approach for AML/CFT.

Transposition of the Insurance Distribution Directive (IDD)

The Insurance Distribution Directive (IDD) was transposed into Belgian law by way of the Law of 6 December 2018[100]. This law entered into force on 28 December 2018.

The IDD includes the following aspects:

- a regulation for the status of insurance and reinsurance intermediaries. The IDD introduces requirements in terms of knowledge, skills and integrity for staff of insurance and reinsurance companies involved in distribution activity;
- information obligations and rules of conduct for all insurance distributors (insurance companies and insurance intermediaries). The IDD also imposes additional requirements for insurance products with an investment component. With this, it also wishes to align these rules with the rules for the banking sectors to which MiFID and MiFID II apply.

It is not only insurance intermediaries in the traditional sense that come under the scope of the IDD. Insurance companies that sell their products directly, as well as ancillary insurance intermediaries fall under the IDD too, albeit only in so far as the premiums and risks covered remain limited.

The new rules are pursuant to the existing Belgian legislation. The majority of the provisions of the Law of 6 December 2018 are faithful transpositions of the IDD. The legislature has however made use, on a couple of points, of the options offered to Member States by this minimum harmonization directive. These points are explained below.

The IDD lays down certain rules of conduct only for insurance products with an investment component. The law broadens the application of these rules to all insurance products. Examples of this are the rules to prevent and manage conflicts of interest, as well as the obligation to prepare a dossier for each client. By selecting these options, the legislature has primarily wanted to ensure coherence and a level playing field for the various categories of companies active in the financial sector.

For ancillary insurance intermediaries, insurance distribution is an ancillary activity. They only offer certain insurance products as a supplement to a product or service. These include for example sellers of electronic goods or smartphones. The legislature has wished to keep the levels of protection high where insurance products are distributed by ancillary insurance intermediaries. In so far as the premium remains under a certain amount and the risks covered remain limited, the ancillary insurance intermediary is exempt from having to register. In the IDD, this premium amount is set at 600 euros a year. The legislature considered this to be a considerable sum for an insurance contract that covers goods or services that are sold or provided by an ancillary insurance intermediary. It has therefore opted to lower this amount to a maximum annual premium of 200 euros, not including taxes. The King may adjust the threshold to better protect consumers and in response to the evolution of consumer prices.

100 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution.

The IDD rules for inducements apply only for insurance products with an investment component and are not extended to other insurance policies. However, the organizations representing the insurance sector are asked to take the following steps for other insurance products:

- draw up a list of inducements that are prohibited because they adversely affect the quality of the service to the client;
- establish the criteria to determine when fees, commissions or benefits are not in the interest of the client, or, in other words, violate the 'fundamental rule of conduct'. If no code of conduct is drawn up, the King may act and provide for the necessary clarifications with a royal decree;

The notion of "insurance product with an investment component" is extended to insurance in the third pillar of pensions or fixed-income class 21 savings insurance with no profit share. Second-pillar products do not come under this extension.

The Law of 6 December 2018 will be supplemented by an implementing Decree. This will, inter alia, specify the form and content of the registration dossier for insurance and reinsurance intermediaries as well as the requirements that intermediaries, their managers, those responsible for distribution and Persons in Contact with the Public must fulfil to meet the conditions for professional knowledge, professional competence and regular continuing education.

Transposition of the IORP II Directive

The Law of 11 January 2019[101] has transposed the European IORP II Directive [102]into Belgian law. IORP II overhauls and supplements IORP I[103]. The main changes in IORP II relate to rules on cross-border activity, governance and information obligations.

In the first place, the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision (hereinafter referred to as the 'LIORP' in English) was amended. The LIORP was also fine-tuned on a couple of points to take into account the experience of the last ten years since its entry into force.

Furthermore, the Law of 2 August 2002 on the supervision of the financial sector and on financial services was amended to take into account the rules from IORP II on professional secrecy and sharing of information between supervisory authorities.

Following the publication of the Law of 11 January 2019, the FSMA published a communication[104] to inform IORPs as to the main changes and anticipated transitional provisions.

101 Law of 11 January 2019 transposing 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) and amending the Law of 27 October 2006 on the supervision of Institutions for Occupational Retirement Provision (Belgian Official Gazette, 23 January 2019).

102 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) (recast) (OJ, L354 of 23 December 2016, p. 37).

103 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, OJ, L235 of 23 September 2003, p. 10 and 2003L0041 of 20 June 2013, p. 1 (latest consolidated version).

104 See Communication FSMA_2019_03.

Cross-border management of pension schemes

One of the important objectives of IORP II is to remove legal obstacles to cross-border management by IORPs, with the ambition to create an internal market for occupational pension provision. For this purpose, this Directive contains a number of provisions that were taken over in the LIORP and that mainly relate to:

- defining the starting point for cross-border activity and cross-border transfers;
- setting up a special procedure for conducting a cross-border transfer;
- removing the possibility of setting special investment rules for assets that belong to a cross-border activity;
- defining the prudential supervisory subjects;
- establishing the scope of the requirement of being fully funded.

The main change is the introduction of a separate procedure for a cross-border transfer that may or may not result in a cross-border activity. The rules that apply to cross-border activity were not fundamentally changed; however, the time frames for the procedure were considerably shortened.

Governance

IORP II contains comprehensive rules on governance. Its transposition into Belgian legislation entailed the introduction of governance provisions in the LIORP itself. However, the "new" legal governance requirements will not in fact cause a great revolution for most IORPs. Comparable governance rules already applied by virtue of the details the FSMA had given via its circular regarding the open standards of IORP I on sound governance. The transposition of IORP II therefore translated largely into taking over and refining the existing soft law in the legislation itself. The new provisions in the LIORP relate to the governance system, the requirements of fit and proper governance for the management of the IORP and the responsibilities for the key staff, the compensation policy, key roles and outsourcing.

Governance system

IORPs must have an effective governance system that ensures sound and prudent management. This system is to be commensurate with the size, nature, scale and complexity of the IORP's work (proportionality).

IORPs must set out a number of policies in writing relating to risk management, internal audit, actuarial activity (if applicable), outsourcing and compensation[105].

105 Article 77/1, LIORP.

Key functions

The LIORP sets out that an IORP must have four effective and permanent key functions: the risk management function, the actuarial function (where relevant[106]), the compliance function and the internal audit function. These four key roles in particular support the board of directors in the exercise of their supervisory tasks. They also from now on have a signalling function to the FSMA[107].

Only the risk management function is new. The actuarial function becomes an internal function and replaces the function of appointed actuary.

The IORP must designate a person responsible for each key function. This person may be assisted by other people but still holds final responsibility. For reasons of proportionality, the responsibility for several key functions may be cumulative or combined with the exercise of other tasks for the IORP. This does not apply to the internal audit function, which must always be independent from the other key functions and the operational work of the IORP.

The IORP may outsource a key function in whole or in part.

Requirements of professional integrity and fitness and propriety (fit and proper)

Requirements of professional integrity and fitness and propriety (fit and proper) remain unchanged. Previously, these rules for the managers and operational bodies[108] were already included in the LIORP[109]. The change is that these legal requirements are not expressly provided for in the LIORP for the people who fulfil a key function and for people or entities to which a key function is outsourced[110].

Fitness and propriety entails that the people concerned show honesty and integrity and have good repute. This requirement is assessed on an individual basis.

The requirement of appropriate expertise encompasses the professional qualifications, knowledge and experience necessary for prudent and sound governance of an IORP.

As regards supervision, it is important to emphasize that the IORP must in the first instance supervise that the members of its operational bodies and the people responsible for their key functions permanently comply with the fit & proper requirements.

Moreover, the appointment or reappointment of a member of an operational body and of the person responsible for a key function are subject to systematic oversight by the FSMA.

Risk management and own-risk assessment

IORPs must set up a risk management system. This system must include effective procedures for the identification, measurement, administration, monitoring and internal reporting of risks that the IORP or its service providers could be exposed to, and for the prevention of conflicts of interest;

106 The actuarial function must only be set up in the cases referred to in Article 77/4, § 1 of the LIORP. This is when the IORP manages a pension scheme that offers cover of biometric risks or provides for a return on investment or a certain level of payout.

107 Article 77/2 § 4, LIORP.

108 Board of directors and other operational bodies (these are bodies with decision-making powers).

109 Articles 24 and 25 of the LIORP, which were repealed by the Law of 11 January 2019.

110 Article 77, § 1, first paragraph, LIORP.

The own-risk assessment is new. Every IORP must conduct and document an own-risk assessment every three years or any time significant changes occur. IORPs must, inter alia, give a description of the way in which the own-risk assessment is integrated in the management and decision-making process of the IORP, give an assessment as to the effectiveness of the risk management system, of the total funding needs, of the mechanisms to protect pension payouts[111] and of the operational risks.

Information

The IORP II Directive contains extended rules on the information that IORPs must provide to members and beneficiaries, current or future, based on the various phases of the pension: the phase before affiliation, the accrual phase of the supplementary pension, the phase before retirement and the payout phase.

These provisions were taken over verbatim in the LIORP.

Prudential supervision

IORP II describes the scope of prudential supervision and determines that it must be based on a proportionate, forward-looking and risk-based approach and must include an appropriate combination of remote work and on-site inspections.

The FSMA's supervision already fulfils these principles in practice. The legal provisions were however amended to bring them into line with the text of the IORP II Directive.

Prospectus Regulation

In 2018, the Federal Parliament adopted the Law of 11 June 2018 on public offers of investment instruments and admission of investment instruments to trading on regulated markets[112]. After this, on 23 September 2018, the Royal Decree on the publication of an information note for a public offer or admission to trading on an MTF and containing various financial provisions[113] was approved. This Decree contains important implementing provisions.

New European legislation and regulations

These texts introduce changes to the legislation and regulations for the offer of investment instruments to the public. Their aim is to implement the new European Prospectus Regulation[114]. From now on, the European prospectus rules take on the form of a regulation. Most provisions in this regulation have a direct effect in national legal orders. Only a couple of provisions must be transposed by Member States.

111 For example, guarantees, covenants or any other type of financial support from the sponsoring undertaking, insurance or reinsurance.

112 This Law was published in the Belgian Official Gazette of 20 July 2018.

113 This Royal Decree was published in the Belgian Official Gazette on 5 October 2018.

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.

As a result, the Law of 11 July 2018 only takes over the aspects of the Law of 16 June 2006 that do not come up in the Prospectus Regulation or for which national legislatures must take transposition measures. Most provisions in the rules that currently apply, such as the provisions on the prospectus exemption, on the prospectus itself, on the approval of the prospectus and international cooperation, are contained in the Prospectus Regulation and consequently not taken over in the aforementioned texts.

Higher thresholds for the obligation to publish a prospectus

The rules under the Law of 11 July 2018 are based, as they are currently, on the obligation to publish a document with information for investors in the case of offers to the public or admission to trading. One of the main changes is the significant increase in the threshold above which the obligation to publish a prospectus applies for offers to the public. That threshold was in fact raised to 5 million euros. For offers to the public of investment instruments that are or will be admitted to MTFs Euronext Growth or Euronext Access, the threshold was raised to 8 million euros.

Introduction of rules for the information note

For offers to the public with a consideration under the aforementioned thresholds, only one abbreviated document is drawn up: the information note. This also applies to admissions to the MTFs Euronext Growth and Euronext Access. If on the other hand investment instruments are admitted to trading on a regulated market, a prospectus must be prepared, irrespective of the amount of the transaction.

The information note must be prepared in accordance with the template in the Royal Decree of 23 September 2018. It does not need to be approved by the FSMA before being shared. The content of the prospectus is, in turn, laid down in the Prospectus Regulation.

Until now, specific rules applied for approved cooperative societies, employee share ownership plans and crowdfunding. In the new legal texts, these couldn't be taken over as such. The players concerned nevertheless fully fall under the new rules for the information note.

The new thresholds for the obligation to publish a prospectus and the rules for the information note apply since 21 July 2018. The other provisions of the new legislation and regulations and the Prospectus Regulation itself come into force on 21 July 2019.

Changes in the legislation and regulations for a takeover or squeeze-out bid

The Law of 11 July 2018 and the Royal Decree of 23 September 2018 also amend other important aspects of financial law. Changes were introduced in the Takeover Law, the Takeover Decree and the Squeeze-out Decree. The principal changes are described below.

From now on, the funds required for a takeover bid may be present at a credit institution or a stockbroking firm established in a Member State of the European Economic Area, and no longer only at an institution established in Belgium (Article 3, 2° of the Takeover Decree).

There is a specific, less stringent, rule introduced for takeover bids for debt instruments issued by the issuer itself. Central to the new rules are the publication, by the offeror, of a communication with information on the identity of the issuer and the conditions of the offer. This communication is approved by the FSMA. As regards the framework for the bidding procedure, only a few provisions of the Takeover Decree apply.

For companies in which part of the voting securities or those that confer access to voting rights are admitted to trading on the MTFs Euronext Growth or Euronext Access, and of which no such securities are admitted to a regulated market, the threshold above which a bid is mandatory is increased from 30 to 50 per cent.

The Squeeze-out Decree was changed in response to the judgments handed down since 2007 by the Brussels Court of Appeal and the Supreme Court. The proposed changes relate to the aspects below.

The requirements of independence, expertise and experience of the expert are tightened. It is specified that the remuneration paid by the offeror to the expert may not allow a conflict of interest to arise for the offeror. This means that the remuneration must be a set fee and not dependent on the outcome of the bid or on the valuation of the company. It must be in line with the scale and complexity of the task, so that the expert can free up sufficient time and resources to fulfil his/her task. The requirements of expertise and experience of the expert are clarified. His/her expertise and experience, in so far as possible, must be with companies of the same scale and from the same sector as the offeree company. Furthermore, both the structure and the organization of the expert must be suitable for the scale of the task. With that new provision, the legislature wishes to ensure that the independent expert that appoints the offeror will be able to draw up a high-quality report.

The expert's report must include an unconditional declaration without reservations that confirms that the price does not jeopardize the interests of the holders of securities. This requirement is formulated in a "negative" sense, in accordance with the judgment of 26 March 2015 of the Brussels Court of Appeal: given that a company may be valued in different ways, the expert cannot be required to determine the one single valuation that safeguards the interests of holders of securities. The expert will have to confirm that the price offered is not at a level at which the interests of holders of securities are jeopardized. That confirmation must be formulated unconditionally and without reservations: it is assumed that the criteria used are flexible enough to enable the expert not to use any disclaimers that would restrict the impact of his/her report. From now on, the expert must also confirm in his/her report that the assumptions and methods he/she uses are reasonable and pertinent. It is up to the expert to determine under his/her own responsibility the parameters on which the assessment in his/her report are based.

The action the FSMA may use is clarified. This action is two fold. It may share its comments with the offeror (and with other parties involved) and it may appoint an additional expert, with the costs thereof borne by the offeror. It may publish these measures. In addition, the holders of securities naturally maintain, as they currently do, the possibility to share any grievances they have as regards the bid with the FSMA. The offeror may effectively launch its bid only after the FSMA has given its approval. This approval is given by the FSMA only if:

- all measures it has taken have been fulfilled,
- it is of the opinion that the expert's report complies with the requirements of the Decree, and in so far as the expert concludes that the price offered does not jeopardize the interests of the holders of securities, and
- it has approved the prospectus and memorandum of response.

The compliance function and approval of compliance officers

The rules for approving compliance officers and the requirements as regards expertise of those responsible for the compliance function in a regulated undertaking were reviewed in 2018. The aim of this was to further align the approaches of the FSMA and the NBB with each other.

This harmonization was recommended by the High Level Expert Group set up in 2015 by the Minister of Finance as one of the initiatives to build confidence in the financial sector. This group of experts advised the prudential supervisory authorities to use the exam that the FSMA has as part of its approval procedure for compliance officers as a criteria to assess the expertise of those responsible for the compliance function[115].

Consequently, the FSMA and the NBB have developed a joint approach in order to align their requirements for expertise and professional knowledge of those responsible for the compliance function. They also want to communicate more transparently on the criteria they use for their assessment.

As part of this new approach, the FSMA issued an amended version of its original regulation of 27 October 2011 on the approval of compliance officers on 28 February 2018[116].

In it, the FSMA mainly changed the conditions as regards appropriate experience and professional knowledge. In addition, it added two new conditions for approval to increase even further the level of excellence it expects from compliance officers. Firstly they must have the requisite proficiency to take on the responsibility of the function of compliance officer. Secondly, they must act professionally. To demonstrate this, it suffices that there be no proof to the contrary.

Using the same criteria, the FSMA tests the expertise of those responsible for the compliance function at the regulated undertakings under its prudential supervision. A specific section was inserted on this subject in the FSMA regulation.

The NBB has adopted a similar regulation[117] that applies to those responsible for the compliance function at the regulated undertakings under its prudential supervision.

115 See the 2017 FSMA annual report, p. 154.

116 Regulation of the Financial Services and Markets Authority of 28 February 2018 and amending the Regulation of the Financial Services and Markets Authority on the approval of compliance officers, approved by Royal Decree of 15 April 2018 (Belgian Official Gazette, 24 April 2018, erratum Belgian Official Gazette, 30 April 2018).

117 Regulation of the National Bank of Belgium of 6 February 2018 on the expertise of those responsible for the compliance function, approved by Royal Decree of 15 April 2018.

Professional knowledge

As regards professional knowledge, the requirement of passing an exam is maintained. However, the procedure and the conditions for the recognition of the exam, as well as the rules for being entitled to an exemption, have been changed on a number of points.

For example, the exam must from now on not only be recognized by the FSMA but also by the NBB. This exam must after all demonstrate that a candidate for the compliance function has the requisite professional knowledge. Each exam must therefore be recognized independently twice, using the same recognition criteria.

The distinction between the exam that applies for the insurance sector and for the banking and investment services sector is maintained. This latter exam is intended for compliance officers of credit institutions, investment firms, management companies of UCIs, UCIs and AIFMs.

The structure of the exam also remains unchanged, with a theory and a practical component. A candidate may only take the exam once he/she has taken a training course.

Both during the training course and in the theory component of the exam, all legal and regulatory rules of conduct and integrity for the compliance function that apply to the sector concerned are covered.

The practical component of the exam is made up of modules tailored to the activity of the company that appoints the candidate compliance officer. To avoid this splitting up into modules compromising the quality of the exam and the requisite minimum professional knowledge, this modular construction is restricted and subject to certain conditions.

There is for example a specific module in the practical component of the exam for the banking and investment services sector that contains a test on the rules of conduct and the organizational rules for providing investment services. That module is only mandatory for candidates who work in a credit institution, a management company of UCIs or an AIFM that offers investment services, or in an investment firm.

If one of these institutions changes its activity, the FSMA must be immediately notified thereof. After this notification, the compliance officer has one year to submit the pass certificate for the module on the provision of investment services to the FSMA.

A similar approach has been devised for the insurance sector. It applies to compliance officers at insurance companies that do not offer life insurance. They do not need to take the module on money laundering and terrorism financing.

The conditions for exemption from the exam were reviewed and clarified. It was furthermore clarified that an exemption only applies if the compliance officer continues to work in the same sector of activity. Different rules apply for each sector. Different exams equally have to be taken per sector. The condition was eliminated that exempted compliance officers that had exercised a similar function to that of compliance officer for three years before the application for approval. That condition overlapped, albeit only partly, with the condition of appropriate expertise. To be exempted, the candidate must also show that he/she has followed the requisite number of hours of training as part of his/her former functions.

Continuing education

To assess the professional knowledge of a compliance officer, more aspects are borne in mind than just passing the exam. These conditions for approval as regards professional knowledge must be complied with at all times through mandatory participation in a continuing education programme.

To keep complying with the condition of professional knowledge, compliance officers that are approved or officially appointed as the person responsible for the compliance function at a regulated undertaking, must take part in a training programme recognized by the FSMA, of at least 40 hours every three years.

The FSMA accepts the pass certificates of candidate compliance officers irrespective of the date on which they took the exam, on the condition that they can demonstrate that they have subsequently kept their professional knowledge up-to-date by following at least 20 hours of continuing education every three years.

The same obligation of taking 20 hours of continuing education every three years also applies to staff of the compliance department in regulated undertakings.

Regulated undertakings continue to be responsible for this mandatory continuing education of compliance officers. They must allow the compliance officers and their staff time for this.

The procedure for recognizing continuing education was also reviewed. From now on, it is no longer the training courses but rather the training institutions that have be recognized by the FSMA. The emphasis is placed on the quality and the regular update of the content of the training courses, on their format and on the expertise of the trainers.

Transitional provisions

The changes made to the FSMA Regulation of 27 October 2011 on the approval of compliance officers entered into force on 1 June 2018.

A transitional provision was also drawn up to gradually have the new rules enter into force. It provides that compliance officers that have a pass certificate for an exam recognized by the FSMA before 1 June 2018 or that have followed a training programme recognized by the FSMA, may submit this after this date to prove that they possess the requisite professional knowledge.

THE ORGANIZATION OF THE FSMA

Structure and bodies of the FSMA

Management Committee

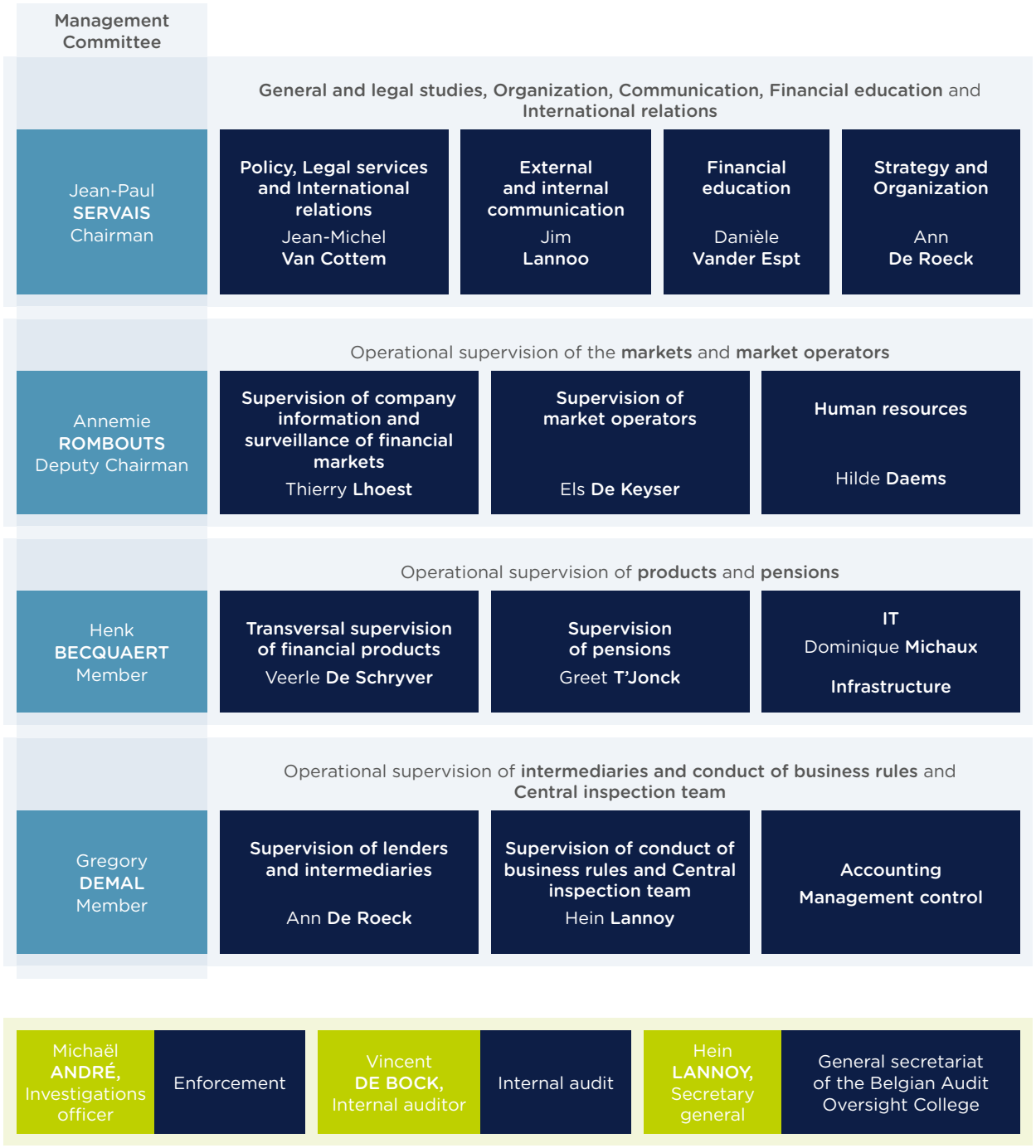
Jean-Paul **Servais, Chairman**

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

General oversight of the FSMA

The Supervisory Board is tasked, pursuant to the law, with the general oversight of the FSMA's work.

Over the course of 2018, the Supervisory Board met seven times and used the written procedure once[118]. To optimally employ the expertise and experience of the members, the relevant agenda points are from now on specifically analysed in advance by one or more members.

118 The attendance rate of the Members of the Supervisory Board was 95 per cent of meetings.

Thanks to the explanations given by the Management Committee, the Supervisory Board monitored in particular the enforcement of the FSMA's action plans for 2018. At the end of 2018, the Board also deliberated on the FSMA's priorities for 2019, and the Board supports the attention that the Management Committee will devote to developments such as Brexit, sustainable investment, as well as culture and integrity in the financial sector.

The members also welcome the Management Committee's intention to further work on transparency as to the supervisory authority's expectations vis-à-vis the undertakings under the supervision of the FSMA.

The Board also closely followed the FSMA's initiatives regarding financial education and especially the preparations for the opening of the Wikifin Lab.

During one of the meetings of the Board, the members exchanged views with the Chairman and the Secretary General of the Belgian Audit Oversight College, of which the FSMA is responsible for the Secretariat.

The members also had a conversation with the Minister of Pensions. During this meeting, attention was primarily focused on supervisory matters for pensions, for which the FSMA is competent, and on the transposition of the European IORP II Directive.

The Board has also regularly deliberated on the new risks and developments in the financial markets the FSMA is confronted with. The Management Committee gave explanations on the risks to investor protection and market integrity associated with cryptoassets and platforms. These phenomena pose challenges as regards legal classification in light of the financial legislation, and the framework thereof is best examined in a European context.

Regulatory developments

By virtue of its statutory task set out in Article 49, § 3, of the Law of 2 August 2002, the Supervisory Board advised the Management Committee on different regulations of the FSMA, including the regulation for the approval of compliance officers, the regulation on the comparison tool for payment accounts and the regulation for preventing money laundering and terrorist financing.

The members were also informed as to the evolution of the proposals of the European Commission on reinforcing supervisory convergence in the financial sector in the EU.

Functioning of the FSMA

The Members also regularly exchanged views on topics that concern the organization, HR policy and the internal operation of the FSMA, including the impact of the GDPR.

Over the course of 2018, the Supervisory Board, after a public procurement contract, appointed the firm of auditors BDO, represented by Alexandre Streel, as auditor of the FSMA for a term of three years.

As part of its statutory tasks, the Board approved the FSMA's 2019 budget on 20 December 2018. The Board approved the annual accounts for the year 2017 on 19 April 2018 and the annual accounts for 2018 on 25 April 2019.

The 2017 FSMA Annual Report was approved on 19 April 2018, whilst the present report, as regards the competences of the Supervisory Board, was approved on 25 April 2019.

Report on the Audit Committee's exercise of its statutory tasks

The Audit Committee met seven times in 2018.

In application of Article 48, § 1ter, first paragraph, 3° of the Law of 2 August 2002, the Audit Committee handled several internal audit reports, including the report on the management of employee turnover. The Audit Committee discussed the follow-up to the recommendations from previous audit reports, such as the examination of teleworking at the FSMA.

The audit committee also discussed with the Management Committee the preparations for the Wikifin Lab and the budgetary aspects thereof.

The Audit Committee reported on its activities to the Supervisory Board.

During its meetings, the Audit Committee, at the proposal of the Management Committee, audited the 2017 Annual Report, the 2017 accounts and the budget for 2019 and advised the Supervisory Board to approve these. The Audit Committee also deliberated on the appointment of the auditor of the FSMA and agreed with the recommendation to appoint Mr Streel, as representative of BDO.

The internal audit function at the FSMA

Internal audit works independently and objectively and must give the institution reasonable certainty that its tasks are conducted with the required expertise. Through the audit, the FSMA gains an insight into the main risks it faces so that it can prepare itself for them. The risk control, supervision and corporate governance processes are systematically and methodically assessed during the audit.

The Supervisory Board exercises general supervision of the integrity, compliance, appropriateness and effectiveness of the FSMA's operations.[119]. An Audit Committee is formed from the midst of the Supervisory Board, to assist it in this supervisory task. That Audit Committee is itself supported by the internal audit function.

All audit reports are submitted, by the head of internal audit, for discussion and handling to the Management Committee. On its side, the Management Committee takes measures to monitor the recommendations in the audit reports. Then the audit reports, along with these measures, are submitted and presented to the Audit Committee for approval.

In 2018, internal audit conducted assurance audits, advisory audits and ad-hoc audits.

119 Article 48, § 1, 7° of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

An initial audit task consisted of assessing the functionality of a new form of teleworking, called 'flex' work. In the pilot phase, two departments of the FSMA were monitored for a month. The aim of this task was to assure the FSMA's management that the administrative, organizational, and operational rules for this 'flex' teleworking formula were effective and efficient.

In a subsequent audit task, attention was focused on employee turnover and the loss of key personnel. The main aim of this was to give the Management Committee and Audit Committee reasonable certainty that the continuity risk in the case of loss of staff (in this case key personnel) is properly managed and controlled.

A third audit task related to the "Cabrio" online app. This is a crucial tool with which the FSMA manages access to the profession of lender, mortgage credit intermediary and consumer credit intermediary, and with which it supervises insurance and reinsurance intermediaries and intermediaries in banking and investment services.

Furthermore, internal audit conducted a number of ad-hoc tasks to examine specific processes. More specifically, the reports submitted to the FSMA by those responsible for the day-to-day management of regulated real estate companies (SIR/GVV) were scrutinized. In these reports, they explain their governance structure and organization (including the set-up of appropriate internal control).

The internal audit service also introduced a register with all the recommendations it has made since 2013. Subsequently, follow-up audits took place to ascertain whether the measures to follow up on these recommendations were carried out.

The Audit Committee also focused on the half-yearly activity reports prepared by internal audit for the working year 2018. The Audit Committee also approved the service's activity plan for 2019, and ascertained the main themes the FSMA will be confronted with in 2020 and 2021.

Auditor

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 at 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. BDO, represented by Alexandre Streel, was appointed as company auditor by the Supervisory Board.

Sanctions Committee

Composition

In 2018, the terms of office of five members of the Sanctions Committee were extended[120]. The composition of the Sanctions Committee and the duration of the terms of office of members are therefore as follows:

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: 16 December 2023)

Erwin **Francis**

Counsellor of the Supreme Court,
Member of the Sanctions Committee on the recommendation of the first president of the Supreme Court.

(end of term of office: 2 February 2021)

120 Pursuant to the Royal Decree of 25 October 2018, published in the Belgian Official Gazette of 7 November 2018.

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: 16 December 2024)

Christine **Matray**

Counsellor of the Supreme Court,
Member of the Sanctions Committee on the recommendation of the first president of the Supreme Court.

(end of term of office: 16 December 2024)

Pierre **Nicaise**

Member of the Sanctions Committee

(end of term of office: 16 December 2024)

Philippe **Quertainmont**

Counsellor of the Council of State,
Member of the Sanctions Committee on 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 on the recommendation of the first president of the Council of State

(end of term of office: 16 December 2024)

Decisions by the Sanctions Committee

Infringement of the prospectus legislation - Publication with names

In 2018, the Sanctions Committee made three decisions in which sanctions were imposed pursuant to infringements of the prospectus legislation. These pertained each time to sanctions against institutions with an authorization in Cyprus active in the online offer of CFDs[121] and other derivatives such as binary options.

An appeal was lodged at the Market Court in Brussels against one of the decisions, of 14 March 2018 in which a EUR 200,000 fine was imposed. This decision was published with names on the FSMA's website, stating that an appeal had been lodged.

121 CFDs (Contracts For Difference) or financial contracts for difference are derivatives, which means that their value depends on another, underlying, asset. These are non-standardized agreements, which differ from offeror to offeror, and that entail a very high risk.

The two other decisions were made on 31 January 2018 and no appeal was lodged against these.

The first of these cases related to an institution with an authorization as an investment firm with Cypriot supervisory authority CySEC. This company offered investors the possibility of opening a transaction account via online trading venues to trade CFDs.

By virtue of the information in the dossier, the Sanctions Committee came to the decision that:
(i) in the period between June 2014 and 24 September 2016, the institution concerned infringed Articles 17 and 20, § 1 and 43 of the Prospectus Law of 16 June 2006 by making public offers of investment instruments on the Belgian territory via its websites without publishing a prospectus approved by the FSMA;
(ii) in the period between June 2014 and 24 September 2016, it infringed the advertising obligations contained in Article 60, § 1, first paragraph of the Prospectus Law by disseminating via its websites documents in Belgium about the investment instruments it offered to the public in Belgium, without these documents having been approved in advance by the FSMA.

The Sanctions Committee imposed a fine of EUR 150,000 and decided to publish the decision with names, taking into account, inter alia, the seriousness and duration of the infringements and the status of the institution concerned as an authorized investment firm. The Sanctions Committee pointed out that every investment firm active in Belgium through the free provision of services is expected to familiarize itself with the relevant regulatory framework and that the institution concerned should be particularly vigilant of compliance with the legislation and regulations to protect the investors that trade through it, especially in the case of retail investors who invest in risky products.

The second decision of 31 January 2018 was in a similar context. It also related to an investment firm, authorized by Cypriot supervisory authority CySEC, which offered CFDs through its website, especially CFDs in Forex, in Belgium. The company acted as a counterparty for investors.

In this dossier, the company and the Management Committee of the FSMA proposed a settlement to the Sanctions Committee, which they had prepared to bring an end to the dispute. That settlement was reached after the company concerned had been notified of the charges. The company and the Management Committee of the FSMA asked the Sanctions Committee to approve the settlement and consequently hand over the dossier. The Sanctions Committee rejected that request because of the consideration that the Law did not allow it to approve a settlement reached after notification of the charges, to put an end to its referral, without ruling on the imposition of an administrative fine as provided for in Article 72, § 3, first paragraph, of the Law of 2 August 2002.

The Sanctions Committee determined not only that the offer of CFDs via the company's website specifically targeted the Belgian territory, but also that the company had offered investment instruments to the public for two years, between 2014 and 2016, without complying with the Prospectus Law. More specifically, it emerged from the dossier presented to the Sanctions Committee that the company had not complied with various obligations. In the first place, this concerned the obligation to publish a prospectus approved by the FSMA before the start of the offer (infringement of Articles 17 juncto 20, § 1, juncto 43 of the Prospectus Law). Additionally it concerned the obligation to have the passages on the website about the public offer approved before they were placed online (infringement of Article 60 of the Prospectus Law). The company had equally not complied with the prohibition of incitement (infringement of Article 64 of the Prospectus Law).

The Sanctions Committee decided to impose a fine of EUR 180,000 and to publish its decision with names. In its opinion, that publication with names was justified because it allows investors to be reassured as to the efficiency of the sanction mechanisms imposed by the legislature.

No abuse of inside information - No sanction

On 31 January 2018, the Sanctions Committee acquitted a person because it could not be determined that he had committed an infringement of abuse of inside information by communicating inside information to a third party.

The dossier submitted to the Sanctions Committee concerned a person who was suspected to be a primary insider. In its report, the FSMA investigations officer had identified a person and a company as beneficiaries of inside information. Both had at an early stage of the procedure come to an agreed settlement with the Management Committee of the FSMA, as a result of which no dossier was submitted against them to the Sanctions Committee.

When it is suspected that an insider has communicated inside information to a third party and there is no direct proof of this communication, the Sanctions Committee may determine that the proof of the infringement has occurred when it determines the existence of a set of precise and mutually consistent indications, on the condition that it be determined that only the possession of inside information could explain the disputed transaction[122]. To come to this determination, the conditions under which the transaction was executed must be examined, as well as the reasons provided by the executor to explain the transaction. The Sanctions Committee determined in this dossier primarily that it could not conclude by virtue of the facts that the disputed transaction could be explained only by the possession of inside information. The Sanctions Committee ruled in this sense that the breach of communication of inside information could not be determined in this dossier.

This decision was published without mentioning names.

Abuse of inside information – Fine and publication with names

On 31 July 2018, the Sanctions Committee accused two people who had acquired securities in a company when they were in possession of information which they knew or ought to have known was privileged information. One of them was moreover accused of communicating that information, which he knew was privileged, outside the normal context of his work, profession or role.

In that decision, the Sanctions Committee also pointed out the pertinence and validity of the method called 'faisceau d'indices' (method of concordant pieces of evidence). The Sanctions Committee pointed out that this method entails that in the absence of direct proof, it uses a precise and consistent set of indications to be able to conclude, with reasonable certainty, that the disputed transaction could only be explained by the possession of inside information. It also pointed out that with this method, it is not necessary to determine how the insider came into possession of the inside information.

In this dossier, the Sanctions Committee determined that the combination of the indications gathered by the FSMA's investigations officer led to the determination that only the possession of inside information could explain the disputed transaction, which was executed by the people who were under investigation. The Sanctions Committee also ruled that, via these indications, it could be established that the one accused person had communicated the inside information to the other accused person.

122 See the ruling of the Brussels Court of Appeal of 24 December 2015, available on the FSMA's website (only in French): https://www.fsma.be/sites/default/files/public/sitecore/media%20library/Files/sanc/fr/2015-12-24_arretdelacour.pdf.

The Sanctions Committee penalized the infringements with fines of EUR 36,010 and EUR 36,634.92 respectively. When establishing the amount of the fines, the Sanctions Committee took into account the capital gain realized. This decision was published with names, and the personal details must remain on the FSMA's website for one year.

There was no appeal against the decision of the Sanctions Committee.

The organizational structure in practice

Human resources management

Staff complement

In 2018, the FSMA welcomed 28 new members of staff. Taking into account the employees who retired or left, the year ended with a headcount of 355.

Table 8: Staff complement

	2018	2017
Number of staff members according to the staff register (number)	355	348
Number of staff members according to the staff register (FTE)	334.79	329.43
Operational staff complement (FTE)	323.65	320.84
Maximum staff complement[123] (FTE)	399	399

The FSMA places a high priority on diversity. This is why it is delighted to count many female colleagues both in its management and in other roles at the end of 2018, in stark contrast to other institutions within the financial sector. 54 per cent of the management consists of women, 56 per cent of the staff with a Master's degree are women, and 58 per cent of staff with a bachelor's degree are women.

The number of statutory and contractual members of staff of the former ISA fell to 15[124]. The average age of this group of staff is 52.5 years, the youngest of which is 43.

The average age of FSMA staff is 42.

At the end of 2018, 61% of FSMA staff had a university education and 27.5% had a bachelor's degree.

The qualifications of university graduate staff are the following:

Table 9: Qualifications of university graduate staff

Law	49.50%	Economics	35.64%
Science	3.47%	Other	11.39%

The majority of staff possess several qualifications.

30.70% of staff have some form of part-time work arrangement.

123 See Royal Decree of 17 May 2012 on the financing of the FSMA's operating expenses, as amended by the Royal Decree of 28 March 2014.

124 One member of staff retired and another member of staff signed an employment contract with the FSMA.

Linguistic framework

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 updated hierarchical grades and the linguistic framework for the FSMA[125]. 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[126].

At the end of 2018, the FSMA had 55.49 per cent Dutch-speaking and 44.51 per cent French-speaking staff.

The FSMA pursues its initiatives, described in the 2017 Annual Report[127] to encourage its staff to further develop their knowledge in our second official language.

Ethics

Both the members of the FSMA's staff and the members of the Management Committee have to comply with a code of ethics approved by the Supervisory Board.

The main objectives of the code of ethics are to prohibit trading in financial instruments of companies subject to the permanent supervision of the FSMA and to avoid any other situation of conflict of interest.

As regards the execution of financial transactions, the number of questions from members of staff on the interpretation of the code remains quite high. Alongside a number of common and more general questions, in 2018 there were questions on new market techniques, such as crowdfunding and exchange-traded funds, and investments in products linked to funds, such as Class 21 and Class 23 products. The number of requests for authorization of defensive transactions remained stable in comparison with last year.

Over the last year, an increased amount of members of staff again took on unpaid mandates with non-profit organizations that engage in activities which the FSMA does not object to in light of the prevention of conflicts of interest.

The requests for consent for the exercise of additional roles which bear a relation to the FSMA's competences primarily related to research mandates or those of assistant for various universities in Belgium. The Management Committee lent its support to the exercise of such additional roles which forge a connection with the academic world.

Human resources management

In 2018, the FSMA launched a new integration pathway for its newly recruited staff. This is very important now that proportionally, the number of new staff at the FSMA is very high, with 222 new recruits since 2011. An intensive training pathway should enable them to obtain an overall insight into the various tasks and powers of the FSMA, and to develop a supervision reflex.

125 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.

126 This is with the exception of the senior management where the proportion is 50/50 with 20 per cent officially bilingual.

127 See the 2017 FSMA annual report, p. 180.

Given the positive evaluation of the initiative, this integration pathway will continue in 2019. In it, account will be taken of the feedback from new staff to make the pathway even more effective.

After this integration, the FSMA continues to devote efforts to the development of its staff by organizing training courses, based on general or specific needs, but also by stimulating a permanent feedback culture and on-the-job coaching. After all, supervision cannot be learned from books. It requires knowledge of the legislation and regulations as well as insights and reflexes that can only be learned from handling different dossiers and situations.

More and more staff are ambassadors of the FSMA. They write articles or give presentations on the mission and objectives of the FSMA and on its supervisory practice. To increase the effectiveness of its message, the FSMA provided support by organizing training courses on written and verbal communication skills.

To continue to safeguard the quality of supervision, it is important to explain the FSMA's expectations from its staff, both in terms of knowledge and in terms of behaviour. There must also be prompt and clear feedback to the staff as to the extent to which they meet these expectations. This occurs through permanent feedback but also through consistent and coherent evaluations.

Regular feedback is increasingly becoming commonplace. In 2018, there was a marked increase in interim performance reviews.

The FSMA's areas of competence are considerably varied. The legislation and regulations it supervises, and the applications it uses to process information and handle dossiers, are constantly and quickly evolving. This is why the FSMA encourages its staff, with a view to the continuing employability of its staff and cross-pollination of best practices, to take part in transversal projects or to go and work in another department at some point.

The well-being of staff was high on the agenda in 2018. The FSMA formalized its absenteeism and re-integration policy. Not only does this provide for close monitoring[128] of staff who return after a period of incapacity for work of more than one month, but also places an emphasis on prevention to avoid absences as much as possible.

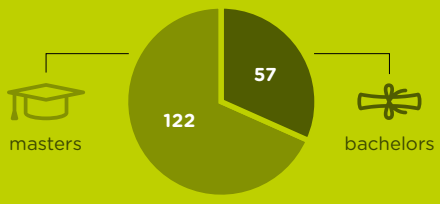
At the end of 2018, the FSMA had seven staff with long absences related to incapacity for work (2 per cent of staff). Absenteeism statistics show that the FSMA scores better than the benchmark.

The FSMA also adjusted its internal processes to meet the requirements of the GDPR.

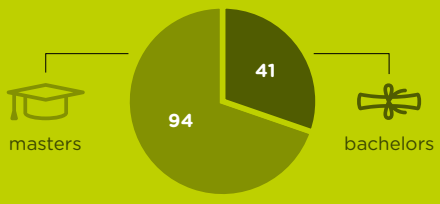
128 The FSMA in particular examines whether the professional working relationship played a role in the absence, and where necessary takes measures to minimize the risk of recurrence. Such measures may consist of the allocation of different tasks, a move to another service, close monitoring by HR, where necessary assisted by a person of trust within the department, or other measures.

Graph 32: Distribution of female/male staff

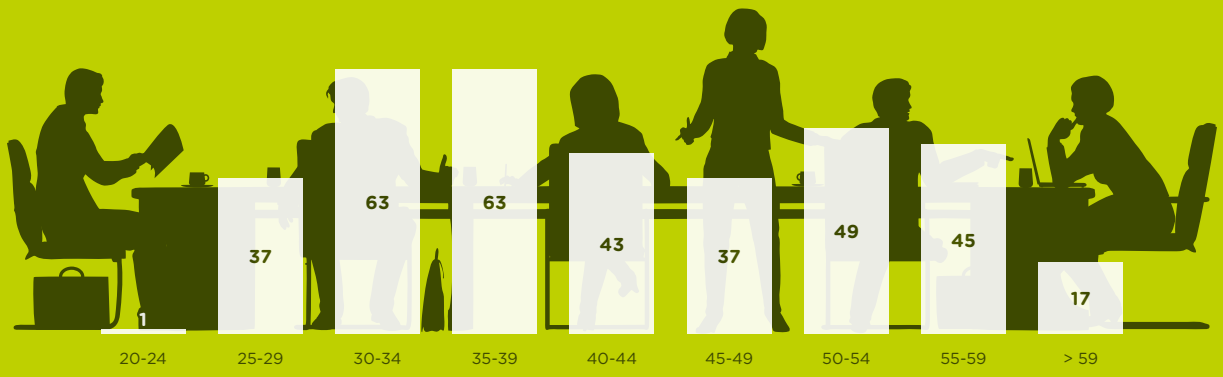
Graph 33A: Distribution of female staff with a bachelor's or master's degree



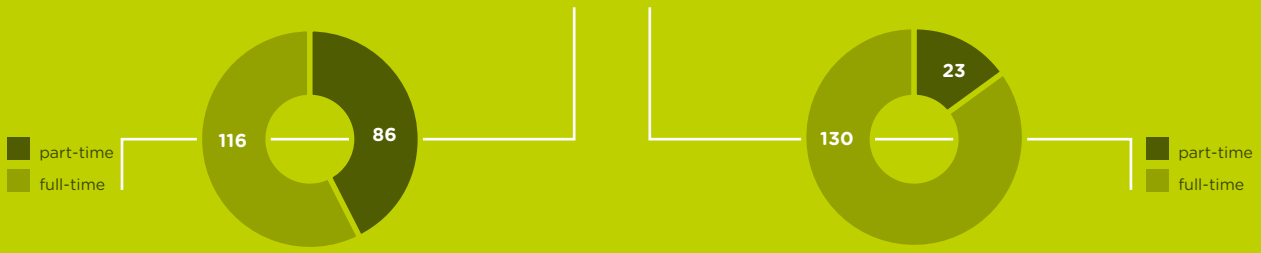
Graph 33B: Distribution of male staff with a bachelor's or master's degree



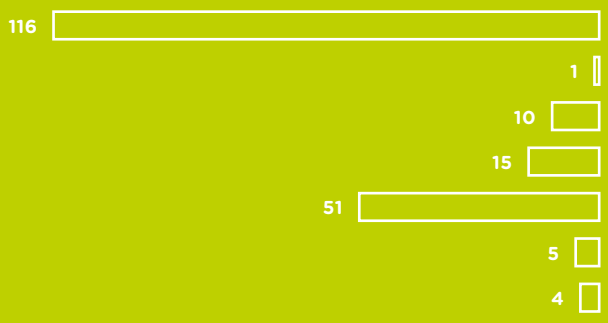
Graph 34: Distribution of staff per age group



Graph 35: Distribution of female/male staff per work arrangement



Graph 36A: Distribution of female staff per work arrangement (breakdown)



Graph 36B: Distribution of male staff per work arrangement (breakdown)

Consultation on social matters

The “social benefits” working group successfully completed its work in 2018. This working group was started in 2017 to modernize some benefits, to meet the conditions of budget neutrality and administrative simplification. Some fringe benefits were replaced by more modern alternatives.

In view of the changing technology for communication, a contribution for data use as well as for the purchase of a smartphone or tablet were provided for, alongside telephones.

As regards salary and employment terms and conditions in general, the FSMA of course offers fully equal opportunities to men and women.

The efforts in the area of sustainability[129] were translated in 2018 into the collective objective in the context of CLA No. 90[130] to work with more digital files and print less. At the end of 2018, the print volumes fell by 36 per cent.

The policy decisions made as regards employment terms and conditions over the course of 2018 furthermore culminated in an adaptation of the social documentation. This entailed, inter alia, an adaptation of the conditions for entitlement to the merits premium and, also in view of sustainability, a relaxation of the conditions for entitlement to a bicycle allowance.

The draft decisions that translated the changes to the federal civil servant status into the specific context of the FSMA[131] were approved by the Management Committee of the FSMA. This happened after discussion with the representatives of the public service staff.

Developments in IT

In terms of IT, 2018 was an important year in which great progress was made in a number of areas.

PictoBIS

This project concerned the migration of the entire data centre to a more modern, versatile and customizable environment. Special attention was devoted to security. This occurs through a Security Operation Centre that monitors the data centre 24/7 and immediately handles any anomalies, in direct cooperation with the contractor NRB and the FSMA where necessary. Regular comprehensive security reporting delivers the necessary data to eliminate any deficiencies where necessary. An upgrade was also planned at the same time to Windows 10 for all PCs, as well as a roll-out of laptops for mobile use. PictoBIS was launched in 2018.

129 See the 2017 FSMA annual report, p. 8 and 184.

130 CLA No. 90 of 20 December 2007 on non-recurrent, result-related bonuses (Belgian Official Gazette, 21 February 2008).

131 See the 2017 FSMA annual report, p. 182.

Surveys and data

The existing tool for surveys (FIMIS) is systematically modernized and updated. As a result, user-friendliness is coupled with accurate automation. In the second half of 2018, a survey was able to be launched to more than 8,000 users, and successfully completed.

There were also negotiations with various external organizations (the NBB, ESMA, etc.) to further automate the sharing of data.

The Workbench, where the existing and newly gathered information will be available to all services (including via surveys, eCorporate etc.) for reporting and complex risk models, is operational in a test environment and will be made available in 2019 to all of the FSMA's services.

These tools contribute to the management of a consistent reference data model for financial products and financial institutions under the FSMA's supervision.

Sustainability

Sustainability has an important place in the FSMA's internal management.

A working group of staff representatives plays an active role in fostering a sustainability mindset. This group helps support the work on sustainability in the workplace.

The efforts of the previous years have culminated in the FSMA receiving a two-star Ecodynamic label from Brussels Environment.

The FSMA became greener in 2018 despite a two per cent rise in staffing numbers. The use of paper is falling substantially. In comparison with 2017, 13 per cent less copying was done and the number of letters fell by eight per cent as a consequence of further digitization.

Energy consumption continued to fall too: there was seven per cent less electricity consumption and 15 per cent less gas consumption. In comparison with 2013, this is a fall of 26 and 37 per cent respectively. Water consumption is also down. In 2018, the FSMA consumed 13 per cent less water than a year earlier.

The actions focused on sustainable purchasing, modernization of lighting, better insulation, preventing food waste and the offer of vegetarian and organic meals also continued this year.

ANNUAL ACCOUNTS FOR THE 2018 FINANCIAL YEAR

Pages 190-201 and footnotes 132-142 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
AIFM	Alternative Investment Fund Managers
AMF	Autorité des Marchés Financiers (the French financial regulator)
AML/CFT	Anti-money laundering and combating terrorist financing
AMLD	Anti-Money Laundering Directive
CFD	Contract for Difference
CLA	Collective Labour Agreement
CMS	Constant Maturity Swap
CRD	Capital Requirements Directive
CSD	Central Securities Depository
DB	Defined Benefit
DB2P	Supplementary pensions database
DC	Defined Contribution
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
ESEF	European single electronic format
ESG	Environmental, Social and Governance
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
FCA	Financial Conduct Authority
Fintech	Financial Technology
FISC	Financial Innovation Standing Committee
FSB	Financial Stability Board
FSMA	Financial Services and Markets Authority
GDPR	General Data Protection Regulation
GVV/SIR	Regulated real estate companies

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
IORP II	Directive on the activities and supervision of Institutions for Occupational Retirement Provision
IOSCO	International Organization of Securities Commissions
ISA	Insurance Supervision Agency
KID	Key Information Document
KIID	Key Investor Information Document
LIORP	Law on the supervision of institutions for occupational retirement provision
MiFID	Markets in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
ML/TF	Money laundering and terrorist financing
MMoU	Multilateral Memorandum of Understanding
MTF	Multilateral Trading Facility
NBB	National Bank of Belgium
OSSG	Official Sector Steering Group
OTC	Over-the-counter
OTF	Organized Trading Facility
PEPP	Pan-European personal pension product
PRIIP	Packaged Retail and Insurance-based Investment Product
PSD	Payment Services Directive
RP	Responsible person (for distribution)
SME	Small and medium-sized enterprises
SPOC	Single point of contact
SRI	Sustainable and Responsible Investment
STORI	Storage of Regulated Information
TCFD	Task Force on Climate-related Financial Disclosures
UCI	Undertaking for Collective Investment
UCITS	Undertaking for Collective Investment in Transferable Securities
WIW	World Investor Week
XBRL	Extensible Business Reporting Language

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