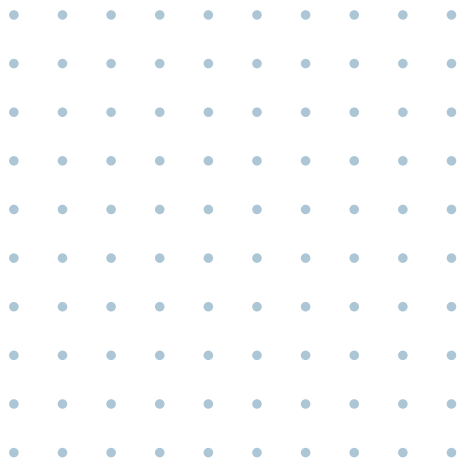


# ANNUAL REPORT 2015

FSMA



FINANCIAL  
SERVICES  
AND MARKETS  
AUTHORITY





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FSMA



AUTORITEIT  
VOOR FINANCIËLE  
DIENSTEN  
EN MARKTEN

AUTORITÉ  
DES SERVICES  
ET MARCHÉS  
FINANCIERS



# FOREWORD

Dear readers,

I am pleased to present to you the 2015 Annual Report of the Financial Services and Markets Authority (FSMA). This is the fifth annual report of our institution, which began activities in April 2011. Over the past five years, the FSMA made intensive use of all the powers conferred upon it in order to enable it to carry out to the full its role and mandate as a supervisory authority in respect of protecting financial consumers.

All actions and initiatives taken by the FSMA are essentially directed towards fulfilling its mission to contribute to the provision of appropriate financial services and products, placing the consumer's interests at the core. The FSMA sees to it that the financial markets operate in an honest and efficient manner, thus laying the basis for a sound financing of the real economy. The FSMA seeks, moreover, to do its part on behalf of better financial education, so as to enable consumers to develop a critical confidence in the financial system.

The work we have done over the past five years has reflected several main foci that I would like to recall here briefly. Since its creation, the FSMA has shown its intent to oppose the distribution of particularly complex and highly speculative products to retail financial consumers. It was with this goal in mind that it put in place a moratorium on the distribution of structured products that are deemed particularly complex. The moratorium has led to a simplification in the offer of structured products. The FSMA then adopted a regulation banning the sale of certain financial products, such as life settlements, on the Belgian market. Lastly, advertising for financial products has been subjected to stricter rules, and supervision of compliance with these rules was strengthened.

In parallel, the FSMA began to conduct systematic inspections at bank branches. These inspections may be announced, or they may be carried out anonymously by means of 'mystery shopping'. They provide the FSMA with a better sense of the way financial consumers are served in practice, and with the opportunity to verify the procedures drawn up by the financial institutions in order to take account of their 'clients' interests. Our inspectors' observations led the FSMA to address a number of orders to certain financial institutions to adjust their ways of operating.

We note that the financial institutions concerned followed these orders and made efforts to remedy the shortcomings that had been identified. Ongoing vigilance nevertheless remains



essential, and it is important to draw the sector's attention regularly to the responsibility incumbent upon it to place the client's interest at the core of its concerns. In 2015, the FSMA also conducted an analysis of the problem of interest rate swaps offered to SMEs. Based on the conclusions of this analysis, it imposed on the banks in question a remedial action in favour of the SMEs. This intervention by the FSMA came out of the consultation conducted by the Minister for the Economy and Consumer Affairs, the Minister of Finance and the Minister for SMEs.

During the first five years of its existence, the FSMA's powers were considerably enhanced. This was the case, for example, for the supervision of the insurance sector, which we have strengthened significantly pursuant to several legislative amendments. This supervision takes the form, among others, of sectoral enquiries and site visits aimed at verifying compliance with the MiFID conduct of business rules, which, since May 2015, also apply to the insurance sector. The opening up of the 'Supplementary pensions database' has allowed us to systematize our approach to the social supervision of supplementary pensions.

When the FSMA identifies infringements, it can in some cases impose administrative sanctions. In mid 2012, a new, independent Sanctions Committee was established. It operates according to the new rules adopted for the imposition of sanctions. Between mid 2012 and the end of 2015, 24 administrative sanctions were imposed, an indication of the efficiency of the new procedure.

Apart from its supervisory mandates, the FSMA was also entrusted by the legislators with the task of contributing to the financial education of Belgian citizens. Thus it was that at the beginning of 2013, we launched a specific programme for the purpose, named Wikifin. Three years later, this initiative can unreservedly be considered a success. As you can read in this report, the Wikifin.be website has already been consulted more than 3 million times. We are also working in close collaboration with the school system, for which we have developed appropriate pedagogical material. Financial education has now made its first entry into the schools on both the French- and the Dutch-speaking sides. Finally, we are coordinating specific activities with a group of active partners in the area of financial education. This aspect of our mission was visible in early 2016 in the organization of the first "Money Week", in which a large number of these partners took part.

The achievements of these first five years of existence clearly indicate that the actions undertaken by the FSMA have yielded concrete and useful results and that it has initiated a considerable number of changes. Now it is time to turn our gaze to the future. The world is undergoing profound shifts. This is also true of the financial sector. We see this in the continuing low interest rates and in the speed of technological developments.

Looking to the future is exactly what a group of eminent experts was mandated to do by the Minister of Finance. They focused their attention on the future of the financial system in Belgium. The group made a number of observations and offered recommendations as regards new challenges, risks and opportunities. The FSMA welcomes the report they drew up, and considers it to be an encouragement to continue along the path it has undertaken. As regards the follow-up to their report, the FSMA will of course collaborate with the Minister of Finance and other relevant parties.

The will to look to the future is also characteristic of the vision the FSMA has developed with respect to its role and its approach. Its role as an effective and efficient supervisor consists of permanently identifying the principal risks so that, on this basis, it may formulate clear objectives, make available the resources necessary for achieving them and then evaluate the results of its actions. To be effective and efficient, we need to allocate as many resources

as possible to supervision as such, and to ensure that there is added value for the financial consumer and the financial sector.

In its capacity as a modern supervisor, the FSMA must also exude authority, inspire respect, assume its responsibilities and act decisively. At the same time, it must be accessible to financial consumers and companies, follow with an open mind the new developments unfolding and play a role internationally by taking an active part in the work of different regulatory bodies.

In order to fulfil this vision, in 2015 the FSMA carried out an analysis of trends, vulnerabilities and points of concern for its supervisory activities. Based on the findings, it drew up an action plan that serves as the golden thread for the work of its staff. The action plan determines the priorities for each area of competence and how they are to be accomplished. The plan also identifies a number of specific themes on which its activities will focus in 2016.

The first of these themes is the rapidity of technological change. Fintech companies are developing new methods for providing financial services. These may have a disruptive effect on traditional players in the financial sector, but at the same time they bring renewal to the provision of services to consumers. The FSMA intends to follow closely the developments in the area of Fintech. Its action will consist, in the first instance, in identifying the new players, understanding the way they operate, evaluating the potential impact of their methods on other financial players, on the products being distributed, on the distribution channels used and on consumer behaviour; the FSMA will then be able to organize its supervision based on its findings.

In order for its action to be effective, the FSMA must also constantly have its ear to the ground in the world around us. It is only by keeping up to date with developments in society and in the sector that we can establish, and adjust in a timely manner, our supervisory approach and priorities. In 2015, the FSMA launched a 'market watch' system intended to serve as a channel for quick information sharing about new trends detected. Regular consultation with players in the financial sector was also inaugurated in order to keep abreast of the external risks that have been identified. The second theme identified for work in 2016 focuses therefore on how and via what channels to gather additional information. For example, there may be information coming from complaints filed with the mediation services. Our objective is also to examine how to encourage both consumers and professionals to spontaneously report to the FSMA any infractions or potential risks of which they become aware.

The third theme is the pursuit of activities centred on the search for yield. This annual report discusses a study conducted by the FSMA on the impact of low interest rates on individual investors. One of the conclusions of that study is that retail clients are likely to be offered riskier products. It is therefore essential for clients to be able to ask well-informed questions and be given clear and transparent information about the way yield is calculated, about the underlying investments, the fee structures and any profit-sharing mechanisms that are a feature of financial products. These aspects will be the subjects of ongoing attention on the part of the FSMA.

During our contacts with financial institutions, compliance officers authorized by the FSMA are often our first interlocutors. They also play a crucial role in developing a positive compliance culture within those institutions. For this reason, we wish to examine how we can contribute to this culture by supporting compliance officers. A working group established within the FSMA will examine this theme more closely and identify good practices in other countries. Another theme focuses on the supervisory tasks carried out by auditors.

The Belgian economy is made up to a significant extent of small and medium-sized enterprises. The FSMA therefore considers it important to be particularly attentive to this category of businesses, both in their capacity as market players and as financial consumers. It intends in 2016 to analyse this market segment under all its facets.

Lastly, the FSMA will look closely at the risks that arise in the context of asset management. This point is a concern expressed at international level, in particular within the Financial Stability Board and the European Systemic Risk Board (ESRB). The FSMA will examine whether it has sufficiently taken into account all the potential risks, both among portfolio management and investment advice companies and among pension funds.

In order to follow developments on a global scale and to foster cooperation with other supervisory authorities, an active presence within international fora is indispensable. Hence, the FSMA sits on various international bodies, where it plays a front-line role. In May 2016, it was elected vice chair of the Board of the International Organization of Securities Commissions (IOSCO). Since 2014, the FSMA has also served as chair of IOSCO's European Regional Committee (ERC). Its mandate was renewed for two years in early 2016. The FSMA also chairs the IOSCO audit committee. In 2015, it was named chair of the ESMA working group tasked with examining financial innovations. The FSMA also sits on the ESRB.

The activities conducted over the course of the past five years were made possible notably by the work of our team of professional, competent and motivated staff. It goes without saying that I count on their ongoing commitment in the years to come in order to be able to continue to fulfil our vision and meet our priorities.

Jean-Paul Servais  
Chairman



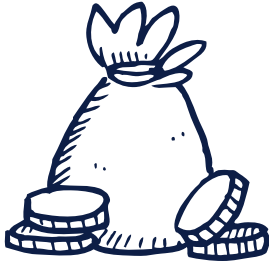
# THE FSMA IN 2015





# Financial Landscape

The average net worth of a Belgian is



**133,000** euros

**327.5**

million euros



deposited in savings and current accounts



**1,164**

billion euros in assets held with financial institutions



**127** billion euros

under management with collective investment schemes and pension savings funds



**23.4** billion euros

under management in pension funds

## Supervision

**141**



credit institutions and insurance companies



**196**

listed companies

**16,695**



intermediaries

**203** pension funds



Pension plans of more than

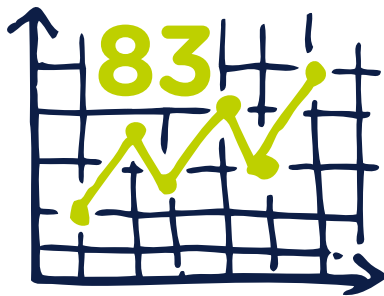
**three million** salaried workers

and **425,000** self-employed workers

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## SUPERVISION OF INFORMATION DISSEMINATED BY COMPANIES

### MARKET SUPERVISION



The FSMA handled 83 dossiers concerning initial public offerings, issuances, mergers and takeover bids.



The FSMA launched 26 analyses of potential market abuse. It suspended the listing of a share 35 times.

### SHAREHOLDING

# 288

### TRANSPARENCY NOTIFICATIONS

The FSMA received 288 transparency notifications. These are notifications regarding upward or downward crossing of certain

statutory or regulatory thresholds with regard to shareholdings in a listed company.

### TRANSPARENCY



The FSMA received 1,361 notifications of managers' transactions. More than 1,600 disclosures of short selling on the Belgian share market were noted.

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## PRODUCT SUPERVISION

### PRODUCT SCREENING



During the year under review, the FSMA subjected 76 structured products to a thorough examination. The FSMA deemed 37 products to be particularly complex and therefore unsuited to the general public. These products were thus not sold on the retail market.

### ADVERTISING



# 1,072

The FSMA handled 1,072 dossiers relating to advertisements for investment funds. It approved 143 documents with key savers' information and 128 advertising

dossiers for regulated savings accounts. The FSMA also handled 287 dossiers relating to advertisements for notes.

### SECTORAL INSPECTIONS

The FSMA conducted sectoral inspections focusing on financial reporting to clients regarding Class 23 life insurance and fire insurance products, and regarding the segmentation criteria used by insurers for each type of insurance product. These inspections led to the elimination of a number of shortcomings identified.



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## SUPERVISION OF CONDUCT OF BUSINESS RULES

### DUTY OF CARE



In 2014 and 2015, the FSMA verified compliance with the duty of care, looking at whether the investment products offered were suitable for retail clients. In the process, the FSMA identified 200 shortcomings, of which 107 gave rise to an order. Firms

that receive such an order are required to remedy the shortcomings within a given period. The FSMA checks, notably by means of mystery shopping, whether the orders have been carried out.

### BEST EXECUTION

In 2015, the FSMA launched a new series of inspections on the theme of best execution. This theme refers to the requirement that regulated undertakings follow policy rules and procedures that contribute to achieving the best possible result for the client when executing their orders.

### INSURANCE

Since 1 May 2015, insurance companies are required to follow specific rules concerning the management of conflicts of

interest, duty of care, and the provision of information to clients. The FSMA launched a series of site visits focusing on compliance with these rules of conduct.

### INTEREST RATE DERIVATIVES

The FSMA carried out an analysis of the issue of interest rate swaps offered to SMEs. Based on this study, the FSMA instructed a number of financial institutions to revise their contracts so as to make them more favourable to SMEs.



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## SUPERVISION OF MARKET OPERATORS, CREDIT PROVIDERS AND INTERMEDIARIES



### CONSUMER AND MORTGAGE CREDIT

Since 1 November 2015, the FSMA is competent for supervising access to the professional activities of all financial intermediaries. Henceforth not only do intermediaries in banking and investment services and insurance intermediaries have

to apply for registration with the FSMA, but intermediaries in mortgage credit and consumer credit must also do so. Credit providers must obtain an authorization.

### FINANCIAL PLANNERS

Since the end of 2014, independent financial planners have their own legal status. In 2015, the FSMA approved the first five applications for this status.

### INTERMEDIARIES



The FSMA approved the registration last year of 1,140 insurance

intermediaries and 183 intermediaries in banking and investment services.

It deleted 95 registrations from the register of insurance intermediaries because they no longer fulfilled the conditions for registration. It suspended 18 insurance intermediaries temporarily or definitively because their fitness or propriety had come into question.

### MARKET OPERATORS

The FSMA identified serious shortcomings in the organization of one portfolio management and investment advice company. The shortcomings were such as to compromise the survival of the company. The FSMA imposed a deadline for recovery.

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## SUPERVISION OF SUPPLEMENTARY PENSIONS



### SUPPLEMENTARY PENSIONS DATABASE

Thanks to the Supplementary Pensions Database (DB2P), the FSMA has for the first time a good overview of second pillar pension schemes and of the pen-

sion rights accrued within them. The FSMA checked whether all pension institutions report correctly to the Supplementary Pensions Database.

### RECOVERY PLANS

At the close of the 2015 financial year, there were eight pension funds with an overall financing shortfall. Six other funds recorded a funding shortfall by one or more sponsoring undertakings. These shortfalls were the result of stricter, and therefore safer, hypotheses used by the pension funds to calculate their financial obligations.

## STRESS TEST



The European pensions authority, EIOPA, organized its first stress test. The test was conducted to determine the extent to which the pension fund sector can withstand shocks caused by crises on the financial markets. For Belgium, the results were positive. The stress test indicated that the Belgian pension fund sector can hold up well even under extremely stressful economic conditions.

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## CONSUMER PROTECTION AND INFORMATION

### CONSUMER CONTACT POINT



In 2015, the FSMA received 1,553 consumer questions and complaints about financial matters. More than a third of these

concerned saving and investing, while nearly a quarter had to do with warnings and authorizations. Around 10% were about insurance and almost 7% about pensions.

### INVESTIGATIONS

The FSMA opened 286 investigations into possible cases of unlawful offering of financial services.

### WARNINGS

Based on these investigations, the FSMA published 81 warnings against unlawful offers.

The number of warnings is on the increase. The most frequent topics are offers of binary options and other fraud mechanisms such as boiler rooms and recovery rooms.



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## INTERNATIONAL



### EURIBOR

The FSMA is competent for the supervision of Euribor, an important benchmark for financial transactions.

### ESMA

Since October 2015, the FSMA has chaired the Financial Innovation Standing Committee of the European Securities and Markets Authority (ESMA). The committee advises on ESMA

guidelines and recommendations, product interventions and other measures to prevent inappropriate financial innovations that might harm the interests of consumers or threaten financial stability.

### IOSCO

The chairman of the FSMA was elected vice-chairman of the Board of IOSCO, the international organization of securities commissions. The Board is the organization's highest decision-making body. He was also re-elected chairman of IOSCO's European Regional Committee (ERC). The ERC is made up of 52 members and discusses topics addressed by IOSCO that are important for the region.

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## ADMINISTRATIVE SANCTIONS



### INVESTIGATIONS

The FSMA launched 23 new investigations that could give rise to the imposition of administrative sanctions.

### FINES

In three cases, the Sanctions Committee of the FSMA imposed a fine for insider dealing and in one case for infringement of the money-laundering legislation.

### AGREED SETTLEMENTS

The FSMA approved four agreed settlements for infringements of various legal provisions.

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## FINANCIAL EDUCATION

### WIKIFIN

# wikifin.be

Wikifin, the FSMA's financial education programme, seeks to improve the financial literacy of the population. Its website, [www.wikifin.be](http://www.wikifin.be), received 1,258,913 visits last year. Since its launch at the beginning of 2013, the site has attracted more than 3 million visitors. At the end of 2015, 13,500 people were signed up to receive the Wikifin newsletter.

### SCHOOLS



The FSMA provides a wide range of teaching materials for the use of teachers and students. These include lesson plans providing financial tips, videos, budgeting tools and an educational game.

### COOPERATION



The FSMA works with some 70 organizations on the topic of financial education. These include civil society organizations, government institutions, professional associations in the financial and insurance sectors and organizations working in the area of financial education in Belgium.



A woman with long, wavy blonde hair, wearing a dark blue blazer over a patterned top, is seated at a wooden table. She is looking down at a document or book on the table. In the foreground, a hand is holding a smartphone, displaying a website with a grid pattern and some text. The background is a plain, light-colored wall.

I.  
**SIGNIFICANT  
DEVELOPMENTS  
IN SUPERVISION  
BY THE FSMA**

# 1. Development of the regulatory framework

## 1.1. International

### 1.1.1. IOSCO activities

The chairman of the FSMA has since October 2014 chaired the European Regional Committee (ERC) of IOSCO. The ERC is made up of 52 members and discusses topics addressed by IOSCO that are of importance for the European region. As chair of the ERC, the FSMA is also a member of the IOSCO Board, the organization's highest governing body.

The Board elected the chairman of the FSMA to chair IOSCO's Finance and Audit Committee. This committee assists the Board in overseeing the organization's budget and accounts. Thanks to these functions, the FSMA was closely involved in shaping IOSCO's strategy for the coming years<sup>1</sup>.

The FSMA is also active in a number of IOSCO working groups, whose task is to determine the standards and good practices to be issued by the organization.

Thus, the FSMA is a member of the working group that reported on the deterrent effect of sanctions and enforcement actions. Its report analyses the characteristics of an effective and deterrent enforcement policy. It also contains a series of concrete examples of actions and initiatives taken by market supervisors to detect, prosecute and sanction infringements against market integrity<sup>2</sup>. These examples can serve as inspiration for other market supervisors.

<sup>1</sup> IOSCO Board, *IOSCO's strategic direction 2015 to 2020*, 28 July 2015.

<sup>2</sup> Committee on Enforcement and the Exchange of Information, *Credible deterrence in the enforcement of securities regulation*, 17 June 2015.

The FSMA contributed to the drafting of the reports on anti-fraud warnings<sup>3</sup> and on sound practices for education about investment risks<sup>4</sup>. The FSMA also took part in a thematic study conducted by IOSCO aimed at identifying trends regarding the frequency and timeliness of occasional and periodic reporting by issuers and UCIs.

Other significant activities carried out by IOSCO focused on asset management, securitization, margin requirements for transactions in OTC derivatives, and financial benchmarks.

IOSCO also published a noteworthy report about supervision of cross-border activities<sup>5</sup>. The report describes the various techniques used to meet the challenges of cross-border supervision; it also notes the tendency to increase multilateral dialogue in response to global market developments.

Lastly, in 2015 as in previous years, there was a sharp increase worldwide in the number of requests for information and assistance made pursuant to the IOSCO MMoU<sup>6</sup>. The memorandum of understanding is an essential instrument for the FSMA as well for carrying out cross-border investigations into infringements of the rules governing investor protection.

## 1.1.2. Financial Action Task Force (FATF)

The FATF is an intergovernmental body tasked with establishing international standards and furthering the implementation of legislative, regulatory and operational measures to fight money laundering and terrorism financing.

In 2013, the FATF launched the fourth cycle of mutual evaluations of its members, to verify their compliance with the international AML/CFT (anti-money laundering/combating the financing of terrorism) standards, better known as the FATC Recommendations. Belgium was one of the first countries to be evaluated during this fourth cycle.

As the competent authority for supervising compliance with the provisions of the anti-money laundering Law of 11 January 1993, the FSMA participated actively in this evaluation.

The Mutual Evaluation Report for Belgium, published on 23 April 2015, set out the AML/CFT instruments put in place in Belgium and analysed their effectiveness and their conformity with the 40 FATF Recommendations. The report also issued recommendations with a view to strengthening those instruments.

<sup>3</sup> IOSCO Board, *Survey on Anti-Fraud Messaging*, 6 May 2015.

<sup>4</sup> IOSCO Board, *Sound Practices for Investment Risk Education*, 15 September 2015.

<sup>5</sup> IOSCO Board, *IOSCO Task Force on Cross-Border Regulation*, 17 September 2015.

<sup>6</sup> IOSCO *Multilateral Memorandum of Understanding*

The report also presents a series of specific recommendations for the supervisory authorities of the financial sector, some of which are directly addressed to the FSMA:

- in addition to sectoral risk analyses in order to identify the priority areas that require particular vigilance by the private sector, the supervisory authorities should also conduct targeted checks;
- the FSMA should put in place specific AML/CFT checks for sectors other than that of the *bureaux de change*. It should reinforce the supervisory resources for both permanent and on-site AML/CFT supervision. For the sector of insurance intermediaries, it should put in place sufficient remote and on-site AML/CFT checks, for example in consideration of the size and volume of activity/business handled by intermediaries;
- the competent authorities should engage more deeply in dialogue and exchanges with the private sector regarding the applicable AML/CFT obligations.

Since the publication of the Mutual Evaluation Report, the FSMA has been working on implementing the recommendations, with a view to improving its supervisory measures and ensuring their compliance with the FATF standards.

As part of the follow-up procedure, Belgium is preparing a first follow-up report that will be presented during the FATF plenary meeting in June 2016. The follow-up report will present the current state of affairs with regard to the evolution of the implementation of the recommendations specifically addressed to Belgium.

### 1.1.3. International Association of Insurance Supervisors (IAIS)

Since 2014 the FSMA has been a member of the International Association of Insurance Supervisors (IAIS) as a secondary authority, alongside the NBB.

On 19 May 2015 the FSMA also signed the multilateral memorandum of understanding of the IAIS. This memorandum provides a framework for the international cooperation between supervisory authorities in the insurance field. Cooperation and exchange of information are essential to be able to exercise effective and adequate supervision of the insurance market throughout the world.

The memorandum contains a number of minimum standards in the areas of confidentiality, powers of investigation and cross-border cooperation. All signatories must adhere to these minimum standards and all applicants are subjected to an in-depth examination regarding these standards.

The signing of this memorandum considerably reinforces the possibilities available to the FSMA to cooperate at an international level, mainly with signatories from jurisdictions outside the EU. As a result of this memorandum the FSMA becomes part of a network of supervisory authorities in the insurance field<sup>7</sup> that have a similar duty of professional secrecy and with which confidential information can be exchanged.

During the year 2015 confidential information has already been exchanged with a supervisory authority outside the EU, in application of this memorandum, as part of the FSMA's exercise of its competence in respect of insurance intermediaries.

<sup>7</sup> At the time of writing this report this network consisted of 55 supervisory authorities.



## 1.1.4. Bilateral cooperation

The FSMA has cooperation agreements with a broad range of foreign supervisory authorities. On 10 November 2015 the FSMA signed a bilateral memorandum of understanding with the Central Bank of Georgia. In Georgia the latter is responsible for the supervision of financial markets. This agreement regulates cooperation between the two authorities, and especially the exchange of information in the exercise of their respective legal duties.

## 1.2. European

### 1.2.1. ESMA activities

The FSMA contributes substantially to the work of ESMA. For many years, and until September 2015, the FSMA chaired the working group on investor protection and intermediaries. In 2015, this working group delivered the preparatory work for the implementing measures of MiFID II on the subject of investor protection and investment firms. The European Commission will publish these implementing measures in 2016.

Since October 2015, the FSMA chairs the Financial Innovation Standing Committee (FISC). FISC advises on guidelines and recommendations, product intervention and other measures to prevent inappropriate financial innovation causing a disadvantage to consumers or posing a threat to financial stability.

The Committee also monitors and analyses trends in financial innovation. Among the things it examined in 2015 were developments in connection with structured products, virtual currencies, contingent convertible instruments and the blockchain. Based on the work of FISC, ESMA advised on possible improvements to the European regulatory framework for investments through crowdfunding.

ESMA strives for consistent, efficient and effective supervisory practices and consistent application of European legislation and regulations. Part of ESMA's work in this respect involves issuing guidelines and recommendations to competent national authorities. Pursuant to Article 16 of the Regulation establishing ESMA, competent authorities must do everything they can to abide by these guidelines and recommendations. In the year under review, ESMA approved guidelines in connection with:

- cross-selling under MiFID II<sup>8</sup>;
- complex debt instruments and structured deposits<sup>9</sup>;
- alternative performance measures (or APMs)<sup>10</sup>.

Within ESMA, the Supervisory Convergence Standing Committee is responsible for assessing the degree of supervisory convergence. Among the aspects this Committee looked at in 2015 were supervisory practices as regards MiFID conduct of business rules in the area of assessing the suitability of transactions. As part of this peer review conducted by ESMA, site visits were made to a number of supervisory authorities, including the FSMA, to gain better insight into the supervisory practices examined.

<sup>8</sup> ESMA/2015/1861, 22 December 2015.

<sup>9</sup> ESMA/2015/1787, 26 November 2015.

<sup>10</sup> ESMA/2015/1415, 5 October 2015.

Of the three European Supervisory Authorities (ESAs), ESMA is the single direct supervisor of a number of market operators, namely credit rating agencies and trade repositories. In 2015, ESMA for the first time used the enforcement powers<sup>11</sup> provided for by European legislation and regulations regarding these market operators.

The aforementioned three European Supervisory Authorities handle cross-sectoral matters in the Joint Committee. The FSMA participates in a sub-committee of this Joint Committee which examines topics relating to consumer protection and financial innovation. It is in this context that implementing measures are being prepared for the regulation on Packaged Retail and Insurance-based Investment Products (PRIIPs). In November 2015, a consultation was conducted on Key Information Documents for PRIIPs<sup>12</sup>.

ESMA also conducts important activities in the area of pan-European IT systems for collecting data and communicating information under a number of European Directives. Consequently, a great number of national supervisory authorities, including the FSMA, have delegated to ESMA certain aspects of the IT systems relating to MiFID II rules.

## 1.2.2. EIOPA activities

After the completion of the regulatory activities linked to the Solvency II Directive, 2015 proved to be a year of transition for EIOPA. Henceforth and even more so than in the past, EIOPA will focus its energies on promoting the convergence of supervisory practices.

A first step towards ensuring that convergence was taken in the area of consumer protection. EIOPA has adopted a new strategy to develop a broad framework based on the risks associated with the supervision of compliance with the rules of conduct<sup>13</sup>. This preventive strategy is based on market supervision, reports on consumption trends, thematic reviews and a risk detection approach using risk indicators for retail clients.

In 2015, the FSMA contributed to the drafting by EIOPA of technical advice addressed to the European Commission. The advice discusses the criteria and the factors to be taken into consideration when exercising the powers<sup>14</sup> in respect of product intervention<sup>15</sup>.

<sup>11</sup> In this case, it was determined that a credit rating agency had infringed Regulation 1060/2009 on credit rating agencies, and this became the subject of a public notice. In a second case, ESMA imposed a fine on another credit rating agency which had committed an infringement of the said Regulation by negligence. See: 'Enforcement' on the ESMA website, [www.esma.europa.eu](http://www.esma.europa.eu).

<sup>12</sup> JC 2015 073, 11 November 2015.

<sup>13</sup> *EIOPA's strategy towards a comprehensive risk-based and preventive framework for conduct of business supervision*, 11 January 2016.

<sup>14</sup> These powers are set out in Regulation (EU) No 1286/2014 of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

<sup>15</sup> *Technical Advice on criteria and factors to be taken into account in applying product intervention powers*, 29 June 2015.

The FSMA also participated actively in EIOPA's activities regarding the sale of mobile phone insurance. It based itself, among other things, on national analyses of the subject and on the conclusions drawn from its own studies. At EIOPA level, the work resulted in the publication of a report on the issue of consumer protection in the area of sale of mobile phone insurance products<sup>16</sup>.

As in previous years, the FSMA contributed actively within EIOPA to various activities and to the drafting of a number of publications. Significant among the latter was the EIOPA opinion on the sale of insurance and pension products via the internet<sup>17</sup> and the EIOPA report on transfers of occupational pension rights<sup>18</sup> in reply to a call for advice by the European Commission.

Building on the consultation held in late 2014 on the concept of the holistic balance sheet as the basis for a new solvency framework for IORPs, technical specifications were issued in 2015 for a second quantitative impact study. In terms of capital, nearly a third of the Belgian pension fund sector (represented by 11 IORPs) voluntarily participated in the study. The study results and the conclusions drawn from them by EIOPA are examined by a technical working group in which the FSMA actively participates.

Simultaneously with the quantitative impact study, EIOPA also carried out a European stress test for IORPs. The stress test results were published on 26 January 2016<sup>19</sup>.

### 1.2.3. ESRB activities

The macroprudential supervision of the EU financial system is carried out by the ESRB, whose mission is to prevent and to mitigate systemic risks and thereby to strengthen the financial stability of the EU. The FSMA is represented on its General Board, the principal governing body of the ESRB.

The sources of systemic risk identified by the ESRB in 2015 include the phenomenon of shadow banking, which is growing in size and complexity and presents a risk of contagion in the traditional financial sector. The General Board took a particular interest in systemic risk within the asset management and the life insurance sectors, given the context of low interest rates. The low interest rate environment in general, which can have undesired effects on certain economic sectors and in certain countries, was analysed in greater detail by a task force. The latter will continue its work in 2016 in order to develop appropriate suggestions for macroprudential policy.

As provided for in European legislation, the ESRB collaborated with EIOPA on a stress test of pension funds<sup>20</sup>. The ESRB thus defined scenarios of adverse economic and financial developments in order to assess the resilience of the pension funds that manage defined-benefit pension schemes<sup>21</sup>.

<sup>16</sup> Report on Consumer protection issues arising from the sale of mobile phone insurance, 12 November 2015.

<sup>17</sup> EIOPA Opinion on sales via the Internet of insurance and pension products, 28 January 2015.

<sup>18</sup> Final Report on Good Practices on individual transfers of occupational pension rights, 2 July 2015.

<sup>19</sup> See this report, p. 83.

<sup>20</sup> For more information about this stress test, see the present report p. 83.

<sup>21</sup> See the document on: [http://www.esrb.europa.eu/pub/pdf/other/2015-03-20\\_GB\\_21\\_EIOPA\\_pension\\_fund\\_ST\\_after\\_ESRB\\_GB.pdf?9630b65ab6f9cb36ce46d01048aa5f28](http://www.esrb.europa.eu/pub/pdf/other/2015-03-20_GB_21_EIOPA_pension_fund_ST_after_ESRB_GB.pdf?9630b65ab6f9cb36ce46d01048aa5f28).

The vulnerabilities linked to the real estate sector were also examined, both in terms of the high property prices in some countries and of indebtedness among borrowers. The ESRB analysed the extent to which structural features of real estate markets in the EU may affect financial stability, distinguishing in particular between residential and commercial real estate<sup>22</sup>. It thus appears that high loan-to-value ratios or a very favourable tax treatment can heighten the sensitivity of a country to problems arising within the real estate sector. The analysis also revealed limitations in the availability and comparability of data concerning the real estate sector. That is why the ESRB has undertaken work aimed at improving the quality of the data necessary for the supervision of financial stability.

The Advisory Scientific Committee (ASC) of the ESRB carried out an analysis of systemic risks that can arise from the transition to a low-carbon economy. Three channels that could affect the financial sector were identified:

- sudden changes in energy use, characterized by price shocks that could have a significant macroeconomic impact;
- the revaluation of carbon-intensive assets: companies in the oil and gas sectors, which are financed in large part by debt, could sustain considerable decreases in value;
- an increase in the physical risks associated with climate change: a rise in the incidence of natural disasters could have a significant impact on the insurance sector.

The ASC therefore encourages companies to improve their dissemination of information so as to allow better evaluation of the financial consequences of climate risk.

## 1.2.4. Supervision of financial benchmarks

### Context

In 2012, the scandal involving the manipulation of benchmarks such as Euribor and Libor came to light. These benchmarks were considered crucial for two reasons. First, they serve as the reference for a vast volume of financial transactions. Second, their use is very widespread, and as a result such benchmarks have an impact on everyone. The smooth functioning of these benchmarks is therefore of great importance for the operation of the financial markets.

In reaction to the scandal, both ESMA/EBA and IOSCO set up working groups in which the FSMA has taken an active part. These activities led to the publication of the ESMA/EBA and IOSCO principles for financial benchmarks.

In addition, the FSB established the Official Sector Steering Group (OSSG), which in turn asked IOSCO to carry out two reviews of the key benchmarks. The FSMA is part of this review panel for the activities concerning Euribor.

<sup>22</sup> The reports are available on: [http://www.esrb.europa.eu/pub/pdf/other/2015-12-28\\_ESRB\\_report\\_on\\_commercial\\_real\\_estate\\_and\\_financial\\_stability.pdf?39075c07ba38c6e3f87143358ee33f38](http://www.esrb.europa.eu/pub/pdf/other/2015-12-28_ESRB_report_on_commercial_real_estate_and_financial_stability.pdf?39075c07ba38c6e3f87143358ee33f38) and [http://www.esrb.europa.eu/pub/pdf/other/2015-12-28\\_ESRB\\_report\\_on\\_residential\\_real\\_estate\\_and\\_financial\\_stability.pdf?71572a074e0bef4d6a475df76c913721](http://www.esrb.europa.eu/pub/pdf/other/2015-12-28_ESRB_report_on_residential_real_estate_and_financial_stability.pdf?71572a074e0bef4d6a475df76c913721).

The first review evaluated the application of the principles for determining Euribor and made recommendations for improvement. The second review was conducted to examine whether those recommendations had been implemented. From the review, it appeared that all administrators have undertaken to address the problems identified.

In 2013, the European Commission proposed a draft Regulation on the supervision of benchmarks. The proposal stated that the relevant supervisor for the benchmark is the Member State where the administrator of a benchmark is recognized as a legal entity. The administrator of Euribor, EMMI, has its registered office in Brussels. Therefore the FSMA is the relevant supervisor of Euribor.

### European Regulation

At the end of 2015, an agreement was reached regarding the Regulation on the supervision of benchmarks. The publication will follow in the course of 2016. The main objectives of the Regulation are:

- better administration and supervision of the benchmark process;
- an improvement in the quality of the input data and of the methodologies used by the benchmark administrators;
- appropriate supervision of the parties that contribute to the benchmarks;
- sufficient protection of consumers and investors who use the benchmarks.

### Belgian Regulation

In the Law of 18 December 2015, the Belgian legislators designated the FSMA as the relevant competent authority for benchmarks, as requested in the European Regulation. They further empowered the King to put in place, on the advice of the FSMA, a transitional regime for supervising certain benchmarks, while awaiting the date when the European Regulation enters into force and replaces the transitional regime.

## 1.3. National

### Financial benchmarks

By inserting Article 37<sup>quinqüies</sup> into the Law of 2 August 2002<sup>23</sup>, the Belgian legislators have conferred a new competence on the FSMA in the area of financial benchmarks. This competence is in line with the future European Benchmarks Regulation, which asks each Member State to designate a competent authority for the supervision of benchmarks.

Because their administrator, the EMMI, is based in Brussels, under that Regulation the supervision of Euribor<sup>24</sup> and Eonia<sup>25</sup> falls to Belgium. The Belgian legislators anticipated this responsibility by designating the FSMA as the competent authority even before the entry into force of the Regulation.

<sup>23</sup> Via the Law of 18 December 2015 laying down miscellaneous financial provisions, establishing an administrative service with accounting autonomy for 'Social activities', amending the Law of 11 May 1995 on the implementation of decisions of the United Nations Security Council and laying down a provision on the equality of men and women

<sup>24</sup> Euro Interbank Offered Rate.

<sup>25</sup> Euro OverNight Index Average.

## Crowdfunding/starter funds

The Programme Law that was approved by the Chamber of Representatives on 24 July 2015 makes it possible to grant tax advantages for investing in starter companies. Natural persons who invest in shares or units in starter companies can thus receive a tax reduction (known as the tax shelter provision). It is also possible to grant an exemption from withholding tax on payments of interest to persons who offer loans to such companies.

Except in the case of a direct investment, the Programme Law also provides for a tax advantage where the investment is made via a crowdfunding platform authorized by the FSMA or via a starter fund authorized by the FSMA. The exemption from withholding tax on interest income on such loans also requires that the loans be agreed via an authorized crowdfunding platform.

Work on setting up a legal framework for crowdfunding platforms and starter funds began in the second half of 2015. This framework is to determine the modalities of authorizing crowdfunding platforms and starter funds, as well as to draw up the rules of conduct with which they must comply. This work will continue in 2016.

## Advertisements

In 2015, the FSMA organized a consultation on the entry into force of national measures relating to advertisements for and information about financial products. These involve a number of rules that are laid down in the Royal Decree of 25 April 2014 concerning certain information obligations when distributing financial products to retail clients<sup>26</sup>.

This consultation was launched upon the request of the Minister of the Economy and Consumer Affairs, with a view to taking account of the developments on European level. At the end of 2014, Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) was approved<sup>27</sup>. This Regulation will enter into force on 31 December 2016. It introduces a harmonized information document for all packaged investment products that must contain among other things a summary risk indicator and appropriate performance scenarios. The Regulation only lays down the general framework. Implementing provisions have still to be drawn up by the European Commission on the recommendation of the three ESAs.

In the light of the European context and the results of the consultation, the legislators decided to postpone the entry into force of some of the national measures. This was done via the Royal Decree of 2 June 2015 amending the Royal Decree of 25 April 2014 concerning certain information obligations when distributing financial products to retail clients<sup>28</sup>.

<sup>26</sup> For more information on this Royal Decree, see the FSMA's 2014 Annual Report, p. 123ff.

<sup>27</sup> See the Official Journal (OJ L 352 of 9 December 2014 and corrigendum in OJ L 358 of 13 December 2014)

<sup>28</sup> See this report, p. 130 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

In order to provide the sector with clear information about the rules governing advertisements, announcements and other documents used when distributing financial products to retail clients in Belgium, the FSMA published a circular<sup>29</sup>.

### Credit providers and credit intermediaries

Book VII of the Code of Economic Law<sup>30</sup> governs the activity of credit providers and credit intermediaries in mortgage and consumer credit. The legislators have entrusted the FSMA with the supervision of compliance with the provisions of Book VII on taking up the activity of credit provider and credit intermediary<sup>31</sup>.

Via a Royal Decree<sup>32</sup>, the date of entry into force of this competence was changed from 1 July 2015 to 1 November 2015. In the course of the year, various other royal decrees<sup>33</sup> were issued concerning this competence.

### Distribution of OTC derivatives

In 2015, the FSMA prepared a new draft regulation on rules governing the distribution of certain financial derivatives. The draft was submitted for advice to the Consumer Affairs Council, and an open consultation was held on the matter. Firstly, the draft regulation prohibits the distribution of certain OTC derivatives to retail investors. The draft regulation also bans a number of aggressive or unsuitable marketing techniques when distributing OTC derivatives to retail investors.

<sup>29</sup> See this report, p. 132 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

<sup>30</sup> For more information about Book VII of the Code of Economic Law, see the FSMA's 2014 Annual Report, pp. 150ff.

<sup>31</sup> For more information about these exercise of this supervision, see this report, pp. 73 and 154 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

<sup>32</sup> Royal Decree of 28 June 2015 amending the Royal Decree of 19 April 2014 fixing the entry into force of the Law of 19 April 2014 inserting Book VII "Payment and credit services" into the Code of Economic Law, inserting the definitions specific to Book VII and the penalties for infringements of Book VII into Books I and XV of the Code of Economic Law and laying down various other provisions, and of the Law of 19 April 2014 organizing the means of appealing certain decisions of the FSMA taken in application of Book VII or of Book XV of the Code of Economic Law, and amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

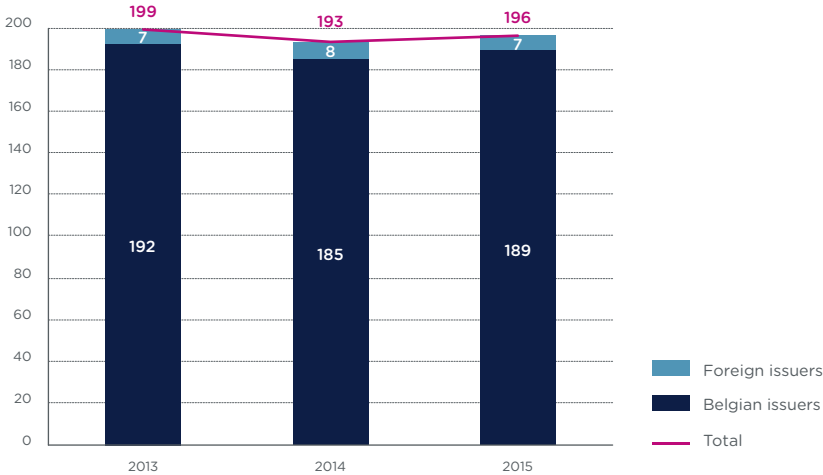
<sup>33</sup> See this report, p. 154 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

# 2. Report on the activities of the FSMA by area of competence

## 2.1. Supervision in figures

Listed companies (as at 31 December 2015)

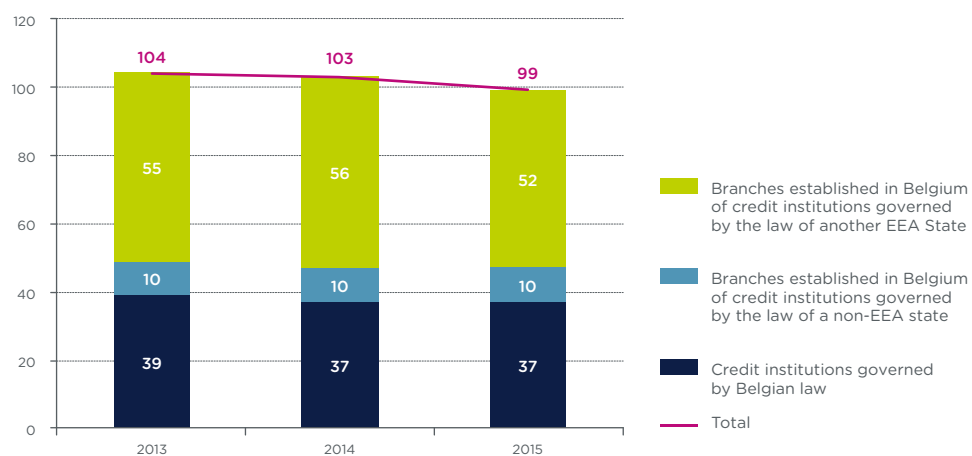
Graph 1: Listed companies



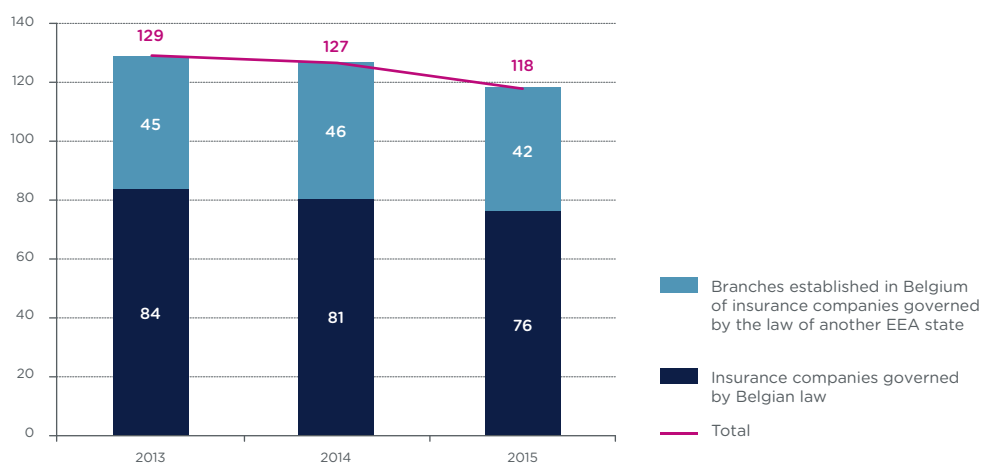


## Institutions under product and conduct of business supervision

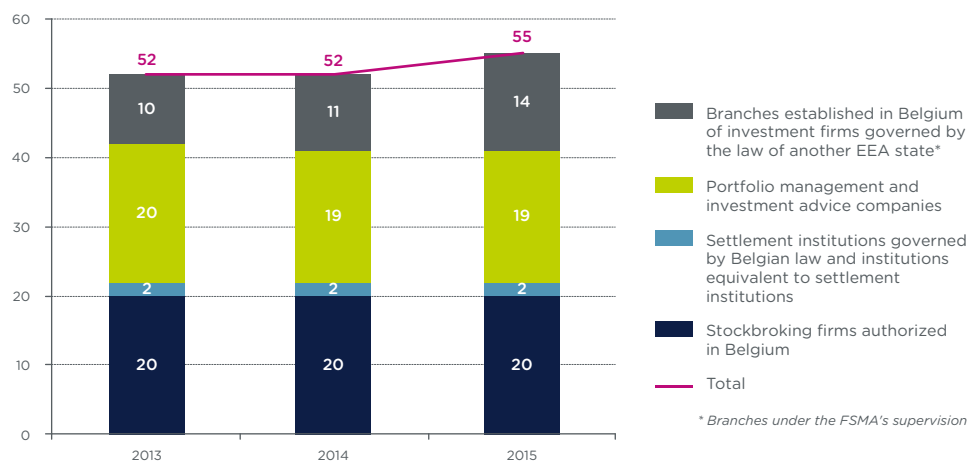
Graph 2: Credit institutions



Graph 3: Insurance companies



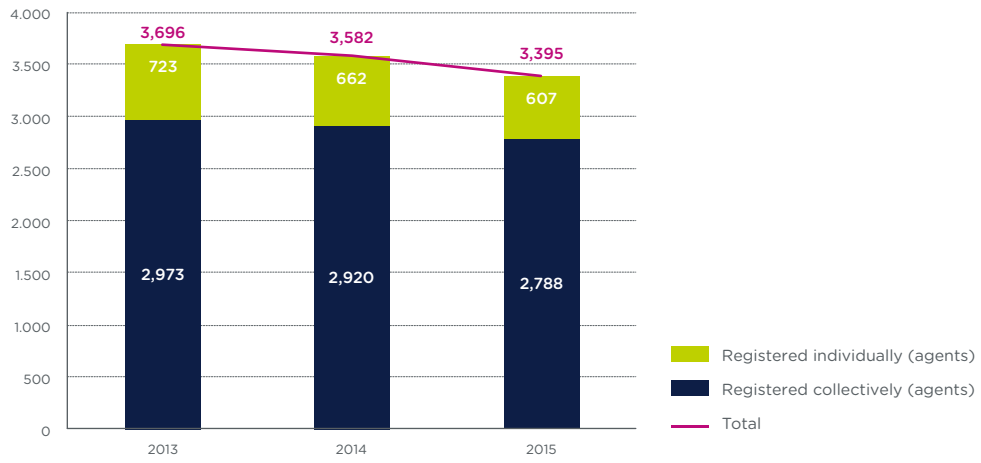
Graph 4: Other



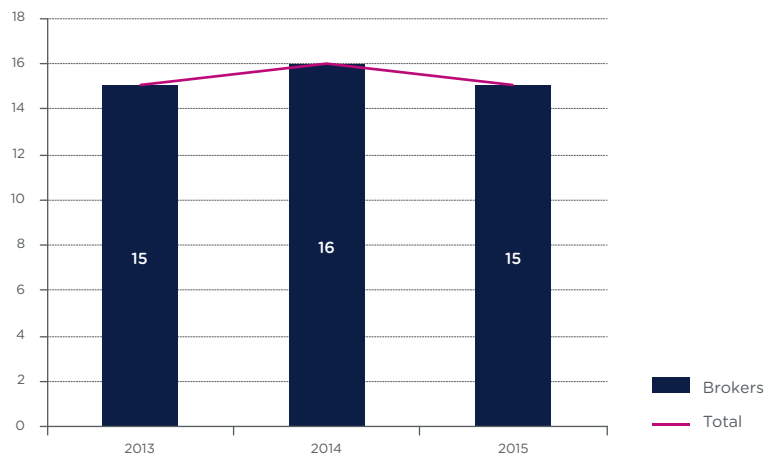
\* Branches under the FSMA's supervision

## Intermediaries

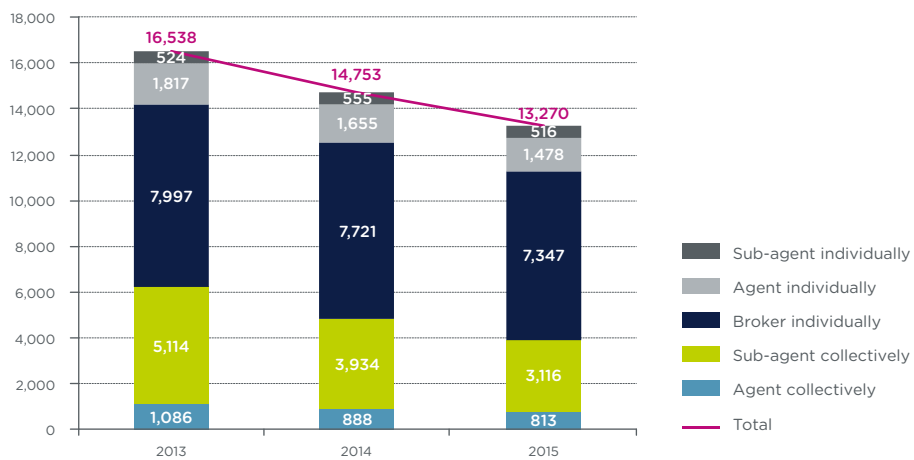
**Graph 5: Intermediaries in banking and investment services (agents)**



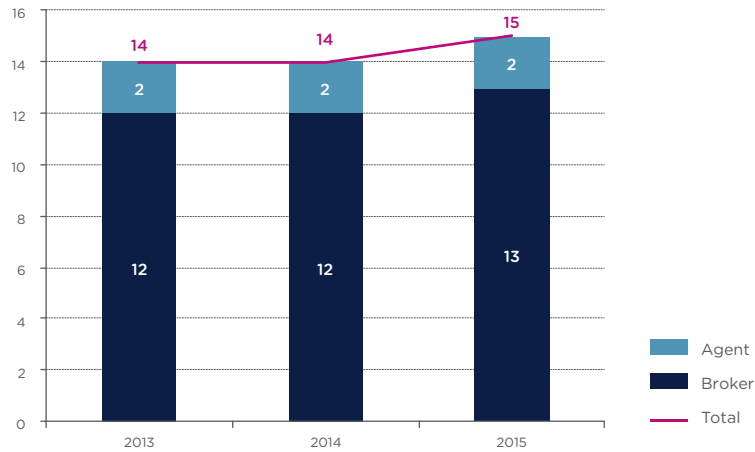
**Graph 6: Intermediaries in banking and investment services (brokers)**



**Graph 7: Insurance intermediaries**

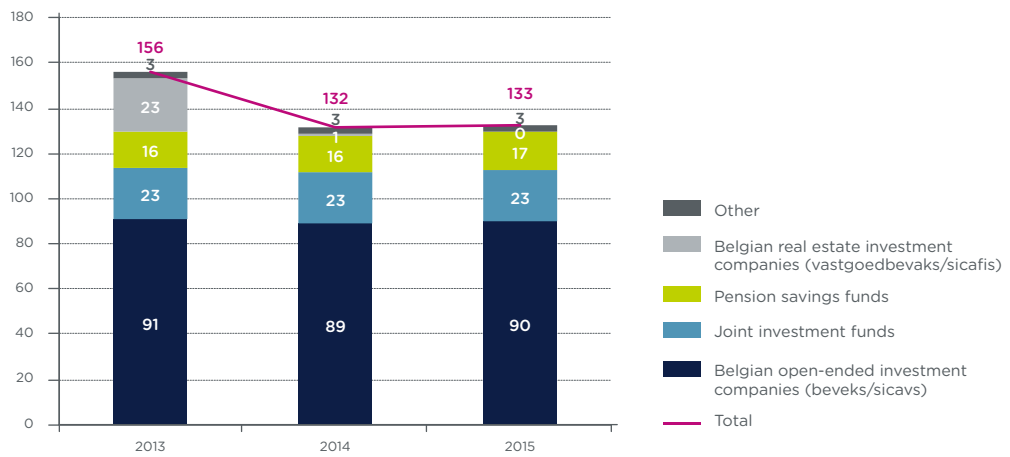


**Graph 8: Reinsurance intermediaries**

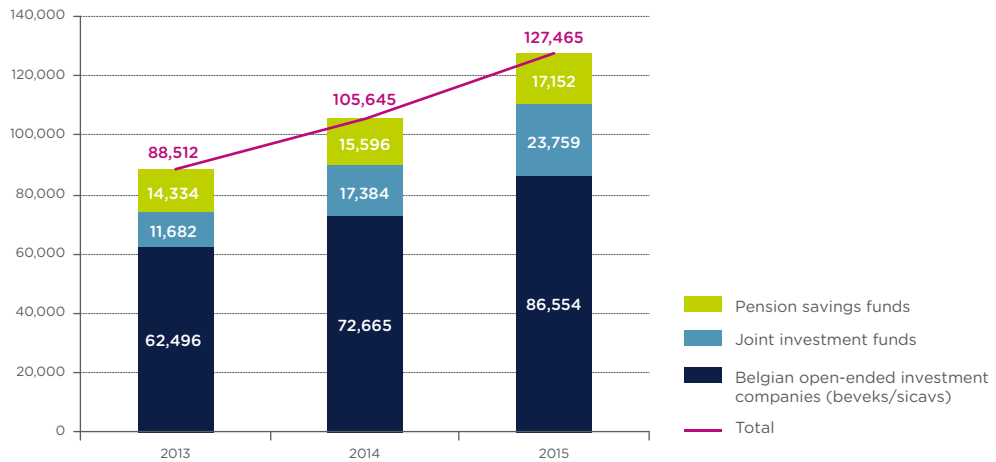


**Undertakings for collective investment**

**Graph 9: Number of Belgian institutions**

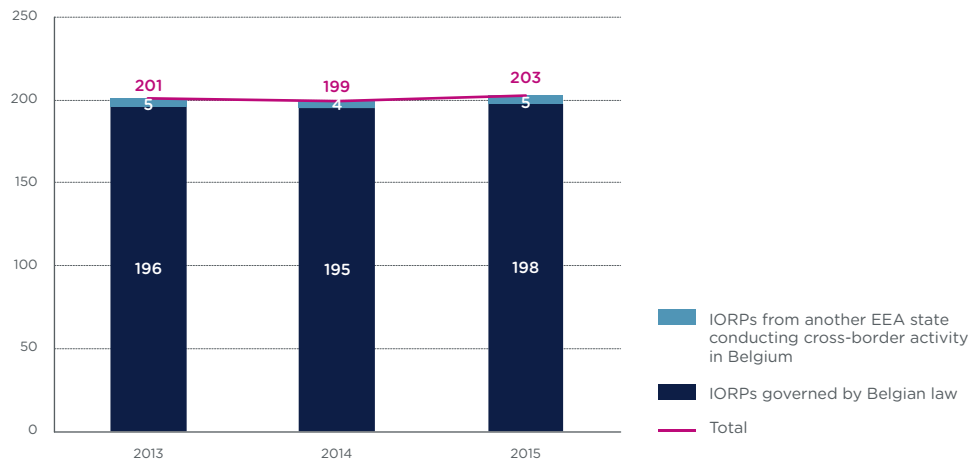


**Graph 10: asset value (in EUR million)**

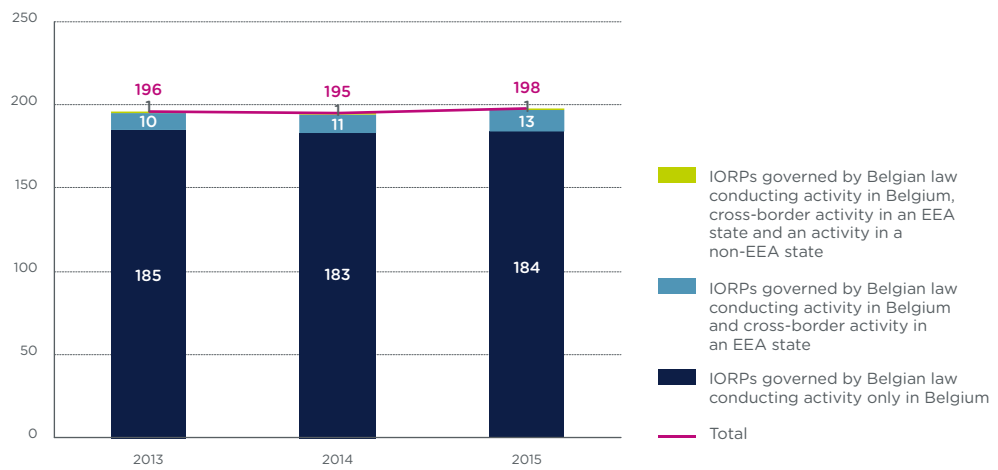


## Institutions for occupational retirement provision (IORPs)

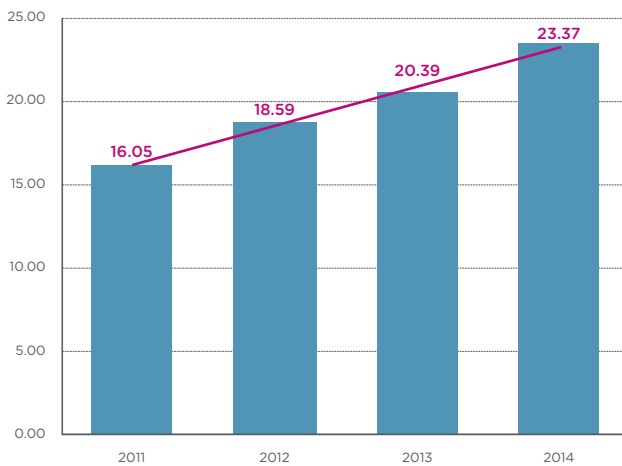
Graph 11: Number of IORPs



Graph 12: IORPs governed by Belgian law

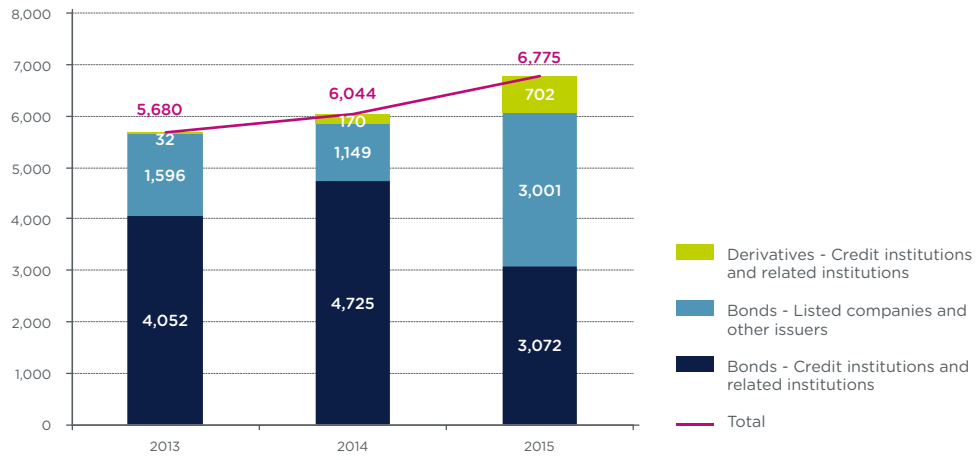


Graph 13: Balance sheet total of IORPs (in EUR billion)

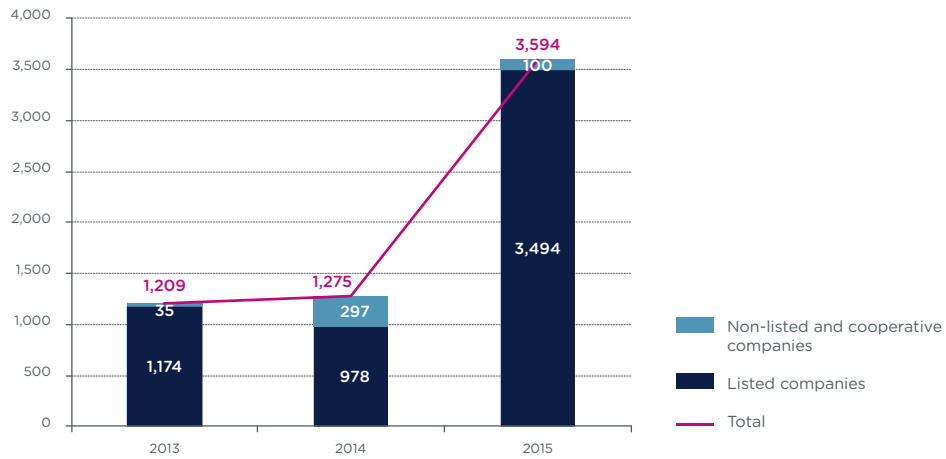


## Public offers in Belgium

Graph 14: Volume of bonds and derivatives issued (in EUR million)



Graph 15: Volume of shares issued (in EUR million)



## 2.2. Areas of supervision

### 2.2.1. Supervision of company information and of the financial markets

The FSMA ensures that the information disseminated by listed companies is complete, gives a true and fair view, and is made available to the public on time and in the correct way. The FSMA also sees to it that all holders of securities in a listed company are treated fairly. In addition, it supervises the information that non-listed companies make available if they launch a public offering of securities. Finally, the FSMA supervises the functioning of both the financial markets themselves and the market infrastructures.

#### 2.2.1.1. Supervision of information disseminated by companies

##### 2.2.1.1.1. Supervision of listed companies

##### 2.2.1.1.1.1. Supervision of financial transactions

#### Issuances and initial public offerings

In 2015, seven companies launched an initial public offering. Prominent among these once again were companies in the biotech and pharmaceutical sectors. Newcomers Bone Therapeutics, Biocartis and Mithra Pharmaceuticals listed their shares on Euronext Brussels. The infrastructure investment company TINC, Xior Student Housing and the real estate certificate issued by Immo Mechelen City Center also opted to list on Euronext Brussels. The cocoa plantation KKO International was the only newcomer to list its shares on Alternext. Two companies submitted an application to the FSMA for a stock market listing, but subsequently cancelled their initial public offering.

Eight listed companies, of which five regulated real estate companies, raised additional capital on the market. In terms of volume, Solvay's and Solvac's share issues of 1.5 billion and 450 million euros respectively were the most noteworthy. This was the first time Solvay raised fresh capital since its initial public offering.

The number of public offerings of classic, listed corporate bonds remained low. Only three companies issued corporate bonds in 2015 to the general public.

In 2015, the FSMA handled 14 base prospectuses prepared in view of a public offering and listing of debt instruments. Base prospectuses, which are allowed only for debt instruments, are generally drawn up independently of a specific transaction. As long as the prospectus is valid, the issuer can use it to launch an offer and/or listing. In that case, the final terms and conditions of the specific transaction must be disclosed. In 2015, the FSMA received the final terms and conditions for 100 transactions.

The FSMA also approved five prospectuses for the admission of investment instruments to trading on Euronext Brussels. In three cases, this involved the listing of shares issued in the form of American Depositary Shares (ADS) as part of an initial public offering in the United

States (US Listing). These companies take the view that a double listing of their shares on both Euronext Brussels and NYSE or NASDAQ offers important advantages. The two other cases involved the listing of privately placed bonds of a regulated real estate company and the private placement of shares.

One issuer drew up a prospectus in the context of a public offer of bonds in Belgium and the listing thereof on the non-regulated Euro MTF market of the Luxembourg stock exchange.

### Restructuring

Various companies have undertaken restructuring in the form of mergers, divisions or contributions in kind. These transactions are governed by the Companies Code. The relevant documents drawn up for these companies' general meeting of shareholders; in accordance with the provisions of that Code, do not have to be submitted to the FSMA for prior approval. The latter is thus not competent to approve the contents of those documents.

Nevertheless, the FSMA ensures that the information provided by the companies in question is complete and transparent, and that the documents contain the information necessary to allow shareholders to make an informed judgment about the transaction concerned, including about the valuation and the compensation of the counterparty. The FSMA does not take a position on the appropriateness of the operation or on the consideration offered.

The FSMA further drew the attention of all parties to their responsibilities in respect of the operations, whether as a director (independent or otherwise) or as a company auditor.

It should be remembered that shareholders are entitled to ask questions<sup>34</sup> and to place items on the agenda of the general meeting<sup>35</sup>. They are also free, of course, to vote against the transaction.

If companies apply to list new shares resulting from a merger, division or contribution in kind, the Prospectus Law provides an exemption from the obligation to publish a prospectus. A condition for this exemption is the publication of an information document, and the FSMA must decide whether that document is equivalent to a prospectus. During the reporting period, the FSMA decided in three such cases that the information made available to the public could be regarded as equivalent to that contained in a prospectus. These cases involved two documents drawn up on the occasion of a contribution in kind and one document in which securities were allocated following a merger.

### Takeover dossiers

The FSMA handled seven takeover dossiers of listed companies. The first concerned a voluntary and conditional takeover bid for a holding company of a banking group. The offer was followed by a mandatory counterbid. This dossier took a long time to process because

<sup>34</sup> Article 540 Companies Code.

<sup>35</sup> Article 533ter Companies Code.

the consent of several prudential supervisors was required for the additional acquisition of shares by both the offeror and the counter-offeror<sup>36</sup>.

In three dossiers, controlling shareholders were seeking the delisting of the target company's shares. They launched voluntary and conditional takeover bids. Two takeover bids were completed in 2015. One of these led to the delisting of the shares, as a result of a simplified squeeze-out bid.

This type of bid is subject to the same conditions as those for the original takeover bid. In order to be allowed to launch a squeeze-out bid, the offeror must meet two conditions. It must, after the original bid, own 95% of the shares of the target company as well as 90% of the shares being offered in the bid.

Delisting a security requires the approval of the FSMA. The latter may withhold approval in order to protect the interests of minority shareholders. Approval will be granted only if a successful measure is in place to protect the interests of minority shareholders. The FSMA considers a takeover bid as being such a measure, and assesses its success on a case by case basis.

Voluntary takeover bids by controlling shareholders require a prospectus as well as a valuation report by an independent expert. In principle, the independent directors of the target company appoint the expert. But if the target company has no independent directors, then the board of directors is responsible for making the appointment. The FSMA must approve the choice. In 2015 there was one such dossier. The FSMA approved the appointment of an independent expert for a target company listed on Alternext that had no independent directors.

In another dossier, an offeror launched a mandatory bid followed by a simplified squeeze-out bid. The bid was mandatory because the offeror had exceeded the threshold of 30% of the voting shares in the company in question. In the year under review, a listed company launched a voluntary bid for its own bonds and offered them in exchange for newly issued bonds. The FSMA also examined a squeeze-out bid for the shares of a company listed on the Vrije Markt /Marché libre without a prior takeover bid. In the case of such a squeeze-out bid, specific guarantees must be given by the offeror for the protection of the interests of minority shareholders.

The FSMA reminds readers that it publishes on its website a list of takeover bids in progress. During the bidding period, certain persons are required to notify the FSMA of any acquisitions or transfers of shares of the target company or of the offeror. Thanks to the list of takeover bids in progress, they know for which companies they may be required to make such notifications.

<sup>36</sup> See also Chapter II, p.102 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).



## 2.2.1.1.2. Supervision of disclosure of financial information

Table 1: Issuers under supervision

	01/01/2014	01/01/2015	01/01/2016
<b>Belgian issuers</b>	<b>192</b>	<b>185</b>	<b>189</b>
Euronext	172	164	166
Alternext	15	16	19
Foreign markets	5	5	4
<b>Foreign issuers</b>	<b>7</b>	<b>8</b>	<b>7</b>
Euronext	6	6	3
Alternext	1	2	3
Foreign markets	0	0	1
<b>Total</b>	<b>199</b>	<b>193</b>	<b>196</b>

The number of issuers under supervision rose slightly in 2015. Two thirds of the issuers listed shares, and one third issued other securities. This proportion has remained constant since 2014. The list of issuers under supervision is available on the FSMA website<sup>37</sup>.

### Supervision of financial reporting

In 2015, the FSMA applied for the first time the guidelines issued by the European Securities and Markets Authority (ESMA) on enforcement of financial information published by listed companies. As explained in the 2014 Annual Report<sup>38</sup>, the purpose of these guidelines is to establish consistent, efficient and effective supervisory practices within the EEA. They are also aimed at ensuring the common, uniform and consistent application of EU law. A more uniform approach to supervision of the obligations as regards financial information and financial statements in accordance with, among other things, the IFRS reporting standards should help competent authorities put in place a sound and rigorous enforcement regime.

In principle, the FSMA conducts ex post supervision of the financial information disseminated by listed companies. To this end it uses a selection model combining a risk-based and a rotation approach<sup>39</sup>. The FSMA adjusted its selection model in order to take account of the points raised by ESMA as regards the 2014 financial statements. In 2015, the FSMA also adjusted its plan as regards the supervision of financial information. This was done partly in response to specific events in the market and partly in order to be able to devote sufficient attention to the financial information included in prospectuses and registration documents submitted to the FSMA for approval. In the case of more than half of the accounts that underwent an “unlimited examination of financial information”, such examination took place when handling prospectuses or registration documents.

The FSMA devoted particular attention once again in 2015 to smooth collaboration with the statutory auditors of listed companies. In a few cases, the FSMA advised auditors that a better and higher quality collaboration was expected of them. In other cases, auditors made a particularly valuable contribution to the successful completion of a dossier.

<sup>37</sup> See the FSMA website: <http://www.fsma.be/en/Supervision/fm/gv/info/Issuers.aspx>.

<sup>38</sup> For further information about these guidelines, see the FSMA's 2014 Annual Report, p. 93 (available in Dutch and French only).

<sup>39</sup> More information about this supervisory methodology can be found in the FSMA's 2013 Annual Report, p. 37 (available in Dutch and French only).

## Priorities for the supervision of financial reporting in 2014

The FSMA set its priorities for supervision of the 2014 financial statements based on points raised by ESMA and its own points requiring attention.

The FSMA focused on the following points raised by ESMA in cooperation with the national supervisors:

- consistency, transparency and comprehensibility of the information and the provision of company-specific information;
- preparation and presentation of consolidated annual financial statements and the provision of information in this regard on the occasion of the entry into force of IFRS 10<sup>40</sup> and 12<sup>41</sup>;
- reporting by entities with joint business activities or that have a joint venture, and the information to be provided in accordance with IFRS 11<sup>42</sup>;
- The recognition and valuation of deferred tax assets.

The FSMA selected the following specific points requiring attention:

- the disclosure of information about related parties;
- the follow-up to the study titled “Disclosures relating to Belgian defined contribution plans with return guaranteed by law”. In early 2015, the FSMA published a study on the reporting in IFRS financial statements about such pension plans. In the study, the FSMA made specific recommendations for improving the information in the explanatory notes<sup>43</sup>. It has since noted that the information in the explanatory notes regarding Belgian pension plans improved substantially in the 2015 financial statements. This indicates that consultation about this topic and the publication of the recommendations have produced the desired effects.

The FSMA also focused, as part of its supervisory activity, on the specific features of various companies. This has allowed it to devote attention to company-specific points. By way of illustration, the following is a list of topics that have been examined in the course of supervising financial statements:

- the treatment of distribution costs charged by electricity suppliers;
- the treatment of the shareholdings in power plants that are held by several owners (indivisibility);
- the corrections made to financial statements resulting from the use in an earlier period of an excessively low effective interest rate for a loan from the government granted at an interest rate below market rate;
- whether or not there is joint supervision of entities that are the subject of a combination of entities;
- information disclosure about the impact the application of a new standard or interpretation may have on the financial statements of the entity in the period in which it is applied for the first time;

<sup>40</sup> IFRS 10 deals with consolidated financial statements.

<sup>41</sup> IFRS 12 deals with disclosure of interests in other entities.

<sup>42</sup> IFRS 11 deals with joint arrangements.

<sup>43</sup> <http://www.fsma.be/-/media/Files/fsmafiles/studies/en/study44.ashx>.

- the treatment of green energy certificates;
- the difference in accounting treatment between the acquisition of assets and of a business combination;
- the explanatory notes to impairments of assets and asset impairment tests;
- the reversal of the discounting or the effect of time on the fair value of a conditional future payment in the pro forma income statement.

### Priorities for the supervision of financial reporting in 2015

ESMA sets out in its Guidelines on Enforcement of Financial Information that national supervisors must take account of the common European priorities<sup>44</sup>. For the 2015 financial statements, the following priorities were set:

- **The impact of the financial markets' conditions on financial statements**  
The financial markets experienced high volatility in 2015. The prices of certain commodities and certain interest rates fell considerably and remained volatile. Certain exchange rates fluctuated significantly. Some countries introduced restrictions on the free circulation of capital.

It may be advisable for companies to review thoroughly some of the assumptions they use in their valuations. That is the case, for example, for the valuation of provisions, pension commitments, for conducting asset impairment tests or for valuing assets and liabilities in the case of business combinations. It may also be advisable for companies to include updated information in their annual financial statements as regards their exposure to certain risks and the assumptions they will use in the future.

Such updated information may also be needed where there are other important sources of estimation uncertainties that carry a substantial risk of material adjustment to the book value of assets and liabilities in a subsequent financial year. Some IFRSs require information about the sensitivity of book values to the methods, assumptions and estimations that underlie their calculation.

- **The statement of cash flows and associated information disclosure**  
The statement of cash flows is a core element of the analysis and correct understanding of a company's performance. Consistency in classification between the statement of cash flows and the other primary financial statements is important, as are appropriate explanatory notes to the statement of cash flows, as well as cross-references among these explanatory notes.

Where the IAS 7 reporting standard *The Statement of Cash Flows* offers several choices of mode of presentation, it is advisable for companies to explain the significant choices they have made. Other important points include the correct presentation of transactions that do not generate cash flow in a given period (e.g. financial leases) and of reverse factoring and the accompanying explanations. Correct classification of cash equivalents is also a point requiring attention.

<sup>44</sup> [https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1608\\_esma\\_public\\_statement\\_-\\_ecep\\_2015.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1608_esma_public_statement_-_ecep_2015.pdf).

- **Fair value measurement and accompanying information disclosure**  
Particular attention is to be devoted to the fair value of non-financial assets and liabilities (for example: real estate investments, business activities being wound down, and assets and liabilities acquired in the context of business combinations) and the information disclosed in this regard. Among other things, the use of IFRS 13<sup>45</sup>-compliant valuation techniques, maximizing the use of observable inputs, and the communication of information on the sensitivity of the fair value to the non-observable inputs used are addressed here.

On the occasion of amendments to the Belgian legislation on defined contribution pension plans with returns guaranteed by law, the FSMA will, as in the past, take a close look at the reporting on such pension plans and take further initiatives in this area.

The FSMA will also devote the requisite attention to reporting on the accounting impact of the decision by the European Commission as regards tax agreements on “excess profit” that the Belgian government entered into with companies.

In some cases, points requiring special attention from past years remain relevant for the FSMA’s supervision.

In its supervision, the FSMA will continue its practice of looking at what other specific points might be relevant for a particular company. Those points are then added to the relevant priorities for the 2015 financial statements.

Overall, the FSMA will also pay close attention to the quality of the explanatory notes and their relevance and specificity, which are deemed necessary in order to be able to evaluate the performance and the position of a company. The FSMA repeats that explanatory notes that are not relevant and entity-specific, as well as the use of boilerplate, do not contribute to obtaining a transparent image of a company. The opposite is often the case. The FSMA refers in this regard to a statement published by ESMA on the subject<sup>46</sup>.

### International consultation

The ESMA guidelines on the enforcement of financial information require the FSMA to submit emerging issues and new topics regarding IFRS to the European Enforcers Coordination Sessions (EECS). The EECS is a consultation panel of ESMA on which all national supervisory authorities are represented and which helps national supervisors to apply the IFRS. The FSMA submitted four emerging issues to the EECS in 2015. These had to do with the presentation of discontinued business activities, booking deferred taxes on biological assets and the presentation of construction contracts in the balance sheet. The FSMA entered five decisions into the EECS database regarding the application of IFRS. These were decisions of the FSMA about emerging issues. There was also a decision regarding the accounting in the profit and loss account of contributions to the deposit guarantee scheme. Another decision concerned the way in which acquisition of a controlling interest in a company by contributing a subsidiary is processed in the consolidated accounts. The decision also concerned the distribution of the shares acquired as a result of the aforesaid contribution.

<sup>45</sup> IFRS 13 deals with fair value measurement.

<sup>46</sup> [https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1609\\_esma\\_public\\_statement\\_-\\_improving\\_disclosures.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1609_esma_public_statement_-_improving_disclosures.pdf).

In 2015, ESMA published two reports with excerpts from the EECS database, with a total of 17 decisions, of which one was a decision taken by the FSMA.

In the course of 2015, the IFRS Interpretations Committee handled a question about 'recoverable cash payments'. The question arose in conjunction with inspections carried out by the FSMA.

### Consultation regarding electronic reporting

In September 2015, ESMA launched a public consultation<sup>47</sup> on the regulatory technical standards for a European single electronic reporting format. This format will be mandatory from 1 January 2020 for all annual financial reports. The Transparency Directive seeks via this format to simplify the reporting process and to promote access, analysis and comparison of financial reports. Given the importance of these standards, the FSMA drew the attention of a number of market participants to this public consultation. ESMA sought, among other things, the views of market participants on the costs and benefits of introducing the format in question.

### New standards

The ESMA guidelines on alternative performance measures enter into force in 2016. The FSMA will supervise compliance with these guidelines<sup>48</sup>.

### Disclosure of periodic and occasional information

The STORI database (which stands for Storage of Regulated Information), has since 2011 been collecting regulated information of companies listed on Euronext Brussels. This database, set up by the FSMA, is available for consultation via a website<sup>49</sup>.

A number of legal provisions regarding the publication of regulated information have been amended in recent years. The deadline for publishing half-yearly financial reports was extended in 2014 from two to three months. The extension of the deadline was intended, among other things, to achieve a better spread of such publications over time. The measure should be beneficial to small and medium-sized enterprises. Publishing their financial reports on a different date from those of large companies ought to ensure that they receive greater public attention.

The FSMA observed that around 68 per cent of listed companies disseminated their half-yearly financial reports for 2015 before the end of August. More than 15% published the information in the first half of September. Around 17 per cent published in the second half of September. As in 2014, six issuers made their financial reports public only on 30 September, the deadline for publication.

<sup>47</sup> <https://www.esma.europa.eu/press-news/consultations/consultation-paper-european-single-electronic-format>.

<sup>48</sup> For further information about the guidelines, see this report, p. 97.

<sup>49</sup> [stori.fsma.be](http://stori.fsma.be).

Despite the abolition of mandatory quarterly reporting in 2014, many listed companies continued last year to publish quarterly information on a voluntary basis. The FSMA enters this information in STORI.

Since August 2015, companies who list only ordinary debt instruments on Alternext are no longer required to draw up a half-yearly financial report. This topic is further discussed in chapter II<sup>50</sup>.

### Disclosure of shareholding structure

In 2015, the FSMA received 288 transparency notifications, down from 343 in 2014. These are notifications regarding upward or downward crossing of certain statutory or regulatory thresholds with regard to the shareholding of a listed company.

Since September 2014, the FSMA has been publishing an overview of the current shareholding structure of listed companies. This information is freely accessible on the FSMA website<sup>51</sup>. The information is based on the transparency notifications to the FSMA made in accordance with the Law of 2 May 2007.

For the benefit of shareholders in listed companies, the FSMA also publishes on its website an overview of the statutory thresholds<sup>52</sup> that these companies use.

### Publication of studies and communications

#### Information disclosure about related party relationships and transactions

In 2014, the FSMA devoted a study to the acquisition of information on related parties in the annual financial reports of Belgian listed companies. These include parties such as major shareholders, directors, managers and group entities with which companies may have certain relationships and transactions. Listed companies are, based on IAS 24, required to provide information about such relationships and transactions in the explanatory notes to the consolidated annual financial statements. Transparency about this subject is important given that related parties may favour each other in this way, to the detriment of minority shareholders.

The Corporate Governance Committee, the Institute of Registered Auditors and the FSMA decided last year to continue working on this topic. They published an explanatory note setting out the obligations of listed companies in respect of relationships and transactions with related parties. The note is available on the FSMA website<sup>53</sup>.

<sup>50</sup> See this report, p. 96 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

<sup>51</sup> See the FSMA website: <http://www.fsma.be/en/Supervision/fm/gv/ah/AhActueel.aspx>.

<sup>52</sup> See the FSMA website: <http://www.fsma.be/en/Supervision/fm/gv/ah/Thresholds.aspx>.

<sup>53</sup> See the explanatory note to Study 45: <http://www.fsma.be/en/Doormat/Publications/Studies%20and%20documents.aspx>.

### Recommendations concerning press releases about transparency notifications

The FSMA published a communication<sup>54</sup> providing recommendations concerning press releases about transparency notifications. It studied the press releases in question over the course of a year. The study indicated that most listed companies offer relatively clear and complete information in their transparency press releases. The FSMA also noted that the quality of the transparency press releases could be improved on a number of points, and hence published a communication in this regard.

#### 2.2.1.1.2. Supervision of the financial transactions of non-listed companies

In 2015, the FSMA approved 38 prospectuses by non-listed companies. These included 13 prospectuses for share issues by cooperative companies, 16 for tax shelters for investment in audiovisual productions (compared to four in 2014), five for issues of debt instruments by non-listed companies and four for employee share ownership plans by issuers from outside the EU.

The sharp rise in the number of prospectuses approved for tax shelters is due in part to a mailing sent out by the FSMA in early 2015 regarding the change in legislation on tax shelters. In this mailing, the FSMA informed the various actors in this sector of their obligations arising from financial legislation and regulations. This awareness campaign is in line with the FSMA's task to contribute to protecting buyers of financial products and services and to combat the illegal offering or provision of financial products or services. The amounts collected by tax shelters rose from 115 million euros in 2014 to 159 million euros in 2015. That is a 38 per cent increase.

In 2014, Belgian legislators relaxed the existing prospectus exemption for cooperative companies and introduced a new exemption aimed at facilitating crowdfunding. To benefit from this exemption, one must provide the FSMA with documentation such as information memos and advertising brochures or flyers demonstrating that the conditions for the exemption have been met<sup>55</sup>; only thereafter can the public offer begin. In cases of ongoing offers, such documentation must be submitted afresh every twelve months. During the reporting period, 20 cooperative companies and five crowdfunders submitted the appropriate documentation to the FSMA.

#### 2.2.1.2. Supervision of financial markets

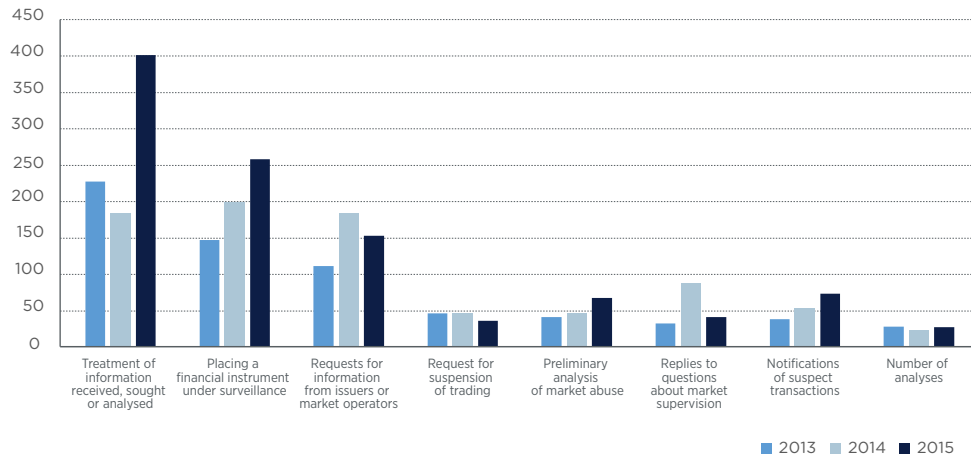
##### Market transparency

For purposes of exercising its mandate of market surveillance, the FSMA has a market surveillance unit where the financial markets can be followed in real time. The FSMA often contacts issuers regarding the reporting of inside information or abnormal volumes or price fluctuations. If an issuer postpones the publication of privileged information, the FSMA places that share under closer surveillance. Any action taken by the FSMA as part of its market surveillance is carefully noted in a log book. The information in the following graph is based largely on that log book.

<sup>54</sup> See Communication FSMA\_2015\_18 of 10 December 2015.

<sup>55</sup> The FSMA published on its website the communication FSMA-2014\_04 of 26 June 2014 clarifying these exemptions.

Graph 16: Market surveillance 2013-2015

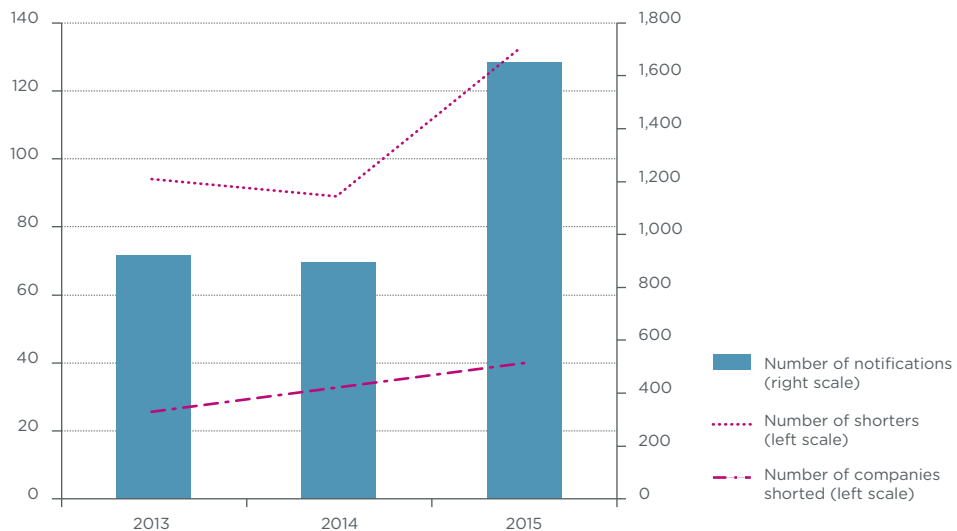


In the course of 2015, the FSMA analysed 26 cases of potential market abuse. The Management Committee decided in the year under review to entrust the investigations officer with six analyses, in dossiers where in the view of the Committee there was sufficient and serious evidence of market abuse.

### Short selling

Since 1 November 2012, the FSMA has been publishing on its website net short positions of 0.50% or more of the share capital of Belgian listed companies. Disclosure of short positions is mandatory as from 0.20% but the FSMA does not publish positions between 0.20 and 0.50%. The following graph shows the changes in the total number of disclosures received, the number of companies shorted and the number of shorters. The figures indicate that short selling on the Belgian share market in 2015 has increased significantly.

Graph 17: Short selling 2013-2015





## New European legislation on market abuse

On 3 July 2016, the European Market Abuse Regulation<sup>56</sup> will enter into force and the deadline for the transposition of the Market Abuse Directive will expire<sup>57</sup>. The new Regulation draws lessons from the financial crisis. It provides, among other things, for the extension of the market abuse regime to non-regulated trading platforms and to new types of financial instruments. Market abuse will henceforth be punishable under criminal law. Member States can decide to abolish administrative sanctions for this offence. In addition, a considerable number of rules and obligations have been refined.

In the course of 2015, the FSMA studied the new legislation and prepared its operational implementation. To this end, a project was launched to automate the reporting of directors' transactions and their publication by the FSMA.

## Reporting transactions in financial instruments in application of MiFID

Following upon the publication of the definitive texts of the MiFID II instruments on 12 June 2014, ESMA continued to work on preparing the technical standards for reporting transactions in financial instruments in application of Article 26 of the MiFIR Regulation. After the sectoral consultation, ESMA submitted to the European Commission the draft texts of the technical standards on 28 September 2015.

At the time of writing, the level II measures had not yet been approved by the European Commission, which proposed on 10 February 2016 to postpone the entry into force of the full MiFID II instruments by one year – i.e. until 3 January 2018 – in order to give market operators and regulators the chance to develop the necessary IT applications.

Conscious of the need to guarantee the predictability of their future enforcement actions, the market regulators represented within ESMA continued their work in this area and on 23 December 2015 published a *Consultation Paper* on the level III guidelines (the *Guidelines*). Responses to the consultation document could be submitted until 23 March 2016, so that the definitive Guidelines could be published in the second half of 2016, thereby allowing market operators to adjust their IT systems accordingly.

<sup>56</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/125/EC and 2004/72/EC, *Official Journal* L 173/1 of 12 June 2014.

<sup>57</sup> Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse, *Official Journal* L 173/179 of 12 June 2014.

### Supervision of compliance with disclosure obligations

The FSMA strictly supervises compliance with the deadlines established by law for publication of periodic information. In practice, the FSMA adopts two types of measure if listed companies do not comply with the deadlines. Very soon after the deadline for publication has lapsed, a warning is published. Such a warning mentions the names of the companies that have not met the legal deadline. If a company does not publish its information shortly after the deadline has passed, the FSMA imposes a new deadline. If it fails to comply with this new deadline, the FSMA may suspend the listing of its share.

The FSMA published one warning in 2015. The warning concerned three companies, of which the listing was suspended in 2013, 2014 and as from July 2015 respectively.

In 2015, the FSMA published a separate warning regarding two of the companies. The FSMA found the information disseminated by the company to be incomplete and inadequate to enable their securities-holders and the public to make an informed judgment about the company's position, management and results. One of these companies has since been delisted as a result of bankruptcy. ■

## 2.2.2. Supervision of financial products

The FSMA's supervision of financial products is intended to help ensure that the products that are offered are understandable, safe, useful and cost-transparent. Supervision relates to all financial products offered to consumers. It covers both the statutory information and advertising distributed about financial products and compliance with the product regulations themselves. The supervisory regime for a product is determined principally by the legal framework.

### 2.2.2.1. Transversal aspects of product supervision

#### 2.2.2.1.1. Moratorium

The moratorium on the distribution of particularly complex structured products to retail investors has been in place since 2011. The moratorium sets out the criteria used to determine whether or not a product should be considered particularly complex. These criteria relate to the accessibility of the underlying asset, the strategy of the derivative component, the number of mechanisms used, and the product's transparency. Nearly all providers of structured products have signed on to the moratorium. In doing so they commit to not distributing products to retail investors which are considered particularly complex under the criteria of the moratorium.

If any doubts exist as to whether a structured product should be considered particularly complex, the product is analysed in detail. In 2015, such a detailed analysis was conducted on 76 products which contained new characteristics, and the calculation formula for which was mostly based on a customized index.<sup>58</sup> 37 of these products were finally deemed to be particularly complex. These products were, as a result, not brought to the retail market. In addition, some fundamental questions as regards the application of the moratorium were examined. The standpoints taken by the FSMA in connection with these questions are set out in detail in Chapter II of this report<sup>59</sup>.

### Number and type of products

**Table 2:** Structured products distributed since the launch of the moratorium (1 August 2011-31 December 2015)

	31/12/2015	
	Number of products issued since the launch of the moratorium	Issue volume (in EUR million)
<b>Class 23</b>	<b>336</b>	<b>13,555.42</b>
Under the moratorium	335	13,555.42
Opt-out	1	N.A.
<b>Debt instrument (Note)</b>	<b>807</b>	<b>10,686.09</b>
Under the moratorium	792	10,686.09
Opt-out	15	N.A.
<b>Term deposit</b>	<b>18</b>	<b>245.48</b>
Under the moratorium	18	245.48

<sup>58</sup> A 'customized index' generally means an index that does not come under the definition of a 'benchmark'.

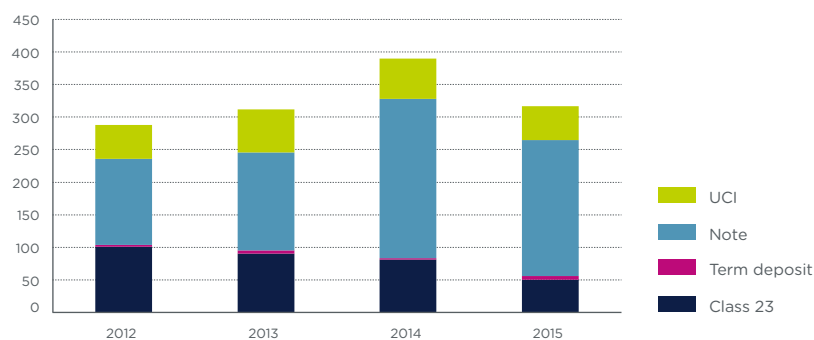
<sup>59</sup> See this report, p. 144 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

<b>UCI</b>	<b>266</b>	<b>9,451.01</b>
Under the moratorium	260	9,451.01
Opt-out	6	N.A.
<b>Private Note</b>	<b>1,578</b>	<b>N.A.</b>
Under the moratorium	122	N.A.
Opt-out	1,456	N.A.
<b>Total</b>	<b>3,005</b>	<b>33,938.00</b>

Since the launch of the moratorium, participating distributors distributed 3,005 products (see table 2), of which 1,478 under the opt-out and 122 as private notes<sup>60</sup>. The remaining 1,405 products represent an issue volume of EUR 33,398 million. The largest issue volume calculated from the launch of the moratorium continues to be made up of Class 23 products, closely followed by Notes. The distribution of particularly complex structured products under opt-out was principally via private notes (98.51 per cent), which are usually offered to a very limited number of clients.

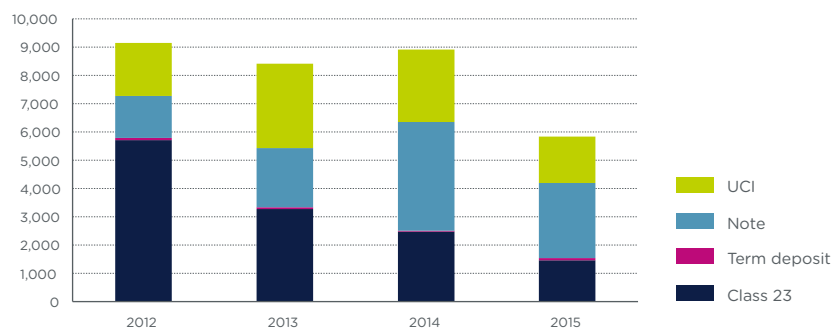
### Evolution since the launch of the moratorium

**Graph 18:** Evolution of the number of structured products distributed (per year)



In 2015, the number of structured products covered by the moratorium fell compared to 2014. In terms of the fall in the number of products launched, the most conspicuous is that of Class 23 products.

**Graph 19:** Evolution of the issue volume of structured products distributed (in EUR million per year)

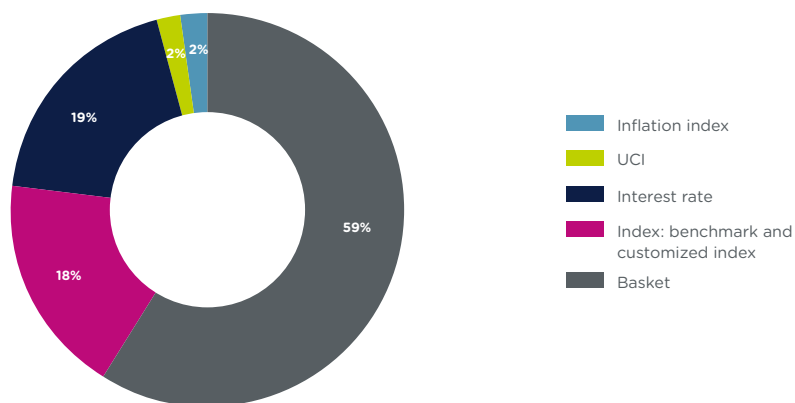


<sup>60</sup> Private notes are debt instruments issued as part of an offer that is not of a public nature within the meaning of Article 3, § 2 of the Prospectus Law.

The total issue volume also fell in 2015 compared to that of 2014. This fall in volume can be attributed almost entirely to the fall in issue of Class 23 products and funds.

### Analysis since the launch of the moratorium

Graph 20: Underlying value of structured products since the start of the moratorium



The moratorium stipulates, in particular, that the underlying asset of the structured product must be accessible. This means that the retail investor must be able to find information about the underlying through the usual channels such as the internet or the written press.

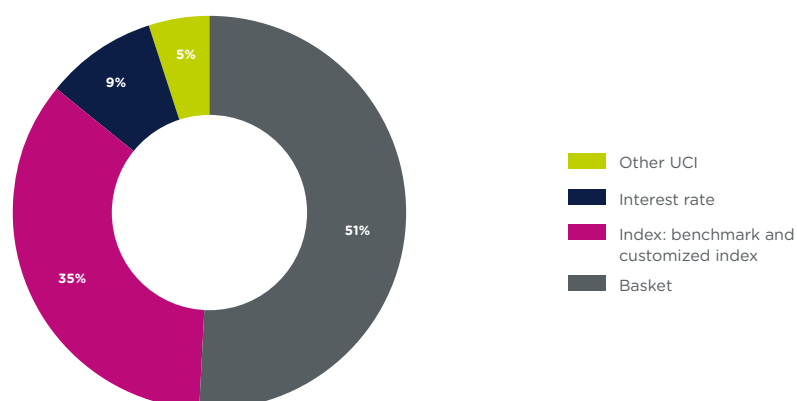
The most common underlying assets are baskets of shares, interest rates and indexes (see graph 20).

In 2015, investments in products with an index as an underlying increased in comparison to 2014. In 2014, 20 per cent of the structured products launched (in terms of issue volume) had an index as an underlying. This percentage has now gone up to 35.

This increase can be explained by the more frequent use of indexes that are considered customized indexes under the moratorium. Since the second half of 2013 and in 2014, distributors sold more products with indexes considered customized indexes under the moratorium as an underlying. This trend continued into 2015.

The FSMA is concerned about the complexity of certain customized indexes, especially as regards the selection of their components.

**Graph 21:** Underlying value of structured products - 2015



The customized indexes used often tap into the theme of sustainability. In other words, the shares included in the customized index were selected on the basis of criteria related to sustainable investment.

Other trends already identified in 2014 also continued into 2015. More and more products offered a right to repayment at maturity of only 90 per cent of the capital invested. Capital protection is under pressure from the low interest rates.

Also as a result of the low euro interest rates, many structured products were issued in US dollars. That is especially the case for UCIs, while Class 23 products and term deposit accounts were issued only in euros.

**Table 3:** Maturity of the structured products distributed between 1 August 2011 and 31 December 2015 (excluding opt-outs and private notes)

	Less than 2 years	From 2 to 5 years	From 5 to 8 years	More than 8 years	Total
Number of products	1	142	802	460	1,405
Issue amount (in EUR million)	5.16	2,020.67	21,229.87	10,682.30	33,938.00

Measured in terms of issue volume, more than half the products issued since the launch of the moratorium have a maturity of between five and eight years. In 2015, a greater number of products were issued with a maturity of less than five years compared to previous years.

#### 2.2.2.1.2. Supervision of advertising

The FSMA in general promotes sound advertising policies for financial products, with the aim of obtaining a more level playing field for the various types of financial products. Since the entry into force on 12 June 2015 of the new Royal Decree<sup>61</sup>, transversal rules apply to advertising for financial products. These rules cover aspects such as the minimum information required, reporting historical, simulated and future yields, and including examples and product comparisons.

<sup>61</sup> Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients. For more information on this Royal Decree, see the FSMA's 2014 Annual Report, p. 123-126 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>) and this report p. 130.

The rules apply to the distribution of units in UCIs/AIFs, investment instruments, savings and term deposit accounts, and insurance products. The entry into force of the Royal Decree raised many questions as to its application. After consultation with the sector and other interested parties, the FSMA clarified, through a circular, the rules that apply to advertising and other documents or publications used to sell financial products to retail clients<sup>62</sup>.

The FSMA aims to achieve uniform application of the new rules across different product categories. In its supervision of advertising and the application of the Royal Decree, the FSMA focuses on the use of plain language, intelligible advertising, cost-transparency and the way in which potential conflicts of interest between the manufacturer/distributor and the financial consumer are handled. If the FSMA is in any doubt as to the usefulness of a certain product, it can furthermore request that the product concerned go through the product approval process.

Regulated savings accounts continue to be the main savings products on the Belgian market. These accounts are offered by 34 credit institutions. In 2015, the FSMA approved 143 key information documents for savers and 128 advertising dossiers. These documents were drawn up whenever a new regulated savings account was launched or the conditions of an existing account were changed. The FSMA also handled 33 requests for information and analysis relating to regulated savings accounts.

In 2015, the FSMA opened 1,072 new dossiers relating to advertising for UCIs, which amounted to 2,884 pieces of advertising material. The FSMA also handled 287 dossiers relating to advertisements for notes.

On 31 December 2016, the PRIIPs regulation<sup>63</sup> enters into force. PRIIPs stands for Packaged Retail and Insurance-based Investment Products. This regulation standardizes the pre-contractual information which is to be communicated to a retail investor. It is essential to provide a Key Investor Information Document (KIID) for a PRIIPs. When this regulation enters into force, the FSMA will also be tasked with the supervision of these KIIDs.

#### 2.2.2.1.3. Research into the impact of low interest rates on retail investors

In 2015, the FSMA conducted research into the impact of low interest rates on the offer of savings and investment products to retail investors. An examination of specialist literature, research on information available, questionnaires to providers of financial services and a survey among Belgian consumers were all used as techniques to ascertain specific supply and demand factors for savings and investment products and to gain insight into their correlation with interest rates.

The main findings of this research are:

- Interest rates are by no means the only factor that determines supply and demand for investment products and, furthermore, the impact thereof is inconsistent. For the average Belgian, interest rates come fourth when it comes to making financial decisions, preceded by more important considerations such as the availability of capital, knowledge and experience in the matter, and a widespread and evident aversion to risk.
- At the very most, one in twenty Belgians claims to be likely to be enticed over the coming months into exploring new avenues for investment as a result of the low interest rates.

<sup>62</sup> See this report, p. 132 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

<sup>63</sup> Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (OJ 9 December 2014).

Insofar as these represent new types of investment entailing risks that could be inaccurately estimated or unsuitable, this observation could be interpreted in part as 'search for yield' behaviour. People who search for yield appear to be spread across the entire research population.

- The low or even negative interest rates have a more than probable impact on the valuation – and the basis for valuation – of financial instruments. An increase was also identified in all sorts of risk (liquidity, maturity or market risk, for example) contained in many of the asset components proposed (bonds, investment funds, investment insurance, for example) with potentially greater interim fluctuations in value, which could come coupled with unrealistic and inadequate yield expectations on the part of the public. Against this backdrop, clarity and full transparency on financial products' yield calculations, underlying investments, cost structure and any profit-sharing mechanisms are of utmost importance to enable investors to continue to make the right choices.
- It can be expected that asset components offered to private individuals could acquire proportionately more of an investment nature and as a result that their financial portfolios could increasingly come in line with the market. Retail investors will more rapidly be confronted with a range of market risks, and interim valuations of their asset portfolios are likely to see greater fluctuations. Offerors ought not to lose sight of the fact that deposit and savings products, and Class 21 insurance products, which are deemed safe, remain the public's preferred products and that they could better tailor their offer of safe products to risk averse clients.

The extent to which offerors such as banks, life insurance companies or investment funds themselves take more investment risks to safeguard their profits as a result of falling interest rates and low yields continues to be a point for attention. Changes in offerors' behaviour, dictated by a search for yield, or by safeguarding profits or an appropriate remuneration model, can have an impact on the way they pass on risks to retail investors.



## 2.2.2.2. Product-related aspects of supervision

### 2.2.2.2.1. Transactions in investment instruments

**Table 4:** Number of transactions in debt instruments

	2013	2014	2015
<b>Issues of debt instruments in which the capital is not subject to market risk through:</b>	<b>243</b>	<b>297</b>	<b>214</b>
Listed companies and other issuers	11	9	15
Credit institutions and related	232	288	199
<b>Issues of debt instruments in which the capital is subject to market risk through:</b>	<b>9</b>	<b>27</b>	<b>74</b>
Credit institutions and related	9	27	74
<b>Total</b>	<b>252</b>	<b>324</b>	<b>288</b>

As table 4 shows, in 2015 a total of 288 transactions in debt instruments took place. This represents a drop of more than 11 per cent as compared to the 324 transactions that took place the year before. This drop is entirely attributable to the reduction in the number of issues in which the capital is not subject to market risk through credit institutions and similar institutions. That number fell by almost a third. The number of issues of debt instruments in which the capital is subject to market risk rose by 174 per cent. There was already a considerable rise in this type of debt instrument in 2014.

#### CFDs/Forex

In 2015, the FSMA approved two prospectuses for the issue of contracts for difference (CFDs). A CFD is a contract between two parties who undertake to pay each other, at maturity, the difference between the initial value of the underlying asset and its value at the end of the contract (excluding commission and costs). The FSMA also approved three prospectuses for products that speculate on currency fluctuations, which are called forex products.

When prospectuses are submitted for such products, the FSMA pays particular attention to the illustration of how such products work and to the clear indication of the risks and costs associated therewith. A warning must be included on the first page of the prospectus as to the risk that the investment may generate a loss greater than the initial outlay. A similar warning must be included in the advertising materials for these products. Prospectuses must also cover aspects such as the management and organization of the issuer, how the trading platform works and the distribution and remuneration model. Finally, the content must be in line with the provisions of the Code of Economic Law, especially with those pertaining to unfair contract terms.

In recent years there has been a rise in the distribution of non-mainstream products to retail clients. These products are mainly distributed through the internet. These include CFDs, forex products and products called 'binary options'. These are products that usually have a short maturity and have a tendency to be risky, but they are often presented to clients as simple products which can earn them money quickly.

Based on these findings, the FSMA drew up a draft Regulation<sup>64</sup> in 2015 to set up a framework for the distribution of certain products on the Belgian retail market. At the beginning of 2016, the FSMA organized an open consultation on the draft Regulation.

### Base prospectuses approved by the FSMA

In 2015, the FSMA handled several base prospectuses. These pertained, inter alia, to the issue of asset-backed securities as part of securitization transactions, covered bonds and Euro Medium-Term Notes.

### Foreign transactions

There are also products distributed in Belgium based on a prospectus approved by a foreign supervisory authority. Table 5 shows how many foreign prospectuses and base prospectuses were used in 2015 for offers on the Belgian market. These came to a total of 149 prospectuses and base prospectuses. A distinction was made between the types of financial instrument to which the prospectus or base prospectus related.

**Table 5:** Number of incoming approval declarations per type of instrument

	Shares	Investment instruments with/without capital risk	Warrants	Total
Base prospectus	0	99	4	103
Prospectus	14	32	0	46
<b>Total</b>	<b>14</b>	<b>131</b>	<b>4</b>	<b>149</b>

**Table 6:** Number of incoming approval declarations per supervisory authority

	Base prospectus	Prospectus	Total
AFM (Netherlands)	14	9	23
AMF (France)	13	5	18
BAFIN (Germany)	11	1	12
CSSF (Luxembourg)	37	26	63
FCA (United Kingdom)	17	5	22
Central Bank of Ireland (Ireland)	11	0	11
<b>Total</b>	<b>103</b>	<b>46</b>	<b>149</b>

In 2015, the FSMA received notifications of approval of foreign prospectuses and base prospectuses from six foreign supervisory authorities. Table 6 shows an overview of these supervisory authorities and of the number of notifications of transactions based on the prospectuses and base prospectuses they approved. As in previous years, the Luxembourg supervisory authority, the CSSF, sent by far the most notifications (63). In second and third place respectively are the Dutch supervisory authority, the AFM (23), and the British supervisory authority, the FCA (22).

<sup>64</sup> Article 30bis of the Law of 2 August 2002 on the supervision of the financial sector and on financial services authorizes the FSMA, taking into account the interests of users of financial products and services, to impose a prohibition or restrictive conditions by way of a regulation on the distribution, or certain forms of distribution, of financial products, or certain categories of financial products, to retail clients. The FSMA may adopt such regulations upon the advice of its Supervisory Board and after having obtained the advice of the Consumer Board (Conseil de la Consommation/Raad voor het Verbruik). They come into effect only after approval by Royal Decree and publication in the Belgian Official Gazette.

During the same year, the FSMA granted a passport, at the issuers' request, to 14 transactions for which they had approved the prospectus. These passports were for 12 countries, including France for eight transactions, Germany for five transactions and the United Kingdom and the Netherlands for four transactions each.

#### 2.2.2.2.2. Regulated savings accounts

There are 131 different regulated savings accounts on the Belgian market, distributed by 34 credit institutions. The FSMA approves the key information documents for savers and the advertising for these accounts.

#### 2.2.2.2.3. Thematic citizens' lending

The offer of certificates of deposit and term deposit accounts as part of the thematic citizens' lending programme came to a complete standstill in 2015. The change in the tax treatment for these products is the most plausible explanation for this development.

#### 2.2.2.2.4. Undertakings for collective investment

**Table 7:** Evolution (in number) of Belgian undertakings for collective investment<sup>65</sup>

	2013	2014	2015
Belgian open-ended investment companies (bevek/sicav)	91	89	90
Joint investment funds	23	23	23
Pension savings funds	16	16	17
Closed-ended real estate investment companies	23	1	0
Other	3	3	3
<b>Total</b>	<b>156</b>	<b>132</b>	<b>133</b>

**Table 8:** Evolution in capital (Belgian open-ended UCIs - in EUR million)<sup>66</sup>

	2013	2014	2015
Belgian open-ended investment companies (bevek/sicav)	62,496	72,665	86,554
Joint investment funds	11,682	17,384	23,759
Pension savings funds	14,334	15,596	17,152
<b>Total</b>	<b>88,512</b>	<b>105,645</b>	<b>127,465</b>

The number of Belgian UCIs/AIFs remained largely the same as in 2014. As regards the net asset value of Belgian UCIs/AIFs, an increase of EUR 22 billion was noted in 2015. The downward trend in outstanding net assets of Belgian UCIs/AIFs, which lasted for many years, appears to have reversed in the last two years.

In 2015, the FSMA conducted an examination of the half-yearly accounts of a number of Belgian sub-funds of bond funds. Alongside the examination of the information included in the half-yearly accounts and of compliance with investment rules and limits, attention was also devoted to the liquidity management of portfolio investments.

<sup>65</sup> As at 31 December of each year.

<sup>66</sup> As at 31 December of each year.

## 2.2.2.2.5. Insurance

### Sectoral inspections

In 2014 the FSMA began sectoral inspections of financial reporting to clients about Class 23 life insurance. These inspections continued into 2015. The inspections focused on the half-yearly and annual reports that insurance companies must draw up for each investment fund distributed to private individuals through Class 23 life insurance policies<sup>67</sup>. The purpose of these reports is to inform the insureds on their investments for the entire duration of the contract. The minimum content of these reports is laid down by law.

The FSMA's inspection revealed that these financial reports were often not drawn up or were of a poor quality. For example, some reports contained no information about the composition of the investment fund's portfolio or about transactions in derivative products and foreign currency. The description of the fund's investment policy and the associated risks was also frequently inadequate.

The FSMA pointed out these shortcomings to the insurance companies concerned and called upon them to remedy them (see also the sidebar 'Supervision in practice'). As a result of this intervention, the quality of the financial reports improved considerably. The findings and experience gained from these sectoral inspections also formed the basis for a communication in which the FSMA explains its expectations as regards financial reporting to clients on Class 23 life insurance.

The FSMA also carried out sectoral inspections in 2015 in connection with basic homeowners' fire insurance contracts<sup>68</sup>. Here, particular attention was devoted to the provision of coherent, transparent and intelligible information for consumers. As a result of the inspection, the insurance companies concerned adjusted their policies and in some cases even drew up entirely new policies.

The findings from these inspections also formed the basis for two general communications. A first communication targets consumers and provides further information on the investigation. The other communication targets insurance companies and gives a brief overview of the main findings of the inspections and presents the FSMA's standpoint and expectations as regards these findings.

Since 1 November 2014, insurance companies are obliged to provide information on their website on the segmentation criteria they use for each type of insurance product. At the beginning of 2015, the FSMA carried out its first check of the websites to ascertain whether the necessary information was indeed being provided. This revealed that the information was in many cases missing, incomplete or not sufficiently clear. After the FSMA's intervention, all the insurance companies concerned adjusted their websites and published the necessary information.

The FSMA intends to launch a new sectoral inspection to more closely scrutinize the offer of life annuity insurance. This investigation is based on questions and complaints received, which at first sight raise questions as to the target group for these products and the manner in which the products are presented.

<sup>67</sup> Based on Article 73 of the Royal Decree of 14 November 2003 on life insurance activity.

<sup>68</sup> For more information about this sectoral inspection, see this report, p. 138 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

## Solvency II

In 2015, the FSMA provided its opinion to the NBB on the transposition of the Solvency II Directive<sup>69</sup> into Belgian legislation. At the beginning of 2015, the NBB sent a partial draft version of the transposition of the law to the FSMA for its opinion. As the supervisory authority tasked with the supervision of compliance with product and conduct of business rules for insurance, the FSMA did not address the prudential aspects of the law. The draft text was examined as regards the possible impact of the new rules on insurance consumers, and attention was also devoted to the manner in which the draft text dealt with the division of powers and the cooperation between the NBB and the FSMA.

### SUPERVISION IN PRACTICE

The FSMA has conducted a sectoral inspection of financial reporting to clients about Class 23 life insurance policies. Insurance companies must prepare half-yearly and annual reports for each investment fund that is distributed to private individuals via Class 23 life insurance products. These reports must include the information stipulated by law<sup>70</sup>.

As part of that sectoral inspection, the FSMA placed the financial reporting of two Belgian insurance companies under scrutiny towards the end of 2014. As major gaps were found in these reports (certain details were inaccurate whilst other details were missing, reports were in a language not permitted by the regulations, only some of the funds distributed were reported on, etc.), the FSMA asked these two insurers to remedy these

gaps and provide a new version of their financial reports.

Later, the FSMA checked the corrected financial reports. The FSMA ascertained that a number of its previous observations had not been sufficiently heeded. As a result, the FSMA decided in May 2015 to send a formal notice to those two insurance companies, giving them two months to comply with the applicable regulations. The FSMA also indicated the sanctions it could impose in the case of failure to comply with a formal notice. The FSMA also sent the NBB a copy of the formal notice letter.

Finally, both insurers provided a new version of their financial reports to the FSMA by the deadline stated, in which the FSMA's observations had been heeded. ■

<sup>69</sup> Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance.

<sup>70</sup> For more details on that sectoral inspection, see the FSMA's 2014 Annual Report, p. 53-54.

## 2.2.3. Supervision of compliance with conduct of business rules

The FSMA is responsible for supervising compliance by regulated undertakings with the conduct of business rules in force. Those rules are intended to ensure that the undertakings in question act honestly, fairly and professionally in accordance with the best interests of their clients. The rules of conduct require regulated undertakings to have a suitable organizational structure and to use the required procedures to ensure the correct and diligent treatment of consumers of financial services.

### 2.2.3.1. Compliance with the conduct of business rules by credit institutions, portfolio management and investment advice companies, UCI management companies and UCIs

The FSMA conducts on-site inspections at regulated undertakings<sup>71</sup> to verify whether they comply with the conduct of business rules that apply to them. These inspections follow a supervisory methodology which is based on specific work programmes. Five work programmes have been developed for the insurance sector to add to the 14 already developed for the banking sector.

An inspection can be on a specific theme, or a set of themes. An inspection can also be conducted as part of a special assignment. Themes and regulated undertakings to be inspected are selected on the basis of a risk assessment specially developed for this purpose.

#### Inspections - duty of care

In 2015 the FSMA continued its inspections on the theme of the duty of care. The duty of care means, among other things, that firms which offer complex financial instruments<sup>72</sup> must obtain the necessary information on their clients' knowledge and experience on the subject. If they offer investment advice or discretionary portfolio management to clients, they must also determine whether the transaction envisaged is suitable for the client in question.

The inspections conducted on this theme were intended to ensure that regulated undertakings act honestly, fairly and professionally and in the best interests of their clients when providing investment advice services or when executing client orders.

By means of these inspections in 2014 and 2015, the FSMA has covered 87 per cent of the sector, measured in terms of the number of retail clients. The FSMA inspections have enabled 200 shortcomings to be identified, 107 of which have resulted in the issuing of an order. Such an order means that the firm in question must prepare an action plan for remedying the shortcomings within the period laid down by the FSMA. The FSMA carefully monitors the implementation of such action plans.

<sup>71</sup> The FSMA is tasked with supervising rules of conduct in the following regulated undertakings insofar as they offer investment services:

- credit institutions governed by Belgian law
- branches in Belgium of credit institutions governed by the law of a State that is not a member of the EEA
- investment firms governed by Belgian law
- branches in Belgium of investment firms governed by the law of a State that is not a member of the EEA
- management companies of undertakings for collective investment governed by Belgian law
- branches in Belgium of management companies of undertakings for collective investment governed by the law of a State that is not a member of the EEA

<sup>72</sup> The FSMA has limited supervisory powers for rules of conduct in branches in Belgium governed by Member States of the EEA. As defined in Article 18 of Royal Decree of 3 June 2007.

The observations and recommendations made by the FSMA following its inspections on the theme of duty of care are discussed in a general memorandum that was sent to the sector. This memorandum is also available on the website of the FSMA and a summary thereof is included in the FSMA's 2014 Annual Report<sup>73</sup>.

### Inspections - Best execution

In 2015, the FSMA started a new round of inspections on the theme of best execution. This theme requires that regulated undertakings use policies and procedures that contribute to obtaining the best possible result for their clients when executing their orders.

Factors that are taken into account are the price, costs, speed, likelihood of execution and settlement, the size and nature of the order and all other aspects relevant for execution. The order execution policy must also mention the venue at which the client orders are executed and the factors that influence the choice of the execution venue. Clients must be informed in advance of this order execution policy and consent to it.

At the time of writing this report, the round of inspections was still ongoing. As with other inspections, the undertakings inspected receive an individual report identifying any shortcomings found. In addition, a general memorandum is sent to the sector detailing any observations and recommendations.

#### 2.2.3.2. Extension of the MiFID conduct of business rules to the insurance sector

The Belgian legislature has extended the application of the MiFID conduct of business rules to the insurance sector<sup>74</sup>. In a decision of 11 June 2015<sup>75</sup>, the Constitutional Court postponed until 1 May 2015 the date of entry into force of the provisions of the Law of 30 July 2013 on the extension of the MiFID conduct of business rules to the insurance sector. From that date on, service providers in that sector must follow certain rules regarding, for example, the management of conflicts of interest, duty of care and information to clients.

The conduct of business rules apply to all insurance intermediation services provided within Belgium, with the exception of insurance intermediation that relates to the first- or second-pillar pension plan and with limited exceptions for major risk cover. Some rules apply only to savings or investment insurance.

In 2014, the FSMA issued a circular to assist the insurance sector with the introduction of the MiFID rules. The circular explains the most important consequences of the extension of the MiFID conduct of business rules to this sector and explains the measures that must be taken to apply those rules.

<sup>73</sup> See the 2014 FSMA Annual Report, p. 56-57.

<sup>74</sup> See the 2014 FSMA Annual Report, p. 145 ff (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

<sup>75</sup> See present report, p. 151.

In 2015, the FSMA added to this circular the provisions on record-keeping. Insurance companies and intermediaries are obliged to retain all necessary information. This includes records on the identity of clients, advertising, details on the service provider's organization and supervision, information on the provision of insurance intermediation services and records that form part of their client dossier.

The FSMA is currently working on further clarifying two aspects of the new rules. First of all, this concerns information that an insurance company or intermediary must provide to its clients on the costs and charges of an insurance intermediation service. Secondly, this concerns information that the insurance company or intermediary must include in reports to its clients on the insurance intermediation service provided and/or the insurance policy entered into.

The FSMA has also made considerable efforts to raise awareness throughout the sector of the application of the MiFID rules. This included contacts with the various professional associations in the insurance sector, participating in conferences and holding meetings with several insurance companies.

In 2015, the FSMA started its site visits to assess compliance with the MiFID conduct of business rules by insurance companies and intermediaries. These site visits followed a methodology based on five themes, along with a risk assessment developed specially for the insurance sector.

The first round of site visits focused on the duty of care for the distribution of class 21 and class 23 life insurance. The aim of these inspections was not only to assess whether the MiFID conduct of business rules were being properly applied, but also whether the registration dossier and the intermediary's procedures for anti-money laundering were correct and complete. Given that this campaign was in the first place intended to raise awareness among insurance companies and intermediaries as regards the application of the conduct of business rules, the FSMA drew up a concise report on its observations.

When communicating its observations to the sector, the FSMA focused particularly on the educational aspects thereof. In its report, the FSMA explained its expectations and the applicable legal framework and provided a detailed description of its observations as compared with its expectations. This educational approach in communication will be further developed as the process continues and fine-tuned in line with the needs of the sector.

If the shortcomings identified as regards the conduct of business rules reveal that the applicable provisions are not complied with, the FSMA expects insurance companies and intermediaries to take the necessary measures to comply with the rules as provided for by the law.

In 2016 a second round of visits will begin. In line with practice in the banking sector, site visits to the undertakings and intermediaries in question could lead to the issuance of orders, recommendations and points for attention.



### 2.2.3.3. Mystery shopping

The FSMA has the power to engage in mystery shopping. This entails FSMA employees or external contractors mandated by the FSMA for the purpose of visiting regulated undertakings without revealing that they are acting on behalf of the FSMA. The FSMA started its first round of mystery shopping visits in 2014. These visits were conducted by an external specialist. To date, the FSMA has completed two campaigns. The purpose of these was to assess whether regulated undertakings comply with their obligations in the pre-contractual stage. The main conclusions of these assessments are summarized as follows.

- Regulated undertakings must encourage their staff, when offering investment advice to clients, to gather the necessary data on the client, to check the suitability of the transaction envisaged and to provide the necessary information to the client regardless of whether or not the transaction is ultimately executed.
- Advice does not always correspond with the scenario put forward and/or with the questionnaires used to gather data from the client.
- Undertakings should better communicate the transaction costs and the risks that the products proposed entail. They should also check that the information required by law is provided to the client, such as the key investor information document (KIID).

The conclusions of the mystery shopping campaign confirm previous observations made during inspections at the same banks. In 2016, the FSMA will organize a new campaign.

From now on, the FSMA will use mystery shopping for two types of task. The first relates to undertakings that have not yet had an inspection. The aim of mystery shopping at these companies is for the FSMA to gather information in order to assess whether a formal inspection is advisable.

The second type of mystery shopping takes place at undertakings that must draw up an action plan to remedy shortcomings that the FSMA has previously identified during an inspection. In such a case, mystery shopping serves to assess whether these action plans have an effect in practice.

### 2.2.3.4. Financing SMEs

The Law containing various provisions on SME financing<sup>76</sup> introduced the duty of care to the process of lending to SMEs. As a result, the FSMA has been tasked with overseeing the specific rules in this regard. This law endeavours to achieve the following:

- increase transparency as regards lending in the pre-contractual stage so that the enterprise is able to make a conscious and sufficiently informed choice and compare the contractual conditions of several different lenders.
- put the contractual relationship between the lender and the enterprise on a more equal footing.

The law also provides for a suitability obligation for the lender. This obligation entails the lender, as part of the loan arrangements it normally offers, searching for the loan that best suits the SME's requirements, taking into account the financial situation of the enterprise at the time of entering into the loan agreement and the purpose of the loan. This suitability obligation also applies to any credit intermediary.

<sup>76</sup> See the 2014 FSMA Annual Report, p. 145 ff.

In 2015, the FSMA conducted a round of inspections on this subject.

The results of these inspections will also serve as input for the two-yearly evaluation of this legislation as provided for in the Royal Decree on determining more detailed rules for the evaluation as referred to in Article 14 of the Law of 21 December 2013 on various provisions on the financing of small and medium-sized enterprises.

#### 2.2.3.5. Interest rate derivatives

In 2015, the FSMA conducted inspections on the issue of interest rate swaps for SMEs. Based on these inspections, the FSMA published a report on interest-rate derivatives to cover variable-rate loans to SMEs. This is discussed in greater detail in chapter II of this report<sup>77</sup>.

## 2.2.4. Supervision of market operators and intermediaries

### 2.2.4.1. Supervision of market operators

The FSMA is tasked with the prudential supervision of management companies of undertakings for collective investment (UCIs) and alternative investment fund managers (AIFMs), of portfolio management and investment advice companies and of regulated real estate companies. The purpose of this supervision is to verify that the companies under supervision are able to meet their obligations at all times and that the continuity of their business is guaranteed. Prudential supervision considers, among other things, a company's administrative and accounting structure, its internal control system, the quality of management, and the management and evolution of its risks. As regards regulated real estate companies, the FSMA ensures that they meet their information obligations as a listed company.

The FSMA also supervises independent financial planners and their compliance with the conduct of business rules that apply to their activities. Furthermore, the FSMA is responsible for supervising bureaux de change. The focus here is on preventing money-laundering and on ensuring the fitness and propriety of the management and the suitability of the shareholders. Lastly, the FSMA also supervises settlement institutions and ensures that certain financial and non-financial counterparties comply with the EMIR rules.

**Table 9:** Changes in the number of companies

	31/12/2013	31/12/2014	31/12/2015
Portfolio management and investment advice companies	20	19	19
Branches established in Belgium of investment firms governed by the law of another EEA state and falling under FSMA supervision	12	11	14
Investment firms governed by the law of another EEA state and that do business in Belgium under the free provision of services	2,783	2,882	2,886
Investment firms governed by the law of a country that is not a member of the EEA, which have notified their intention to provide investment services in Belgium under the free provision of services	83	84	84

<sup>77</sup> See the present report, p. 151 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

UCI management companies governed by Belgian law	7	7	7
Alternative investment fund managers governed by Belgian law	0	4	7
Branches established in Belgium of UCI management companies that are governed by the law of another EEA state	6	8	10
UCI management companies governed by the law of another EEA state and operating in Belgium under the free provision of services	74	91	98
Real estate investment companies/Regulated real estate companies	23	23	24
Bureaux de change authorized in Belgium	12	12	11
Independent financial planners	0	0	5
Small-scale alternative investment fund managers	0	0	42

The changes in the number of companies confirm the trend of previous years: both the number of portfolio management and investment advice companies and the number of UCI management companies governed by Belgian law has remained stable. However, a number of additional alternative investment fund managers governed by Belgian law were authorized. Furthermore, many new small-scale alternative investment fund managers were registered in 2015. In the same year, the first authorizations were granted to independent financial planners<sup>78</sup>.

### Portfolio management and investment advice companies

In the course of 2015, the FSMA granted authorization to one portfolio management and investment advice company. As part of its examination of such a dossier, the FSMA verifies, among other things, the company's shareholding structure, its financial plan, who will be tasked with its day-to-day management and how the company and, in particular, its accounting and control functions (compliance, risk management and internal audit) are organized. In addition to its analysis of the dossier and contacts with the applicant, the FSMA also makes on-site visits in order to ensure that the company is operational and meets all the requirements.

Furthermore, in 2015 the FSMA received an application to grant a company an authorization as a portfolio management and investment advice company only for the provision of the investment service 'placing of financial instruments without firm commitment'. The activity envisaged by the company consisted exclusively of promoting and distributing units in UCIs to financial intermediaries and institutional investors.

The company intended to limit its activities to connecting investors with issuers, and thus would not be involved with the management and transmission of subscription forms or with the cash flows generated by the subscription.

<sup>78</sup> See the present report, p. 159 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

The FSMA concluded that this activity does not constitute an investment service. It does not involve actively seeking subscribers and purchasers for the financial instruments concerned, nor the actual or full implementation of the subscription, namely the management and transmission to the issuer of the subscription forms, the receipt of funds and the delivery of the securities<sup>79</sup>.

Since the company did not intend to provide other investment services, it could not be granted an authorization as a portfolio management and investment advice company.

### Alternative investment fund managers

In 2015 the FSMA granted three companies an authorization as alternative investment fund manager.

When processing applications for authorization as an alternative investment fund manager, the FSMA examines whether all the legal requirements are met. It addresses, among other things, the governance, the audit and remuneration committee, conflicts of interest, delegation, risk management, the depositary, the firm's own funds and its professional liability insurance.

In addition, 42 small-scale alternative investment fund managers governed by Belgian law were registered. Such managers may manage alternative investment funds in Belgium if they are registered on a list maintained by the FSMA. In order to be registered on that list, managers must fulfil a number of conditions laid down in the AIFM law<sup>80</sup>.

In 2015 the FSMA approved the merger by acquisition of a UCI management company by a UCI and AIF management company. This merger followed the merger by acquisition of both parent companies.

Pursuant to Article 214 of the UCI law and Article 327 of the AIFM law, the authorization of the FSMA is required for mergers of UCI and AIF management companies or of such companies and other institutions that are active in the financial sector. The FSMA can refuse to grant its authorization for reasons relating to the sound and prudent management of the UCI and AIF management company or companies concerned.

The FSMA analyses every merger between management companies on a case-by-case basis. In so doing, it focuses on the following aspects:

- any change in the acquiring company's activities compared to its activities before the merger;
- the organization of the acquiring company (composition and operations of the Board of Directors and the Management Committee);

<sup>79</sup> See the present report, p. 164 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

<sup>80</sup> The conditions for registration on the list of small-scale alternative investment fund managers governed by Belgian law are:  
• either managing AIFs of which the total assets under management, including assets acquired by means of leverage, do not exceed the threshold of 100 million euros;  
• or managing AIFs of which the total assets under management do not exceed the threshold of 500 million euros, where the AIFs in question do not work with leverage and where no reimbursement rights may be exercised for a period of five years from the date of the original investment in each institution.

- the financial impact of the merger on the acquiring company (in particular the business plan of the acquiring company and compliance with the own funds requirements<sup>81</sup>);
- the applicable procedures within the acquiring company (which procedures of the acquiring company/the company being acquired will be kept/modified, temporary application of other procedures to the staff of the acquiring company/the company being acquired, etc.).

The analysis showed that the organizational structure, the need for own funds and the procedures of the acquiring company were in accordance with the UCI law and the AIFM legislation. Consequently, the FSMA did not oppose this merger by acquisition.

Lastly, the FSMA has systematized its contacts with the auditors of management companies, in the course of which the respective views on the companies concerned are exchanged. This makes for improved understanding of the functioning of the supervised entities and identifying points requiring attention.

### Inspections

Supervision of portfolio management and investment advice companies, UCI management companies and bureaux de change is carried out through on-site inspections, among other means. In the year under review, these inspections focused specifically on the topic of governance, with particular attention to the companies' management structure and the organization of key functions, i.e. compliance, risk management and internal audit. The FSMA also examined how these companies apply the rules regarding prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

On completion of such an inspection, serious shortcomings were identified in the organization of one portfolio management and investment advice company. These shortcomings were such that questions arose concerning the company's viability. On the basis of the findings the FSMA set a deadline by which the company in question was required to remedy the shortcomings identified.

### Regulated real estate companies

In 2015 the FSMA granted one company an authorization as a regulated real estate company. When processing such applications, the FSMA checks whether the company meets the legal requirements. Among other things, it looks at the composition and the diversification of the portfolio, the governance structure, and the organization, staff and internal control functions (compliance, risk management, internal audit). Moreover the FSMA approves the prospectus for the public offering and the listing of the new company's shares.

**81** The own funds requirements are set out in:  
 (i) Article 206 of the UCI law and Article 332 of the AIFM law  
 (ii) Article 22 of the AIFM law and  
 (iii) Article 14 of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

In the supervision of regulated real estate companies, an important role is also played by the auditors. Therefore the FSMA is in continuous contact with them. Meetings have taken place with the auditors of all real estate companies regarding the examination of the accounts and the functioning of the internal audit. Following the establishment of the BE-REIT Association, the professional association of the Belgian regulated real estate companies, the FSMA and this Association agreed to hold regular meetings.

### Independent financial planners

After the entry into force of the new financial planning legislation on 1 November 2014, the FSMA received several applications for authorization as independent financial planner. In 2015 the FSMA granted such authorization to four legal persons and to one natural person.

Prior to granting such an authorization, the FSMA verifies whether the applicant fulfils all the conditions. These conditions concern, among other things, the fitness and propriety and the expertise of the senior management and of the persons representing the independent financial planner, as well as the organization, financial plan, professional liability insurance and quality of the shareholder structure.

### Consultation with the NBB

Persons nominated to participate for the first time in the governance of a financial undertaking under the supervision of the NBB have to be assessed on the basis of their fitness and propriety. As part of this assessment, the NBB is obliged to consult the FSMA. This procedure also applies to those responsible for the independent control functions at a financial undertaking under the supervision of the NBB. The FSMA provides the NBB with its advice regarding fitness and propriety within one week of receiving the request for advice. In 2015, the FSMA provided advice of this nature to the NBB for 341 persons.

### European Market Infrastructure Regulation (EMIR)

The entry into force of the EMIR Regulation<sup>82</sup> has resulted in a number of new obligations. Thus, companies that enter into derivative contracts must report their derivative transactions and adopt risk-mitigation techniques.

The FSMA also contributes to the supervision of compliance with these obligations by non-financial counterparties, a substantial number of which have not previously come under the supervision of the FSMA. In 2015 the FSMA worked with the *Instituut der Bedrijfsrevisoren / Institut des réviseurs d'entreprises* (Institute for company auditors) on the drafting of supervisory programmes for these non-financial counterparties. The programmes will be implemented in the course of 2016.

In addition, the counterparties are obliged to report to one of the six trade repositories registered with ESMA the details of all derivative contracts they enter into. Each counterparty reports its part of the transaction, and the trade repositories are tasked with consolidating and reconciling the reports of both counterparties in order to publish combined data on the outstanding derivative contracts. It is therefore essential that the counterparties' reports correspond in every respect in order to be reconciled and included in the aggregated statistics as constituting a single contract.

<sup>82</sup> Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

The quality of the data reported to the trade repositories is therefore essential and the regulators have, through ESMA, carried out a first coordinated quality control based on error reports from the trade repositories. This initiative has revealed the difficulties encountered by both counterparties and trade repositories. If necessary, clarifications will be made via the FAQs on EMIR that are published on the ESMA website. Further checks are scheduled for 2016.

Finally, the FSMA also participates in the international consultation regarding EMIR. Thus the FSMA sits on ESMA's Post-Trading Standing Committee, the forum where supervisors can discuss the EMIR obligations. The FSMA also sits on supervisory colleges, either as the authority tasked with the supervision of the trading platform to which the central counterparty provides services or as the competent authority that supervises the central securities depositories with which the central counterparty is connected. These colleges are involved in the procedures for granting authorization to and the supervision of those counterparties.

### Central Securities Depositories (CSD)

On 23 July 2014, the CSD Regulation was approved<sup>83</sup>. Article 11 of the Regulation stipulates that each Member State must designate a competent authority. This authority is responsible for the authorisation and supervision of CSDs established in its territory. Where a Member State designates more than one competent authority, their respective roles must be determined. A single national authority is responsible for cooperation with other Member States' competent authorities and with ESMA and EBA.

In Belgium, the NBB was designated as the first-line competent authority<sup>84</sup>. The NBB is accordingly responsible for the authorization and supervision of central securities depositories established in Belgium unless otherwise provided for in the CSD Regulation. In this respect it should be noted that the CSD Regulation grants specific powers to the FSMA as the authority responsible for the supervision of Euronext Brussels<sup>85</sup>.

Moreover, supervision of the settlement system and its operator is exercised both from a prudential point of view and with a view to investor protection and the proper functioning of the markets. The division of powers as provided for in the CSD Regulation was therefore made in light of the division of powers between the FSMA and the NBB, as implemented by the Twin Peaks reform. Thus, the Belgian legislators tasked the FSMA with verifying that the central securities depositories comply with a number of Articles<sup>86</sup> of the CSD Regulation. When considering an authorization dossier, the FSMA provides advice to the NBB on the aspects within its competence.

<sup>83</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 ('CSDR').

<sup>84</sup> Article 1, § 1 of the Royal Decree of 11 June 2015 designating the competent authority responsible for the authorization and supervision of central securities depositories.

<sup>85</sup> These concern, for example, Article 5 (intended settlement date), Article 6 (1) (measures to prevent settlement fails) and Article 7 (9) (measures to address settlement fails).

<sup>86</sup> These are Article 26 (3) (conflicts of interest), Article 29 (record keeping), Article 32 (goals, objectives and rules for the handling of complaints), Article 33 (requirements for participation), Article 34 (transparency), Article 35 (communication procedures with participants and other market infrastructures), Article 38 (protection of securities of participants and those of their clients), Article 49 (freedom to issue in a CSD authorized in the Union) and Article 53 (access between a CSD and another market infrastructure).

As member of the Post-Trading Standing Committee of ESMA, the FSMA participates in the international consultation regarding the CSD Regulation.

#### SUPERVISION IN PRACTICE

In 2015 numerous initiatives were taken by different market participants in order to promote crowdfunding in Belgium. Several projects were submitted to the FSMA in order to examine, among other things, whether they are subject to the AIFM Law or the Prospec-

tus Law. Within the framework of the supervisory powers conferred upon it by these Laws, the FSMA closely examined the structures in place, either to make sure that they do not fall within the scope of the aforementioned laws, or to monitor compliance with those laws. ■



#### 2.2.4.2. Supervision of credit providers

**Since 1 November 2015, the FSMA's mandate in respect of credit providers has changed significantly. As from that date, supervision of compliance with the legal requirements when granting mortgage loans to consumers, including the approval of standard contracts, is carried out by the Federal Public Service Economy. The task of the FSMA henceforth consists essentially of supervising access to the activity of mortgage credit and consumer credit provider. The supervision includes processing applications for authorization and supervision of ongoing compliance with the conditions for exercising this activity.**

In order to allow the sector to prepare thoroughly for the entry into force of the new law on credit provision, the FSMA has set up an informational website. The site [mcc-info.fsma.be](http://mcc-info.fsma.be) explains the conditions and procedures for authorization by means of videos and thematically structured FAQs. The site also provides model documents that applicants for an authorization must complete.

Credit providers must submit their request for authorization via an online application that has been operational as from 2 November 2015. This is the only way the requests can be submitted.

All mortgage companies that on 1 November 2015 were registered or enrolled in accordance with the Law of 4 August 1992 on mortgage credit, and all credit providers that on 1 November 2015 were recognized or registered as a credit provider in accordance with the Law of 12 June 1991 on consumer credit, have a transitional period of 18 months to apply for an authorization. In 2015 no applications for authorization were submitted.

#### 2.2.4.3. Supervision of intermediaries

**Since 1 November 2015, the FSMA is the competent authority for supervising access of all financial intermediaries to their professional activity: in addition to intermediaries in banking and investment services and insurance intermediaries, intermediaries in mortgage credit and in consumer credit must also now request registration with the FSMA. The FSMA's task is essentially to process requests for registration in the various registers of intermediaries and to update those registers. The FSMA also supervises compliance with the legal requirements for maintaining registration.**

##### **Intermediaries in mortgage credit and consumer credit**

In order to allow the sector to prepare thoroughly for the entry into force of the new law on credit intermediation, the FSMA has set up an informational website (see above).

Credit intermediaries must submit their request via an online application that has been operational as from 2 November 2015. This is the only way the requests can be submitted. The application is set up in a user-friendly format, thanks in part to an earlier test phase and feedback from the sector. The quality of the dossiers submitted is therefore generally good.

Credit intermediaries that on 1 November 2015 had been active for at least one year have a transitional period of 18 months to submit a request for registration. For credit intermediaries with less than one year's experience, the transitional period is only 2 months.

In order to gain access to the profession of intermediary in consumer credit and/or in mortgage credit, an exam must be taken. The FSMA has recognized the exams administered in Dutch, French, German and English.

## Intermediaries in banking and investment services and (re)insurance intermediaries

The FSMA's mandate in respect of intermediaries in banking and investment services and (re) insurance intermediaries<sup>87</sup> consists essentially in supervising access to the profession of intermediary in banking and investment services and of insurance intermediary. The supervision includes processing applications for registration in the registers of insurance and reinsurance intermediaries and of intermediaries in banking and investment services, and keeping those registers up to date. The FSMA also supervises compliance with the legal requirements for maintaining registration.

Table 10: Registrations

Insurance intermediaries	31/12/2013	31/12/2014	31/12/2015
<b>Collectively registered</b>	<b>6,200</b>	<b>4,822</b>	<b>3,929</b>
Agent	1,086	888	813
Sub-agent	5,114	3,934	3,116
<b>Individually registered</b>	<b>10,338</b>	<b>9,931</b>	<b>9,341</b>
Broker	7,997	7,721	7,347
Agent	1,817	1,655	1,478
Sub-agent	524	555	516
<b>Total</b>	<b>16,538</b>	<b>14,753</b>	<b>13,270</b>
<b>Reinsurance intermediaries</b>	<b>31/12/2013</b>	<b>31/12/2014</b>	<b>31/12/2015</b>
<b>Individually registered</b>	<b>14</b>	<b>14</b>	<b>15</b>
Broker	12	12	13
Agent	2	2	2
<b>Intermediaries in banking and investment services</b>	<b>31/12/2013</b>	<b>31/12/2014</b>	<b>31/12/2015</b>
<b>Collectively registered</b>	<b>2,973</b>	<b>2,920</b>	<b>2,788</b>
Agent	2,973	2,920	2,788
<b>Individually registered</b>	<b>738</b>	<b>678</b>	<b>622</b>
Broker	15	16	15
Agent	723	662	607
<b>Total</b>	<b>3,711</b>	<b>3,598</b>	<b>3,410</b>

<sup>87</sup> Supervision of intermediaries is governed by the Law of 4 April 2014 on insurance and the Law of 22 March 2006 on intermediation in banking and investment services and the distribution of financial instruments.

## Changes in the lists

On 31 December 2015 there were 13,270 insurance intermediaries in the register of insurance and reinsurance intermediaries. That is 1,483 fewer than on 31 December of the previous year. There were 15 registered reinsurance intermediaries. The register of intermediaries in banking and investment services comprised 3,410 intermediaries registered, which is 188 fewer than a year ago.

In 2015, 1,140 new insurance intermediaries and 183 new intermediaries in banking and insurance services were entered in the relevant registers. The majority of deregistrations were of intermediaries whose registration was deleted at their own request or intermediaries whose collaboration with the central institution had come to an end.

In the year under review, The FSMA removed 95 insurance intermediaries from the register because they failed to comply with the registration conditions. In such cases, the FSMA sets a deadline by which the intermediary must remedy the shortcoming. If this is not done, the FSMA proceeds to strike the intermediary in question from the register, or the registration lapses automatically. This occurs, for example, where an intermediary fails to take out insurance for professional liability risks or if it does not reply to questions posed by the Insurance Ombudsman in relation to a complaint.

Moreover, in 2015 the FSMA suspended or definitively struck off the registration of 18 insurance intermediaries because their fitness and/or propriety had been called into question. The FSMA has a margin of appreciation for determining whether the registration requirements are met. Examples of cases in which the fitness and propriety of an intermediary are called into question include embezzling client funds, failure to pass on the insurance premiums paid or producing false insurance policies.

The FSMA also struck 10 intermediaries in banking and investment services from the register in 2015 because the bank agency agreement between the agent and the principal was terminated.

## European passport

Insurance intermediaries registered in another EEA state may also carry out their activities as insurance and reinsurance intermediaries in Belgium under the free provision of services or via a branch<sup>88</sup>. In 2015, 564 insurance intermediaries registered in another EEA state reported that they wished to carry out the activity of insurance intermediation on the Belgian market; 202 ceased operations.

69 Belgian insurance intermediaries submitted an application in 2015 to engage in activities in one or more other EEA states. 22 Belgian intermediaries that were already active via the free provision of services sought to expand their activities to additional states within the EEA.

<sup>88</sup> Based on European Directive 2002/92/EG.

### **On-site inspections**

In 2015 the FSMA conducted 18 on-site inspections with a view to verifying the registration dossiers of insurance intermediaries. These types of inspections make it possible among other things to conduct an ex-post check that the intermediaries are complying with the registration conditions, such as the obligation to engage in continuing education.

With respect to the continuing education obligation of intermediaries, in the course of 2015 the FSMA also conducted 9 inspections of accredited training providers. During the inspection, the FSMA looked at whether the training providers followed the conditions regarding the form, content and organization to which they committed themselves at the time of their accreditation.

The FSMA also carried out five inspection visits in 2015 at the newly established recognized exam centres. At these centres, insurance and reinsurance intermediaries as well as intermediaries in banking and investment services can take the recognized exams that serve as the gateway to the profession. The exams are organized in accordance with a strict procedure so as to ensure the smooth operation of the new regulations.

### **Professional liability insurance**

One of the conditions of registering as an intermediary and maintaining registration is to take out professional liability insurance. This is in the interest of the consumer. Claimants can obtain compensation for damages they suffered as a result of professional errors committed by the intermediary. Claims for compensation can be submitted directly to the professional liability insurer.

During the year under review, the FSMA engaged in constructive consultation with a representative sample of insurance companies who offer cover for the professional liability of intermediaries. These insurance companies are required to inform the FSMA if their professional liability insurance comes to an end. Concrete working arrangements were made in this regard. The FSMA can in that case take the necessary measures immediately in order to address cases where an intermediary is uninsured.

### **Newsletter for intermediaries**

The FSMA decided to distribute a 'Newsletter for Intermediaries' at least twice a year. The aim is to contribute to a more active and direct communication with intermediaries. The subjects treated will relate specifically to the target group, namely, intermediaries that need to be registered with the FSMA in order to carry out their activities. In addition, the FSMA may also send out occasional news flashes for intermediaries on a given topic. The first Newsletter was sent out on 14 January 2016 to around 7,000 intermediaries.

## 2.2.5. Supervision of supplementary pensions

The FSMA is tasked with supervising supplementary pensions that employees and the self-employed accrue through their professional activities ('second-pillar pensions'). These pensions are accrued through insurance companies and pension funds. The FSMA supervises compliance with the social legislation applicable to second pillar pensions. This is called 'social supervision'. The FSMA also monitors the financial health and appropriate organization of the pension funds. This is called 'prudential supervision'.

### 2.2.5.1. Social supervision

2015 was an important year for the FSMA in terms of social supervision. Continued progress as regards access to the 'DB2P' (the supplementary pensions database) opened up a whole array of new possibilities for supervision.

The DB2P registers an array of crucial data pertaining to supplementary pension schemes such as individualized acquired pension rights of employees, self-employed persons and civil servants.

From October 2016, citizens obtain access to this database with their electronic ID card through the website [www.mypension.be](http://www.mypension.be). With this, they can verify which pension institution manages their supplementary pension and how much it amounts to.

For the FSMA, the new potential for use of the DB2P represents a turning point in the social supervision of supplementary pensions. For the first time, the FSMA has a good overview of second pillar pension schemes and of the pension rights accrued within them.

In 2015, the FSMA took the first steps towards the operation of the database, with the help of the database manager SIGeDIS, which works hard towards opening up the database to the FSMA.

The FSMA has taken the opportunity of the DB2P being put into operation to redirect the social supervision of supplementary pensions towards systematic supervision. This work is built around four key points: supervising, informing, regulating and handling complaints.

#### 2.2.5.1.1. Supervising

The FSMA focuses on proactive and systematic social supervision. This means that social supervision is conducted on the basis of periodic supervisory programmes, with the initiative coming from the FSMA, and supervisory actions no longer depending on external reports or events. Last year, the FSMA chose two major themes: 'Reporting to DB2P' and 'Supplementary pensions and resignation/dismissal'.

#### Reporting to DB2P

It is essential that the DB2P work properly for citizens when the database is opened to the general public in autumn 2016. Citizens must immediately be able to accurately assess their supplementary pension as well as be able to re-trace "forgotten" pension rights. Clearly, these aims can only be achieved if pension institutions properly report the information required to DB2P.

Comprehensive and accurate DB2P reporting is also crucial for the development of systematic social supervision. For this reason, any reporting issues must be detected on time and reported to the pension institution with a view to correcting or adding to the declarations made. This will also prevent non-compliance with declaration obligations becoming an advantage to the pension institutions concerned as a result of no longer being included in the supervisory action pertaining to social supervision.

For these reasons, this supervision paid particular attention to the provision of information by pension institutions to the data manager SIGeDIS. More particularly, the FSMA examined whether pension institutions fulfilled their declaration obligations to DB2P. The FSMA also examined the quality of the reporting. It was also ascertained whether the information provided was accurate and complete.

More particularly, the FSMA examined whether the institutions send the rules corresponding to each pension scheme and whether they report the annual statements for each beneficiary to the DB2P. These statements provide an individual and updated overview of the main aspects of the supplementary pension accrued, for example on the accrued reserves, the accrued benefits, the death benefits and the amount of guaranteed return. The FSMA also examined whether pension institutions correctly register exits by beneficiaries.

The FSMA ascertained that a limited number of pension institutions did not comply with their declaration obligations. These institutions have in the meantime started reporting or are in the process of preparing their reporting. In order to raise awareness among foreign pension institutions that manage Belgian pension plans, the FSMA decided to include the DB2P reporting obligations in the list of provisions of Belgian social and labour legislation. Foreign pension institutions that manage Belgian pension plans must adhere to these rules.

As regards the quality of reporting, the FSMA identified quite a number of issues. These enquiries also brought to light major differences between institutions. The FSMA pointed out the shortcomings to the institutions. In a follow-up enquiry, an overall improvement was observed in the quality of reporting. Despite this, some pension institutions continue to be problematic. The FSMA demanded that the institutions that continued to be at fault take measures to remedy this situation. The FSMA will not hesitate to deal strictly with institutions that do not fully comply with their obligations.

### **Supplementary pensions and resignation/dismissal**

The FSMA organized a thematic supervisory programme for the first time in 2015. A transversal pilot project was launched on the theme of supplementary pensions and dismissal. The FSMA enquired into how pension institutions deal with the rights of “dormant” members. These are beneficiary employees who no longer actively contribute to the accrual of the supplementary pension as a result of resignation/dismissal.

#### **Dormant member rights in the pension scheme**

The FSMA compared the accrued benefits and reserves of dormant members with those of active beneficiaries for a similar amount of years of service. It identified that certain pension schemes contain clauses by virtue of which the accrued reserves and benefits of dormant members were less favourable than those of active beneficiaries. Such clauses are in breach of the legal rules regarding accrued reserves and benefits.

The FSMA detected around ten problem dossiers. These dossiers related to the return on pension reserves and to the right to beneficial early withdrawal of pension benefits. The problem dossiers relating to return were successfully closed. Dormant members can continue

to benefit from their membership in the pension scheme with no reduction to the return on their pension reserve. The problem dossiers relating to the right to beneficial early withdrawal of pension benefits culminated in the publication of a new law. Pursuant thereto, the right to beneficial early withdrawal will ultimately be eradicated, both for active beneficiaries and for dormant members.

## SUPERVISION IN PRACTICE

### Information upon exit

As a supervisory authority, the FSMA oversees compliance with social legislation on supplementary pensions, both by employers that offer a supplementary pension and pension institutions that manage pension plans. Every year, it conducts supervisory action on a large number of pension institutions around a particular theme that is of direct concern to pension consumers. As part of this, in 2015 it scrutinized information that pension institutions provide to employees when they leave their employment as a result of resignation or dismissal. In pension jargon, this is called “exit”.

In accordance with the WAP/LPC [the Belgian supplementary pension law], employees have a right, upon exit, to certain information on their pension reserves already accrued and on how these can be managed. This information must be written clearly and accurately and provided to the employee within 60 days. The aim of this obligation is to ensure that employees can make a suitable choice, in a timely manner, for further management of their pension reserves after exit, with all the relevant information at their disposal.

As part of a sample check, the FSMA requested all the information that pension institutions had provided to employees who had exited. This information was examined in detail for

timeliness, completeness and comprehensibility.

The FSMA identified a number of infringements. The information provided was often incomplete and also at times misleading. Pension institutions do not always communicate all the options available to exiting persons for the further management of their pension reserves. Exiting persons are also sometimes insufficiently informed as to what happens to their pension reserves should they die before taking retirement. Furthermore, the comprehensibility of the information often left a lot to be desired and pension institutions and employers regularly failed to observe the deadlines laid down.

The FSMA informed each pension institution concerned individually as to the irregularities identified in their regard. It asked the pension institutions to draw up an action plan to ensure that in the future, exiting employees receive all the information required by law. The FSMA also published a communication bringing together the main findings of the enquiry and formulating a number of expectations and recommendations. The communication contains tips, and highlights examples of good practice from the pension sector. In this way, the FSMA opted for a constructive approach to help the sector eradicate shortcomings and is delighted with the positive response elicited by this approach. ■

### Pension rights of beneficiaries in case of death

In 2015, the FSMA enquired into the issue of unpaid death benefits. It was supposed that this issue was greater among dormant beneficiaries than among active beneficiaries. In the latter case, the employers are in principle there to ensure that the pension institutions are in possession of the necessary information to pay out the death benefits.

This enquiry revealed that very few pension institutions make use of the possibility they have by law to consult the national register or the information provided to them annually by the database manager SIGeDIS. As a result of this, pension institutions often have no idea of the fact that a beneficiary has died, ensuing in non-payment of the pension rights which may be due to beneficiaries. The FSMA highlighted this issue by comparing data from the National Register with those of the DB2P. It confronted the pension institutions concerned with its findings and requested that they take the necessary organizational measures. The FSMA will continue to closely monitor this issue.

#### 2.2.5.1.2. Informing

The FSMA aims to set standards in terms of reliable, intelligible and useful information about supplementary pensions. A distinction is made here between the different levels of information tailored to different target groups.

A first level of information is addressed to the general public and aims to provide easily understandable basic information on supplementary pensions. This target group is addressed through Wikifin, the FSMA's financial education programme.

A second level of information concerns consumers of supplementary pensions. These are consumers entitled to a supplementary pension and who have a need for a specific overview of their rights and obligations relating to supplementary pensions. This overview must enable them to understand what is expected of them in certain circumstances or what they may expect from others in those circumstances. Supplementary pension consumers must be able to assess whether things are being done correctly. They should also be able to make a well-informed choice when they have to - or have the option to - make a decision. This target group is addressed via a special FAQ tab on the consumer page of the FSMA website.

A third level of information is directed at institutions under supervision and at pension professionals. They will receive information via a tab dealing with legal doctrine on the 'supervision' section of the website (see below).

The FSMA took action in 2015 relating to several levels of information. Through Wikifin, it distributed a newsletter focusing on the issue of supplementary pensions and resignation/dismissal. The first instalment in a set of FAQs was published on the FSMA website. In addition to a general section ("supplementary pensions at a glance") there is a part that goes in greater depth into the rights of employees as regards their supplementary pension when they are dismissed or when they resign. This FAQ will be added to further over the course of 2016.

The FSMA is additionally tasked with writing reports every two years on sectoral pension schemes and voluntary supplementary pensions for self-employed persons. The FSMA published the fifth edition of these reports this year.



### 2.2.5.1.3. Regulating

Actions by the FSMA have, over the years, given rise to the development of an extensive body of doctrine: guidelines that the FSMA uses as a starting point for conducting its supervision. This body of doctrine is available via the tab dealing with legal doctrine on the 'supervision' section of the website. All new standpoints of the FSMA regarding legislation on supplementary pensions are also published there.

In this way, the FSMA aims to contribute to a correct and uniform application of the legislation on supplementary pensions. The FSMA also aims in this way to increase transparency as to its expectations as a supervisory authority and thereby to increase the predictability of its action.

As part of this, in 2015, the FSMA organized a consultation on multi-employer pension schemes<sup>89</sup>.

### 2.2.5.1.4. Handling complaints and questions

The FSMA serves as complaints handler for supplementary pensions. In 2015, the FSMA received 236 questions or complaints on supplementary pensions, the majority of which could be dealt with over the course of the year. The large majority of dossiers handled concerned pension legislation for employees (Law on supplementary pensions for employees, or WAP/LPC).

#### Statutory guaranteed return for supplementary pensions

The social partners belonging to the Group of 10 entered into an agreement in 2015 on the statutory guaranteed return for supplementary pensions. At the request of the Minister of Pensions, the FSMA provided its technical expertise for the transposition of the agreement into legal texts. The new legislation obliges the FSMA from 2016 to annually calculate and publish the interest rates for the calculation of the minimum guaranteed return<sup>90</sup>.

### 2.2.5.2. Prudential supervision

At the end of 2014<sup>91</sup>, there were 195 institutions for occupational retirement provision (IORPs) active in Belgium. These pension funds comprised 1.48 million beneficiary members. This figure was the same in 2013.

The joint balance sheet total of pension funds rose by 15 per cent in 2014 to 23.4 billion euros. Just as in 2013, this rise is predominantly attributable to healthy financial results. Pension funds primarily invested in shares and bonds with a very slight predilection for bonds. These investments occurred primarily via UCIs.

<sup>89</sup> See articles 3, § 1, 25<sup>a</sup> and 33/2 of the WAP/LPC [the Belgian supplementary pension law], as amended by the law of 15 May 2014.

<sup>90</sup> See the FSMA's website: <http://www.fsma.be/nl/Site/Repository/wgapwn/rendementsgar.aspx>.

<sup>91</sup> At the end of 2015 there were 198 IORPs. The full statistics for 2015 were not available at the time of writing the annual report.

In 2015, six new pension funds came into being. Three funds went into liquidation.

At the end of 2015, 14 pension funds engaged in cross-border activity in 11 different countries. Belgium is a key player in the area of cross-border pension management. The FSMA approved seven new dossiers last year relating to the cross-border activities of four funds. At the end of 2015, nine new dossiers from six funds were still being handled.

The FSMA bases its supervision of the financial health of the pension funds on three facets: supervising, reporting, and regulating. Here follows some further information on a number of developments in the area of supervising and regulating.

#### 2.2.5.2.1. Supervising

##### **Monitoring recovery and reorganization measures**

Funding gaps in the pension funds sector as a result of the financial crisis have already been a thing of the past for a few years. The FSMA has in the meantime identified new gaps. These gaps are primarily the result of stricter, and therefore safer, hypotheses used by pension funds to calculate their financial obligations. At the close of the 2015 financial year, there were eight pension funds with a global funding gap. Six other funds showed a funding gap at the level of one or more sponsoring undertakings.

##### **Multi-employer funds**

For some time, there has been a trend in the set-up of multi-employer funds at the initiative of service providers. These are funds that manage the pension schemes of different companies that do not form part of the same economic group and are often too small to fund their own pension scheme. The FSMA ensures that the management structure of those pension funds is of such a nature as to offer beneficiary companies sufficient control over the management offered by the service provider concerned. Service providers must offer sufficient and intelligible information on their way of working and on the decision-making structure of the pension fund. This must occur prior to the signature of each contract so that companies that wish to enter into a multi-employer fund are able to build a good picture as to their say in the management and as to their respective rights and obligations, and especially as regards the costs to be charged.

##### **Statutory auditors and actuaries**

The FSMA decided to incorporate the reports of accredited statutory auditors and appointed actuaries of pension funds more systematically into its supervision. The aim is to more quickly pick up signals in the reports these professionals, who are subject to supervision, send to the FSMA. The FSMA intends thereby to optimize the way in which pension funds are selected for thorough examination.

In 2015, the FSMA conducted a horizontal analysis for all pension funds of the annual reports drawn up by accredited statutory auditors and appointed actuaries for the 2014 financial year. The information from this analysis formed the basis for the 2016 supervisory plan for pension funds.

This analysis of the annual reports of accredited statutory auditors to the FSMA unveiled that no signal at all had been given for a third of pension funds and that for half the pension funds, only one or two signals had been given. There were five to seven signals for six per cent of pension funds. A little over half of these signals related to measures that should be adopted by the pension funds for their administrative and accounting procedures and internal control, or in other words, 'sound governance' of pension funds. For these aspects of supervision, the FSMA places a lot of importance on the presence of the accredited statutory auditor on the field. This presence allows auditors to ascertain whether the information they have is consistent with the information that the pension fund provides to the FSMA as part of its annual reporting.

The results of this analysis will also be used to gain a qualitative improvement in the cooperation between accredited statutory auditors and the FSMA, especially as regards bilateral agreements and relations with the Belgian Institute of Auditors Accredited for Financial Institutions (IREFI).

### Inspections

The FSMA completed its round of inspections on the theme of data management in 2015. The FSMA monitors how each individual pension fund applies its recommendations on this subject. In addition to this individual monitoring, the intention is to publish a circular with guidelines based on good practice observed.

Most pension funds outsource their portfolio management. As a result the FSMA started a campaign of inspections in 2015 on how pension funds deal with the risks inherent in outsourcing portfolio management. The FSMA wishes to ascertain which risks pension funds take into account and which risks they ignore. The campaign especially delved into the procedure for selection, monitoring and evaluation of portfolio managers. The focus lies primarily on the decision-making process and on monitoring the observance of the investment policy, which pension funds describe in their Statement of Investment Principles.

### Stress test

In 2015, the European authority EIOPA conducted a stress test of the pension fund sectors of 17 EEA Member States with a relevant pension market<sup>92</sup>. It was the first time that such a Europe-wide exercise took place. The aim was to analyse the extent to which the pension fund sector can withstand shocks caused by crises on the financial markets.

The European Systemic Risk Board (ESRB), in close collaboration with the European Central Bank, put forward a number of stress scenarios for EIOPA. Two scenarios were based on overall deterioration of the economic situation and geopolitical risks with an impact, inter alia, on financial markets, commodities prices, exchange rates, employment rates and inflation. A third scenario looked at managing the risk of an ageing population based on a 20 per cent fall in mortality rates.

<sup>92</sup> 14 Member States took part in the stress test for pension funds which manage defined benefit and hybrid plans. Nine countries took part in the stress test for pension funds which only manage defined contribution plans.

EIOPA applied the stress scenarios both to the balance sheet figures prepared according to the National Balance Sheet (NBS) and to the 'Holistic Balance Sheet' (HBS). The HBS is one of EIOPA's supervisory instruments for valuing and presenting the financial obligations of pension funds vis-à-vis their members in accordance with a common European methodology. The HBS shows all mechanisms that pension funds can use to meet their obligations when deficits occur. This relates to the option of pension funds to, on the one hand, call on a special protection fund and on sponsors' capacity to remedy deficits and, on the other hand, reduce pension commitments.

Sixteen Belgian pension funds took part in the European stress test. Encompassing 57 per cent of the assets under management of Belgian pension funds, they formed a representative sample of the Belgian pension funds sector.

The results of the stress test for Belgium are positive both under the Belgian solvency regime and under the European supervisory framework. The stress test indicates that the Belgian pension fund sector can hold up well, on average, even under extremely stressful economic conditions. This result can largely be attributed to the substantial buffers that the pension funds concerned keep or to the presence of strong sponsors.

This puts Belgium among the top five countries which maintain sufficient coverage of their obligations in all stress scenarios.

#### Peer review

In 2015, EIOPA launched a peer review on national supervisory authorities' supervisory practices as regards the Statement of Investment Principles.

After analysing the written reports by the national authorities to the Review Panel, EIOPA paid a visit to the FSMA at the beginning of 2016 as part of the peer review to establish good practices as regards supervision of the Statement of Investment Principles.

#### 2.2.5.2.2. Regulating

##### Circulars

As indicated in the 2014 annual report, the FSMA drew up a circular about accredited statutory auditors' duty of cooperation as regards the supervision of pension funds. The FSMA issued this circular at the beginning of February 2015. The guidelines contained in this circular were applied for the first time to the 2014 annual accounts.

The FSMA has also drawn up a circular regarding the function of appointed actuaries within pension funds. The main purpose of this draft circular is to stress the importance of exercising the function of appointed actuary in an independent and objective manner, and to help raise the quality of the latter's advice and reports. The circular sets out the minimum content of the advice and reports of the appointed actuary with the aim of bringing the quality thereof up to the same level. It also aims to promote their comparability and usefulness for supervisory purposes. In 2015, the FSMA embarked on extensive consultation on this subject with PensioPlus, the Belgian association of pension funds, and with IA/BE, the institute of actuaries in Belgium. The circular underwent some substantial changes following this consultation.

### Sanction and enforcement policy

Since 2015, the FSMA operates a uniform sanction and enforcement policy in the area of supplementary pensions. The same procedures and sanctions apply to all pension institutions under supervision. With this policy, the FSMA aims to achieve a level playing field between pension institutions, both in terms of social supervision and prudential supervision.

### European activities

The FSMA closely followed the work of the Council and of the European Parliament on the review of IORP II, the pension funds directive, with a view to providing technical advice to policymakers.

The FSMA is pleased that 11 Belgian pension funds voluntarily took part in the Quantitative Assessment. Based on this research, EIOPA made recommendations to the European Commission on the framework for pension funds' risk management. The participation of Belgian pension funds in this research enables European policymakers to ascertain the specific characteristics of the Belgian pension funds sector. In the same context, the FSMA also played an active role in the working groups within the Occupational Pensions Committee with a view to providing advice as to how the HBS could be incorporated into supervision, and more particularly to the supervision of risk management.

## 2.2.6. Information and protection of consumers of financial services

In 2015 the FSMA received 1,553 written questions from consumers about financial matters. More than a third of those questions were about savings and investments, while a quarter had to do with warnings or authorizations. Of the remaining questions, 11% dealt with insurance and nearly 7% with pensions. The FSMA answers these questions itself if the subject falls within its areas of competence. If not, the FSMA refers the consumer to the competent institutions, such as the various mediation/ombudsman services, the Federal Public Service Economy and the NBB. The FSMA also receives numerous questions by phone.

When the questions concern offers of financial products or services that may be unlawful, the FSMA launches an enquiry. Such enquiries can also be initiated on the basis of evidence provided by third parties, complaints and observations made by the FSMA itself.

During the period under review, the FSMA opened 286 enquiries into such offers of financial products or services that may be unlawful, compared to 270 enquiries in 2014.

In cases where the FSMA was not in a position to quickly put an end to such potentially unlawful offers, for example because they are made either via the internet or from abroad or because the offerors cannot be identified, it informs the judicial authorities and publishes a warning to draw the public's attention to the dangers of unlawful offers. In 2015 the FSMA

published 81 warnings. In 2014 there had been 59 warnings. This increase is largely due to the significant number of warnings concerning the offer of binary options and other fraud mechanisms, such as boiler rooms and recovery rooms<sup>93</sup>.

The FSMA publishes not only its own warnings but also those issued by its European counterparts. The latter are forwarded to it via ESMA. In 2015, the FSMA published 191 such warnings. The FSMA also published on its website, via a hyperlink, the warnings issued by supervisory authorities from outside the European Union that belong to IOSCO.

## SUPERVISION IN PRACTICE

### From consumer question to warning

During an unsolicited phone call from Hanson & Fridge, a Hong Kong based company, Jean Peeters<sup>94</sup> receives a fantastic offer to invest in shares. According to Hanson & Fridge, this is a unique opportunity that will yield a high return. Jean Peeters considers the offer to be very interesting. As he is not sure that the offer is reliable, he decides to contact the FSMA in order to try and obtain further information as quickly as possible.

Jean Peeters logs on to the FSMA website. Upon accessing the consumer area he clicks on "How to make a complaint". On that webpage he discovers the contact details of the FSMA and fills out the "Consumer Contact form". His question is electronically transmitted to the consumer contact point, where all consumer questions are centralized. Another possibility for Jean Peeters would be to send his question directly to [info@fsma.be](mailto:info@fsma.be).

A staff member at the consumer contact point submits Jean Peeters' question to the FSMA department in charge of verifying whether offers are in compliance with the financial legislation and whether they are authorized in our country.

Foreign companies wishing to sell financial products in Belgium must be granted prior

authorization by the FSMA. As Hanson & Fridge is not duly authorized as an investment firm, it may not proceed to make its offer in our country.

Considering the urgency of the question, the FSMA decides to phone Jean Peeters to inform him of the fact that the Hanson & Fridge offer is unlawful. The FSMA advises him against doing business with that company. Indeed, it is likely that he is being contacted by potential fraudsters. A few days later Jean Peeters receives an e-mail with a more extensive answer to his question.

The FSMA examines the dossier in further detail and decides – amongst other things on the basis of the information provided by Jean Peeters – to publish a warning. In the warning, which is published on the FSMA website, the public's attention is drawn to the activities of Hanson & Fridge in Belgium in order to prevent other consumers from becoming victims of possible fraudulent practices.

The FSMA decides to transmit the dossier to the judicial authorities for further examination. It also forwards its warning to its foreign counterparts. Moreover, it publishes a press release to bring the dossier to the attention of the media. ■

<sup>93</sup> See this report, p. 176 (available in French and Dutch only – <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> – <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

<sup>94</sup> Hanson & Fridge and Jean Peeters are fictitious names.

## 2.3. Financial education

The Belgian legislators have tasked the FSMA with making a contribution to financial education. By way of carrying out this legal mandate, the FSMA launched a financial education programme under the name 'Wikifin'. This programme is intended to develop initiatives to improve citizens' financial literacy. The financial education programme comprises three pillars: the schools, information campaigns for the general public, and collaboration and the exchange of good practices with various stakeholders.

### Schools

Young people are an important target group for this programme. They are in great need of financial education, and schools are an ideal platform for reaching them. Therefore, as part of the Wikifin programme, the FSMA has, in cooperation with partners from the schools, developed educational materials for use in secondary schools.

In the 2014-2015 school year, pilot projects were carried out in order to test the materials. Ten general secondary schools from the Wallonia-Brussels Federation and fifteen vocational secondary schools in the Flemish school system took part. In May 2015, these projects were successfully completed.

The pilot projects yielded useful information for improving the educational materials, identifying best practices and detecting additional needs. The results of the pilot projects are available on the digital platform of the Wikifin.be website.

The platform hosts a wide range of teaching materials for the use of teachers and students. For example, there are lesson plans with practical tips for teachers, suggestions for classroom activities, videos and budgeting tools. An educational budgeting game for young people ages 14 and up is also available on [www.wikifin.be](http://www.wikifin.be).

There are plans under way to expand these materials further.

Within the Flemish school system, the pilot project focused mainly on materials for the vocational schools. Currently, work is being done to adapt these materials to the needs of general secondary schools and other specific target groups within the secondary school system.

In the Wallonia-Brussels Federation, the programme started with pedagogical materials on the topic of responsible consumption, intended for general secondary schools and in particular 'transitional secondary education'. In the next phase, emphasis will be placed on developing tools that meet the needs of technical and vocational schools and, in particular, of 'secondary education for qualifications'.

The FSMA carefully ensures that all the materials produced meet the requirements of the new curriculum. The materials are intended to help achieve the new learning objectives regarding social and economic education which will be in use within the French technical and vocational schools as from in 2016-2017. To this end, a collaborative partnership was launched with the CeDES (Centre de Didactique Économique et Sociale at the University of Namur).

In order to raise the awareness of the educational sector and motivate schools to include financial education in class, two events were organized. Together with the Wallonia-Brussels Federation's Ministry of Education, the school networks and the office of the competent ministers, the FSMA organized a study day for around 100 French-speaking teachers. On the

Flemish side, the FSMA in cooperation with the Flemish Minister for Education and Training held a day-long workshop at the Flemish Parliament for 300 teachers.

A competition known as the Wikifin@School Challenge was held within the secondary school network. The competition offered prizes to students who collected creative tips for helping young people manage a budget.

Raising awareness among teachers on ways to incorporate financial education in the classroom and training the teachers represent significant challenges for the coming years. Ongoing work is needed in order to promote the existing range of educational materials among the schools so that teachers can make effective use of them in class. In addition to the campaigns already carried out to that end, there are numerous other actions in the pipeline, such as information and training days.

2016 will be marked by the further expansion of the school-based educational programme. The FSMA has also launched a Wikifin newsletter aimed specifically at teachers, in order to keep them informed of new initiatives and materials. The newsletter also includes information about the training that the Wikifin programme offers teachers.

In 2016, Wikifin.be took its first steps in the primary schools. During 'Money Week' (see below), dozens of FSMA staff members visited classrooms to play the new budgeting game developed by Wikifin.be for years 4, 5 and 6. The game is intended for children in primary school to learn to deal with choices and the limitations of a budget. More than 1500 classrooms signed up to play the game in class.

2016 also marked the first year that the FSMA awarded a prize for Masters' theses on financial literacy and consumer protection. The 'Wikifin thesis prize' is designed to awaken even greater interest in financial education. All theses on this topic submitted by students at a Belgian university or further education college are eligible for the prize.

The FSMA strives to have financial education incorporated into the regular school curriculum. Its educational programme enjoys the support of Her Majesty the Queen. As an expression of her commitment, she visited the schools participating in the pilot projects and those that took part in 'Money Week'.

The FSMA is also available to help nurture the debate under way in Flanders with respect to learning outcomes. It makes its expertise available to the various players, to help examine what role financial education could play in the classroom.

### **Campaigns for the general public**

The [www.wikifin.be](http://www.wikifin.be) website received 1,258,913 visits last year. This represents an increase of 66% as compared to the results in 2014. Since its launch at the beginning of 2013, the site has attracted nearly 3 million visitors.

There are several explanations for these excellent figures. The website is steadily expanding its contents, with several new topics coming on board. The site itself was given a fresh look in 2015.



On the home page of [www.wikifin.be](http://www.wikifin.be), the presentation of the 'Life moments' tab and of the financial quizzes has been made more attractive. The search engine has been updated so that consumers can find the different topics more easily. Topics that are likely to elicit the interest of consumers are featured more prominently via the home page and in the newsletter. The newsletter has 13,500 subscribers to date.

The FSMA has also invested in marketing tools in order to ensure that Wikifin.be comes up prominently in on-line searches. Smaller-scale awareness campaigns conducted in the first half of 2015 also helped increase name recognition.

The growing interest in the website is also linked to the greater coverage of financial matters in the media. The Wikifin website registers an increased number of visits whenever the media devotes significant attention to financial topics such as pensions or the housing bonus.

Popular tools on the Wikifin.be website include the savings simulator (381,334 simulations), the pension quiz (110,951 visitors) and the real estate simulator (143,956 simulations).

The Wikifin website is the most important channel by which the FSMA can reach consumers with information about financial matters. In order to promote new topics or new interactive tools on the Wikifin.be site, Wikifin.be attends various fairs, where members of its staff are in direct contact with visitors. In addition, the FSMA supports initiatives by partners such as the 'Credit-free Day'.

From 14 to 20 March 2016, the FSMA organized 'Money Week' jointly with other partners. A wide range of activities were offered throughout the week. These included a survey of how families handle money matters, a quiz about consumers' financial profile, and information stands in various cities where consumers could ask questions about financial topics. There were also activities offered in schools.

### **Collaboration and exchange of good practices**

The FSMA strives to promote cooperation with stakeholders on matters to do with financial education. At the invitation of the FSMA, some 70 organizations participated in workshops on topics in financial education. These included civil society organizations, government institutions, professional associations in the financial and insurance sectors and organizations working in the area of financial education in Belgium.

One of the topics addressed by the workshops was the preparation of an OECD study on financial literacy. The study measured the financial behaviour, attitudes and knowledge of the population in Belgium. The key questions were: how do they handle money matters, what is their attitude to money and what do they know about the subject.

The FSMA presented the findings at the second national conference on financial education, held on 11 March 2015, in the presence of Her Majesty the Queen. The most important conclusion was that everyone needs lifelong and sustainable financial education. Education has to address knowledge, behaviour and attitudes to money matters, and needs to be made available to all ages and social groups.

The study identified a number of striking results:

- A quarter of the population would not be able to withstand a financial setback. They would not be able to pay for unexpected costs in the amount of a month's income without having to borrow or seek help from family or friends.
- The financial situation of almost 4 out of 10 Belgians does not allow them to make expenditures they consider important.
- One out of four is not well prepared for retirement.
- Almost two out of ten do not save money.
- When purchasing a financial product such as a loan, shares and insurance, only one out of every three considers the offers of several providers.
- The population generally has a faulty estimation of its own financial knowledge.
- One out of two Belgian families does not draw up a household budget.

At the end of the conference, there were spontaneous and enthusiastic responses. Stakeholders suggested holding a large-scale consciousness-raising week on money matters, and as a result the decision was made to organize a 'Money Week'. The initiative is aimed at reaching as wide an audience as possible with all manner of information about financial matters. 'Money Week' thus helps provide lifelong and sustainable financial education, for which the OECD study has shown that there is great need.

The FSMA, via its Wikifin.be programme, plays a coordinating role in 'Money Week'. This role is an important one when it comes to setting up multi-stakeholder projects aimed at promoting financial education. For this reason, the FSMA is also working on developing a new platform for exchanging information about initiatives for financial education. The FSMA hopes in this way to foster joint projects in this domain. The platform, to be known as "Financial Education Belgium", will be launched in 2016.

## 2.4. Administrative sanctions

### 2.4.1. Procedure for imposing administrative fines

If the Management Committee notes serious evidence of a practice that is liable to give rise to the imposition of an administrative fine, it entrusts the investigations officer with investigating the case<sup>95</sup>. This decision is taken based on evidence provided by the FSMA's supervisory services, pursuant to a complaint, or based on evidence provided by a foreign supervisory authority pursuant to a request for cooperation made by that authority to the FSMA. In the latter case, the Management Committee also entrusts the investigations officer with conducting the necessary investigation to be able to respond to the request by the authority in question.

<sup>95</sup> Art. 70, § 1, of the Law of 2 August 2002.

## 2.4.2. Decisions to open an investigation

In 2015, 23 dossiers were submitted for investigation based on the FSMA's own enquiries or on complaints received. This figure does not include dossiers submitted for investigation in response to requests for cooperation made to the FSMA by foreign supervisory authorities<sup>96</sup>.

An investigation refers to a decision to investigate a certain amount of evidence liable to give rise to an administrative fine, in accordance with Article 70, § 1, of the Law of 2 August 2002. This decision may be based on serious evidence of infringements of one or more legislative texts committed by one or more persons. The estimate of the number of persons concerned in the dossiers is indicative only: the investigation concerns the facts, and it may be that the examination of the facts in question prompts a reconsideration of the number of persons concerned.

## 2.4.3. Summary of dossiers handled

The investigations officer conducts the investigations into facts that are liable to give rise to the imposition of an administrative fine. Under his direction, the FSMA staff responsible for the dossiers carry out the investigative tasks deemed necessary and examine the evidence gathered in the light of the applicable legislation.

### Proposal for an agreed settlement

The provisions organizing the procedures with a view to imposing administrative fines make it possible to close a dossier by entering into an agreed settlement<sup>97</sup>.

The decision to accept an agreed settlement is taken by the Management Committee. The person in question must have cooperated with the investigation and must have previously given consent to the proposed agreed settlement.

During the period under review, the investigations officer submitted to the Management Committee for approval four proposed agreed settlements which had obtained the consent of the persons who committed the practices at issue.

These proposals concerned, in all, four legal persons, in cases of evidence of failure to comply with the prospectus obligations, failure to fulfil the obligation to publish inside information immediately and infringements of the regulations on advertising for regulated savings.

The agreed settlements approved by the Management Committee in these cases are commented on in this report in the section devoted to that Committee's decisions<sup>98</sup>.

<sup>96</sup> With regard to these requests, see the present report, p. 93.

<sup>97</sup> Art. 71, § 3, of the Law of 2 August 2002.

<sup>98</sup> See the present report, pp. 123-127 (available in French and Dutch only - <http://www.fsma.be/fr/Doormat/Publications/Annual%20reports.aspx> - <http://www.fsma.be/nl/Doormat/Publications/Annual%20reports.aspx>).

## Conclusions submitted to the Management Committee

At the end of the investigation, the investigations officer prepares a report. The report indicates whether the facts discovered are liable to constitute an offence giving rise to the imposition of an administrative fine, as well as whether they may constitute a criminal offence<sup>99</sup>.

The investigations officer submits the definitive report to the Management Committee. The Management Committee decides, based on the report, what further action to take regarding the dossier<sup>100</sup>.

During the period under review, the investigations officer submitted two investigation reports to the Management Committee, which both concerned a legal person.

\* \* \*

Between 2011, the year when the new procedure laid down in the Twin Peaks Law<sup>101</sup> entered into force, and 31 December 2015, a decision to initiate an investigation was taken in respect of 59 dossiers involving one or more practices liable to give rise to the imposition of an administrative fine on one or more persons.

During the same period, the total number of agreed settlements proposed and of reports completed by the investigations officer was 69. The agreed settlements and reports made it possible to definitively close 36 dossiers.

The investigation dossiers initiated since 15 July 2011 involve serious evidence of infringements of one or more of the legislative texts mentioned in the table below<sup>102</sup>. It is worth noting that, in 2015, the dossiers involved a larger number of legislative texts, reflecting the will to use the sanctioning powers of the FSMA in all its supervisory areas:

**Table 11:** Legislation referred to in the dossiers handled by the investigations officer since 15 July 2011

	From 15 July 2011 to 31 December 2014	From 15 July 2011 to 31 December 2015
Law of 11 January 1993 on preventing the use of the financial system for purposes of money-laundering and the financing of terrorism	1	1
Law of 2 August 2002 on the supervision of the financial sector and on financial services		
1. Insider dealing	20	23
2. Market manipulation and failure to inform the market	10	12
3. Rules of conduct		2
4. Reporting of suspect transactions		1
Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market	4	4
Royal Decree of 5 March 2006 on market abuse	4	6
Law of 16 June 2006 on public offers of securities	4	14

<sup>99</sup> Art. 70, § 2, of the Law of 2 August 2002.

<sup>100</sup> Art. 71 of the Law of 2 August 2002.

<sup>101</sup> See FSMA annual report 2011, p. 42.

<sup>102</sup> Several of the dossiers handled by the investigations officer involved possible infringements of more than one of the laws cited in this table. As a result, the number of applications of the laws and royal decrees mentioned in this cumulative list is greater than the number of dossiers.

Law of 2 May 2007 on the reporting of significant interests in issuers whose shares are admitted to trading on a regulated market and containing miscellaneous provisions	2	2
Royal Decree of 3 June 2007 containing detailed rules transposing the European Directive on Markets in Financial Instruments		2
Royal Decree of 27 April 2007 on takeover bids	1	1
Law of 3 August 2012 on undertakings for collective investment that fulfil the conditions of Directive 2009/65/EC and institutions for investments in receivables (modified by the Royal Decrees of 12 November 2012, 25 April 2014 and 2 June 2015)	1	1
Royal Decree of 18 June 2013 laying down certain information obligations in respect of the distribution of regulated savings accounts	2	3
Law of 4 April 2014 on insurance		2

## 2.4.4. International cooperation

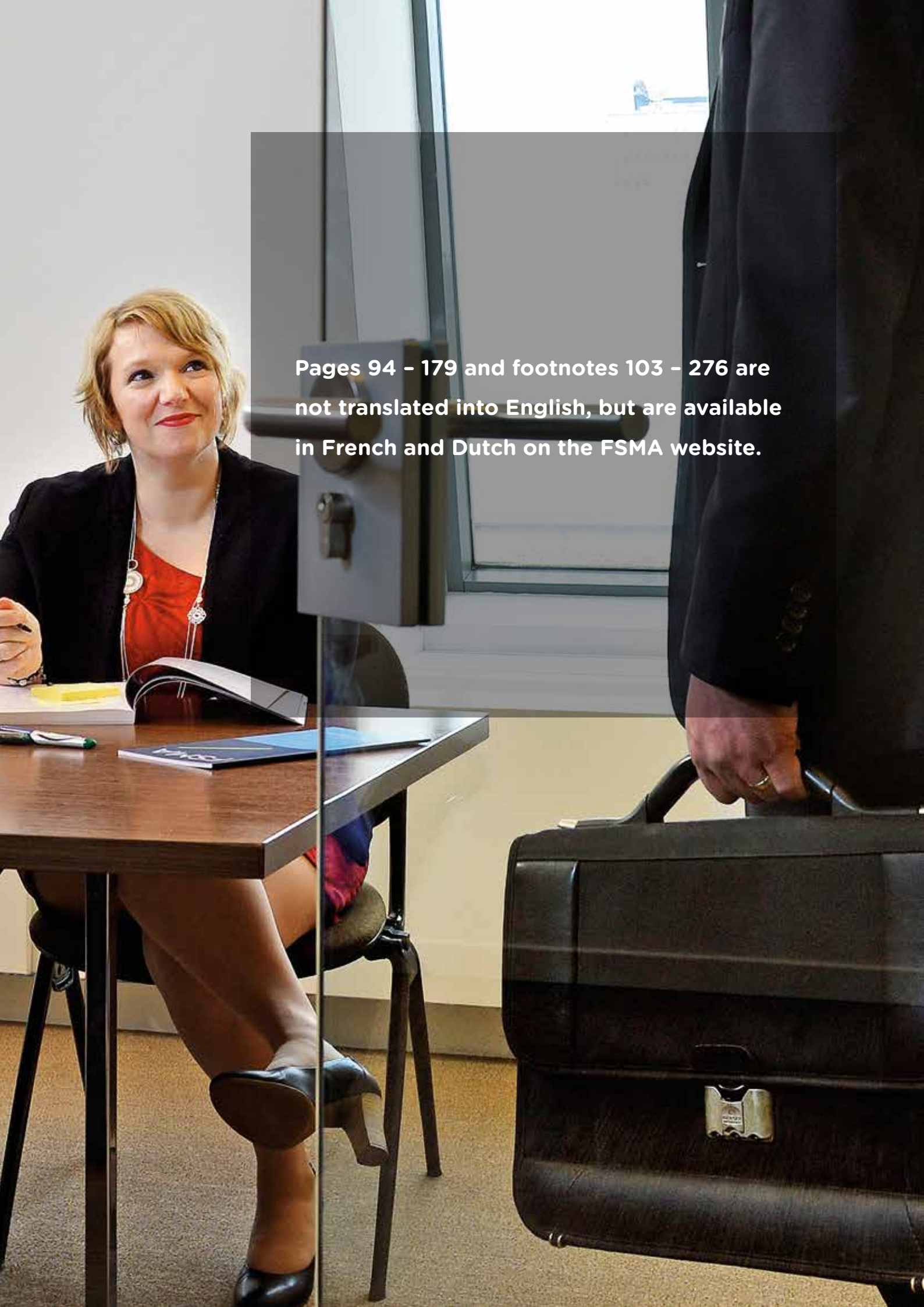
The number of requests for international cooperation on dossiers relating to potential market abuse, as well as regarding the illicit offer of financial services, has increased slightly in 2015 as compared to the previous year.

The FSMA received 44 requests for cooperation from foreign competent authorities, as compared to 42 in 2014. All those requests were handled in an average of 34 days, the turnaround time being determined by the nature and scale of the tasks to be completed.

The tasks in question often relate to identifying the beneficiary of a transaction. They can also include collecting information from an issuer or a telecommunication service operator, or organizing a hearing of witnesses or of persons suspected of having committed an offence.

During the same period, the FSMA in turn addressed 80 requests for cooperation to foreign competent authorities, as compared to 45 in 2014. This sharp increase is due to investigations of international fraud dossiers. Requests for cooperation usually aim at identifying the beneficiary of a transaction or at inquiring with a financial institution about the history of the movements in an account or about an account holder's identity. Like the requests received from foreign competent authorities, those made by the FSMA relate to obtaining a range of information from an issuer or another person.





**Pages 94 - 179 and footnotes 103 - 276 are not translated into English, but are available in French and Dutch on the FSMA website.**







### **III. THE ORGANIZATION OF THE FSMA**

# 1. Organization

## 1.1. Structure

### 1.1.1. Governing bodies

#### Management Committee



Jean-Paul Servais,  
Chairman



Annemie Rombouts,  
Deputy Chairman



Henk Becquaert,  
Member



Gregory Demal,  
Member

## 1.1.2. Organization chart of the departments and services<sup>277</sup> (on 31 December 2015)



<sup>277</sup> Hein Lannoo has been seconded to the department of Minister Kris Peeters, where he holds the position of director of the strategic unit for consumer protection and economic regulation.

## 1.1.3. Supervisory Board

### 1.1.3.1. Composition



Dirk Van Gerven, chairman



Jean-François Cats



Jean Eylembosch



Deborah Janssens



Didier Matray



Pierre Nicaise



Frédéric Rouvez



Reinhard Steennot



Marnix Van Damme



Marieke Wyckaert

### 1.1.3.2. Report on the Supervisory Board's exercise of its statutory tasks

#### Composition and operation of the Board

In the course of 2015, Ms Deborah Janssens and Mr Frédéric Rouvez were appointed new members of the FSMA's Supervisory Board. They replaced Ms Hilde Laga, who had tendered her resignation, and Mr Robert Geurts, whose mandate ended when he reached the upper age limit. The Supervisory Board wishes to thank both of them for their expert contribution to its work; both have been granted the title of honorary member. The mandates of Messrs Matray, Nicaise, Van Damme and Van Gerven were renewed<sup>278</sup>.

<sup>278</sup> The Royal Decree of 29 June 2015 appointing members of the Supervisory Board of the Financial Services and Markets Authority, Belgian Official Gazette, 2 July 2015, second edition.

The members re-elected Mr Dirk Van Gerven as chairman of the Supervisory Board. They also elected Mr Rouvez as a new member of the Audit Committee and confirmed Ms Wyckaert and Messrs Van Gerven and Nicaise as continuing members of that Committee.

In 2015, the Board met nine times and used the written procedure once. The average attendance rate of the members of the Supervisory Board was close to 90 per cent of the meetings<sup>279</sup>.

The Board wishes to thank the Management Committee and the FSMA staff members for their collaboration in the execution of the Board's tasks.

### The FSMA's action plan

Following the consultations regarding the FSMA's overall action plan for 2015, the Supervisory Board discussed the action plans of the FSMA's services at various meetings in the course of 2015. The competent members of the Management Committee presented the main lines of these action plans, giving the members of the Board the opportunity to express their thoughts on the initiatives taken. This way of working allowed the Supervisory Board to play fully its role of sounding board for the Management Committee.

In the process, the plans and achievements of the FSMA in terms of financial education were closely examined. The members welcomed these initiatives, in particular those involving the schools, and further encouraged the FSMA and Wikifin to take the necessary initiatives to strengthen the financial literacy of the less fortunate.

The Board also devoted particular attention to the observations made in the course of the supervision of compliance with MiFID. The members were given an explanation regarding the FSMA's mystery shopping campaigns, a supervisory technique that, given its specificity, must be accompanied by special guarantees.

The members also discussed the experience with the moratorium on particularly complex structured products, now that it has been in use for several years. They agreed that the moratorium has contributed to simplifying the offer of structured products on the Belgian retail market, by keeping out particularly complex products.

The members also received information about developments in a number of new supervisory areas, such as financial planners and EMIR, and were given a presentation about the fully digitized module for registering credit providers and credit intermediaries.

The members also looked closely at the FSMA's enforcement actions and the resulting implementation measures (agreed settlements and fines imposed by the Sanctions Committee) that are important for the credibility of the FSMA.

### Regulatory developments

The Board was regularly informed of new regulatory developments at both national and international level that have an impact on the FSMA's tasks, such as MiFID II and the future rules for retail investment products and insurance-based investment products.

<sup>279</sup> This does not take into account Ms Laga, outgoing member, who no longer attended the meetings until her replacement.

The Board takes the view that the impact of regulatory developments should also be examined, in light of the development of Brussels as a financial centre. It also recommends that the FSMA contribute to the implementation of the recommendations of the High Level Expert Group on the future of the Belgian financial sector that were published on 13 January 2016, as regards the aspects that touch on the FSMA's tasks.

On the basis of its statutory mandate laid down in Article 49, § 3, of the Law of 2 August 2002, the Supervisory Board advised the Management Committee on a regulation on the information about expenses and additional costs that must be provided to clients in the context of insurance intermediation services, and on an amendment to the anti-money laundering regulation.

#### **Appointment of the auditor**

After the public procurement procedure was completed, the Supervisory Board appointed BDO Bedrijfsrevisoren, represented by Mr André Killesse, as the FSMA's statutory auditor, in application of Article 57 of the Law of 2 August 2002.

#### **Mission statement, organization and functioning of the FSMA**

The members took note of the proposed mission statement of the FSMA and made suggestions regarding the vision expressed therein.

They gave their consent to the Audit Committee's proposal for a new set of internal regulations for that Committee.

The Board members also exchanged views on a wide range of topics that concern the organization and internal operation of the FSMA. In particular, they were given further details about the planned recruitment of additional employees and about the priorities in terms of IT.

As part of its legal mandate, the Supervisory Board approved the FSMA's budget for 2016. At its last meeting of 2015, the Board also deliberated on the application of Article 48, § 1, 2° of the Law of 2 August 2002 to the overall action plan for 2016, prepared by the FSMA's Management Committee. The Board considered it advisable to further integrate the preparation of the budget and that of the action plan.

The annual financial statements for 2014 were approved by the Board on 30 April 2015, and the annual financial statements for 2015 on 28 April 2016. The Board approved the 2014 Annual Report on 30 April 2015, while the part of the present report concerning the powers of the Supervisory Board was approved on 28 April 2016.

#### **1.1.3.3. Report on the Audit Committee's exercise of its legally mandated tasks**

The composition of the Audit Committee underwent a change in 2015 as a result of the appointment by the Supervisory Board of Mr Frédéric Rouvez, to replace Mr Robert Guerts, whose term of office on the Supervisory Board came to an end. The Supervisory Board confirmed the memberships of Ms Marieke Wyckaert and of Messrs Pierre Nicaise and Dirk Van Gerven on the Audit Committee. The Audit Committee re-elected Mr Dirk Van Gerven as its chair.

The Committee met five times in 2015. During its meetings, the Audit Committee examined among other things the annual report and the accounts of the FSMA for 2014, as well as the FSMA's budget for 2016. In application of Article 48 of the Law of 2 August 2002, the Audit Committee advised the Supervisory Board to approve the accounts and budget drawn up by the Management Committee, provided a few clarifications were added, and also to approve the part of the annual report that concerns the Supervisory Board. The Audit Committee also took cognizance of the update on the figures for the first quarter of 2015 and for the semi-annual accounts of the FSMA as at 30 June 2015.

During the reporting period, the Audit Committee prepared its amended internal regulations, which the Supervisory Board approved on 28 October 2015. The regulations set out the operation and organization of the Audit Committee and define its interaction with the Supervisory Board. They also go into greater detail as regards the relationship with the Management Committee and internal audit. The internal regulations are now published on the website of the FSMA. In line with the above, the Audit Committee also examined the new charter for the FSMA's internal audit service. The charter was approved by the Audit Committee, after some revisions at its request had been made, on 13 January 2016. The Audit Committee also approved the audit timetable for 2016 drawn up by the internal auditor; the Committee members drew attention to the risks associated with IT as regards the protection of confidentiality, among other points.

Pursuant to Article 48, § 1<sup>ter</sup>, first paragraph, 3° of the Law of 2 August 2002, the Audit Committee discussed various internal audit reports, upon their presentation by the internal auditors. The Audit Committee closely monitors the way in which the Management Committee follows up on the said reports. In this regard, the Audit Committee approved a procedure for monitoring the implementation of audit recommendations.

The Audit Committee reported on its activities to the Supervisory Board.

As part of the procedure for approving the position of company auditor, the Audit Committee proposed that Mr Killesse be appointed as the FSMA's company auditor.

## 1.1.4. Statutory auditor

André Killesse<sup>280</sup>

In accordance with Article 57, second paragraph, of the Law of 2 August 2002, the FSMA's accounts are audited by one or more statutory auditors. They are appointed by the Supervisory Board for a renewable term of three years, on condition that they not be included on the list of auditors accredited by the FSMA and not hold any office at a company subject to the FSMA's supervision. The auditors verify and certify every element specified by the legislation on the financing of the FSMA's operating expenses, as set out in Article 56 of this Law.

<sup>280</sup> Appointed in accordance with Article 57, second paragraph, of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

## 1.1.5. Sanctions Committee

### 1.1.5.1. Composition



**Michel Rozie, chairman**  
honorary first president of the Antwerp Court of Appeal, member of the Sanctions Committee in the capacity of magistrate who is not a counsellor at the Supreme Court or at the Brussels Court of Appeal  
(end of term of office: 2 February 2021)



**Erwin Francis**  
counsellor at the Supreme Court, member of the Sanctions Committee at the recommendation of the first president of the Supreme Court.  
(end of term of office: 2 February 2021)



**Guy Keutgen**  
member of the Sanctions Committee  
(end of term of office: 2 February 2021)



**Christine Matray**  
emeritus judge of the Belgian Supreme Court, member of the Sanctions Committee at the recommendation of the first president of the Supreme Court.  
(end of term of office: 14 October 2017)



**Jean-Philippe Lebeau**  
president of the Commercial Court of Hainaut, member of the Sanctions Committee in the capacity of magistrate who is not a counsellor at the Supreme Court or at the Brussels Court of Appeal  
(end of term of office: 14 October 2017)



**Pierre Nicaise**  
member of the Sanctions Committee  
(end of term of office: 14 October 2017)



**Philippe Quertainmont**  
chamber president at the Council of State, member of the Sanctions Committee at the recommendation of the first president of the Council of State  
(end of term of office: 2 February 2021)



**Reinhard Steennot**  
member of the Sanctions Committee  
(end of term of office: 2 February 2021)



**Marnix Van Damme**  
chamber president at the Council of State, member of the Sanctions Committee at the recommendation of the first president of the Council of State  
(end of term of office: 14 October 2017)



**Dirk Van Gerven**  
member of the Sanctions Committee  
(end of term of office: 14 October 2017)



Pursuant to the Royal Decree of 2 June 2015, the composition of the Sanctions Committee went through two changes<sup>281</sup>. Jean-Philippe Lebeau was appointed member of the Sanctions Committee in the capacity of magistrate who is not a counsellor at either the Supreme Court or at the Brussels Court of Appeal, to replace Hamida Reghif whose term of office he will complete. Erwin Francis, in his capacity of counsellor at the Supreme Court, and at the recommendation of the first president of the Supreme Court, was appointed to replace Luc Huybrechts, whose term of office he will complete.

Michel Rozie was re-elected chairman of the Sanctions Committee by the members of the Sanctions Committee.

### 1.1.5.2. Decisions by the Sanctions Committee

#### Misuse of inside information and failure to notify transactions to the FSMA - sanctions

On 12 June 2015, the Sanctions Committee imposed a fine on a company (X) and a person (Y).

In this case, Y, who at the time was financial director of a company listed on Alternext Brussels<sup>282</sup>, placed a buy order for 8,000 shares in that company. He did so on behalf of company X, of which he was director.

This buy order occurred as part of an employee share ownership plan of the group that the listed company formed part of.

At the time of placing the order, Y was in possession of information that the Sanctions Committee qualified as inside information: Y knew that the listed company's significant rise in turnover for the previous financial year was in line with the forecast turnover announced to the market. Y was also aware of the favourable financial prospects for the first half of the financial year underway. A few hours after the order was placed, once the markets had closed, a press release was published on that subject.

The Sanctions Committee considered that the information that Y possessed when the disputed order was placed was concrete and specific enough to be qualified as being of a 'precise nature' within the meaning of Article 2, 14°, fifth paragraph of the Law of 2 August 2002. It also determined that the official announcement that the turnover was not only in line with the forecast but had also significantly increased as compared with the previous financial year constituted positive information for the market, from which a conclusion could be drawn as to its potential impact (upwards) on the share price of the listed company concerned.

The Sanctions Committee in this case fined both the person who placed the disputed order and the legal entity on behalf of which the person acted. Pursuant to Article 25, § 1, first paragraph, 1°, a) of the Law of 2 August 2002, it is prohibited for any person possessing information that he or she is aware, or ought to be aware, constitutes inside information to acquire or dispose of, or try to acquire or to dispose of, for his/her own account or for the account of a third party, either directly or indirectly, financial instruments to which that inside

<sup>281</sup> Belgian Official Gazette of 16 June 2015.

<sup>282</sup> Pursuant to Article 25, § 3, first paragraph, 1°, of the Law of 2 August 2002, the market abuse prohibition applies to acts that concern financial instruments admitted to trading on a Belgian regulated market or on any other market or alternative trading system as referred to in Article 15 and designated by the King upon the recommendation of the FSMA. Article 8 of Royal Decree of 21 August 2008 containing more detailed rules for certain multilateral trading facilities designates Alternext Brussels as an 'other market' within the meaning of the aforementioned Article 25, § 3, first paragraph, of the Law of 2 August 2002.

information refers. As regards a transaction carried out by a legal entity, Article 25, § 2 of the aforementioned Law of 2 August 2002 sets out that the prohibition shall likewise apply to the natural persons who take part in the decision to carry out a transaction or place an order on behalf of the legal entity concerned.

In this dossier, Y could therefore be personally penalized for infringing Article 25, § 1, first paragraph, 1<sup>o</sup>, a), of the Law of 2 August 2002, because it was proven that at the time of placing the disputed order on behalf of company X, Y possessed information that Y was aware or ought to have been aware constituted privileged information. After all, as financial director, Y was directly involved in the internal process to determine turnover and in the preparation of the press release.

It should be noted that X and Y argued in their defence that the order placed was entirely independent of the inside information and aimed simply to implement an employee share ownership plan. Y referred to the instructions of superiors and to the pressure exerted by the beneficiaries of the share ownership plan. Y therefore disputed having “made use of” the inside information and wished to refute the presumption that everyone in possession of inside information also actually makes use of it.

It should be noted that Article 25, § 1, first paragraph, 1<sup>o</sup> of the Law of 2 August 2002 requires no causal relationship between the inside information and the transactions carried out, as was confirmed by the Court of Justice of the European Union<sup>283</sup>. To be qualified as “prohibited” insider dealing, it suffices for the insider in possession of inside information to carry out a transaction in the financial instruments to which this inside information pertains; there is therefore no need to establish that the insider has specifically “made use of” this inside information in his or her investment decision. The Court of Justice allows for the presumption of use of inside information to be refuted, but only in cases in which it is proven that the possession of that inside information could not, from an objective point of view, have influenced the conduct of the person in possession thereof. In those cases, the insider makes no unlawful use of the advantage that he or she has over other investors as a consequence of the inside information.

The Sanctions Committee established in this matter that Y had in fact received instructions to buy the shares on behalf of X, with no stipulation as to how – and especially when – that transaction should take place. This autonomy as regards the timing of the transaction was of course crucial, because in this dossier it was precisely the time chosen to place the buy order (a few hours before the publication of the press release), that made Y guilty of the infringement. Y was not in fact obliged to buy 8,000 shares urgently. In accordance with the share ownership plan, Y had several weeks in which to do so.

Consequently, the Sanctions Committee ruled that the pressure cited by Y to justify the action taken was quite relative (and by no means binding) and in no way prevented Y from complying with the (binding) obligation as prescribed by law to take no further action pending the publication of the press release. In any case, instructions, a hierarchical relationship, or pressure from the beneficiaries of the employee share ownership plan could in no way justify a financial director of a listed company in possession of inside information committing market abuse.

<sup>283</sup> CJEU, 23 December 2009 (Spector) C-45/08, point 62.

The Sanctions Committee therefore ruled that the suspicion of a causal relationship between the inside information and the disputed order had not, in this case, been refuted.

It consequently ruled that X and Y had infringed the prohibition contained in Article 25, § 1, first paragraph, 1<sup>o</sup>, a), of the Law of 2 August 2002.

Although the Sanctions Committee did not accept that the fact that the order was made as part of an employee share ownership plan was in itself sufficient to refute the presumption of a causal relationship between the inside information and the disputed order, it did accept that argument as a mitigating factor, in the same way as the absence of a personal advantage on the part of the persons concerned.

However, despite X and Y's claims, the Sanctions Committee ruled that the decision of the public prosecutor's office not to prosecute did not constitute a mitigating factor. The public prosecutor's office could after all have made this decision for a number of reasons, including the concern that the administrative sanctions procedure may not be able to follow its course but may be terminated under the principle of *non bis in idem*, should the judicial authorities come to a final decision prior to the end of the proceedings.

The Sanctions Committee also identified a number of infringements by company X of Article 25bis, § 2 of the Law of 2 August 2002. X after all had close links with the senior management of the listed company, as a result of which it was obliged, by virtue of the aforementioned provision, to inform the FSMA of transactions in the securities of that company<sup>284</sup>. However, a number of transactions appeared not to have been correctly notified to the FSMA, including especially the purchase made by Y as a result of the placement of the buy order for 8,000 shares as part of the employee share ownership plan.

The Sanctions Committee imposed a fine of EUR 17,500 on company X for infringement of Articles 25, § 1, first paragraph, 1<sup>o</sup>, a), and 25bis, § 2, of the Law of 2 August 2002, and a fine of EUR 12,500 on person Y for infringement of Article 25, § 1, first paragraph, 1<sup>o</sup>, a), of the Law of 2 August 2002.

Pursuant to Article 72, § 3, fourth paragraph of the Law of 2 August 2002, the Sanctions Committee ruled that the inclusion of names in the publication of the decision in this dossier would cause disproportionate detriment to Y because given his age, it could bring a potentially long career into jeopardy. To spare him that disproportionate detriment, the Sanctions Committee opted to anonymize its decision for all persons concerned.

### Insider dealing - Appeal

On 25 February 2015, the Sanctions Committee imposed administrative fines of EUR 75,000 and EUR 25,000 respectively on two natural persons in a dossier concerning insider dealing. One of the parties lodged an appeal against this decision at the Brussels Court of Appeal. Pursuant to Article 72, § 3, fourth paragraph, of the Law of 2 August 2002 as applicable at the time of the occurrences, the Sanctions Committee decided to publish this decision without mentioning the names of the parties until the conclusion of the legal proceedings.

<sup>284</sup> Persons with managerial responsibility at an issuer with a registered office in Belgium, the financial instruments of which are admitted to trading on Alternext Brussels, and persons closely linked to them are required to notify the FSMA of transactions in the issuer's shares carried out on their account (Article 25bis, § 2, of the Law of 2 August 2002, as declared to apply to Alternext Brussels in Article 7 of the Royal Decree of 21 August 2008 containing more detailed rules for certain multilateral trading facilities).

On 20 November 2015, the Sanctions Committee ruled on another case of insider dealing. In this dossier, the Sanctions Committee identified infringements of the prohibitions relating to inside information by three natural persons and two legal entities. Just for the two legal entities, fines were imposed of EUR 200,000 and EUR 15,000 respectively. All parties lodged an appeal against this decision, which was published without mentioning the names of the parties, pending the conclusion of the legal proceedings.

### Market manipulation - no sanction

On 8 October 2015, the Sanctions Committee decided not to impose a sanction on the managing director of a stockbroking firm accused of market manipulation<sup>285</sup>, considering that there was insufficient evidence of the infringement with which he was charged.

The person in question had placed consecutive orders (primarily buy orders) in his own name and that of the stockbroking firm<sup>286</sup>, in the shares of a company listed on Alternext. Those orders were placed during the trading days prior to the end of three quarters and resulted in a price rise of 30%, 40% or 60%, depending on the quarter concerned. Those orders, the volumes of which usually coincided with the volumes of sell orders in the order books, represented a very large proportion of the purchase volumes of the share in question (up to 100%). As a result, the substantial price fluctuations during the three quarters under investigation could be considered suspicious.

In this dossier, the shares of the listed company were mainly owned by the stockbroking firm, its clients and its managing director. The risk that the orders placed by the managing director would lead to an unstable price appeared in this case to be intrinsic to the firm's shareholder structure. Those orders could, however, be qualified as price manipulation only if all the constitutive components of the infringement referred to in Article 25, § 1, first paragraph, 2°, of the Law of 2 August 2002 were present. It therefore had to be proven that false or misleading signals were given regarding the supply, demand or price, or that the price was retained at an abnormal or artificial level.

The Sanctions Committee established that the accused person confirmed, without being contradicted, that the price of the share had fluctuated considerably during the 11 quarters in which the stockbroking firm owned shares in the firm in question, and continued to do so after the stockbroking firm had disposed of those shares.

<sup>285</sup> Infringements of Article 25, § 1, first paragraph, 2°, a) or b), of the Law of 2 August 2002.

<sup>286</sup> In this dossier, it should be noted that the managing director accused disputed his responsibility for most of the orders placed in the stockbroking firm's name, because the decision to place those orders was made jointly by one of the stockbroking firm's managing bodies. According to him, the stockbroking firm bore the sole responsibility for those orders. The Sanctions Committee did not accept this argument. It recalled the fact that in accordance with the case law of the Brussels Court of Appeal, (Brussels, 18th chamber), 24 September 2015, point 267), company law does not need to be referred to in order to determine whether an infringement of Article 25, § 1, first paragraph, 2°, of the Law of 2 August 2002 can be attributed to a legal entity, because the Law of 2 August 2002 institutes an autonomous system of administrative sanctions without referring to company law. Because of this autonomy, the Sanctions Committee does not need to limit itself to the decisions and knowledge of the governing bodies—either statutory or established pursuant to the articles of association—of a company in order to declare it responsible for an infringement. The Sanctions Committee indicated that, pursuant to Article 25, § 2, of the Law of 2 August 2002 the prohibitions laid down in § 1 apply to the natural persons who "take part in" the decision to execute a transaction or place an order to trade on behalf of the legal person concerned. In this dossier it was not disputed that the managing director took part in the decision to place the disputed orders in the stockbroking firm's name. Bearing this in mind, the Sanctions Committee decided that, given that the orders were placed in the stockbroking firm's name, the prohibition on market manipulation also applied to the managing director.

Precisely in light of such price fluctuations, it transpired to be difficult to determine the exact moment at which the share had reached an “abnormal or artificial level” or when exactly “false or misleading signals regarding the supply, demand or price” were given, and all the more so when the intrinsic value of the share was far below the price, as was the case in this dossier. According to the Sanctions Committee, a doubt therefore existed as to whether the fluctuations during the three disputed quarters in and of themselves formed sufficient evidence that the managing director of the stockbroking firm had given false or misleading signals and/or that the price of the share had reached an abnormal or artificial level because of his actions.

This decision was published without mentioning names.

### Money laundering - sanction

On 13 March 2016, the Sanctions Committee identified serious and repeated infringements of legal obligations by a bureau de change and imposed a fine of EUR 75,000 pursuant to Article 40 of the anti-money laundering legislation. It also ordered the publication of its decision without mentioning names on the grounds that publication of names could jeopardize the existence of the firm.

The infringements in question were originally identified by the FSMA service tasked with the supervision of financial service providers (including bureaux de change). All infringements concerned transactions for considerable amounts and/or transactions executed by clients with a high risk profile.

The Sanctions Committee was in the first place of the opinion that the bureau de change had insufficiently identified certain clients or had not correctly updated the identification details of certain clients (breach of Article 7 of the anti-money laundering legislation).

The Sanctions Committee also determined that the bureau de change had not taken the necessary steps to further investigate the “politically exposed”<sup>287</sup> capacity of certain foreign clients/businesspeople. The bureau de change had limited itself to establishing this capacity without gathering or recording any information on their business activity, the people with whom business relationships were entered into, their sector of activity, etc.

The Sanctions Committee additionally ruled that the bureau de change had not complied with its obligations of due diligence in respect of certain clients (breach of Article 14, § 1, of the law). The bureau de change had in fact not asked the clients for any supporting documents or information on the origin of the funds at the time of making foreign exchange transactions for large amounts.

Finally, the Sanctions Committee established that the internal reports pursuant to Article 14, § 2, of the Law were either missing or insufficient to prove that certain foreign exchange transactions had been subject to an investigation as part of the obligation of due diligence.

The Sanctions Committee was of the opinion that the infringements proved that the bureau de change had failed to comply with anti-money laundering legislation, by not putting in place the appropriate resources (including human resources) to guarantee its compliance with legal obligations.

<sup>287</sup> Article 12, § 3, of the anti-money laundering legislation.

The Sanctions Committee did, however, rule that there was insufficient evidence of a lack of due diligence on the part of the bureau de change regarding certain foreign exchange transactions in dollars that were executed in a very short period of time and the cumulative value of which came to more than EUR 10,000. Pursuant to Article 7, § 1, first paragraph, 2° of the anti-money laundering legislation, a bureau de change must identify each client who wishes to execute a transaction, outside of a commercial relationship, for EUR 10,000 or more, irrespective of whether the transaction is carried out in a single operation or in several operations which appear to be linked (splitting transactions). Although every foreign exchange transaction for an amount close to the EUR 10,000 threshold could on the face of it be suspected to be a split transaction, the Sanctions Committee indicated that it falls to every bureau de change to take into consideration the circumstances under which the transactions were executed, their frequency, their characteristics, etc., in order to determine whether or not a connection appears to exist between these transactions. In this dossier, the Sanctions Committee ruled that the fact that the transactions concerned were executed almost simultaneously suggested that they were executed at different branches of the bureau de change and consequently by different people. The dossier also contained no indication that those different people had acted in concert, nor did it contain any other element from which it could be concluded that a link existed between those transactions. The fact that the disputed transactions were all executed in one and the same foreign currency was not decisive, according to the Sanctions Committee. In this case, euros were converted to dollars, as is usually the case with foreign exchange transactions.

Although the Sanctions Committee was of the opinion that the bureau de change had shown indications of laxity by accepting loans from certain clients for considerable sums without investigating the origin of the funds and the profile of the clients concerned, it decided that these relatively old facts which had been brought to the attention of the FSMA by the bureau de change itself, were insufficient to warrant a sanction.

## 1.2. The organizational structure in practice

### 1.2.1. The internal audit function at the FSMA

The Law of 25 April 2014<sup>288</sup> made several changes to the governance structure of the FSMA. The Supervisory Board's general task of oversight of the work done by the FSMA has been defined more precisely. The tasks of the Audit Committee and its relationship to the Management Committee and internal audit have also been clarified<sup>289</sup>.

In 2015, the Audit Committee reviewed its internal regulations and approved the new internal audit charter. This new charter incorporates the new aspects of the FSMA's governance and translates these into changes to the scope of internal audit and to its place within the institution.

The task of internal audit is to contribute to achieving the objectives of the FSMA, in particular by supporting the institution's risk management. Through several audits in 2015, internal audit assessed the operational workings of the departments and services. In this regard,

<sup>288</sup> Law of 25 April 2014 containing various provisions.

<sup>289</sup> Article 48, § 1 of the Law of 2 August 2002.

it examined the internal control measures and the reasonable guarantees they provide as regards achieving the strategic and operational objectives.

Internal audit conducted two audits within the service responsible for supervision of supplementary pensions. The first of these audits looked at how this service conducts prudential supervision of risk management at institutions for occupational retirement provision and how use is made of on-site inspections at these institutions. The second audit looked at the organization of supervision of social legislation regarding supplementary pensions (LPC/WAP and LPCI/WAPZ) in light of the recent major change in the way the service works. Because the FSMA has started using the DB2P database for supplementary pensions, it can conduct its supervision of these pension schemes in a systematic way.

The internal audit service also audited the supervision of market infrastructures, assessing how the service in question supervises Belgian market operators and institutions for clearing and settlement of Belgian securities transactions. Given the international nature of the securities and derivatives markets, special attention was paid to the FSMA's cooperation with foreign supervisory authorities that are also involved in the supervision of these institutions.

The FSMA is continuously working on modernizing and improving its data management. As an extension to its 2014 audit of the new content management application, in 2015 internal audit analysed the basic concepts that the FSMA will use as part of the overhaul of its data management structure. This new structure aims to increase the efficiency of data handling and improve the quality and safety of the data used in work processes.

The internal auditors also audited the FSMA's supervision of market operators. For the purposes of the audit, market operators are understood to include management companies of UCIs, portfolio management and investment advice companies, bureaux de change, independent financial planners and regulated real estate companies. Because this supervision is conducted by one and the same service, it supervises and regulates several economic activities. The service also therefore applies several supervisory angles depending on the legal status of the authorized companies. This includes prudential and semi-prudential supervision, supervision of information, and supervision of compliance with anti-money laundering rules and measures to combat the financing of terrorism.

In 2015, internal audit completed an audit of the secretariat function in the FSMA. This horizontal operational audit aimed to obtain an insight into the way in which this function is organized and steered in all sections of the organization. The internal auditor took into account the work carried out in this respect by the service in charge of the FSMA's organization. The report of this audit will be ready at the beginning of 2016.

In the year under review, the working procedures of internal audit were adapted to the changes in the institution's governance. As a result, the roles and responsibilities of all parties involved in internal audit were further detailed. In particular, it was clarified how internal audit reports should be handled and followed up.

The head of internal audit submitted each audit report for discussion to the Management Committee. The report was afterwards provided to the audit committee accompanied by the measures taken by the Management Committee to implement the audit recommendations. The internal auditors explained their audit reports to the audit committee.

The Audit Committee discussed the internal audit activity reports for 2015 and approved the audit schedule for 2016.

## 1.2.2. 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.

During the past year the Management Committee was not asked to address any conflicts of interest. It did receive some requests for an interpretation of the code from members of staff.

The same number of requests for authorization of transactions of a defensive character were submitted as in the two previous years.

No requests were made for authorization to exercise complementary functions related to the FSMA's areas of competence.

## 1.2.3. Developments in IT

In 2015 several important IT projects were completed. Efforts focused mainly on four pillars that are explained below.

- Internal organization. The professionalization of the IT service's internal organization was continued, using the ITIL framework as a source of inspiration. This made it possible to introduce internally the necessary additional tools, in various areas such as portfolio management, project organization, service desk, etc.
- Development of applications. The most significant efforts were devoted to the production of the internal platform for document management, which is now fully operational, and the development of the MCC (Mortgage and Consumer Credit) application. The FSMA thus has the tools to exercise its powers in the area of access to the profession of lender and of credit intermediary.
- Information management. The FSMA wishes to pay due attention to the collection, processing and use of information and data. In 2015 several initiatives were taken, particularly with regard to new ways of reporting and the management of data quality.
- Modernization of the system infrastructure. In 2012 the FSMA outsourced its data centre. The outsourcing contract stipulated that an extensive technological upgrade would be done in 2015. This upgrade was realized together with the hosting partner. The IT service also did a full upgrade of the desktop, laptop and smartphone environments.

Overall, 30% of the available internal and external IT resources was allocated to internal maintenance, study and operational activities (including exploitation). Half the resources consisted of external staff. These external consultants were assigned to specialized areas, but mainly to projects requiring a temporary strengthening of the development capacity. The most significant efforts were devoted to the MCC application, the production of the tool for internal record management and the Information Management programme.



## 1.2.4. Human resources management

### Recruitment

The efforts made in 2014<sup>290</sup> in terms of hiring were continued in 2015. These have led to the recruitment of 31 new colleagues in 2015. Taking into account the staff members who left the FSMA for retirement or other reasons, a net increase of 20 staff members was achieved (6.3%). In 2015, recruitments were mainly of the following profiles: jurists, actuaries, systems engineers, communications staff, economists, knowledge expert jurists, project & content managers and security officers.

Table 12: The staff complement in figures

	31/12/2015
Number of staff members according to the staff register	337
Number of staff according to the staff register (FTEs)	320.33
Operational staff complement (FTEs)	312.34
Maximum staff complement by the end of 2015 <sup>291</sup> (FTEs)	336

Through the recommendations campaign known as 'B-Ring a friend@FSMA'<sup>292</sup> launched in late 2014, four new staff members were recruited in 2015. The employees who helped make it possible to recruit new colleagues via this campaign were offered the chance to choose a charitable cause to which a set amount was donated.

Integrating new staff into the various departments requires significant attention. The FSMA thus prefers a gradual process of recruitment. Young staff need to be given the opportunity to immerse themselves in the topic and to become thoroughly familiar with the supervisory culture.

### Evaluations

As regards the evaluation system, the emphasis was once again placed on a consistent application of the process across the entire institution. With that goal in mind, meetings were held to promote consistency, at which all line managers compared the criteria they take into consideration when assigning certain employees an exceptional score or, on the contrary, a score of 'to be improved' or 'unsatisfactory'. A similar exercise was carried out for employees eligible for promotion.

<sup>290</sup> See FSMA Annual Report 2014, p. 206 and following.

<sup>291</sup> See the Royal Decree of 17 May 2012 on the coverage of the FSMA's operating expenses as amended by the Royal Decree of 28 March 2014

<sup>292</sup> See FSMA Annual Report 2014, p. 207-208.

## 1.2.5. Consultation on social matters

A sectoral agreement for 2015-2016 was jointly<sup>293</sup> entered into on 26 October 2015. As in previous years, job security, cost of living and staff employment skills (notably via the right to training) were central.

Intensive discussions were held at an organizational level in the spring of 2015 between employer and employee representatives to set the priorities for consultation on social matters leading up to the social elections of May 2016.

It was fairly quickly decided that priority should be given to meeting obligations as regards psychosocial risks at work<sup>294</sup>. As part of the undertaking's health & safety policy, psychosocial risks<sup>295</sup> are to be taken into account, as are all other risks that could affect the health and safety of employees. As part of this, an employee satisfaction survey was conducted. The results, which were published at the end of 2015, on the whole appear very positive. On most criteria, the FSMA scored as well or even better than its benchmark. Notwithstanding the excellent results, several working groups will be set up in 2016 and 2017 composed of employee representatives and interested staff.

These working groups will implement concrete actions to improve any points for attention that were identified. The FSMA's main challenge is to consolidate this positive outcome from the employee satisfaction survey.

For the employer representatives, simplifying the administrative workload was a clear priority, given that the FSMA's action plan states that the supporting services (such as HR) should free up as many resources as possible to allocate them to the supervisory services.

There are many facets to simplifying administration. Even though the FSMA is constantly striving to optimize existing working methods and processes as it is, this is not sufficient. Working conditions at the FSMA (benefits, working hours, absences etc.) often – because they have been in existence for a long time – contain as many exceptions as rules. In addition, the follow-up required for their application is often labour-intensive, to an extent that is not always proportionate to the real benefit to employees. Certain benefits, which undoubtedly had a good reason for existing in the past, are no longer relevant, or at least not to the same extent, in light of changes in society.

Some adjustments were certainly required with a view to achieving a staff policy that is sustainable in the long term. Having a sustainable staff policy over the long term means daring to modernize, and daring to overhaul 'acquired' rights if these no longer appear to be appropriate in light of the substantial changes to society or the work context.

Lastly, the employer representatives also wished to address the increasing demand for flexible working hours. This subject was included in the discussions.

<sup>293</sup> Along with the National Bank of Belgium, the National Delcredere Office, the Participation Fund, the Federal Participation and Investment Corporation, and Credibe, the FSMA is part of joint committee 325.

<sup>294</sup> - Law of 28 February 2014 supplementing the Law of 4 August 1996 on the welfare of employees at work, addressing in particular the prevention of psychosocial risks at work, including violence, harassment and sexual harassment at work.  
- Law of 28 March 2014 amending the Judicial Code and the Law of 4 August 1996 on the welfare of employees at work, as regards the legal procedures.  
- Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work.

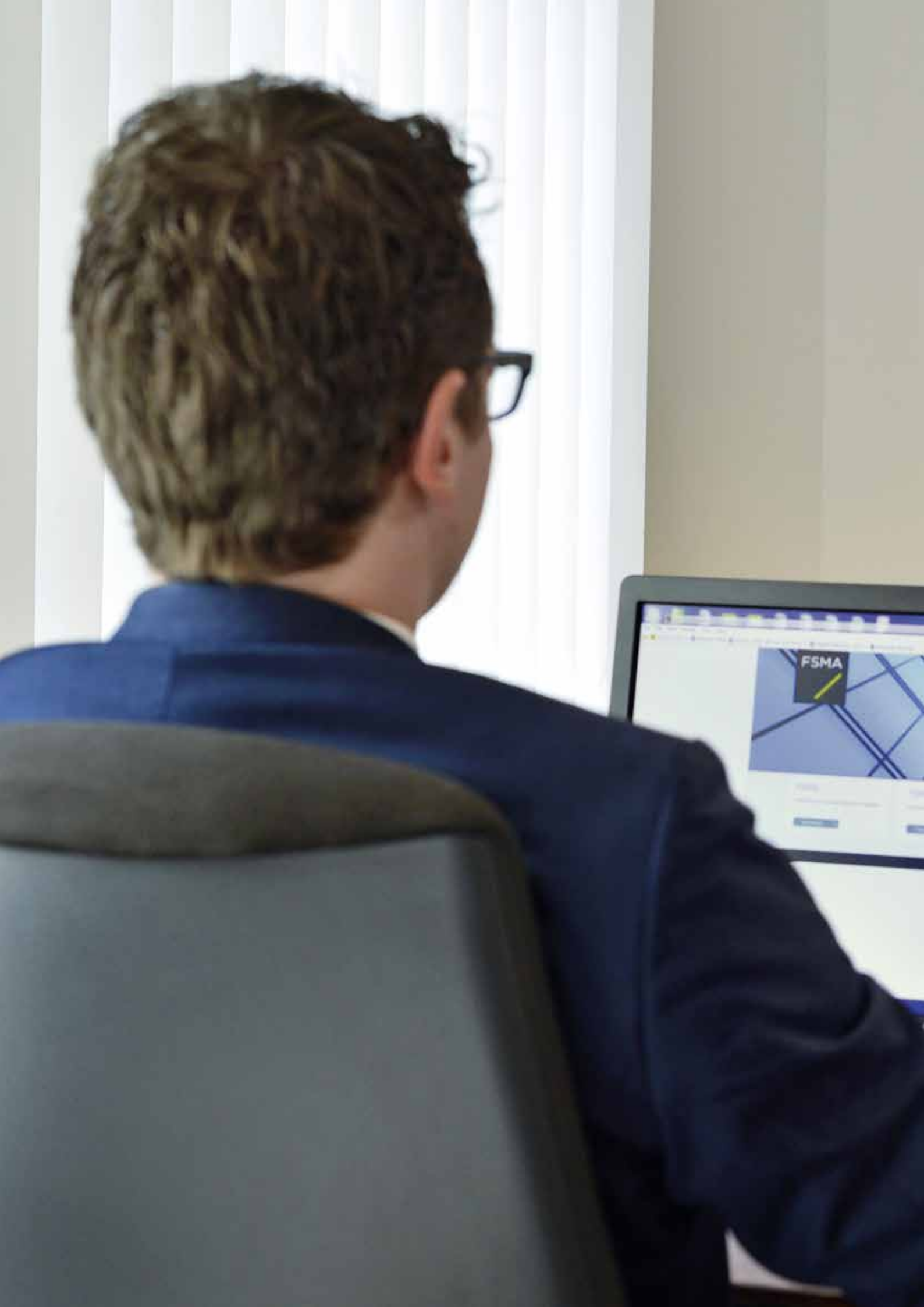
<sup>295</sup> The legal provisions concern prevention of all psychosocial risks and are no longer aimed solely at preventing violence and moral or sexual harassment at work..

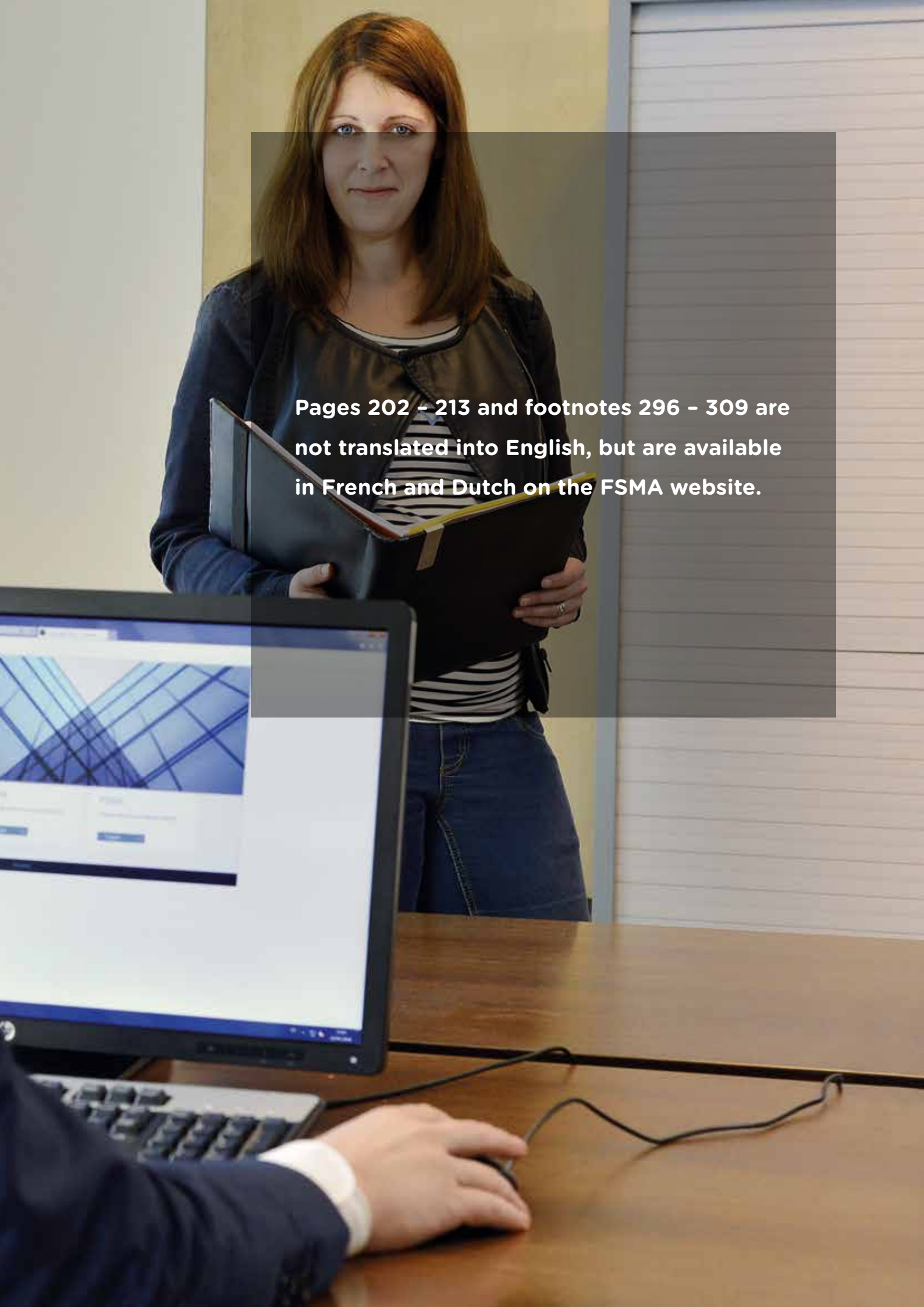
The trade unions have fulfilled their responsibilities in the modernization of a number of working conditions. Both parties came to an agreement on 30 September 2015 on a whole array of adjustments, motivated by the aforementioned considerations.

It was agreed that the resources freed up as a result of the measures taken would be applied to other benefits for staff, and more specifically:

- some specific measures for more dynamism in the current career path of administrative staff
- renewal of hospitalization insurance and guaranteed income insurance for all employees.

Negotiations on these latter two points are ongoing in 2016.



A woman with long brown hair, wearing a black leather jacket over a striped shirt and blue jeans, stands in an office. She is holding two black folders. In the foreground, a person's hand is visible using a mouse on a wooden desk. A computer monitor displays a website with a blue and white geometric pattern. The background features a window with white horizontal blinds.

**Pages 202 – 213 and footnotes 296 – 309 are not translated into English, but are available in French and Dutch on the FSMA website.**



# ABBREVIATIONS

FSMA

AUTORITEIT  
VOOR FINANCIËLE  
DIENSTEN  
EN MARKTEN

AUTORITÉ  
DES SERVICES  
ET MARCHÉS  
FINANCIERS



For purposes of readability we have used abbreviations throughout the annual report, for which the full official names are given below:

<b>ABIP/BVPI</b>	Belgian association of pension institutions (Pensioplus)
<b>AIF</b>	Alternative investment fund
<b>AIF Law</b>	Law of 19 April 2014 on alternative investment funds and their managers
<b>AIFM Directive</b>	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
<b>Anti-money Laundering Law</b>	Law of 11 January 1993 on preventing the use of the financial system for purposes of money laundering and the financing of terrorism
<b>Assuralia</b>	Professional association of insurance companies
<b>Banking Law</b>	Law of 25 April 2014 on the legal status and supervision of credit institutions
<b>BEAMA</b>	Belgian Asset Managers Association
<b>CBF</b>	Banking and Finance Commission (before its merger with the Insurance Supervisory Authority (CDV/OCA))
<b>CBFA</b>	Banking, Finance and Insurance Commission
<b>CC</b>	Companies Code
<b>CEL</b>	Code of Economic Law
<b>CRD IV Directive</b>	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and on the prudential supervision of credit institutions and investment firms amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
<b>DB2P</b>	Database on supplementary pensions
<b>EBA</b>	European Banking Authority
<b>ECB</b>	European Central Bank
<b>EECS</b>	European Enforcers Coordination Sessions
<b>EEA</b>	European Economic Area
<b>EFRAG</b>	European Financial Reporting Advisory Group
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>EMIR Regulation</b>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
<b>ESMA</b>	European Securities and Markets Authority



<b>ESRB</b>	European Systemic Risk Board
<b>FASB</b>	Financial Accounting Standards Board
<b>FATF</b>	Financial Action Task Force
<b>FEBELFIN</b>	Belgian Financial Sector Federation
<b>FIPU</b>	Belgian Financial Intelligence Processing Unit (CTIF-CIF)
<b>Former Banking law</b>	Law of 22 March 1993 on the legal status and supervision of credit institutions
<b>FPS</b>	Federal Public Service
<b>FSMA</b>	Financial Services and Markets Authority
<b>General Insurance Regulation</b>	Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies
<b>IAASB</b>	International Auditing and Assurance Standards Board
<b>IAIS</b>	International Association of Insurance Supervisors
<b>IAS</b>	International Accounting Standards
<b>IASB</b>	International Accounting Standards Board
<b>IFRIC</b>	International Financial Reporting Interpretations Committee
<b>IFRS</b>	International Financial Reporting Standards
<b>Independent Financial Planners Law</b>	Law of 25 April 2014 on the status and supervision of independent financial planners and on the provision of financial planning advice by regulated companies and amending the Companies Code and the Law of 2 August 2002 on the supervision of the financial sector and on financial services
<b>Insurance Law</b>	Law of 4 April 2014 on insurance
<b>Insurance Supervision Law</b>	Law of 9 July 1975 on the supervision of insurance companies
<b>IOSCO</b>	International Organization of Securities Commissions
<b>IORP</b>	Institution for occupational retirement provision
<b>IORP Decree</b>	Royal Decree of 12 January 2007 on the prudential supervision of institutions for occupational retirement provision
<b>IORP Directive</b>	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
<b>ISA</b>	Insurance Supervisory Authority (before its merger with the Banking and Finance Commission)
<b>KIID</b>	Key Investor Information Document
<b>Law of 6 April 1995</b>	Law of 6 April 1995 on the legal status and supervision of investment firms
<b>Law of 27 March 1995</b>	Law of 27 March 1995 on intermediation in insurance and reinsurance and on the distribution of insurance

<b>Law of 2 August 2002</b>	Law of 2 August 2002 on the supervision of the financial sector and on financial services
<b>Law of 22 March 2006</b>	Law of 22 March 2006 on intermediation in banking and financial services and on the distribution of financial instruments
<b>Law of 21 December 2009</b>	Law of 21 December 2009 on the status of payment institutions and electronic money institutions, access to the activity of payment service provider and access to payment systems
<b>LCAT/WVLO</b>	Law of 25 June 1992 on the non-marine insurance contract
<b>Life Insurance Decree</b>	Royal Decree of 14 November 2003 on life insurance
<b>LIRP</b>	Law of 27 October 2006 on the supervision of institutions for occupational retirement provision
<b>LPC/WAP Decree</b>	Royal Decree of 14 November 2003 implementing the Law of 28 April 2003 on supplementary pensions and their tax regime and on certain supplementary social security benefits
<b>LPC/WAP Law</b>	Law of 28 April 2003 on supplementary pensions and their tax regime and on certain additional social security benefits
<b>LPCI/WAPZ Law</b>	Title II, Chapter 1, Section 4 of the Programme Law (I) of 24 December 2002 (legislation on supplementary pensions for the self-employed)
<b>Market Abuse Decree</b>	Royal Decree of 5 March 2006 on market abuse
<b>Market Abuse Directive</b>	Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation
<b>Market Abuse Regulation</b>	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
<b>MiFID Directive</b>	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC
<b>MoU</b>	Memorandum of Understanding
<b>MTF</b>	Multilateral trading facility
<b>NBB</b>	National Bank of Belgium
<b>OFP</b>	Organisation for Financing Pensions
<b>PRIIPS Regulation</b>	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
<b>Prospectus Directive</b>	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC
<b>Prospectus Law</b>	Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets

<b>Prospectus Regulation</b>	Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards the information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements
<b>Real Estate Investment Company Decree</b>	Royal Decree of 7 December 2010 on real estate investment companies (vastgoedbevaks/sicafis)
<b>Regulated Real Estate Companies Law</b>	Law of 12 May 2014 on regulated real estate companies
<b>Reinsurance Supervision Law</b>	Law of 16 February 2009 on reinsurance
<b>Royal Decree of 3 June 2007</b>	Royal Decree of 3 June 2007 laying down detailed rules on the implementation of the directive on markets in financial instruments
<b>Royal Decree of 14 November 2007</b>	Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market
<b>Royal Decree of 23 August 2004</b>	Royal Decree of 23 August 2004 implementing Article 63, §§ 1 and 3 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services
<b>Royal Decree on Regulated Savings Accounts</b>	Royal Decree of 18 June 2013 imposing certain information obligations when distributing regulated savings accounts
<b>SIR/GVV</b>	Regulated Real Estate Company
<b>SME Financing Law</b>	Law of 21 December 2013 on various provisions on the financing of small and medium-sized enterprises
<b>Solvency II Directive</b>	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance
<b>Squeeze-out Decree</b>	Royal Decree of 27 April 2007 on squeeze-out bids
<b>Takeover Decree</b>	Royal Decree of 27 April 2007 on takeover bids
<b>Takeover Directive</b>	Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids
<b>Takeover Law</b>	Law of 1 April 2007 on takeover bids
<b>Transparency Decree</b>	Royal Decree of 14 February 2008 on disclosure of major shareholdings
<b>Transparency Directive</b>	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC
<b>Transparency Law</b>	Law of 2 May 2007 on disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions
<b>Transversal Royal Decree</b>	Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients
<b>Twin Peaks Decree</b>	Royal Decree of 3 March 2011 on developments in the supervisory architecture for the financial sector

<b>Twin Peaks Law</b>	Law of 2 July 2010 amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services and the Law of 22 February 1998 determining the organic status of the National Bank of Belgium, and containing various provisions
<b>Twin Peaks II Law</b>	Law of 30 July 2013 on strengthening the protection of consumers of financial products and services and the powers of the Financial Services and Markets Authority and containing various provisions (I)
<b>UCI</b>	Undertaking for collective investment
<b>UCI Decree</b>	Royal Decree of 12 November 2012 on certain undertakings for collective investment
<b>UCI Law</b>	Law of 3 August 2012 on certain forms of collective management of investment portfolios
<b>UCITS</b>	Undertaking for collective investment in transferable securities with a European passport
<b>UCITS Directive</b>	Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
<b>UCITS IV Directive</b>	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)



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