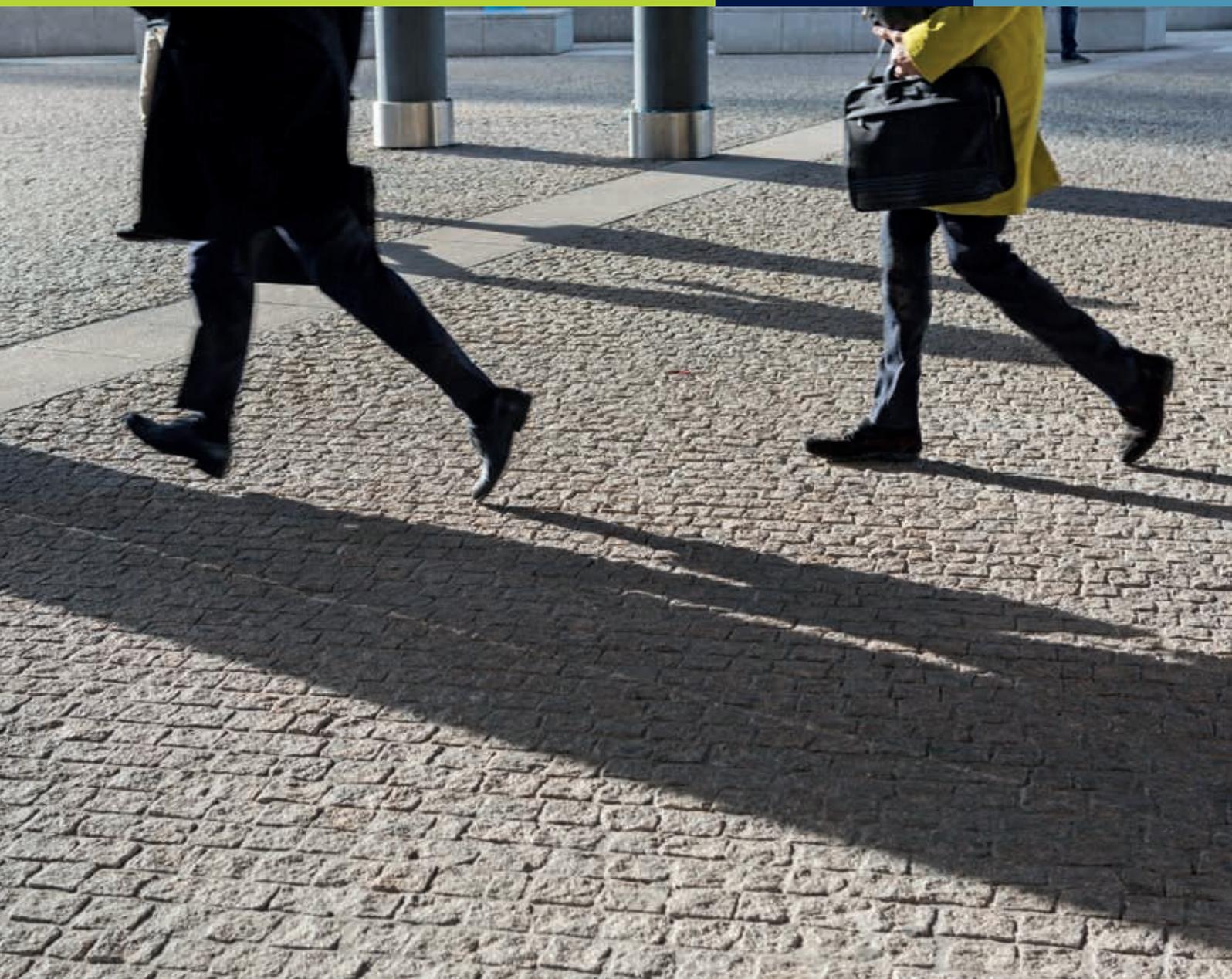


# ANNUAL REPORT 2016

FSMA



FINANCIAL  
SERVICES  
AND MARKETS  
AUTHORITY



**Legal responsibility for this edition**

J.-P. Servais,

Rue du Congrès / Congresstraat 12-14, 1000 Brussel

**Photography** Kris Pannecoucke

**Layout** Gamma nv, Antwerpen

# ANNUAL REPORT 2016

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# FOREWORD



Dear readers,

In this annual report, the Financial Services and Markets Authority (FSMA) reports on its activities in 2016. All of these activities have contributed to accomplishing our mission: working towards a sustainable financial system, with open and transparent markets. A system in which consumers can rely on the proper provision of financial services, through which they can buy financial products in line with their wishes and needs. A system in which the financial industry serves society and contributes to a sound financing of the real economy.

The FSMA always acts with the consumer in mind. It is constantly on the lookout for trends and risks that could have an impact on consumers, and works to prevent or mitigate those risks. It also contributes to improving the financial education of Belgians. The FSMA seeks to develop in consumers a discerning confidence in the financial sector through greater financial literacy.

Just as in other economic sectors, the financial sector is seeing significant shifts on an international level, be it in Europe or worldwide. Many of these shifts are linked to rapid technological advances which could potentially have major repercussions for the financial sector and the financial consumer. Internationalization and technological advances have made quickly identifying trends and risks—and exercising risk-based supervision—all the more important.

It is very important to the FSMA to keep close track of these international shifts and activities. This is why the FSMA is a member of—and plays an active and leading role in—European and international agencies and organizations, details of which you will find in this report.

In 2016, the FSMA became Vice Chair of IOSCO, the International Organization of Securities Commissions. The FSMA also became Chair of the IFRS Monitoring Board, which oversees the international standard-setter for financial reporting. In addition, the FSMA chairs the committee within the European agency ESMA that monitors financial innovation.

The FSMA keeps its finger on the pulse of technological advances in Belgium too. In 2016, it set up a FinTech portal. The aim of this portal is to allow companies engaged in financial innovation easily to get in touch with the FSMA. This portal has already led to numerous contacts with players offering or wishing to develop a wide range of activities. Given the importance of such quick and direct contact with FinTech players, this portal will continue to be further developed, in conjunction with the National Bank of Belgium.

The FinTech portal illustrates the importance of communication with the sector. As experience shows, supervisory authorities that communicate clearly, directly and promptly on the rules and on their expectations find that this contributes to tangible changes in the field. This is why the FSMA places a lot of importance on its communication with the sector.

For a supervisory authority, clear communication as to the rules and its expectations is a valuable tool. The FSMA uses a variety of channels to ensure that this communication flows smoothly. In addition to regular contact with representatives of sectoral organizations, the FSMA also publishes newsletters and newsflashes directed at the many intermediaries in banking and investment services, insurance and credit, and which contain information specifically tailored to this target group.

The FSMA may also set out its expectations for example in the form of a Communication addressed to the sector. In 2016, the FSMA published Communications setting out its expectations as regards the comprehensibility of home insurance documents and as regards financial reporting on Class 23 life insurance. These Communications in all cases originated from observations that came to light during a sectoral inquiry.

This annual report is itself also a demonstration of the FSMA's wish to make its communication clearer and more accessible. As you will see, you don't have to be a specialist to be able to understand this report. Additionally, the legal positions adopted by the FSMA will no longer be gathered once a year in a separate chapter of the annual report. They will from now on be published on the FSMA's website as they are adopted. The sector will as a result be informed more quickly and easily of these positions and will be able to act accordingly at an earlier stage.

There has been evidence in recent years that this approach to communication and the FSMA's approach with, for example, complex products and inspections, has led to changes in the field. Clear communication with the sector is also important to avoid any potentially unrealistic expectations as regards supervision. Supervision cannot after all prevent all risks for society.

Although proactive communication and identifying and preventing risks remain the FSMA's primary goals, sometimes this approach does not suffice. In these cases, the supervisory authority must take the next step: regulatory and corrective action.

A good illustration of such regulatory action is the prohibition in 2016 of the distribution of binary options and certain other over-the-counter derivatives to retail clients in Belgium. By prohibiting this distribution, the FSMA led the way on an international level and issued a clear warning that these products are not suitable for the ordinary consumer.

In 2016, the FSMA also took several corrective measures. Over the course of the year, the FSMA formally intervened nearly 500 times. Such intervention can take various forms. It can for example entail withdrawing the registration of an intermediary who no longer meets the criteria for working in the sector, a warning against illegal offers, ordering that shortcomings identified during an inspection be remedied, or suspending trading in a share in order to make the necessary information known to the market.

Corrective action can also entail administrative sanctions. Since the inception of the new Sanctions Committee in mid-2012, 36 administrative sanctions have been imposed for a total amount of over EUR 14 million. These sanctions were the consequence of infringements of various laws. Alongside infringements of the rules regarding market abuse, the sanctions also pertained to infringements of legislation such as the law on financial products, money laundering, or public offers of financial instruments. The FSMA will further extend its sanctions policy to other areas of supervision.

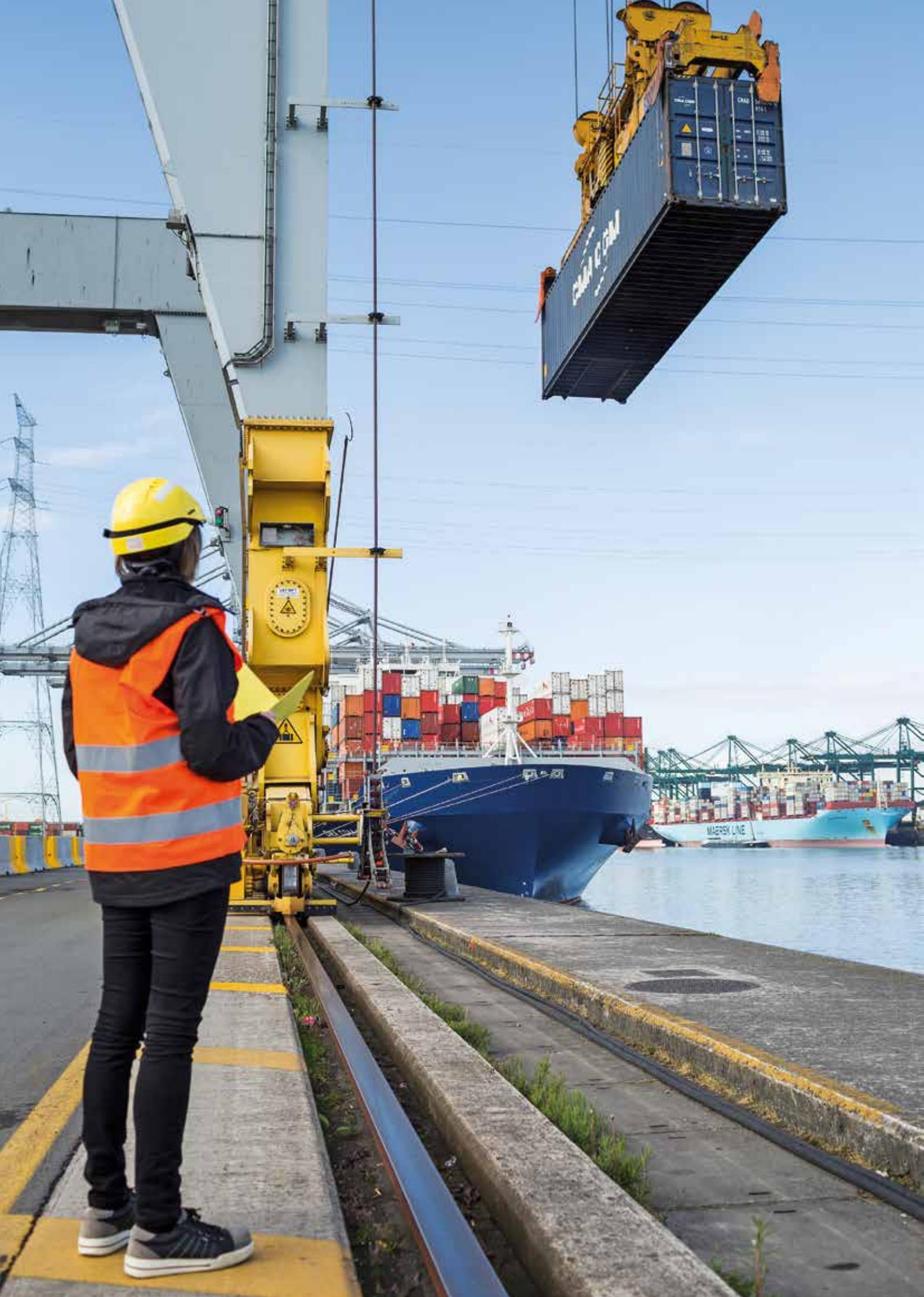
Over the last few years, the FSMA has seen a continual increase in its responsibilities. In 2016, the legislature entrusted an important responsibility to the FSMA in the area of supervision of statutory auditors. The newly established independent supervisory authority, the “College voor toezicht op de bedrijfsrevisoren/Collège de supervision des réviseurs d’entreprises” which supervises statutory auditors, has its headquarters in the FSMA buildings and counts two FSMA representatives in its midst. This supervisory college calls upon FSMA staff for administrative support and inspections, and can refer matters to the FSMA’s Sanctions Committee.

It is of course impossible to go into every single one of the FSMA’s initiatives and activities in all of its diverse and complementary areas of supervision in this foreword. I invite you to read in more detail in this report about the activities of the FSMA in areas such as market- and product supervision, inspections, supplementary pensions, authorizations and registrations, financial education and much more.

In 2017 and over the coming years, the FSMA will continue to work towards its mission in all of its areas of responsibility. In doing so, the FSMA will continue to contribute to the development of a sustainable financial system in Belgium, which supports the real economy and guarantees the proper provision of services to consumers.

Happy reading,

Jean-Paul SERVAIS  
Chairman





## A few key dates

**26 January:** EIOPA publishes the results of the European stress test for pension funds. This stress test shows that the Belgian pension funds sector can hold up well even under conditions of extreme economic stress.

**14-20 March:** The FSMA organizes the first edition of Money Week. After an opening conference, information stands are set up and over 30,000 primary school children play the budget game. Her Majesty the Queen joins in with playing the budget game in a number of Brussels classrooms.

**12 May:** The Chairman of the FSMA, Jean-Paul Servais, is elected as Vice Chair of IOSCO, the International Organization of Securities Commissions. The FSMA's Chairman also subsequently becomes Chair of the IFRS Monitoring Board.

**31 May:** The FSMA orders Value8 to place a bid for Sucraf. Research from the FSMA uncovered that Value8 had by far exceeded the threshold of 30 per cent of voting securities in Sucraf in November 2015.

**7 June:** Wikifin.be, the FSMA's financial education programme, launches the Wikifin learning tool on financial literacy in conjunction with KU Leuven University. The main goal of this learning tool is to put a spotlight on financial literacy in Belgium. Based on this, the policies and field work can better be aligned with the needs in this area.

**17 June:** The FSMA launches a Fintech portal on its website. Through this portal, Fintech companies can get in touch with the FSMA.

## Supervision

# 107

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

# 193

**listed companies**

# 22,387

registered **intermediaries**

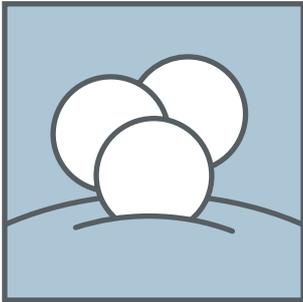
# 204

**pension funds** manage the **pension plans** of

# 1.5 million

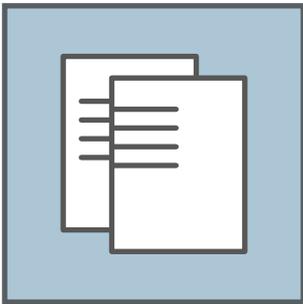
**employees and self-employed**

# Financial landscape



**Deposits with credit institutions** governed by Belgian law (September 2016):

**596**  
billion EUR



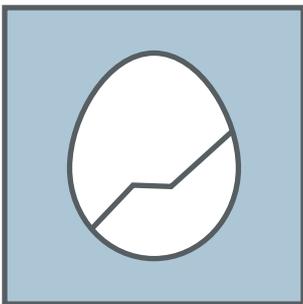
**Credit institution balance sheet total** (September 2016):

**1,029.7**  
billion EUR



**Assets under management** by **investment funds** and **pension savings funds** governed by Belgian law:

**127**  
billion EUR



**Pension fund balance sheet total:**

**24.7**  
billion EUR

**14 & 21 June:** The FSMA takes part in the hearings for the Special Committee on “International tax fraud/ Panama Papers” of the Chamber of Representatives.

**13 July:** The FSMA accepts an agreed settlement with the Cyprus-based investment firm Rodeler Limited. This company had offered binary options and other products in Belgium without the prospectus required for this purpose. The agreed settlement consists of a payment of EUR 140,000 and a publication by name on the FSMA's website. This is the first settlement relating to this issue entered into with a foreign firm.

**18 August:** The Regulation that introduces a ban on distribution of certain OTC derivatives such as binary options, comes into force.

**10 October:** The takeover of SAB Miller by AB Inbev is rounded off. This is an exceptionally large transaction by Belgian standards.

**21 September:** The FSMA chairs the first meeting of the Euribor College. This College brings together the supervisors of all banks taking part in Euribor, as well as the supervisors of countries for which Euribor is of systemic importance.

**5 October:** The FSMA takes part in a hearing as part of the ‘Optima’ parliamentary inquiry committee.

**6 December:** The supplementary pensions database (DB2P) is opened to the public. This means that everyone has access to this database through the website [www.mypension.be](http://www.mypension.be) to check which pension institution manages their supplementary pension and how much pension has already been accrued.

# Mission and vision

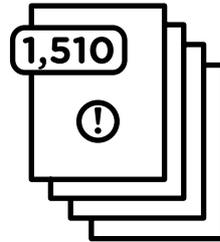
The FSMA works towards a sustainable financial system. This means a financial system in which consumers can rely on the proper provision of financial services and on transparent and open markets, in which consumers can buy financial products in line with their wishes and needs, and in which the financial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

The FSMA acts with consumers in mind. This is why it is constantly on the lookout for trends and risks and is fully committed to its supervisory tasks. It also engages in efforts to increase financial literacy. In this way it wishes to develop in consumers a discerning confidence in the financial sector.

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

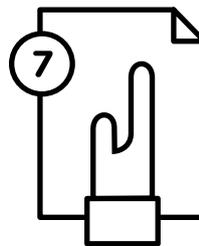
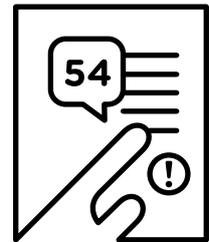
- reinforcing engagement towards the financial consumer;
- allocating as many resources as possible to supervisory tasks;
- more quickly identifying risks, focusing on priorities and monitoring performance and results;
- developing a modern organization;
- optimizing the management and use of information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

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

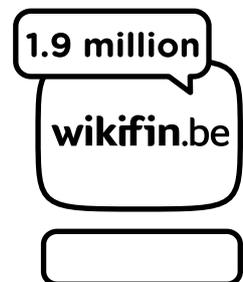


The FSMA received 1,510 messages from consumers on a wide range of financial subjects. Most messages related to warnings and authorizations. Almost four out of ten questions and complaints related to these. Over a quarter of the messages related to saving and investment. 13 per cent of questions and complaints related to insurance and 11 per cent to pensions.

The FSMA published 54 warnings, which related to 137 companies and one natural person. The warnings related to companies involved in offering binary options, but also in other forms of fraud, especially boiler rooms and recovery rooms.

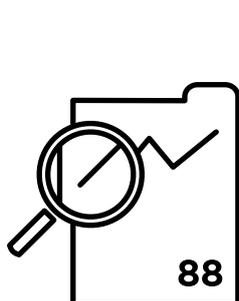


The FSMA imposed seven administrative sanctions in the form of an agreed settlement. These settlements consist of the payment of a monetary amount and a publication by name on the FSMA's website.

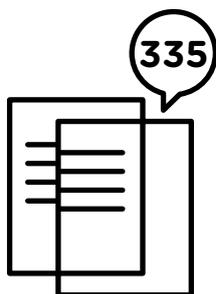


In 2016, [www.wikifin.be](http://www.wikifin.be) was visited close to 1.9 million times, an increase of 68% compared with the previous year.

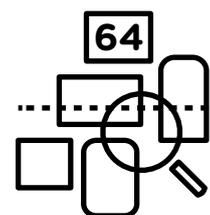
# The FSMA in 2016: in brief



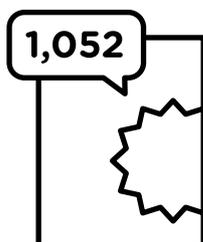
The FSMA launched 88 preliminary analyses or full analyses into potential market abuse. It suspended trading in a share 52 times.



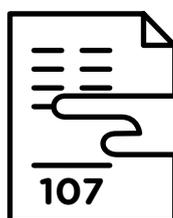
The FSMA received 335 transparency notifications. These are notifications regarding the upward or downward crossing of a statutory or regulatory threshold of shareholdings in a listed company. The FSMA received 1,317 notifications of managers' transactions.



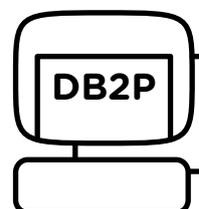
During the year under review, the FSMA subjected 64 structured products to a thorough examination. The FSMA deemed 32 products to be particularly complex. These products were, as a result, not sold on the retail market.



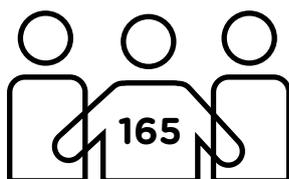
The FSMA handled 1,052 dossiers relating to advertising. The vast majority, with 854 dossiers and over 4,000 advertisements, concerned investment funds.



The FSMA conducted inspections in a range of domains. In total, there were 107 inspections, the majority among intermediaries.

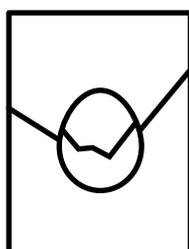


At the end of 2016, the supplementary pensions database (DB2P) was opened to the public. Through DB2P, everyone can check which pension institution manages their supplementary pension and how much pension has already been accrued.

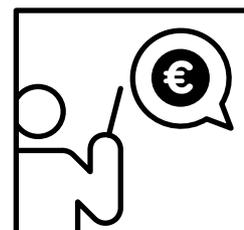


The number of insurance intermediaries fell by six per cent to 12,508. The number of intermediaries in banking and investment services fell by eight per cent to 3,144. The FSMA withdrew the registration of 165 intermediaries and suspended that of 14 intermediaries.

Over the course of the year, 12 pension funds resolved their funding gap. As a result, the number of funds with recovery or reorganization measures fell to 14.



In 2016, the FSMA organized the first edition of Money Week. The aim of this initiative, linked to Wikifin.be, is to encourage money matters to be discussed as widely as possible and to devote extra attention to financial education.







# Financial products that are easy to understand, safe, useful and cost-transparent

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

## Supervision of advertising

The FSMA supervises the distribution of financial products to consumers. Advertisements for products such as insurance policies, debt instruments, and regulated savings accounts come under this supervision. Undertakings for collective investment (UCIs), also referred to as 'investment funds' or simply 'funds', also come under this supervision. The FSMA checks, inter alia, whether offerors clearly state both the advantages and disadvantages of a financial product.

Supervision of advertising messages is crucial. Consumers mostly find out about financial products through advertisements. They make purchasing decisions based on these advertising messages. To enable consumers to make an informed assessment of financial products, the FSMA checks the majority of advertising messages beforehand. The FSMA's approval of an advertisement is therefore a prerequisite to the distribution of most financial products<sup>1</sup>.

The Belgian government tightened the supervision of advertising as a reaction to issues that arose during the financial crisis. Consumers continued to be unaware of the risks certain products entailed.

The Royal Decree on advertisements lays down the substantive rules for advertising financial products. The advertising messages must meet a number of specific criteria: the information must be accurate; misleading information is prohibited; advantages and disadvantages of a product should be presented in a balanced manner; and they should be written in language that is easy to understand.

The Royal Decree strongly opposes a purely salesy approach by offerors in which they primarily try to highlight a product's pros. All too often, an advertisement presents the benefits of a product in a prominent position, whilst the risks are written in small print underneath. This is what the FSMA strives to prevent.

<sup>1</sup> There is no prior (ex ante) approval of advertising messages by the FSMA for insurance products.

The ex-ante checks help prevent consumers signing up for a product based on inaccurate, incomplete, or misleading advertisements. They avoid consumers suffering loss and having to file complaints with the financial ombudsman or the courts.

In addition to these rules, the Royal Decree obliges offerors to provide consumers with information on the risks associated with financial products before they sign up. The Royal Decree also aims to promote the comparability of products, for example as regards calculating historical yields. These rules are intended to help consumers make a well-informed choice.

To prevent consumers being misled by offerors painting a rosy picture of returns, the Royal Decree on Advertisements lays down certain rules. Offerors of UCIs must state the returns on their products from the start. If a UCI has existed for longer than five years, it must at least state the returns over five years. If such a fund has not yet been in existence for a full year, the returns cannot be presented. The FSMA rejects all advertising messages in which the returns of funds are not stated according to the rules prescribed.

The Royal Decree on Advertisements entered into force on 12 June 2015. Since then, the large majority of advertising messages have been screened prior to distribution. The FSMA has identified that advertising messages continue all too often to highlight product returns without sufficiently highlighting the risks. If these aspects are not in line with the legislation, handling such advertisement dossiers takes a lot of time. Sometimes, there can even be six or more draft versions.

To enable the approval of advertisement dossiers to run more smoothly, the FSMA publishes a list of FAQs to answer any possible questions on the supervision of advertisements. The FSMA provides clarifications on the Royal Decree in individual meetings with financial institutions and in workshops with the sector. It hopes that such initiatives will help many offerors gain in-depth knowledge on the subject. In some dossiers, their limited knowledge of the legal framework of the supervision of advertisements, and more particularly that of marketing departments, appears to be an issue.

Depending on the circumstances, the FSMA has a term of five to fifteen days in which to handle advertisement dossiers. For UCIs, the procedure is faster. Nine out of ten dossiers of investment funds<sup>2</sup> are approved within a maximum of 72 hours.

**Table 1:** Supervision of advertising in figures

|                            | Number of dossiers | Website dossiers | Number of advertising messages | Number of emails from the FSMA |
|----------------------------|--------------------|------------------|--------------------------------|--------------------------------|
| Funds                      | 854                | 223              | 4,049                          | 2,226                          |
| Regulated savings accounts | 105                | 75               | 266                            | 312                            |
| Insurance products         | 93                 | 23               | N/A                            | N/A                            |

Over the last year, the FSMA handled 1,052 advertisement dossiers. The large majority of them were for UCIs. The FSMA screened 854 dossiers in that category. It sent an average of almost three e-mails with observations per dossier. The number of fund dossiers related to over 4,000 advertisements. An advertisement is any form of provision of information of a promotional nature for a financial service or a financial product.

<sup>2</sup> These are dossiers of UCIs that do not relate to advertisements on websites.

## Moratorium

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

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

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

If any doubts exist as to whether a structured product should be considered particularly complex, the product is analysed in detail. In 2016, such a detailed analysis was conducted on 64 products which contained new characteristics, and the calculation formula for which was mostly based on a customized index<sup>3</sup>; 32 of these products were finally deemed to be particularly complex. These products were, as a result, not brought to the retail market.

Since the launch of the moratorium in 2011, 3,916 structured products have been distributed in Belgium (see Table 2). Almost half of these (1,885 structured products) fall under the moratorium. The other 2,031 structured products fall under the opt-out regime<sup>4</sup>.

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

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

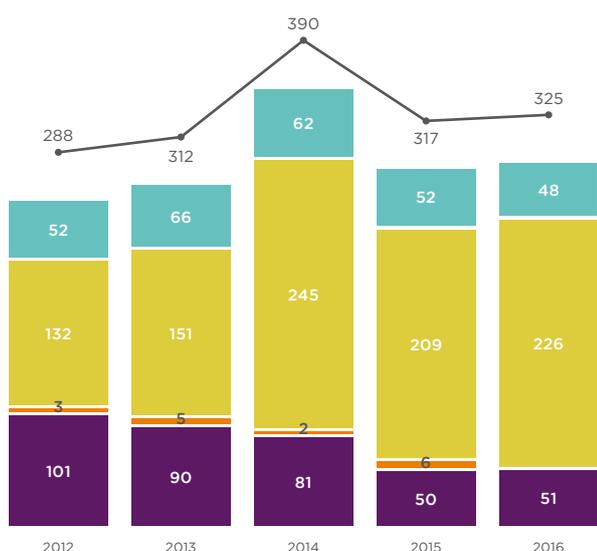
**Table 2:** Structured products distributed since the launch of the moratorium (1 August 2011-31 December 2016)

|                                 | Number of products since the launch of the moratorium | Issue volume (in EUR million) <sup>5</sup> |
|---------------------------------|---|--|
| <b>Class 23</b>                 | <b>387</b>  | <b>14,871.13</b>                           |
| Under the moratorium            | 386   | 14,871.13                                  |
| Opt-out                         | 1   | N/A  |
| <b>Debt instrument (Note)</b>   | <b>1,047</b>  | <b>13,418.42</b>                           |
| Under the moratorium            | 1,018   | 13,418.42                                  |
| Opt-out                         | 29  | N/A  |
| <b>Term deposit</b>             | <b>18</b>   | <b>245.48</b>                              |
| Under the moratorium            | 18  | 245.48                                     |
| <b>UCI</b>                      | <b>316</b>  | <b>10,853.00</b>                           |
| Under the moratorium            | 308   | 10,853.00                                  |
| Opt-out                         | 8   | N/A  |
| <b>Private Note<sup>6</sup></b> | <b>2,148</b>  | <b>N/A</b>                                 |
| Under the moratorium            | 155   | N/A  |
| Opt-out                         | 1,993   | N/A  |
| <b>Total</b>                    | <b>3,916</b>  | <b>39,388.02</b>                           |

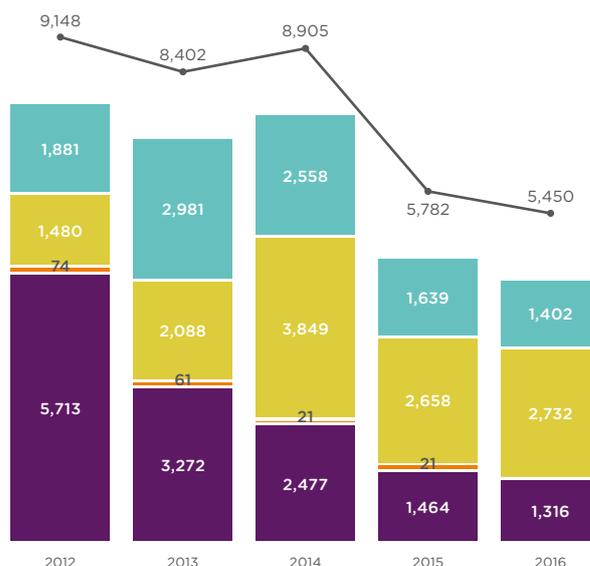
<sup>5</sup> These figures also take into account products that have matured, terminated early and that have been resold.

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

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



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



■ Class 23 ■ Term deposit account ■ Note ■ UCI

Since the launch of the moratorium, the FSMA has been keeping a record of structured products distributed in Belgium. Those records show that certain trends from 2014 and 2015 are no longer to be seen.

The number of products distributed in 2016 with a right to repayment of the capital on maturity appears to have increased slightly in terms of issue amount as compared with 2015. Even against a backdrop of very low interest rates, the right to repayment of capital at maturity is an important factor in the investor’s decision-making process.

In 2015, many more structured products appear to have been issued in US dollars following the interest-rate differential in favour of the dollar. During the first half of 2016, investors invested more in products issued in euros, and the percentage of structured products issued in US dollars fell as compared with 2015. However, that percentage rose again during the second half of 2016.

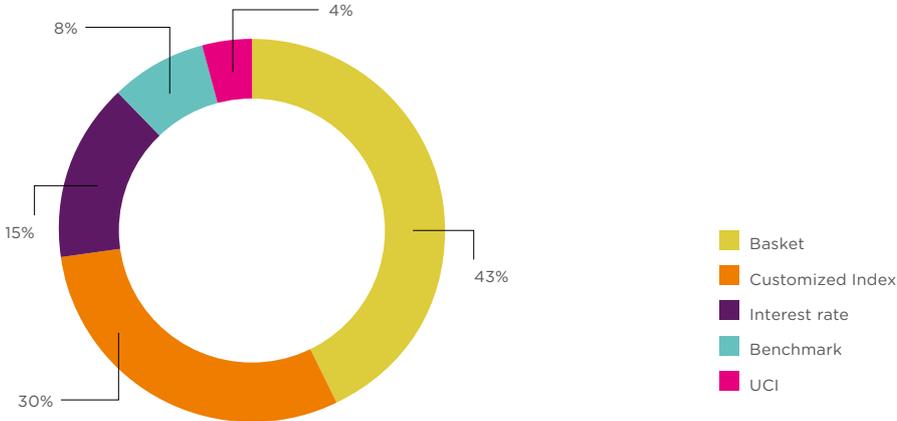
In 2016, less was invested, in terms of issue amount, in products with three mechanisms than in 2015. This means that more was invested in less complex products.

The moratorium determines that the underlyings of a structured product must be accessible. This means that a retail investor should be able to view the data on the underlying through the usual channels, such as the internet and written press. This excludes certain assets.

The most common underlyings are baskets of shares, interest rates and indexes. Currencies and UCIs or a combination of different assets can also be seen (see Graph 3).

Since 2013, offerors have distributed more structured products with customized indexes. This trend carried on into 2016. The FSMA remains concerned about the complexity of certain customized indexes, especially as regards the selection of their components.

**Graph 3:** Underlyings of structured products in 2016



## UCIs and sub-funds

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

The FSMA supervises the organization and operation of Belgian public UCIs. It checks the quality of the information provided by these funds to investors. This information encompasses the legal documents such as the prospectus, key investor information, and advertising material. The FSMA's approval of the majority of this information is a pre-requisite to the distribution of these UCIs.

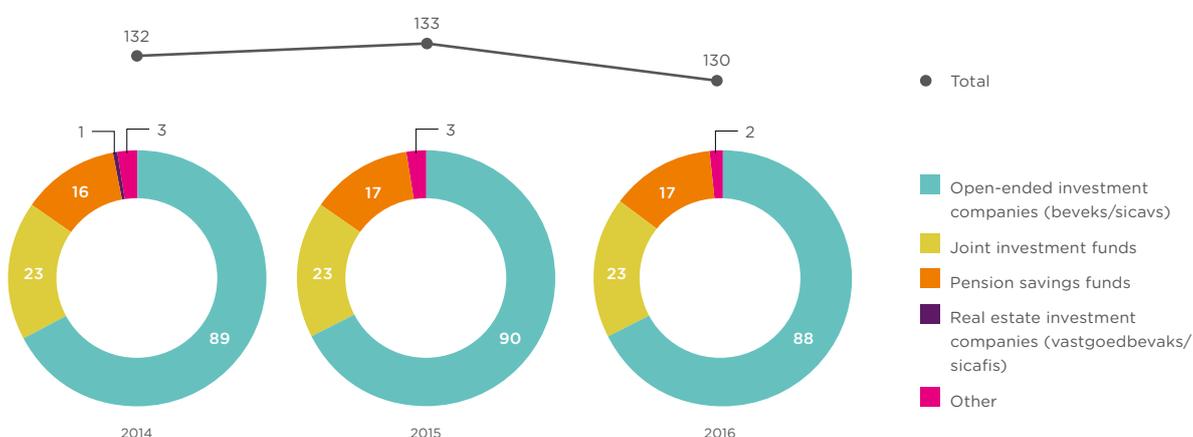
Public UCIs in Belgium are primarily in the form of an open-ended investment company, also referred to as a Belgian open-ended investment company (bevek/sicav), or in the form of an open-ended collective investment fund. The term 'open-ended' indicates that the capital of the UCI becomes higher or lower depending on the entries or exits of investors. This is contrary to closed-ended UCIs (bevak or privak), which are rare in Belgium.

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

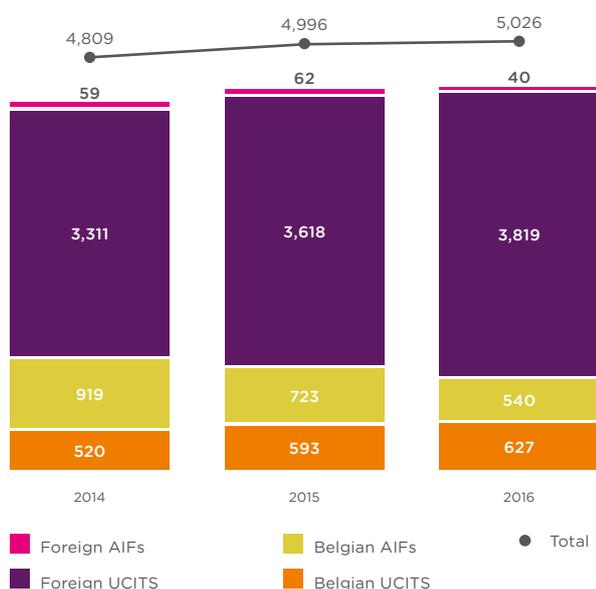
Most public UCIs are composed of different sub-funds. These are different funds within a UCI that have their own investment policy. The sub-funds are essentially "products" offered to investors (see Graph 4).

At the end of 2016, there were 1,167 sub-funds of Belgian public open-ended UCIs registered with the FSMA. In addition, there were 3,859 sub-funds of foreign public open-ended UCIs registered with the FSMA.

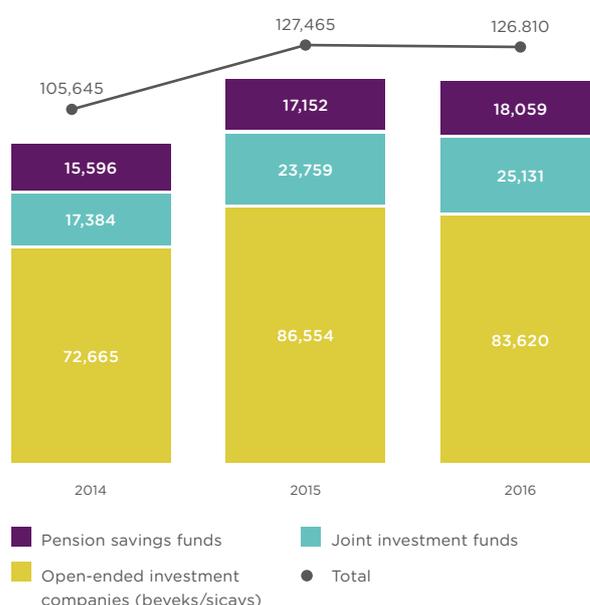
**Graph 4:** Evolution (in number) of Belgian public undertakings for collective investment



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



**Graph 6:** Evolution of the total net assets<sup>8</sup> of Belgian public open-ended undertakings for collective investment (in EUR million)



A large proportion of the sub-funds distributed in Belgium are of foreign origin (see Graph 5). Almost all foreign sub-funds are sub-funds of undertakings for collective investment in transferable securities (UCITS) with a European passport allowing them to be traded freely. There are also Alternative Investment Funds (AIFs), which, in addition to being supervised by the competent authority of their home country, are also overseen by the FSMA.

The FSMA must approve the advertising material of Belgian and foreign UCIs before it is allowed to be used, except in some very specific cases. The aim of this is to ensure that retail clients receive sufficiently qualitative and balanced information, in which different financial products are treated the same.

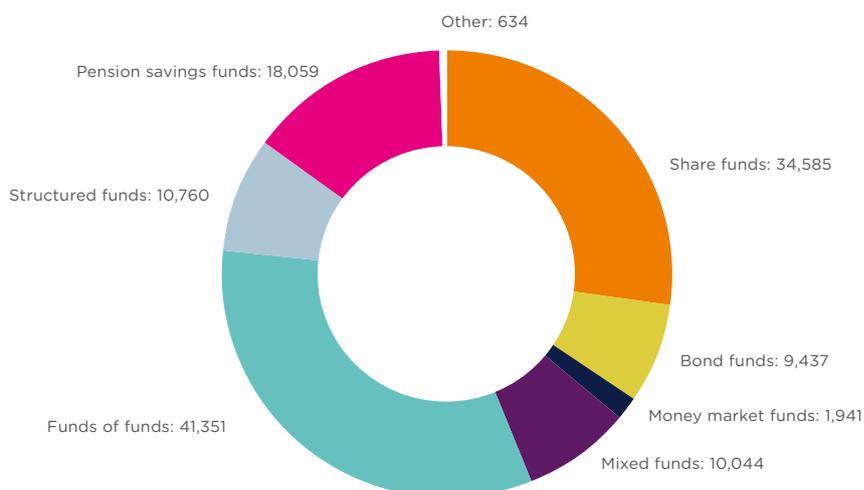
The total value of the net assets of Belgian public open-ended funds rose by EUR 127.5 billion between 2012 and 2015. This is because there were more investors who signed up to such funds than investors who exited. This rise can also be attributed to the positive returns of the financial instruments in portfolio over this period. At the end of 2016, there was a slight dip in the total net assets to EUR 126.8 billion (see Graph 6).

The investment policy determines, inter alia, the sort of assets in which the funds may invest and how a return is sought. The sub-funds of Belgian public investment funds are divided into eight different categories based on investment policy: share funds, bond funds, mixed funds, funds of funds, structured funds, money market funds, pension savings funds and other funds<sup>7</sup> (see Graph 7).

<sup>7</sup> N.B. the division into these categories occurs at the level of the sub-funds. Here, the term "funds" also relates to a sub-fund of an undertaking for collective investment, in so far as it is divided into several sub-funds.

<sup>8</sup> "Total net assets" means the value of all UCIs after deduction of debts.

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



The funds of funds are the largest category, representing a third of the total net assets for the sector. These types of funds primarily invest in other funds, hence their name. The managers of funds of funds engage in diverse investment objectives such as selecting other managers and allocating funds to the different classes of assets. This category showed strong growth over the last few years, largely because of an increase in investors that joined funds of funds.

The second main category is that of share funds. This category represents 27 per cent of the total net assets for the sector. After a slight decline in 2016, the assets of share funds resumed strong growth, primarily because of an increase in members.

Pension savings funds constitute the third largest category, representing 14 per cent of the total net assets for the sector. Their net assets have seen constant growth in recent years. This is primarily down to the positive returns from the investment portfolio, and to a lesser extent to the increase in registrations.

Mixed funds invest directly in both shares and bonds and are not pension savings funds. These funds have experienced continuous growth in recent years. This is the result of an increase in registrations and positive returns on the portfolio. At the end of 2016, mixed funds represented eight per cent of the net assets of the sector.

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

After a sharp rise in 2015, the net assets of bond funds and money market funds fell in 2016. At the end of 2016, bond funds and money market funds represented seven per cent and two per cent respectively of the total net assets for the sector.

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

## Fund liquidity risk

In 2016, the FSMA tested whether certain UCIs remain, in the case of higher interest rates, in a position to pay out to consumers who wish to exit a fund. In changing market conditions, certain UCIs could be left unable to sell bonds, leaving them with insufficient means to compensate those who leave the fund. Such liquidity risks are considered one of the greatest risks for funds.

The FSMA conducted a test on a representative sample to see how UCIs in Belgium manage their liquidity risk. It subjected UCIs that primarily invest in bonds to a thorough investigation. The funds had to state how much time it would take them to pay out exiting participants with no great losses, without making use of a line of credit or other financing. Four different scenarios were tested, with increasing stress levels. The first scenario, with no stress level, was based on normal market conditions and concerned the liquidation of the entire portfolio. The second scenario was based on a request for repayment from the three main participants in the UCI. The third scenario was based on a request to repay 20 per cent of the portfolio. The fourth and most extreme scenario was based on full settlement of the portfolio. The third and fourth scenarios were based on halving the trading volume on the regulated markets.

From this test, the FSMA concluded that even in the most severe of stress situations, there are no overall problems with UCIs that primarily invest in bonds for consumers on the Belgian market. This test did however bring to light that certain individual funds could have problems in cases of extreme stress. One UCI was faced with bonds that were difficult to sell. That fund has in the meantime sold these assets.

This was the first time the FSMA arranged such a stress test. It was intended to raise awareness among the UCI sector on the need to be vigilant for changing market conditions. In principle, funds are obliged to properly monitor their liquidity risks. Their managers must regularly conduct liquidity checks. They must ensure that the liquidity profile of the assets is in line with the UCI's obligations. The managers have the possibility of organizing stress tests for that purpose.

## UCI investment risks

In 2016, the FSMA conducted two thematic audits of UCIs' investment risks, and more particularly those of Belgian public open-ended UCIs.

The audits were conducted in the form of surveys among the UCIs or their management companies. They were asked by the FSMA to provide a detailed overview of the relevant exposures per sub-fund. The FSMA collated information on risks that these funds run, directly and indirectly, for example through constructions of funds of funds or through collateral. The FSMA also asked the funds or their management companies to explain the manner in which they monitored certain risks.

The aim of these audits was twofold. The FSMA wanted to get an idea of the possible repercussions of potential future market developments on Belgian public UCIs. It also wanted to gain an insight into the vision that the managers of these funds have of market developments and how they translate this vision into the management of their portfolios.

In both audits, the FSMA devoted particular attention to the sub-funds of UCIs with capital protection and to other structured sub-funds that repay investors a specified minimum percentage of the registration price at maturity.

The first of these audits took place at the end of February 2016. The FSMA examined to what extent these UCIs were exposed to risks entailed by the governments or credit institutions of Italy, Portugal and Greece. These southern European countries do not have a favourable credit rating and bank shares from these countries performed for the most part badly during the month of February 2016.

A second audit took place in July 2016. The FSMA examined to what extent funds were exposed to risks associated with the British pound and the British property market in the wake of Brexit.

The decision by the British public to leave the European Union led, at the time, to a considerable fall in the British pound. A number of British property funds decided temporarily to stop repayments. That occurred as a result of an increased number of redemption applications following a potential fall in British property prices as a result of Brexit.

The July audit also gauged the impact on UCIs of the Italian banking sector's performance. Italian banks came under pressure in 2016 as a result of a relatively high number of bad loans in their portfolios.

The results from both audits uncovered no problematic investment risks. The exposures reported in most sub-funds of Belgian UCIs were minor to very minor, especially in the case of structured sub-funds.

Funds or their managers in most cases reported no material exposures in the part of the investments destined for capital protection for the structured sub-funds. The same applied to the minimum percentage of the registration price that must be repaid based on the investment policy. For all other sub-funds audited, the reported exposures appeared to be in line with the investment policy. It also came out of the audit that managers overall closely monitor changes in the financial markets. The majority of UCIs phased out positions that could potentially be vulnerable to certain fluctuations or hedged themselves against negative market events.

## Financial reporting on Class 23

The FSMA has formulated recommendations for better financial reporting on Class 23 life insurance. These recommendations arose after a sectoral inspection that identified a number of shortcomings.

The sectoral inspection examined the half-yearly and annual reports that insurance companies must draw up for each investment fund that is distributed to private individuals through Class 23 life insurance. 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 in the regulations on life insurance activity.

The FSMA's research unveiled that insurance companies did not always draw up the financial reports on time or that the reports were of 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 currencies. The description of the fund's investment policy and the associated risks was also frequently inadequate.

The FSMA informed the insurance companies concerned about these shortcomings and asked for them to be remedied. As a result of this intervention, the quality of the financial reports has in the meantime improved considerably.

The findings and experience gleaned from these sectoral inspections also form the basis for a Communication. This Communication reminds insurance companies of their obligations regarding financial reporting and where necessary clarifies the legislation. The Communication also contains a number of recommendations to improve the quality and the publication of the reports. Some of the recommendations for the reports are: to feature relevant information on the underlying assets of investment funds, to clearly specify the operation of the investment funds and to publish the reports on the company's website.

## Home insurance

Last year, the FSMA published the results of a sectoral study into home insurance among fourteen Belgian insurance companies.

The FSMA identified that the insurance documents of most of the insurance companies concerned were difficult for consumers to understand. The conditions were not clearly structured, provisions were drafted in complex language, and legibility was compromised by the use of double negatives.

Insurance documents should nevertheless give policyholders a clear picture of the cover and obligations arising from their insurance policy. The fact that the regulations are complex does not absolve insurers from drafting clear insurance documents that are easy to understand. The study also revealed that insurance documents sometimes contain provisions that are not in line with the regulations. This is the case for conditions in which an insurer can stipulate that it will not—or will only partly—intervene in a claim. An insurer may renounce to its duty of intervention if the policyholder or insured has not met certain obligations. According to the legislation, these obligations must be stated in the policy. Certain insurers had nonetheless written these obligations in such general terms that they did not comply with the legal requirements.

Through this study, the FSMA wished to eliminate a number of shortcomings and make the sector aware of the need to draft documents in plain language. The insurance companies followed up on these observations by amending documents and drafting them in language that was easier to understand.

In Belgium, there are more than 5 million home insurance policies. As a result, home insurance is one of the most common forms of insurance on the Belgian market. The companies involved in the study represented 97 per cent of that market.

## Low interest rates and insurer initiatives

The continued low interest rates that have already dominated the financial markets for several years have major consequences for Belgian insurance companies that are active in the life insurance sector. The Belgian insurance sector is characterized by the large number of products with guaranteed interest rates. Certain products, as a legacy from the past, sometimes even offer higher interest rates than the current interest rates.

The financial climate has notably led insurers to lower guaranteed interest rates for new Class 21 products and for new premiums paid for existing agreements. However, insurers' initiatives also go one step further. The new rules introduced by the prudential legislation transposing the Solvency II Directive, apply increased pressure on the old insurance policies that in some cases offer a guaranteed interest rate of more than four per cent. In certain cases, insurers have taken specific measures to ease the pressure from these policies on their solvency.

Certain insurers launched promotions for early redemption of those life insurance policies. Policyholders who were prepared to end their insurance policy early were offered an "exit bonus", with a time limit. In such a case it is crucial that the policyholders concerned be informed in a transparent and comprehensive manner. The reasons for which insurers establish such actions, the options they offer to their clients, and the consequences of the client's choice must therefore be clearly explained so that policyholders can make informed decisions.

The existing Class 21 policies are also sometimes amended to reduce the guaranteed interest rates on the current reserves as well as future premiums. This implies an amendment to the insurance policy, which must be made in accordance with the legal principles in force.

That specific context also entails part of the insurer's risk transferring to the policyholders.

For Class 21 products and in the context of low interest rates, the profit shares that insurers can pay out play a decisive role. The guaranteed interest rates offered by insurers have after all drastically fallen, making profit shares gain more importance. Profit shares are almost always of a discretionary nature because insurers are not obliged to pay out and because the amount of the payout depends on insurers' results. Against this backdrop, the FSMA also ensures that the parties involved are informed transparently and comprehensively on the profit-sharing mechanism and on the amount actually paid out by the insurers.

It has also been identified that insurers are promoting Class 23 products. A number of promotions were launched in 2016, including repayment of the two per cent insurance tax, to encourage clients to subscribe to these products. Given that the investment risk for these products is fully absorbed by the policyholder, it must be verified that clients are accurately informed as to aspects such as the characteristics of these products and the costs and risks associated with them. The FSMA has checked a particularly great number of advertisements for such products. It has also examined the quality of the periodic financial statements that the insurers must prepare for each investment fund linked to life insurance.

## Low interest rates and regulated savings accounts

As a result of the European Central Bank's accommodative monetary policy, most credit institutions lowered the interest rates on regulated savings accounts in 2016. As a consequence, the interest rates offered by certain credit institutions on various regulated savings accounts have reached record lows, i.e. 0.01% basic interest and 0.1% loyalty premium.

Over the past year, there were also other aspects that had a negative influence on the offer of regulated savings accounts in Belgium. On the one hand, two institutions ended their offer of regulated savings accounts, whilst two other institutions merged their offerings. On the other hand, certain regulated savings accounts reserved for legal entities were transformed into unregulated accounts, meaning that the regulatory obligations associated with the regulatory status no longer apply. The reduction in the offer of regulated savings accounts can be attributed to the lack of returns from these products for certain credit institutions.

At the end of 2016, 31 credit institutions in Belgium offered regulated savings accounts. Holders of a regulated savings account benefit from an exemption, if the bank adheres to the necessary legal conditions, from the withholding tax on interest up to a certain amount.

Despite all this, in Belgium, the outstanding amount on regulated savings accounts (EUR 261 billion) remained almost unchanged between December 2015 and December 2016.

## Unfair contract terms

As part of its supervision on the disclosure of information for a public offer of investment instruments in Belgium, the FSMA assesses whether prospectuses and advertisements submitted for its approval contain unfair contract terms. Unfair contract terms are clauses in an agreement between a company and a consumer that create a significant imbalance to the detriment of the consumer. Such contractual clauses are forbidden by law. The law provides for criminal and civil sanctions in the case of infringements.

Over the course of the exercise of this supervision, it emerged that the application of this prohibition of unfair contract terms generated a great amount of questions of interpretation. The FSMA therefore decided to clarify its interpretation of this prohibition and make a number of recommendations. The FSMA then put all this in a Position Paper<sup>9</sup>. The 'Position of the FSMA on the application of the Belgian rules on unfair contract terms to some clauses as part of the offer of investment instruments' examines in more depth clauses deemed problematic which repeatedly arise in the contractual conditions for investment instruments.

Specifically, it concerns terms that allow the issuer unilaterally to alter the essential characteristics of an investment instrument. It also concerns terms that allow the issuer unilaterally to end the fixed-term contract without compensating the consumer. It equally concerns terms that provide for a transfer of the contract.

These terms belong to the category of what are referred to as "black terms". This category comprises a list of contractual clauses which, according to the legislature, create an imbalance to the detriment of the consumer.

<sup>9</sup> For more information, see the FSMA's website.

## Supervision in practice

In the case of a public offer of investment instruments, the publication of a prospectus is mandatory. It is only after approval of this prospectus by the FSMA that the issuer may offer its product to consumers<sup>10</sup>.

During its supervision, the FSMA identified problems in a prospectus for debt instruments. Certain clauses in the contractual terms of the Euro Medium Term Notes programme gave the issuer the right, in certain circumstances, to repay investment instruments (called Tier 2 Subordinated Notes) early with no compensation.

A clause that provides for a right by the issuer unilaterally to proceed to early repayment, without compensating the consumer, is unfair and as a result prohibited.

Once the FSMA alerted the institution thereof, it amended the prospectus for its programme. It clarified that investment instruments that included such a prohibited clause in their contractual conditions may not be offered to consumers.

As this document contains only recommendations and interpretations by the FSMA, it does not constitute a regulatory document. These recommendations and interpretations are in no way intended to derogate from the ultimate jurisdiction of the courts for the assessment of the fair or unfair nature of these contractual clauses. The Position Paper equally does not affect the liability of the issuer to comply with the legislation on unfair contract terms.

This Position Paper came about after consulting the sector and discussing the matter with the FPS Economy. The FSMA is the competent authority, since 31 May 2014, along with the FPS Economy, for supervising compliance with the legislation on unfair contract terms.

<sup>10</sup> This obligatory prior approval by the FSMA does not apply to prospectuses of investment instruments that have already been approved by another European authority and that are offered to the Belgian market through a European passport.

# Compliance with conduct of business rules

The FSMA ensures that regulated undertakings abide by the rules of conduct in force and act honestly, fairly, and professionally in the best interests of their clients. The rules of conduct require regulated undertakings to have a suitable organizational structure and to use the required procedures to ensure the correct and diligent treatment of consumers of financial services. The FSMA conducts on-site inspections at regulated undertakings<sup>11</sup> to verify whether they comply with the conduct of business rules that apply to them. These on-site inspections occur on the basis of a supervisory methodology and can relate to a certain theme or a set of themes. Inspections can also be conducted as part of a specific task. The themes and regulated undertakings to be inspected are selected on the basis of a risk assessment specially developed for this purpose.

## Duty of care

In 2016 the FSMA continued its inspections on the theme of the duty of care. The duty of care entails, inter alia, that firms which offer complex financial instruments must first collect information from their clients about their knowledge and experience in the proposed transactions. If the company recommends a transaction to a client in the context of investment advice or manages the client's portfolio on a discretionary basis, it must furthermore evaluate whether the transaction is suitable for that client.

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

<sup>11</sup> The FSMA is tasked with supervising rules of conduct in the following regulated undertakings in so far as they offer investment services:

- credit institutions governed by Belgian law
- branches 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 States that are not members of the EEA

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

The inspections conducted in 2014, 2015 and 2016 have enabled the FSMA to cover 89 per cent of the sector for this theme. That percentage is calculated based on the number of retail clients. In 2016, the FSMA primarily conducted inspections among portfolio management companies, which come under its supervision for prudential aspects. As part of the inspections it conducted in 2016, the FSMA identified 219 shortcomings, 68 of which led to an order.

An order means that the firm in question must prepare an action plan to remedy the shortcomings within the period laid down by the FSMA. The FSMA carefully monitors the implementation of these action plans, including through mystery shopping.

In 2017, inspections will be conducted among regulated undertakings in which inspections have previously been conducted on the theme of complying with the duty of care, to verify the effectiveness of the action plan they submitted to the FSMA. Until now, where a regulated undertaking had seriously infringed a rule of conduct, the FSMA would order it to remedy the situation within a period of time it determined. Given that the rules of conduct have been in force since 3 June 2007 and that the FSMA has since then communicated extensively on the rules of conduct regarding duty of care, it has supplemented its sanctions policy, and it has extended the measures it can take in the case of infringement of the conduct of business rules to include the other sanctions referred to in the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

## Inspections - Best execution

The FSMA has launched a round of inspections on the theme of best execution. In these inspections, the emphasis lies on the investment service pertaining to the execution of orders on behalf of retail clients in Bel20 shares<sup>12</sup>. This theme requires regulated undertakings to have appropriate policies and procedures that contribute to achieving the best possible result when executing orders for retail clients.

Factors that must be taken into account are the price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order. For retail clients, the provision requiring the best possible result is based on the total consideration. This is made up of the price of the financial instrument and the costs related to execution.

The order execution policy must include, in respect of each class of financial instruments, information on the different execution venues and the factors affecting the choice of execution venue. Clients must be informed in advance of this order execution policy and agree to it. Clients must also give their express permission in the case of orders that may be executed outside a regulated market or multilateral trading facility (MTF).

In the case of a specific instruction from the client for an order or part of the aspects of an order, the regulated undertaking must execute the order following the specific instruction.

<sup>12</sup> As established at the time of conducting the inspections.

The first round of inspections uncovered a number of shortcomings. Regulated undertakings' strategic choices as regards execution venues appeared to be insufficiently substantiated by, for example, an internal study. In addition, they did not take sufficient account of the current market conditions, such as the evolution in the volume of liquid assets in other execution venues. The order execution policy did not contain all the legal provisions. On certain points, the policy was not sufficiently specific, for example as regards the notion of specific instructions, the description of the third parties the regulated undertaking calls upon for the execution of orders, or the identification of the types of orders permitted.

In some cases, clients were wrongfully induced to give a specific instruction, which is not permitted. The information provided to clients is not always in line with the MiFID conduct of business rules. This includes information provided to clients regarding the order execution policy, in the case of specific instructions or when executing orders outside a regulated market, as well as the information included in the order statement.

It also emerged that the existing monitoring and periodic evaluations were not sufficient to accurately evaluate the order execution policy or validate the strategy used. Additional steps must also be taken in terms of staff training.

The FSMA will publish a general communication on its website with the most important points and recommendations from its inspections<sup>13</sup>. This communication should be regarded as a general guideline for the sector as a whole and for all types of financial instruments to which this guideline could apply.

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

In recent years, the Belgian legislature has drafted rules of conduct for the insurance sector similar to the rules of conduct that apply to the banking sector<sup>14</sup>.

Following a decision of the Constitutional Court on 11 June 2015<sup>15</sup> the date of entry into force of the provisions of the Law of 30 July 2013, which forms the legal basis for that reform, was postponed until 1 May 2015. Since that date, providers of insurance intermediation services must therefore adhere to the various conduct of business rules and information obligations, primarily as regards preventing and managing conflicts of interest and the duty of care.

It should be noted that the Constitutional Court pronounced a second decision on 9 June 2016, which confirmed the postponement of the date of entry into force of the Law of 30 July 2013 to 1 May 2015. In that second decision, the Constitutional Court also abrogated some provisions of the Law of 30 July 2013. The reason for this was that the legislature introduced a discrimination between the insurance and the banking sector. This arises from the fact that the law does not contemplate the possibility of categorizing clients as professional and retail, and does not allow certain transactions in savings or investment insurance policies to be made only to execute client orders, without firstly evaluating whether they are appropriate for the client in the insurance sector.

In 2016, the FSMA pursued its efforts to clarify two requirements contained in the regulations pertaining to the disclosure of information arising from the conduct of business rules that apply to the insurance sector.

<sup>13</sup> See the FSMA's website.

<sup>14</sup> See the 2014 FSMA annual report, p. 143 et seq.

<sup>15</sup> See the 2015 FSMA annual report, p. 146.

The first regulation deals with the information on costs and charges that service providers must disclose to their clients as part of the insurance intermediation services they provide on the Belgian territory. Work is currently underway on the draft text of the FSMA regulation.

The second regulation deals with the adequate reports clients must receive from their service provider on the insurance intermediation service offered or the insurance policies entered into with them. The regulation determines that service providers must provide adequate reports to their clients on the services offered and the insurance policies entered into. The FSMA clarified the content, form and methods of communication of those reports in a regulation of 2 August 2016, approved by Royal Decree of 18 September 2016<sup>16</sup>.

The aim of these reports is to ensure that each client receives an annual overview that is as comprehensive as possible of his/her portfolio of insurance policies. The report therefore has to include an inventory of the ongoing insurance policies on 31 December of the calendar year in question. These reports must, depending on the case, be drawn up by the insurance brokers or companies.

In 2016, the FSMA also pursued its efforts to make the insurance sector aware of the application of the conduct of business rules.

This took place on the one hand by pursuing contacts with the various professional organizations in the sector, taking part in conferences and organizing meetings with different insurance companies.

On the other hand, the FSMA visited insurance companies and intermediaries to ascertain whether they were complying with the rules of conduct and the obligation to inform clients<sup>17</sup>. Just as in 2015, these visits were based on an educational approach using a methodology centred around five themes, and with a specific risk assessment for the insurance sector.

Given that the inspection campaign at that time aimed to make the insurance sector and intermediaries aware of the application of the rules of conduct, the FSMA provided each company it visited with a short report. That report included the FSMA's observations and asked that the necessary measures be taken to remedy any potential shortcomings identified. The FSMA has however not yet issued any orders or imposed any sanctions on the companies concerned.

The focus of the visits was on the duty of care for the distribution of class 21 and class 23 life insurance. That crucial theme, which was already central to the visits in 2015, constitutes a great challenge for the sector. It should be noted that during the inspections among insurance brokers in 2016, just as in 2015, it was not only the correct application of the MiFID conduct of business rules that was verified but also whether the registration dossier and the procedures were accurate and complete as regards the anti-money laundering legislation.

The FSMA will collate the most important observations it has made during its visits to insurance brokers and companies in two sectoral reports, which it will publish on its website. Those reports will not only place an emphasis on certain good practices but also on certain practices that should be prohibited with a view to the correct application of the conduct of business rules. These reports will also give companies that have not yet been visited by the FSMA the opportunity to learn from the first on-site visits.

<sup>16</sup> Belgian Official Gazette, 13 December 2016.

<sup>17</sup> See this report, p. 64.

## Financing of SMEs

The Law containing various provisions on SME financing introduced the duty of care as regards the process of lending to SMEs. The FSMA was entrusted with the task of supervising compliance with these specific rules. This Law seeks to achieve the following:

- to create sufficient transparency as regards the offer of lending in the pre-contractual stage so that the enterprise is able to make a conscious and sufficiently informed choice and compare the contractual terms of several different lenders;
- to put the contractual relationship between the lender and the enterprise on a more even keel.

The Law also provides for a suitability obligation for the lender. This obligation entails that the lender must search among the credit arrangements it normally offers, for the loan that best suits the SME's requirements, taking into account its financial situation at the time of entering into the loan agreement and the purpose of the loan. This suitability obligation also applies in certain cases to the credit intermediary.

In 2016, the FSMA continued its campaign of inspections on compliance with the requirements of the Law containing various provisions on SME financing<sup>18</sup>. These provisions primarily deal with the duty of care and information, the loan refusal, and the introduction of organizational measures with a view to complying with the provisions of the Law. The FSMA has no powers of supervision or sanction regarding early redemption and the calculation methods for the early redemption fees.

During the first round of eight inspections, the main observations made by the FSMA were the following:

- the written explanation, which should give clients a complete overview of the types of credit relevant to them, is not systematically given to the clients. It does not always contain all the information prescribed by law and by the code of conduct drawn up by the representative employers' organizations and credit sector organization. This includes, for example, the information on the options as regards early redemption, exceptional government intervention etc.
- the comprehensive information document<sup>19</sup>, which is provided as part of a loan offer, is not always complete as regards the list of aspects that are clarified in the aforementioned code of conduct. Examples of the aspects missing are the interest rates for straight loans, the lender's identity, and the aim and characteristics of each loan.
- the lenders do not systematically keep a record of the handover of documents or the oral communication of information to clients. As a result, neither the lender's control functions, nor the FSMA are able to exercise their supervisory prerogatives on the matter.

The results of those inspections also uncovered useful aspects for the first two-year evaluation of the legislation concerned. This evaluation is 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 for financing for small and medium enterprises.

<sup>18</sup> See the 2014 FSMA annual report, p. 145 et seq.

<sup>19</sup> Document that aims to allow SMEs independently to research the main aspects of the draft credit agreement, and to assess the consequences of the main clauses of that agreement, without needing to call on specialists to analyse it.

## Mystery shopping

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

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

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

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

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

New for this 2016 campaign was the focus on the distribution of life insurance.

In 2017, the FSMA will evaluate its approach over the first three campaigns, draw up an action plan to organize new campaigns and on the basis of this, draw up a new call for tenders.

# Unlawful activity

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

## Cooperation with judicial authorities and publication of warnings

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

Where the FSMA identifies a potentially unlawful offer of financial products and services, it may decide to open an investigation. In the year under review, it opened 273 investigations compared with 286 in 2015.

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

In 2016, the FSMA published 54 warnings, relating to 137 companies and one natural person. In 2015, the number of warnings published was 81. This decrease is primarily attributable to the fact that a great many warnings were published in 2015<sup>20</sup> relating to companies that offered binary options, as well as to companies involved in other forms of fraud, especially boiler rooms and recovery rooms. As a result, many queries or alerts received by the FSMA in 2016 related to companies for which a warning had already been published in 2015. The FSMA also published a general warning against fraudulent credit offers and one about pyramid-type investment offers and Ponzi schemes.

<sup>20</sup> See the 2015 FSMA annual report, p. 176-177.

Because of the great number of warnings, the FSMA continued to publish its list of companies that engage in unauthorized activity on the Belgian territory. The advantage of this is that consumers and financial institutions have a clear list of all companies that engage in unauthorized activity about which a warning has already been published or which are linked to companies about which a warning has already been published. This list, which is regularly updated, can be consulted on the FSMA's website<sup>21</sup>.

In addition to its own warnings, the FSMA also publishes the warnings of its European colleague supervisory authorities, which are provided to it by ESMA. In 2016, the FSMA published 191 of these warnings. The FSMA also publishes, via a hyperlink on its website, the warnings issued by other foreign supervisory authorities from outside the European Union which are members of IOSCO.

## Raising awareness

In the year under review, the FSMA pursued its efforts to raise awareness, among both the public and financial sector professionals, on the risks of investment fraud and prevention thereof.

More specifically, it has raised awareness through campaigns among compliance officers and insurance intermediaries, who are able, by virtue of their role and position, to pick up on indications of unlawful offers.

<sup>21</sup> See the FSMA's website.  
<sup>22</sup> See this annual report p. 112.

## Regulation to restrict distribution of certain financial derivatives, including CFDs and binary options

On 18 August 2016, the FSMA published a Regulation governing the distribution of certain derivative financial instruments (such as binary options or CFDs with a leverage effect) to retail clients in Belgium. That Regulation was approved by Royal Decree of 21 July 2016 and entered into force on 18 August 2016<sup>22</sup>.

Despite the great number of warnings already published by the FSMA on the risks involved in such products, it still received a number of consumer complaints on these financial instruments. The FSMA therefore decided to ring-fence the distribution of these products to consumers in Belgium.

These derivative instruments were usually offered from abroad and via online trading platforms to Belgian investors. They were presented by the offerors as products delivering a high return against a backdrop of interest rates at a historic low. In actual fact, these were highly risky products or often very short-term transactions that had no link at all with the real economy, and were sold using aggressive sales tactics. There were also a lot of cases of investment fraud.

The FSMA has published a list on its website with questions on the Regulation for ring-fencing the distribution of certain derivative OTC instruments (such as binary options and CFDs).

# Consumer notifications

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

Last year, the FSMA received 1,510 notifications from consumers on various financial subjects. That figure is almost the same as that of 2015. In 2015, the FSMA recorded 1,553 complaints and queries.

Most messages related to warnings and authorizations with almost four out of ten questions and complaints relating to these. Over a quarter of the messages related to saving and investment. 13 per cent of questions and complaints related to insurance and 11 per cent to pensions.

The most conspicuous increase was that in the number of notifications in the category of warnings and authorizations. Last year, the FSMA registered 554 questions and complaints, almost 50 per cent more than in 2015. These pertain to unconventional products such as binary options, CFDs or Forex products and other fraud phenomena such as boiler rooms and recovery rooms.

Because the distribution of unconventional products often goes hand-in-hand with fraud and major losses for consumers, the FSMA issued a warning in mid-2016 on the distribution of certain products<sup>23</sup>. That prohibition raised a lot of questions among consumers.

The opening of the DB2P database on supplementary pensions led to a significant increase in the number of questions and complaints on this subject. Last year, the FSMA registered 166 consumer complaints in the category of pensions, an increase of more than 60 per cent.

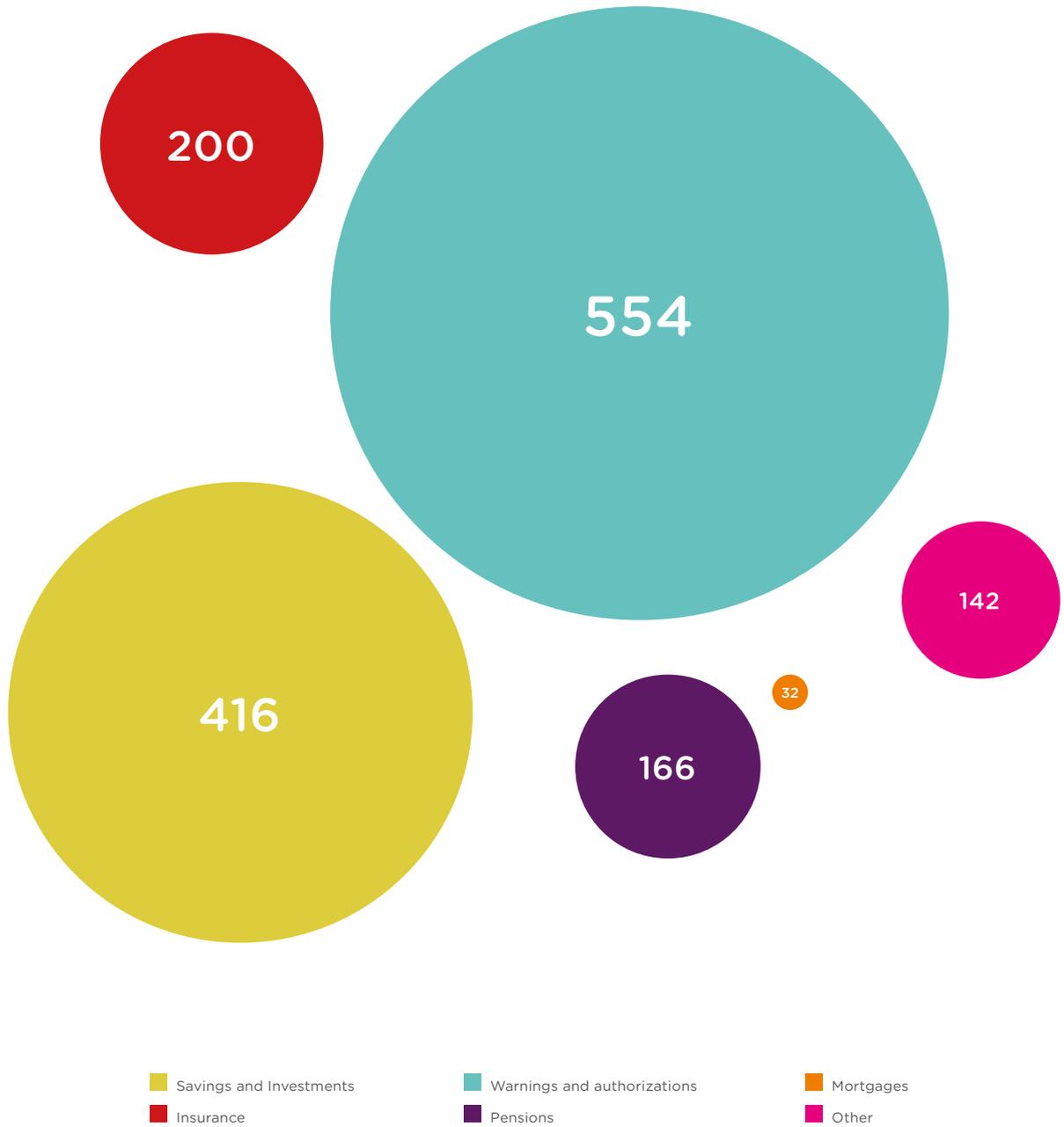
A change in the legislation on the supervision of mortgage loans led to a noticeable fall in the number of questions and complaints on this subject. Last year, the FSMA registered 32 notifications, a fall of 66 per cent. Since 1 November 2015, the FSMA is no longer the competent authority for the supervision of compliance with the legislation on mortgage loans.

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

Many notifications are on subjects that fall outside the FSMA's competence. In such a case, the FSMA refers consumers to the competent institution, such as the Ombudsman in financial conflicts, the Insurance Ombudsman, the National Bank of Belgium, the FPS Economy and the FPS Finance.

<sup>23</sup> See this report, pp. 35 and 112.

Graph 8: Number of consumer notifications by category





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A person wearing an orange safety vest and dark clothing is walking through the center of the room, slightly out of focus.



An investor who invests in a company should be able to access the necessary information on that company. This is why the FSMA ensures that the information from listed companies gives a true and fair view and is made available to the public promptly and correctly. The FSMA supervises the correct and transparent operation of the markets on which these companies are listed. The FSMA also checks the information from unlisted companies at the time of a public issue of securities with the purpose of collecting money from the public.

## Transactions of listed companies

Where listed companies make a public offer of shares or debt instruments or where an offer is made for a listed company, the necessary information must be made available to the market. This usually occurs through a prospectus approved by the FSMA or information deemed equivalent thereto. Over the course of 2016, several transactions of listed companies took place for which the FSMA checked and approved the information provided.

The information in a prospectus must adhere to legal requirements and be consistent and complete. When handling prospectuses, the FSMA places particular importance on identifying and stating the risks to investors. Apart from a separate section in the prospectus on the risks, specific risk factors are, wherever necessary, again emphasized on the cover page of the document. This is to make potential investors aware of the risk that they run so that they can take this into account in their decision as to whether or not to invest.

### Issuances and initial public offerings

In 2016, two companies were listed for the first time on Euronext Brussels. The biotechnology company ASIT biotech obtained, through its IPO, EUR 23.5 million in capital through the issue of new shares. Cenergy Holdings, a subsidiary of the Viohalco group, also listed on Euronext Brussels, did not obtain new capital through its IPO. Cenergy Holdings was listed on Euronext Brussels since 21 December 2016 after the merger of two Greek listed companies. In those cases, the FSMA approved a prospectus for the issuance or the listing on Euronext Brussels.

Over the course of 2016, seven companies already listed on Euronext Brussels obtained additional capital through the stock exchange and, for this purpose, submitted a prospectus to the FSMA for approval. These are Hamon, TINC, Fagron, Connect Group, Nyrstar, WDP and Befimmo.

Five already-listed companies had additional shares listed on Euronext Brussels without first obtaining new capital through a public offering. For this purpose they submitted a listing prospectus to the FSMA for approval.

The FSMA approved a prospectus for five listed companies for the issuance or listing of bonds. One company submitted a prospectus for approval for the listing of shares issued in the form of American Depositary Shares (ADSs) as part of a dual listing on both Euronext Brussels and the American NASDAQ.

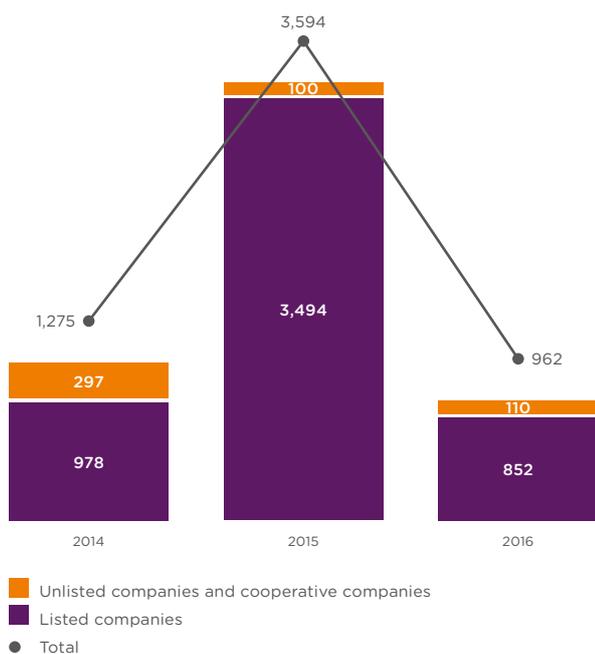
Sometimes, the companies opted to have their annual financial statements approved as a registration document. This approval does not relate to a specific transaction. The advantage of this approach is that during the validity of the document, securities can be issued or listed without needing to have a separate prospectus approved. In the case of a transaction (listing or issuance), a securities note must be drawn up showing the conditions of the transaction. In 2016, the FSMA approved ten registration documents.

In the year under review, the FSMA additionally handled three base prospectuses. A company that issues such a base prospectus still needs to publish the final conditions of the transaction in the event of an issuance.

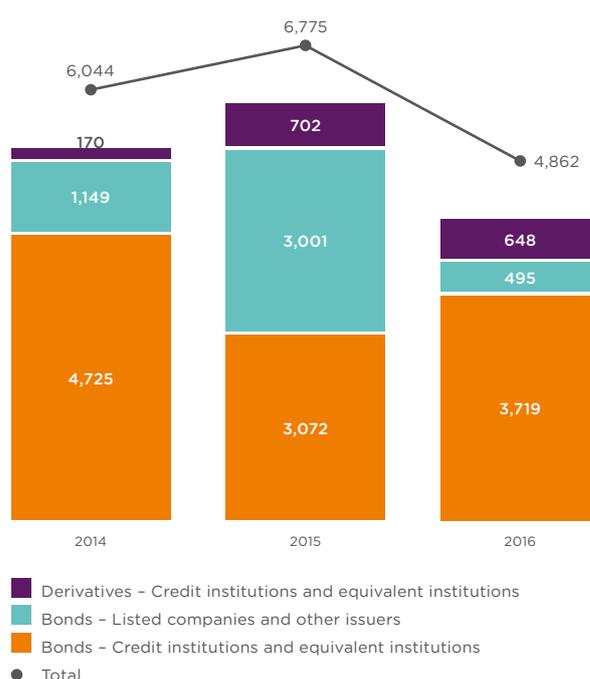
Graph 9 shows the evolution of the issue volume of shares. In 2016, this issue volume was considerably lower than in the year before. The year 2015 was also exceptional in the area of share issuance because very many IPOs and some very large capital increases took place.

Graph 10 shows the evolution of the issue volume of debt instruments. Bond issuances by listed companies saw a sharp drop in 2016 as a result of the less beneficial interest rates for such issuances. The volume of structured debt instruments with capital protection issued by credit institutions saw considerable growth at the end of 2016. The volume of structured debt instruments with no capital protection, which are called derivative instruments, saw a slight decrease over the course of 2016.

Graph 9: Share issue volume (in EUR million)



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



## Takeover dossiers

In 2016 the FSMA also handled four takeover dossiers in which a prospectus had to be approved. These involved a mandatory takeover bid for Sufrac, following an order by the FSMA (see box). There was also a voluntary takeover bid for shares in Newbelco as part of the takeover of SABMiller by AB InBev. The other two involved a takeover bid for Cofinimmo bonds and a public exchange bid for the shares of the FNG Group listed on the Free Markets.

### Bid by AB InBev for SAB Miller

In 2016 the takeover bid of the Euronext-Brussels-listed beer group AB InBev for SAB Miller, a company in the same sector, was a significant one. This operation was atypical in a number of aspects. It was primarily a transaction involving two international players for an exceptionally large takeover amount of GBP 71 billion. It was also a complex takeover structure.

The takeover structure was complex because the takeover occurred in several stages. The first stage comprised including SAB Miller in a newly incorporated Belgian company, namely Newbelco. Then AB InBev launched a takeover bid for Newbelco, in which the shareholders could choose between a partial share exchange and a cash payout. The final part of the operation consisted in AB InBev allowing itself to be absorbed by Newbelco, which was subsequently renamed AB InBev.

Given that the offeree company was British, the entire operation fell under the competence of the British Takeover Panel and also under British law. But given that there was also a significant Belgian contingent, the FSMA intervened in the operation at various times. As an example, the FSMA approved the prospectus for the takeover of Newbelco. Then, the FSMA also approved a prospectus to authorize the listing of Newbelco's shares on Euronext Brussels.

Given the exceptional scale and complexity of the operation, the FSMA allowed, on AB InBev's request, derogation from certain Belgian takeover rules. These derogations included the bank certificate which is supposed to show that there are sufficient cash resources available to finance the operation, and the minimum duration of the period for acceptance. This pragmatic approach contributed to the flawless execution of this exceptionally large operation (by Belgian standards).

## Order to issue a takeover bid for Sucraf

In 2016 the FSMA investigated the participating interest of the Dutch company Value8 in Sucraf, the shares of which are listed on Euronext Brussels. The cause for this investigation was a transparency notification which occurred at the end of November 2015. That notification was made following the acquisition of 15.82 per cent of the voting securities in Sucraf by a natural person who also appeared to be a major shareholder in Value8. At the time, Value8 was already the major shareholder of Sucraf with a participating interest of 28.99 per cent of voting securities. The investigation unveiled that Value8 had intervened in the acquisition of that 15.82 per cent, which was not specified in the transparency notification. In that way, Value8 had, at least temporarily, become the owner of these Sucraf securities. As a result Value8 had in 2015 vastly exceeded the threshold of 30 per cent of the voting securities in Sucraf. Whoever exceeds, through an acquisition of voting securities, the threshold of 30 per cent of such securities held in a listed company, must launch a takeover bid for all voting securities issued by the company. At the end of November 2015, a mandatory takeover bid occurred for Value 8.

The FSMA therefore ordered Value8 to launch a takeover bid for the voting securities of Sucraf. As regards the shares, the bid had to be made at 2.10 euros per share. This is the highest price paid by Value8 for Sucraf shares in the 12 months preceding the date on which the takeover bid should have been announced. As regards the profit-sharing certificates, the bid had to be made at 1.32 euros per profit-sharing certificate. This is the highest price paid by Value8 for Sucraf profit-sharing certificates in the 12 months preceding the date on which the takeover bid should have been announced.

Following this order, Value8 proceeded with the mandatory bid. 80,447 shares and 3,645 profit-sharing certificates were included in the bid.

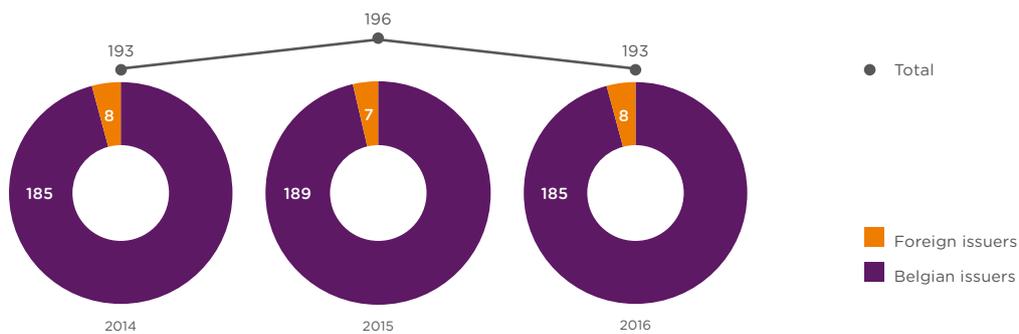
# Supervision of regulated information from listed companies

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

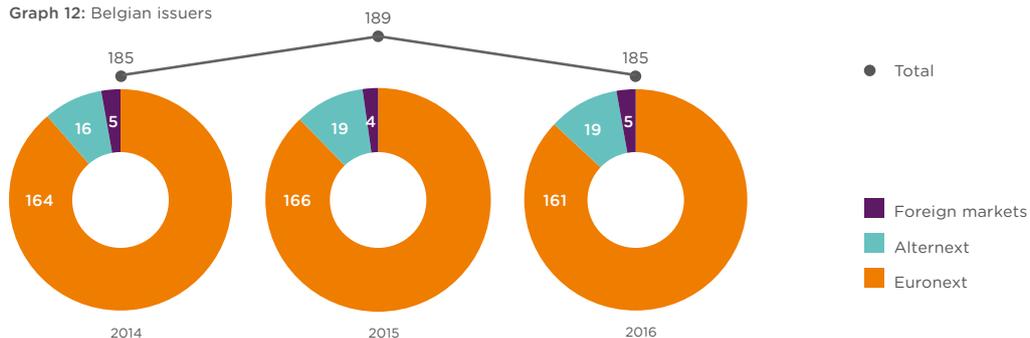
## Number of issuers

The number of listed companies whose financial information the FSMA supervises fell slightly in 2016 (see graphs 11 and 12). This fall is primarily attributable to the delisting of four undertakings for investment in debt securities. Two-thirds of these issuers list shares; one third other securities (bonds, real estate certificates etc.). The complete list of issuers is available on the FSMA's website.

Graph 11: Issuers under supervision



Graph 12: Belgian issuers



## Supervisory approach

The supervision of regulated information from listed companies in principle takes place ex post. To determine its supervisory plan, each year the FSMA selects a number of companies whose regulated information will be subjected to a more thorough inspection. For this it uses a selection model based on risk and rotation. The selection also takes account of the relevance for the company of the priorities established for the year in question.

The FSMA determines, for the selected companies, which information will be subjected to particular scrutiny. Often the FSMA asks the statutory auditor of the company concerned in advance for a report on, inter alia, the main current or latent risks and problems. The FSMA then determines which information to scrutinize based on the risks identified for each company and the special points for attention that have been established in the Guidelines of the European Securities and Markets Authority (ESMA). Where necessary, cases relating to the International Financial Reporting Standards (IFRS) are submitted to a sub-committee of ESMA in which all European supervisory authorities are represented.

The FSMA's supervision is focused on ascertaining whether the reporting obligations are complied with and in particular whether they give a true and fair view and are not misleading to the public. To this end, the FSMA examines the regulated information published by these companies. When certain aspects require further examination, it asks the company and its statutory auditor for more information. The more detailed examination into whether the financial reports give a true and fair view of the financial condition and of the scale and preparation of the results, assets and cash flow, is in the first instance the auditor's task. The estimations and opinions of the management are only examined in brief by the FSMA.

Depending on events on the market or in the companies themselves, the FSMA may adapt its initial supervisory plan if necessary. Companies that have not been selected are in principle not checked. However, these companies may be subject to ad hoc supervision if the FSMA becomes aware of certain facts. The FSMA is also open to dialogue with companies and/or their shareholders. This dialogue can for example be on the subject of the accounting treatment of transactions or on the information to be communicated.

Based on its checks, the FSMA intervened in different ways. It ordered one company to publish new half-yearly financial statements. There were figures missing on the infringement of agreements that the company had entered into with banks on ratios to be adhered to as part of loan agreements. That information was nevertheless necessary to allow investors to assess the nature and scale of the company's risks. In the new financial statements, the company had to publish more precise information and facilitate a true and fair view of its situation.

In another case, the FSMA obliged a company to publish a supplement to its consolidated annual accounts with additional information on the fair-value valuation of assets for which no active market exists. This information was necessary to allow investors to assess the valuation methodology and the inputs used.

Another company issued a perpetual loan with characteristics which could economically force the company to repay the loan in a relatively short period of time. Because of this the FSMA asked the company to include that loan in a separate line in the balance sheet, rather than in the reserves as had occurred previously, and clearly specify the characteristics thereof.

A lot of the time, these checks lead to FSMA recommendations or requests to improve the quality of the information provided in the accounts. In one case, the FSMA submitted a problem to the international committee that interprets IFRS accounting rules. That committee clarified how the transactions in question had to be handled.

Based on its checks, the FSMA also drew one company's attention to the inadequate or incomplete information in its press releases on ongoing projects. In another case, the FSMA asked for amendments to how the information was presented on a website.

## Study on the treatment of pension liabilities

A specific point for attention in 2016 was the impact of a recent change in the Belgian law on supplementary pensions as regards the treatment of pension liabilities in IFRS financial statements. The FSMA published a study on the subject at the end of 2016, taking into account the position of interested parties in the sector. These included the representatives of auditors, pension funds, actuaries and insurance companies.

This study fits into the FSMA's aim to further improve the quality of financial information on Belgian defined contribution pension plans with a minimum return guaranteed by law. With this study, the FSMA also wishes to contribute to more coherence in the processing of these plans in the financial statements of Belgian listed companies.

The study confirmed previous research showing that strict application of the accounting standard 'IAS 19 - Employee Benefits' to these pension plans can lead to contradictory results and can therefore be problematic. The study also shows that, after the change in the law, it is possible to use a method that fits better into this standard than the previously often-used intrinsic method, providing for a more reliable picture of pension liabilities.

## Disclosure of shareholding structure

Whoever exceeds certain thresholds downwards or upwards in the shareholding of a listed company must disclose such a fact. This may relate both to legally established thresholds or thresholds that the companies themselves have estab-

lished in their articles of association. In 2016, the FSMA received 335 such transparency notifications, compared with 288 in 2015.

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

# 13,575

The STORI (Storage of Regulated Information) online database includes all regulated information that companies listed on Euronext Brussels have published since 2011. This database already included 13,575 documents at the end of 2016.

STORI can be consulted through [stori.fsma.be](http://stori.fsma.be).

# Transactions of unlisted companies

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

In 2016, the FSMA approved 35 prospectuses of unlisted companies. More specifically, these were 12 prospectuses for the issue of shares by cooperatives. The FSMA also approved 14 prospectuses of tax shelters for investments in audio-visual productions. There were also four prospectuses for the issue of bonds or notes and five prospectuses for employee share ownership plans.

The Belgian legislation states that cooperatives and crowdfunding initiatives are, under certain circumstances, exempt from the obligation to publish a prospectus. Anyone who wants to make use of this exemption must demonstrate that they meet the exemption criteria. That entails sending documents, such as brochures, advertisements or information memos to the FSMA. This must occur prior to the commencement of any offer and must be repeated again every twelve months if the offer continues. In 2016, the FSMA received 26 such messages from 24 different companies.

# Supervision of financial markets

## Real-time monitoring

To exercise its market supervision, the FSMA has a market surveillance unit where the financial markets are monitored in real-time. The market surveillance unit ensures that suitable information is provided to the markets by monitoring whether listed companies meet their obligations as regards disclosing inside information. This monitoring entails checks being conducted on both the completeness and the correct dissemination of that information. The market surveillance unit is also tasked with detecting potential situations—or indications—of market abuse.

The FSMA's market surveillance unit is equipped with all the necessary information instruments that are used in market rooms. This includes, inter alia, real-time access to the Euronext markets on which Belgian shares are traded, a link to the major electronic distributors of financial information, the financial press, the studies of financial analysts concerning listed companies and the information published by those companies.

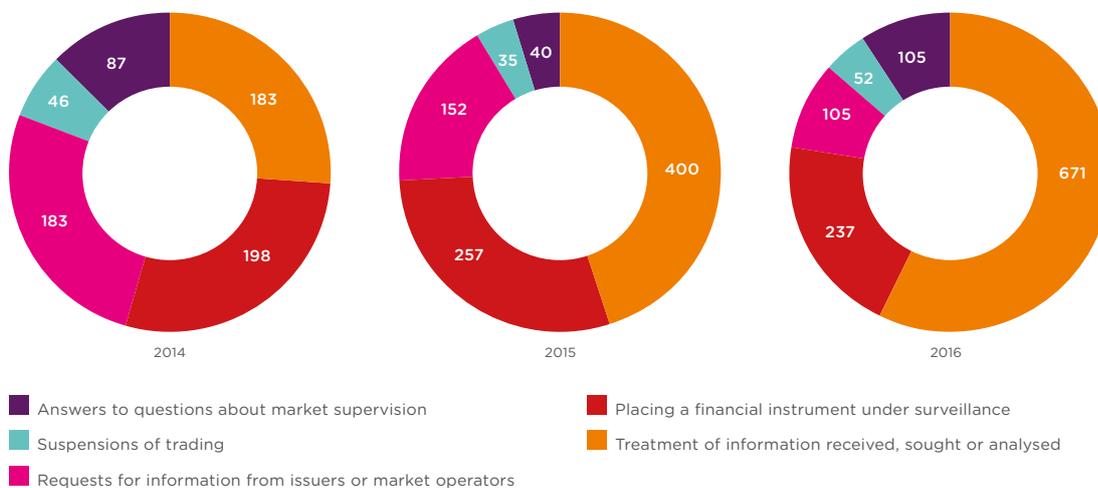
# Suspension of trading

The FSMA's market surveillance unit can decide for several reasons to suspend trading in a share. One example is when a listed company must disclose price-sensitive information (inside information) during trading. This inside information could pertain to a court ruling or a decision by the general meeting over the course of the day. In such a case it may be decided, by consultation between the FSMA and the listed company, to suspend trading in the share. In this way, the company can properly inform the market. When all market participants have had the opportunity to find out about the news, trading can be resumed.

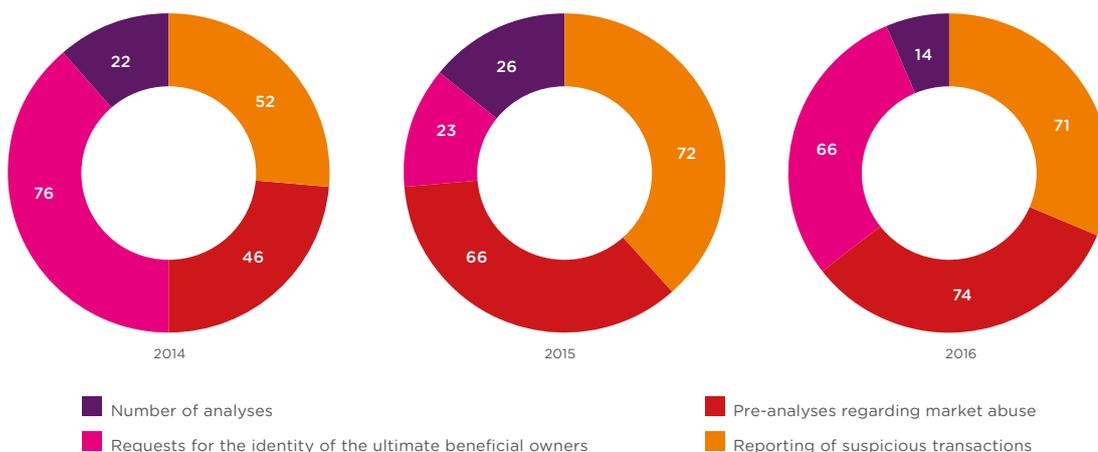
The FSMA opts for real-time supervision of the markets because this presents a number of advantages vis-à-vis other countries which only supervise their financial markets ex post. Real-time supervision after all enables immediate action to be taken where, for example, incorrect information circulates in connection with a listed company. The FSMA may in that case decide to put a stop to trading in that particular share. That gives the company the opportunity to publish the correct information and gives the market time to assimilate that information. Such intervention also prevents investors incurring damage as a result of price fluctuations in reaction to the inaccurate information. In 2016, the FSMA suspended trading in a share 52 times (see box).

In addition to suspension of trading, the market surveillance unit can also take other action such as placing a share under increased scrutiny, requesting information from listed companies and requesting information from market players. The market surveillance unit also receives alerts of potentially suspect transactions and other information. Finally, it is also responsible for the preliminary analysis of indications of potential market abuse. In 2016, the FSMA conducted 74 preliminary analyses and 14 full analyses in connection with potential market abuse. Graphs 13 and 14 give an overview of the number of actions taken by the FSMA's market surveillance unit.

Graph 13: Real-time supervision



Graph 14: Detecting market abuse



The financial markets have evolved considerably over the last few decades, partly under the impulse of the liberalization of the stock-market sector, increased competition between trading platforms, and the advent of new technology. This also paved the way for a rise in new types of market players, such as high-frequency traders. These changes have also led to new forms of potential market manipulation.

Partly to better be able to detect such manipulations, the FSMA has entered into a Memorandum of Understanding with the French supervisory authority, the AMF. This agreement provides for cooperation as regards the approach for detection, and the use of AMF software by the FSMA's market surveillance unit. This software enables detailed analyses of the behaviour of market participants by reconstructing the input, amendment, cancellation and execution of all orders.

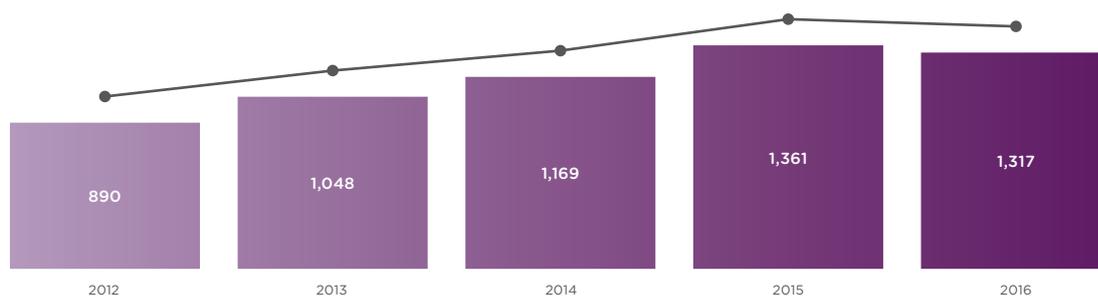
## New rules as regards managers' disclosure obligations

The rules regarding market abuse were amended over the course of 2016 by the implementation of the European Market Abuse Regulation<sup>24</sup>. This Regulation determines, inter alia, that listed companies are in principle themselves responsible for publishing transactions made by their managers in the company's securities. This information can be of a lot of interest to investors.

The Regulation does however give Member States the option also to allow this publication to be centralized by the supervisory authority. The Belgian legislature has, on the advice of the FSMA, opted for this latter option. As a result, the existing practice of being able to consult the transactions of the managers of all listed companies on a daily basis, centralized on the FSMA's website, can be maintained. In 2016, the FSMA also migrated to a new system for communicating these transactions, which takes into account the new, broader reporting requirements. Communication now occurs electronically through a tool specially developed for that purpose. In 2016, the FSMA received 1,317 communications of managers' transactions. Graph 15 shows the evolution of the number of communications over the last five years.

<sup>24</sup> See this report, p. 115.

Graph 15: Transactions by managers

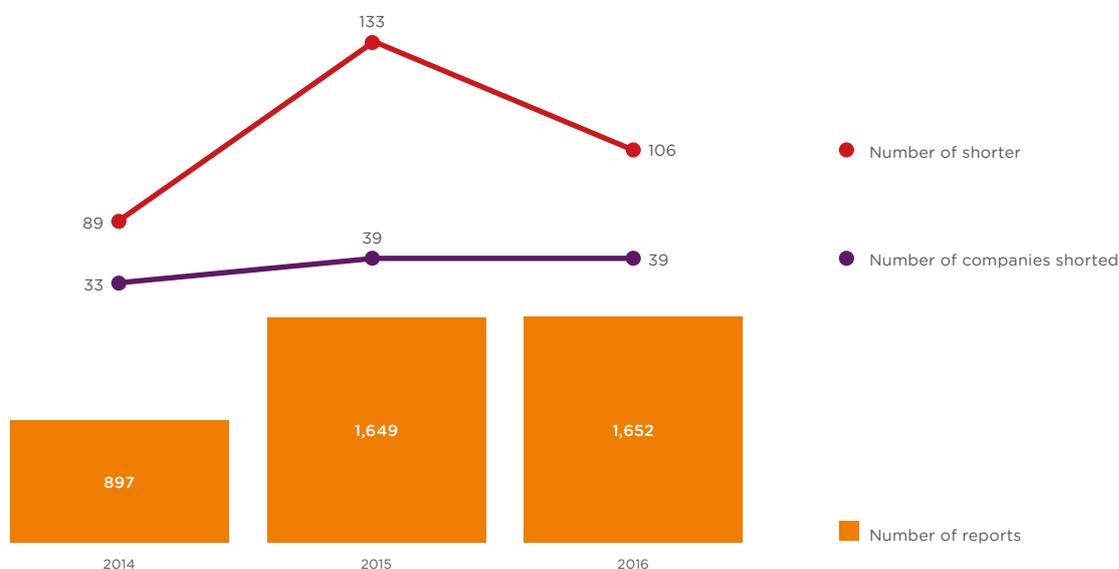


## Short selling

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

Graph 16 gives an overview of the number of communications, the number of players that have a short position and the number of companies on which short positions have been taken. It shows that the number of shorters fell in 2016. The number of companies concerned and the number of communications remained more or less stable.

Graph 16: Short selling



# Informing the sector

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

In 2016, the FSMA communicated intensively on the new Market Abuse Regulation. All relevant circulars were amended and there was a mailshot to all listed companies. The FSMA was also invited to give presentations on the new Regulation to the Federation of Enterprises in Belgium (VBO/FEB) and to the Belgian Investor Relations Association (BIRA).

In 2016, the FSMA published a range of frequently asked questions on potential conflicts of interest in the context of contributions in kind, mergers and demergers. These FAQs remind readers of the principles that apply and identify good practices. Conflicts of interest can arise in the context of contributions in kind, mergers and demergers and in similar transactions. That can for example be the case in a business combination between two companies with the same major shareholder.

The FSMA additionally published a range of frequently asked questions on exemption from the prospectus for cooperatives and crowdfunding projects. It also drew up a note in collaboration with the Corporate Governance Committee and the Institut des réviseurs d'entreprises/Instituut der Bedrijfsrevisoren (institute of statutory auditors) to help listed companies comply with the provisions on transactions with related parties.

## Focus 2017

Over and above its ongoing supervisory work, the FSMA will place particular emphasis in 2017 on correct compliance with the legislation that has recently come into force. Following the new legislation on crowdfunding, a specialist unit has been set up to handle prospectuses on alternative financing. There are also specific checks on compliance with the new provisions on market abuse. The supervision of listed companies' information obligations will occur, inter alia, on the basis of ESMA's priorities for financial reporting. These priorities are explained in a document published by ESMA<sup>25</sup>.

<sup>25</sup> European common enforcement priorities for 2016 financial statements, ESMA public statement, 28 October 2016.



# HONESTY AND INTEGRITY OF THE FINANCIAL SECTOR

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

## Supervision of market operators

### Asset management

The FSMA supervises management companies of investment funds. For management companies that only manage funds which are not publicly sold and the total managed assets of which do not exceed the legal thresholds, there is only an obligation to report to the FSMA. They must provide the FSMA with information on their investment strategies, but they are not subject to any further supervision. The FSMA publishes a list on its website of these 'small-scale managers'.

Management companies that manage public investment funds need an authorization to do so. There are two types of authorization, depending on the type of investment fund under management, either undertakings for collective investment in transferable securities (UCITS) or alternative investment funds (AIFs)<sup>26</sup>. Most management companies have both authorizations. The rules are largely similar and their content is comparable to the rules that apply to banks.

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

<sup>26</sup> For the supervision by the FSMA itself on investment funds: see this annual report, p. 19.

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

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

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

Management companies are subject to rules of conduct: they must work fairly, equitably, professionally and independently, in the interest of the investment funds managed and of the investors in these funds. They must, among other things, identify, prevent, manage and control conflicts of interest. Management companies may, in addition to managing investment funds, also provide some investment services to individual clients. If they do, they must comply with the MiFID conduct of business rules<sup>27</sup>.

The FSMA regularly receives and looks into financial and other reporting from management companies. It screens all new managers and major shareholders. It also conducts on-site inspections. In 2016 it conducted checks on the organization of management bodies and on the control functions of a number of management companies. It also checked whether the companies possessed the necessary authorizations for all the services they provide in practice.

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

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

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

Just as with management companies, the FSMA receives and looks into the reporting of portfolio management and investment advice companies and screens managers and shareholders. In 2016, it checked the organization of the management bodies and of the control functions of a number of portfolio management and investment advice companies. It also checked whether the companies possessed the necessary authorizations for all the services they actually provide. Because the placement of financial instruments is from now on reserved only to stockbroking firms, portfolio management and investment advice companies that possessed an authorization for this investment service had to relinquish it.

<sup>27</sup> See this annual report, p. 28.

## Bureaux de change

The FSMA's supervision of currency exchange offices (bureaux de change) focuses mainly on compliance with anti-money laundering legislation. It emerged from checks in 2016 that the anti-money laundering legislation was not correctly observed by all offices. In two bureaux de change, serious shortcomings were identified. One office was suspended. Another office decided to put a stop to its activity.

The FSMA calls on the sector to exercise great vigilance and actively work with it to prevent money laundering practices. Bureaux de change must have a competent manager for combating money laundering and the financing of terrorism. They must collect and analyse the legally required information on their clients and their transactions. They must report any suspect transactions to the Belgian Financial Intelligence Processing Unit (CTIF-CFI)<sup>28</sup>. If they are unable to collect the necessary information to meet their legal duty of vigilance, they may not enter into relations with the client in question or they must put a stop to the existing business relationship.

**Table 3:** Evolution in the number of firms

|   | 31/12/2013 | 31/12/2014 | 31/12/2015 | 31/12/2016 |
|---|------------|------------|------------|------------|
| Portfolio management and investment advice companies governed by Belgian law  | 20         | 19         | 19         | 19         |
| Branches established in Belgium of investment firms governed by the law of another EEA Member State and falling under FSMA supervision  | 12         | 11         | 14         | 12         |
| Investment firms governed by the law of another EEA Member State and that do business in Belgium under the free provision of services   | 2,783      | 2,882      | 2,886      | 2,990      |
| 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         | 84         |
| UCITS management companies governed by Belgian law  | 7          | 7          | 7          | 7          |
| Alternative investment fund managers governed by Belgian law  | 0          | 4          | 7          | 9          |
| Branches established in Belgium of UCI management companies that are governed by the law of a non-EEA Member State  | 6          | 8          | 10         | 13         |
| UCI management companies governed by the law of another EEA Member State and operating in Belgium under the free provision of services  | 74         | 91         | 98         | 108        |
| Real estate investment companies/Regulated real estate companies  | 23         | 23         | 24         | 24         |
| Bureaux de change authorized in Belgium   | 12         | 12         | 11         | 12         |
| Independent financial planners  | 0          | 0          | 5          | 6          |
| Small-scale AIFMs   | 0          | 0          | 42         | 53         |

<sup>28</sup> The Belgian Financial Intelligence Processing Unit (CTIF-CFI), established in 1993 by the Law of 11 January 1993 is an independent administrative authority to combat the laundering of money of criminal origin and the financing of terrorism.

## Supervision of crowdfunding activities

Companies that need capital to finance their activities usually go to a bank. They tend to apply for a bank loan in the hope of obtaining capital. Companies can now also encounter other methods of financing. Crowdfunding provides the opportunity to call on the general public for funds, hence the other name for crowdfunding: 'public financing'. Calls for funds often occur through an interactive website or platform.

This practice has been on the rise in recent years. Companies, NGOs, individuals, artists or sports-people have discovered crowdfunding as an alternative form of financing or support. The Belgian government wishes to encourage crowdfunding initiatives. The Belgian parliament approved a new law in December 2016 on the recognition and delineation of crowdfunding. This Law entered into force on 1 February 2017 and designates the FSMA as the supervisory authority for crowdfunding platforms<sup>29</sup>.

There are different types of crowdfunding platforms:

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

The new Law regulates only the latter type of platform. The FSMA therefore only exercises supervision of platforms that distribute investment instruments. Companies that offer this activity in most cases require a separate authorization as an 'alternative finance platform'. They must apply for this additional authorization from the FSMA.

Only credit institutions and investment firms may distribute investment instruments through a crowdfunding platform without requiring an additional authorization. This is because they are already under the supervision of the National Bank of Belgium or of the FSMA.

The FSMA thoroughly prepared itself in 2016 for the introduction of the new legislation. It has held a lot of talks with companies active in the field of crowdfunding to explain the obligations the new legislation entails. The FSMA published brochures and frequently asked questions containing all the information that is useful for companies.

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

It is important to be aware that the commercial viability of crowdfunding platforms is not subject to the FSMA's supervision. There are no obligations as regards financial reporting or capital requirements for these companies. The same applies to companies whose investment instruments are offered through these platforms.

<sup>29</sup> See this report, p. 113.

## Focus 2017

### *Asset Management - Brexit*

European current affairs in 2016 were dominated by Brexit. Great Britain chose to leave the European Union. This decision has consequences for London's position as a financial centre. Companies may choose to move their activities from London to the Continent. At the request of the High Level Expert Group on the future of the Belgian financial sector, the FSMA engages in efforts to actively assist portfolio managers considering establishing themselves in Belgium with their applications for authorization. This approach does not detract from the legal obligations of portfolio managers, inter alia in the area of sound governance and appropriate organization. As always, the principle of proportionality is applied: the organization must be appropriate for the scale and complexity of its activities.

### *Communication*

In 2017, the FSMA will conduct widespread communication on the various statuses under its supervision. Over the past year, the FSMA's services received a large number of questions from people who wished to pursue the activity of portfolio manager and investment advisor, independent financial planner or organizer of a crowdfunding platform. They wished to find out from the FSMA what conditions they needed to fulfil to obtain that status. The FSMA seeks to provide information in a more structured manner and in clear language, and provide answers to these questions.

The FSMA will devote special attention in 2017 to the robustness of companies active in the field of portfolio management. Management companies of investment funds and portfolio management and investment advice companies will be audited in terms of management of operational risks.

# Supervision of intermediaries and lenders

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

## Supervision of intermediaries in banking and investment services and insurance and (re)insurance intermediaries

On 31 December 2016, 3,144 intermediaries were registered in the register of intermediaries in banking and investment services. This represents a fall of eight per cent in one year (see Graphs 17 and 18).

On 31 December 2016, 12,508 intermediaries were registered in the register of insurance intermediaries. This represents a fall of six per cent in one year (see Graph 20). Since the entry into force of the law on insurance intermediation, there has been a continuing fall in the number of insurance intermediaries. When the Law entered into force in 1996, there were around 28,000 insurance intermediaries in the register.

In around 95 per cent of cases, the intermediaries themselves took the initiative to terminate their registration, or the termination was requested by an institution with collectively registered intermediaries. However, the FSMA is not systematically informed of the reasons for which intermediaries end their activity.

### Removal from the register of intermediaries

Intermediaries must demonstrate that they meet a number of requirements for registration. For example, they must prove that they have sufficient professional knowledge, that they have professional liability insurance for intermediation services and that they possess the requisite suitability and professional integrity.

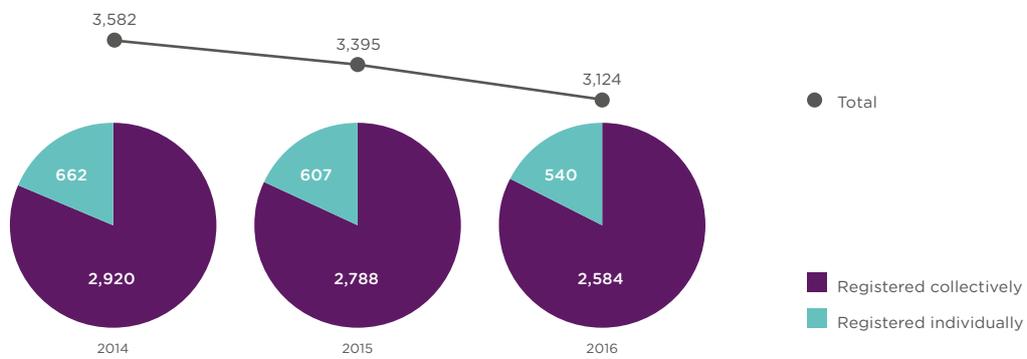
They must continue to meet these requirements for as long as they are registered. The FSMA supervises this. Where the FSMA ascertains that an intermediary no longer complies with the registration requirements, it urges the intermediary to comply. In that case, it always gives a deadline by which the intermediary must remedy the non-compliance. If this does not occur, the FSMA strikes the intermediary from the register.

In 2016, the FSMA struck off 140 insurance intermediaries and 16 intermediaries in banking and investment services from the register. Nine insurance intermediaries were struck off as a result of bankruptcy.

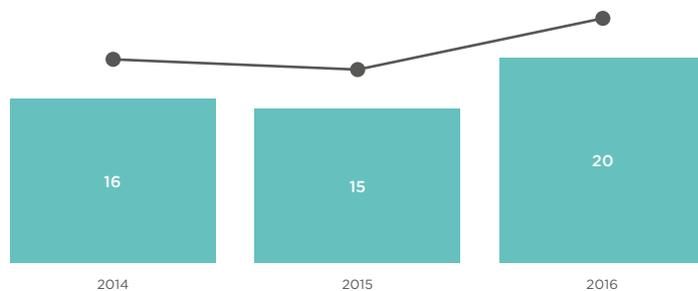
The FSMA struck off 85 intermediaries because they did not demonstrate that their professional liability insurance was still valid.

Professional liability insurers inform the FSMA when an intermediary's policy ends. Based on this information the FSMA gives intermediaries one month to provide proof that they have renewed their professional liability insurance. If this proof is not provided, the FSMA strikes them off.

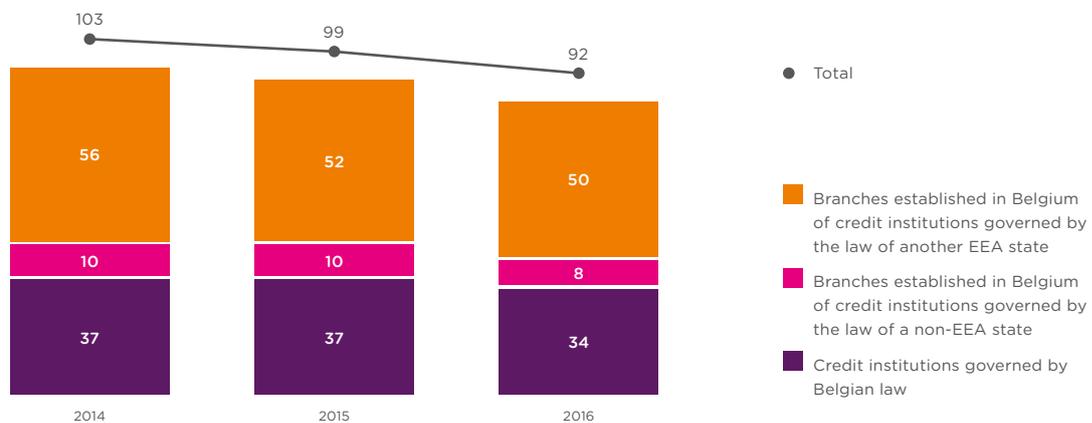
**Graph 17:** Intermediaries in banking and investment services - agents



**Graph 18:** Intermediaries in banking and investment services - brokers



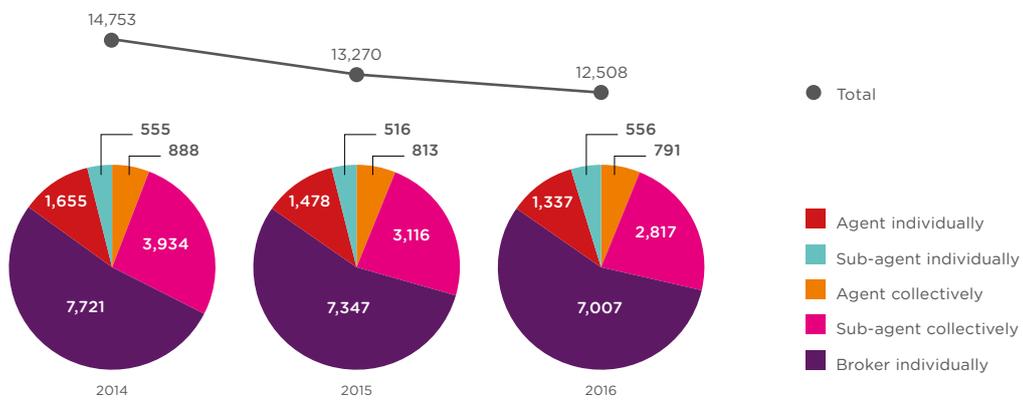
**Graph 19:** Credit institutions



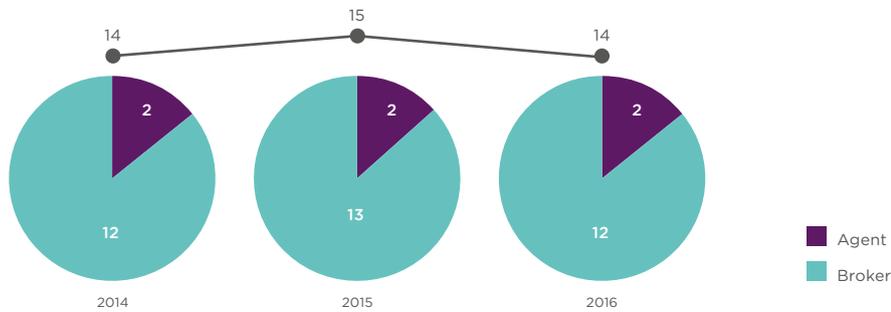
Intermediaries are legally obliged to respond to questions from the Insurance Ombudsman or Ombudsfin (the ombudsman in financial conflicts) as part of the complaints handling process. If they do not respond to these questions, the ombudsmen inform the FSMA thereof. In 2016, the FSMA urged 11 insurance intermediaries to respond to the ombudsman's questions. Three insurance intermediaries did not react to the reminder, which ensued in the FSMA striking them off the register.

Intermediaries are obliged to answer any question the FSMA asks concerning their registration dossier. Most of the time, these questions entail updating the dossier. For example, they can concern the provision of proof of obtaining continuing professional education points or proof that the new person responsible for distribution possesses the requisite professional knowledge. Intermediaries regularly fail to respond to these questions. Last year, this led to 13 of them being struck off the register.

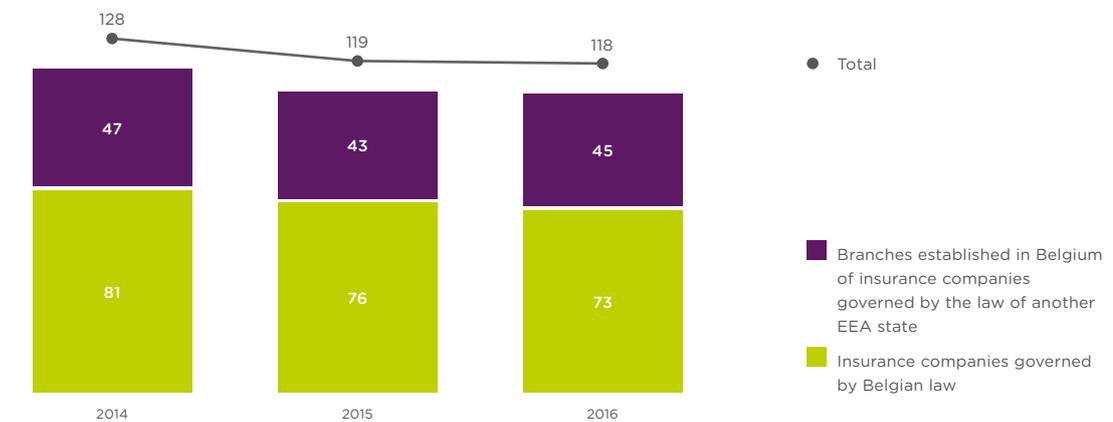
**Graph 20: Insurance intermediaries**



**Graph 21: Reinsurance intermediaries**



**Graph 22: Insurance companies**



The FSMA also struck off 47 intermediaries from the registers because they no longer worked as an insurance subagent under the responsibility of another insurance intermediary, an insurance broker or insurance agent, or because the credit institution terminated its collaboration with its agent in banking and investment services.

In 2016, the FSMA struck off eight intermediaries because it was of the opinion that they were no longer suitable or no longer showed professional integrity. In the case of intermediaries registered in the form of a legal entity, it is the senior managers and those responsible for distribution who must fulfil these conditions. Contrary to the other registration conditions, in which compliance can be established from an objective point-of-view, the FSMA has discretionary power for the assessment of the requirements as regards suitability and professional integrity. The FSMA assesses compliance with these criteria on a case-by-case basis. In doing so, it takes into account the protection of consumers and their confidence in the financial sector.

In 2016, the following events led to enquiries as to the suitability and professional integrity of intermediaries: forging or copying client signatures, non-remittance of insurance premiums to the insurance company, embezzlement of client funds, making false declarations, or deliberate concealment of relevant information as part of an additional application for registration.

If any wrongdoing is committed as part of certain professional activities, such as intermediation in banking and investment services, this could have an impact on the other registrations of the intermediary concerned with the FSMA such as that of insurance intermediary or credit intermediary.

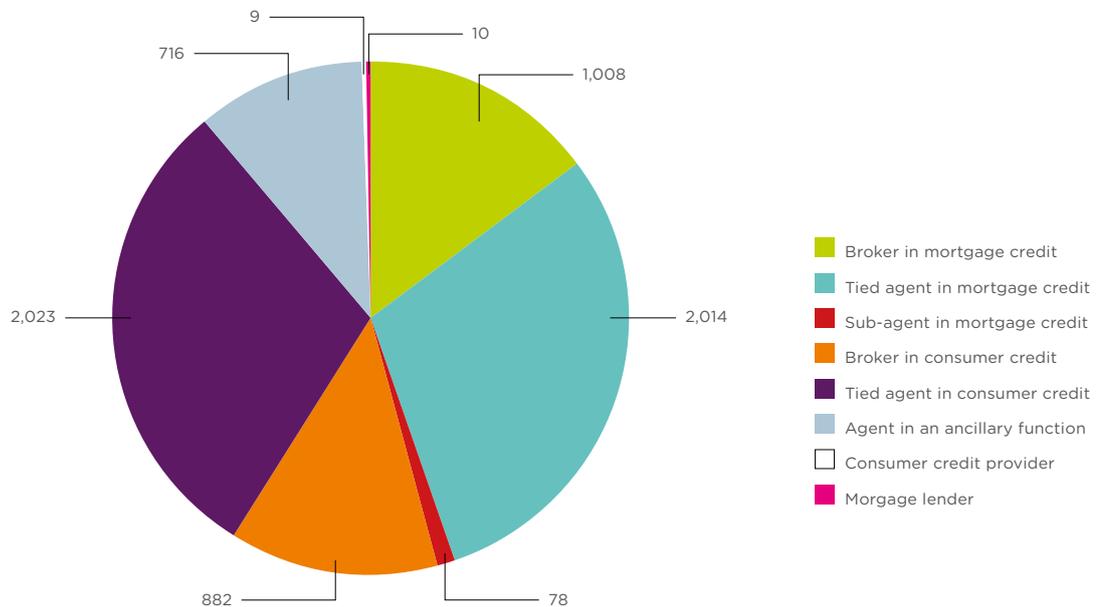
## **Suspension**

The FSMA may decide to suspend an intermediary's registration. A suspension is an administrative measure that leads to a temporary stop to the activities of the intermediary concerned. The FSMA only takes this measure when it believes that the facts that have come to its attention are very serious and a suspension is necessary for the protection of consumers or for the reputation of the sector. In 2016, the FSMA suspended eleven intermediaries. In the case of a suspension, intermediaries may in principle no longer pursue any intermediation activity. They may not renew policies, write amendments to policies, provide registration certificates for vehicles or make new contracts.

The FSMA may proceed to a partial suspension. In such a case, an intermediary may for example pursue ongoing activity such as processing claims or amending policies. However, entering into new contracts is prohibited. Last year, the FSMA partially suspended three intermediaries. Whether an intermediary is eligible for partial suspension depends on the severity of the facts and their significance to society.

## Supervision of lenders and intermediaries in mortgage loans and consumer credit

Graph 23: Lenders and credit intermediaries in mortgage loans and consumer credit



Since 1 November 2015, the FSMA is the competent authority for the supervision of lenders and credit intermediaries in mortgage loans and consumer credit. It grants authorizations to lenders and registers credit intermediaries. Lenders and credit intermediaries which were already active for at least one year on 1 November 2015, have a transition period of 18 months, until the end of April 2017, to submit an application for an authorization or registration. The figures in Graph 23 therefore do not give a current reflection of their numbers.

## Publication of warnings

Research by the FSMA revealed that insurance intermediary Athos International Management could not demonstrate that all insurance policies it manages or that came about thanks to its intermediation were effectively covered by an authorized insurance company. This led to the risk that certain insurance policies placed through this intermediary could potentially not be in order.

On 15 December 2015, the FSMA suspended the registration of Athos International Management and on 15 February 2016 it struck off this company's registration from the insurance intermediaries register. On 18 February 2016, the FSMA published this decision to strike the company from the register on the FSMA's website, with a view to warning the public about this company. This was the first time the FSMA published such a warning.

The FSMA decided on 15 June 2016 to issue a renewed warning to the public as regards this company. This warning came after the FSMA received new coinciding indications that Athos International Management had pursued its insurance intermediation activity via its manager Bruno Leblanc, despite being struck off the register.

## Optima Bank

The public limited company (naamloze vennootschap/société anonyme) Optima Bank was registered as an insurance broker in the register of insurance intermediaries. As a result of Optima Bank's bankruptcy on 15 June 2016, this registration expired automatically and Optima Bank's intermediation activities came to an end, as did those of its insurance subagents and bank agents.

The FSMA had previously commenced an investigation into compliance with the registration conditions to which Optima Bank had to adhere as an insurance broker and, pending the final result of this investigation, had suspended Optima Bank as an insurance broker.

Pursuant to this dossier, the FSMA published a list of frequently asked questions on its website, explaining to consumers in layman's terms what the suspension and termination of an intermediary's registration means.

The FSMA assisted with the hearings on Optima Bank in the parliamentary investigation committee.

## Supervision of conduct of business rules and registration conditions

In 2016, the FSMA conducted a round of on-site inspections among insurance companies and insurance intermediaries. These inspections aimed to supervise compliance with the duty of care during the distribution of savings and investment products. This primarily involved the distribution of Class 21 and Class 23 products<sup>30</sup>.

In total, the FSMA conducted 115 checks. These checks were in the first place intended to familiarize the insurance companies and insurance intermediaries under supervision with the AssurMiFID conduct of business rules, which contain measures to protect investors. After completing this first campaign of inspections, the FSMA will communicate the main findings to the sector.

During the inspections of insurance intermediaries, the FSMA also checked compliance with the conditions for registration in the insurance intermediary register. The same thorough check of the registration conditions occurred among approximately 40 insurance intermediaries who were active only in the business of what is termed 'general insurance' such as fire and vehicle insurance and civil liability insurance and travel assistance. The two most common non-conformities were in the area of continuing professional development (CPD) and theoretical knowledge.

Insurance intermediaries and those responsible for distribution are obliged to obtain a minimum number of CPD points over periods of three years. This obligation is a condition for registration and may lead, in the case of non-compliance, to being struck off the register of insurance intermediaries. The FSMA identified that some intermediaries had either not obtained any CPD points or had not obtained enough. The FSMA set a deadline of three months in which to obtain their points<sup>31</sup>.

During these checks, the FSMA ascertained that a number of intermediaries work with staff that do not possess the requisite theoretical knowledge or cannot prove that they comply with the legal requirements. This concerns in particular the front-office roles. These are people who are in direct contact with the consumer in order to sell insurance. The FSMA told the intermediaries that these members of staff were no longer permitted to exercise intermediation activity until they could prove that they had met all the requirements as to theoretical knowledge.

<sup>30</sup> See also the 'Newsletter for intermediaries' of April 2016 [<https://www.fsma.be/fr/file/41122/download?token=5ofCxilr> or <https://www.fsma.be/nl/file/41123/download?token=WtHBU3Ss>].

<sup>31</sup> For more information on CPD see the FSMA's website [<https://www.fsma.be/fr/recyclage-0> or <https://www.fsma.be/nl/bijscholing>].

The FSMA checks compliance with the registration conditions in new registrations of intermediaries or in amendments to existing dossiers of intermediaries. Every year, this entails approximately 2,000 checks.

By law, intermediaries must communicate any change to their dossier spontaneously to the FSMA. The FSMA organizes spot checks on compliance with these rules.

## Informing and supporting the sector

To contribute to effective supervision of players in the financial sector, it is essential that they be properly informed on the rules that apply and on the expectations of the supervisory authority. This is why the FSMA places particular emphasis on clearly communicating to the sector on its expectations, priorities and points for attention, as well as on changes in legislation and regulations.

This communication occurs in a range of different ways. Apart from presentations and publishing circulars, frequently asked questions and positions, the FSMA sends newsletters and newsflashes to the sector. Last year, intermediaries received four newsletters and six newsflashes.

The FSMA published a communication<sup>33</sup> in conjunction with the CTIF-CFI containing an overview of the main anti-money laundering obligations and reminding intermediaries thereof in a clear and concise way. The FSMA also sent out a newsletter entirely devoted to preventing money laundering. The newsletter focuses on concrete cases of money laundering practices. The FSMA asks intermediaries to be vigilant and provides guidance with a number of good examples of how to tackle money laundering practices<sup>34</sup>.

The FSMA is engaged in efforts to automate the registration and dossier management procedure. For lender and credit intermediary registration it has developed a digital platform which enables easy handling of dossiers. Last year, the FSMA organized a number of “first-aid days” to assist credit intermediaries with their registration.

In 2017, the FSMA will further roll out the digital registration platform to all intermediaries. They will be better able to personally manage their registration dossier as well as make changes more easily.

## Focus 2017

In 2017, the FSMA will hold talks with the sector on the application of an amended Directive on insurance intermediation<sup>32</sup>. This Directive places importance not only on legislation, rules of conduct and claims management but also on knowledge of policy conditions for the products sold as well as the duty of information and the duty of care. Intermediaries in insurance products should possess broader knowledge on the products they sell. This requires continuing professional development.

<sup>32</sup> Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (Text with EEA relevance).

<sup>33</sup> See communication FSMA\_2016\_16 of 20 September 2016 [<https://www.fsma.be/fr/file/41823/download?token=Qy7cje9U> or <https://www.fsma.be/nl/file/41822/download?token=MRgxhg-w>].

<sup>34</sup> See also: “Newsletter for intermediaries” of 20 December 2016 [<https://www.fsma.be/fr/file/41757/download?token=pNtKNjeb> or [https://www.fsma.be/nl/file/41758/download?token=RrMv3\\_4r](https://www.fsma.be/nl/file/41758/download?token=RrMv3_4r)].





The FSMA is responsible for the supervision of supplementary pensions that employees, the self-employed and company directors accrue through their professional activities. Accrual of these second-pillar pensions occurs through insurance companies and pension funds. The FSMA supervises these pension institutions' compliance with the social legislation applicable to second-pillar pensions. In addition to this social supervision, the FSMA also exercises prudential supervision on pension funds. This means that the FSMA oversees the financial health and appropriate organization of these institutions.

## Opening to the public of the pensions database

At the end of 2016, the supplementary pensions database (DB2P) was opened to the public. This means that everyone has access to this database through the website [mypension.be](http://mypension.be). The database records a number of data on supplementary pension schemes, such as the rights accrued by each employee, self-employed person or company director. Through DB2P, anyone can check which pension institution manages their supplementary pension and how much pension has already been accrued. The FSMA also uses this database. Thanks to DB2P access, the FSMA has a good overview of second pillar pension schemes and of the pension rights accrued within them. The FSMA has seized these new opportunities opened by the database to reorient its social supervision towards systematic supervision. These inspections started in 2015 and continued into 2016.

# Social supervision

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

## Supervision

The social legislation supervised by the FSMA should mitigate the risks for members. These risks can be divided into three main categories: non-allocation or non-payment of pension rights/insufficient payment or allocation of pension rights; wrong information; insufficient say or bilateral decision-making. When determining its supervision priorities, the FSMA opts for risk-based supervision, which means that the greatest risks are tackled first. In 2016, the FSMA focused its supervisory work around four themes specified as follows.

### Transparency in defined contribution plans

The FSMA led a large-scale enquiry into transparency in defined contribution (DC) plans. These are pension plans through which the employer commits only to paying pension contributions. The employer does not promise a particular benefit at the time of retirement, as is the case with defined benefit (DB) plans. This means that the member in principle bears the full investment risk.

There is a global shift underway from DB to DC plans. This is also the case in Belgium, certainly as regards the number of members.

Given the increasing prevalence of DC plans, the FSMA wanted to take a closer look at these. As part of this, it wished to look into whether the members bearing the investment risk receive appropriate and comprehensible information on the aspects that have a major impact on the accrual of their pension rights. In the first instance, this concerns the contributions made, risk coverage, returns, guaranteed returns, profit-sharing and costs and taxes.

This information should allow members to make the right investment decisions. It also offers beneficiaries the material they need to make substantiated use of the say they have by law in the management of the commitments.

The FSMA published the results of its enquiry in a report. The report showed that there continued to be certain shortfalls in the information. The FSMA therefore addressed a Communication to the sector. This Communication included the FSMA's expectations and recommendations as regards information on DC plans. The enquiry also led to enforcement measures vis-à-vis pension institutions that infringed the legislation.

### Supplementary pensions: death benefits

A second theme for supervision in 2016 was the treatment of death benefits in supplementary pensions. The FSMA launched an enquiry into whether the death benefits were paid out to the beneficiaries in the case of a member's death.

Insurers and pension funds are legally obliged to let beneficiaries know that they are entitled to death benefits in conjunction with the accrual of a supplementary pension. This means that pension institutions should do everything possible to keep themselves informed of potential deaths of members whose supplementary pension with death benefits they manage. To this end, these pension institutions have access to the civil register and they also receive monthly information on deaths from DB2P.

The enquiry unveiled that many pension institutions do not of their own accord find out about deaths of their members. They wait to be informed thereof by third parties. As a result, a lot of death benefits that should have been paid were left unpaid.

Based on this enquiry, the FSMA took the necessary enforcement measures against the pension institutions that demonstrated shortcomings in their data management as regards deaths. Those institutions were obliged to rectify the situation from the past. They also had to adjust their procedures and processes in order from now on to correctly monitor deaths.

In the second half of 2016, the FSMA also launched an enquiry into the administrative processing of death benefits. This concerns the process for detecting a death and the actual payout of the death benefit. This enquiry was conducted on the basis of checks on a number of death dossiers. The FSMA looked into whether and how pension institutions engage in efforts or take measures to trace the beneficiaries and correctly pay them out.

Finally, the FSMA conducted a targeted check on the continuance of death cover after a member has left his/her employer, which is referred to as 'exit'. This check by the FSMA was intended to avoid this situation leading to jeopardizing the supplementary retirement pension without the member being aware of this. It also emerged that some pension institutions wrongly discounted the amounts for this continued death cover from the statutory guaranteed return.

## **Information upon exit**

The third theme for supervision in 2016 related to the information that members must receive upon exit. This supervision follows on from actions already started in 2015. The FSMA places a lot of importance on this theme because upon exit, members must make important decisions on the further management of their pension scheme. They can only do so if the information in question is clear, accurate and easy to understand.

In 2015, the FSMA published its research findings on the practices concerned in a communication, along with a number of recommendations. In the meantime, the Law of 18 December 2015 amended the rules regarding information upon exit. As a result, the FSMA conducted a follow-up check in 2016. This follow-up check was to ascertain the extent to which the information that pension institutions provide upon exit is in line with the recommendations published, and adheres to the new legislation.

Based on this follow-up check, the FSMA amended its communication. It now also includes recommendations on the application of the new legislation. The FSMA also took action vis-à-vis pension institutions that did not sufficiently comply with the information obligations.

## **Reporting to DB2P**

On 6 December 2016, DB2P was opened to the public through the website [mypension.be](http://mypension.be). All citizens should be able to correctly estimate their supplementary pension. This database should also allow them to track down "forgotten" pension rights. For a lot of members, DB2P is set to become the only source of information on the accrual of their supplementary pension. Since 1 January 2016, pension institutions are no longer obliged to provide a pension information sheet to members who

have left their company or sector (which are termed 'dormant members'). This category of members can from now on only find out about their supplementary pension accrual through DB2P. Full and accurate reporting to DB2P is therefore also essential for citizens.

DB2P reporting is also crucial for the FSMA's supervision. Promptly detecting reporting issues is therefore imperative and pension institutions must make the necessary corrective and supplementary declarations. This should also prevent non-compliance with declaration obligations leading to the pension institution concerned escaping supervision action as part of social supervision.

The information in DB2P comes from the data that insurers and pension funds provide to SIGeDIS, the non-profit association that manages the database. The law determines that these pension institutions must provide data on the pension rights of their members to SIGeDIS before 30 September of each year. The reliability of the DB2P information therefore depends on the proper cooperation of the pension institutions.

The FSMA closely monitors that pension institutions provide their declarations to SIGeDIS in full and on time. SIGeDIS statistics revealed that more than one month after the expiry of the statutory deadline certain pension institutions had not made their declarations or had made insufficient declarations. The FSMA ordered these institutions to meet their declaration obligations as quickly as possible. Pension institutions that had met their declaration obligations too late were asked to take measures to prevent delays in their reporting in the future.

## Informing

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

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

After the FSMA had set out the roadmap in 2015 for these frequently asked questions, it amended the questions in 2016 in line with the new legislation, and added four new sections:

- options at the time of acquisition;
- events over the course of a career;
- payout of the supplementary pension;
- what happens in case of death.

It also published additional information on the use of the supplementary pension for home purchases or renovations.

## Focus 2017

One theme for supervision is the financing of pension liabilities through group insurance policies. This theme is linked to one of the basic principles of social legislation, namely the externalization principle. This principle aims for supplementary pension schemes to be managed externally from the employer in order to protect members from the insolvency risk of the sponsor. The rules for financing supplementary pensions differ depending on whether it is through a pension fund or through a group insurance scheme. The legislation on pension funds includes a set of rules regarding financing pension liabilities and the supervision thereof. There is no comparable framework for group insurance schemes. For example, there is no separate reporting on the level of financing of group insurance schemes. The FSMA will therefore scrutinize the financing of group insurers for defined benefit (DB) plans in light of the externalization principle and the applicable provisions of the Royal Decree on life insurance. The supervision will look into aspects such as the financing methods of group insurance schemes, the buffers created and whether the statutory minimums are adhered to, as well as how much transparency there is among employers and employees.

A second theme for supervision is “forgotten rights”. DB2P data show that pension institutions still manage major pension reserves for people who have already passed retirement age. That raises the suspicion that the pension capital was left unclaimed. Pension institutions should however alert members when benefits payable come available. The FSMA wishes to remedy this through its supervisory action and to ensure that these forgotten pension rights be paid out to members.

Finally, in 2017, the FSMA wishes to place particular emphasis on accurate and prompt reporting to DB2P.

## Regulation

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

The FSMA also pursues the practice, introduced since 2015, of immediately publishing new Position Papers regarding supplementary pensions. This practice contributes to the legal certainty and predictability of the FSMA's actions.

The FSMA is responsible for the secretariat of the Supplementary Pensions Committee and the Voluntary Supplementary Pensions Committee. It provided its services in this capacity to these advisory bodies, which over the course of 2016 examined a number of questions of interpretation regarding supplementary pension legislation, especially as regards the entry into force of the Law of 18 December 2015.

## Complaints handling

The FSMA handles complaints on the subject of supplementary pensions. In 2016, the FSMA received 282 questions or complaints dossiers on supplementary pensions. Most of them were closed over the course of the year. The large majority of the dossiers handled related to the Belgian law on supplementary pensions for employees. A conspicuously great quantity of questions related to "lost" pension rights. These are cases in which a member has accrued pension rights in the past but subsequently lost trace of these rights. As a result of the opening of DB2P to citizens on 6 December 2016 (see box) this issue should for the most part have been resolved.

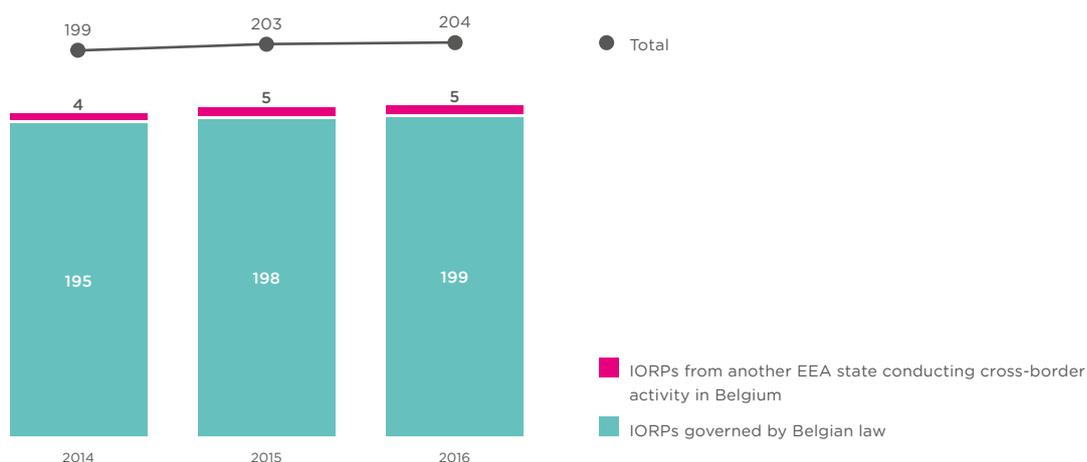
# Prudential supervision

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

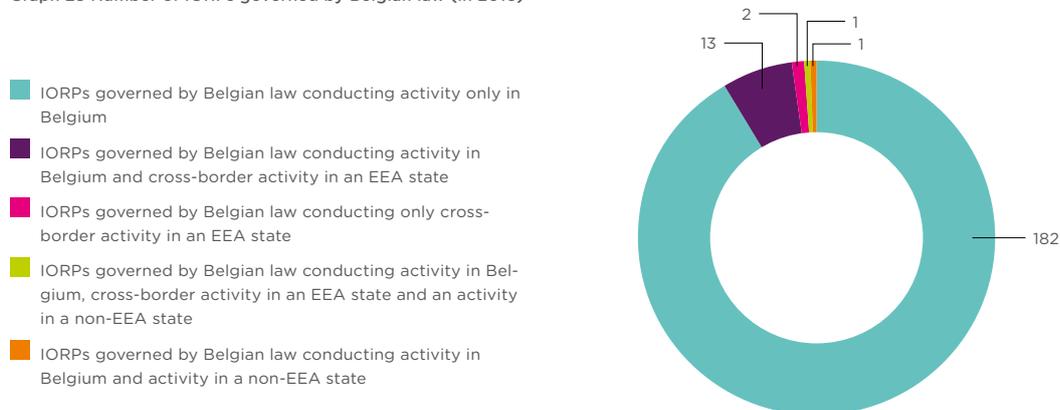
- prudent valuation of pension liabilities, which perfectly corresponds with the return on investment and takes into account all relevant risks, as well as appropriate financing of pension liabilities;
- diversified investments tailored to the investor;
- sound organization;
- transparency towards all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

Belgium has 204 pension funds. A number of key figures on the pension funds sector are shown in graphs 24, 25 and 26. More statistics on the sector can be found on the FSMA's website.

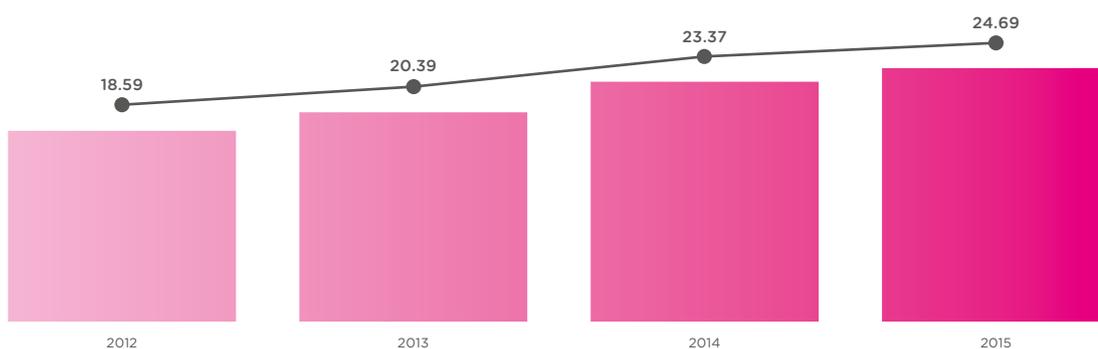
**Graph 24:** Number of IORPs



**Graph 25** Number of IORPs governed by Belgian law (in 2016)



Graph 26: Balance sheet total of IORPs (in EUR billion)



## Risk model

The legislature requires certain transactions by pension funds to have the FSMA's prior approval. For example when starting activities, when the fund wishes to manage foreign pension plans or when the fund has to take recovery measures to remedy a funding deficit.

In addition to the supervision of such transactions screened in advance by the FSMA, supervisory resources are primarily allocated to areas that entail the greatest risks and which therefore need to be properly monitored. The FSMA identifies the risks based on a risk model that automatically gathers data from reporting.

In 2016, the FSMA made the existing risk model more sophisticated and flexible. This should in the future make it easier and faster to respond to the signals of other major players in the supervision, such as the accredited statutory auditor and the appointed actuary (see below). The revised risk model will also enable partial scores to be allocated in very specific areas such as sound governance or financing of a pension fund. It will also enable a general stress test to be conducted as well as quicker processing of external signals or new macroeconomic aspects.

## Accredited statutory auditors and appointed actuaries

For its risk-based supervision, the FSMA can call upon the expertise of two major players in the field, namely the accredited statutory auditor and the appointed actuary. In 2015, the FSMA set out all of its expectations as regards the statutory task of accredited statutory auditors. In 2016, it published a circular on the statutory role of the appointed actuary. This circular sets out the FSMA's expectations as regards the content of the appointed actuary's opinions and reporting. The circular also draws attention to the importance of properly managing conflicts of interest that could arise for actuaries. This can for example comprise situations in which the actuary is both a consultant for the pension fund and the appointed actuary with a reporting and advisory obligation solely in the interest of members.

Both circulars are of major importance. Since 2015, the FSMA conducts an annual screening of these reports in order to immediately incorporate any signals from appointed actuaries and accredited statutory auditors in the risk-based supervision agenda.

## Inspections

Belgian pension funds are non-profit institutions which are often very small. For these reasons, they tend to outsource many management tasks to third parties. It is crucial, with a view to prudent management, that the pension fund establish clear guidelines and expectations for the parties to which management tasks are entrusted and that it properly monitor the outsourced management tasks. For this reason, the FSMA organized an inspection among a representative sample of pension funds focusing on the outsourcing of portfolio management.

## Stress test

At the beginning of 2016, the results of an EU pension funds stress test were published. This was steered by EIOPA. The FSMA took part in this stress test with a representative sample of institutions encompassing 57 per cent of the assets managed by Belgian pension funds. The stress test showed that the participating pension funds on average bear up well even under extremely tight economic circumstances. This result is mainly due to the sizeable buffers held by the pension funds concerned to absorb shocks on the financial markets. The presence of strong sponsors who can stand guarantor for the pension commitments also plays a role. This puts Belgium among the top five countries that maintain sufficient coverage of their obligations under all stress scenarios.

The FSMA has also been commended at a European level for its supervisory practices, especially for the way in which it monitors pension funds' investment strategies and uses any signals picked up for the purposes of its supervision. From the eight good practices identified by EIOPA pursuant to a study of the supervisory practices of all European supervisory authorities in connection with the Statement of Investment Principles, seven are standard practice for the FSMA.

## Recovery and reorganization measures

Pension funds with a funding gap must take the necessary measures to remedy that gap. A gap can occur at the level of the entire fund or at the level of the pension plan of one or more employers which contribute to the fund. In the first case, recovery measures are taken; in the second, reorganization measures. The number of such measures remained low last year. Eighteen pension funds had recovery measures underway; eight funds had reorganization measures underway. Of these 26 IORPs, 12 IORPs succeeded in ending their recovery or reorganization plans in 2016. These included eight IORPs with recovery measures and four IORPs with reorganization measures. Many of the new gaps in pension funds are the result of stricter, and therefore safer, assumptions used by pension funds to calculate their pension liabilities.

## Informing the sector

The FSMA ensures that the pensions sector remains properly informed as to its supervision and expectations. This occurs inter alia through the publication of good and bad practices and the provision of guidance based on its supervisory actions. In addition, there is a monthly meeting with As-suralia, the professional organization for the insurance sector, and with PensioPlus, the professional organization for pension funds. The FSMA also takes care of the secretariat of the supplementary pensions committee and of the committee of supplementary pensions for the self-employed. These committees are composed of representatives from the sector, consumers and experts. They are the fora par excellence for dealing with specific questions relating to the application of the legislation.

### Focus 2017

The focus of the prudential supervision in 2017 lies, inter alia, on the financing of pension funds in a low-interest-rate environment. After all, low interest rates have a great impact on the financing of funds, especially for the management of defined benefit plans. The checks planned have the common goal of lowering the discount rates of pension funds that use too high a discount rate. One supervisory pathway will consist of a special analysis of pension funds with great exposure to interest-rate products. These will after all be the first to feel the impact of low interest rates.



# SANCTIONS



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

## Procedure for imposing administrative fines

Where the Management Committee identifies strong indications of the existence of a practice liable to give rise to an administrative fine, it tasks the investigations officer with investigating the dossier<sup>35</sup>. This decision is made based on the indications of the FSMA's supervisory services following a complaint or based on the indications of a foreign supervisory authority as part of a request for cooperation addressed to the FSMA. In the latter case, the Management Committee tasks the investigations officer with ordering the necessary investigative action in order to be able to respond to the request from the supervisory authority concerned.

## Decisions to open an investigation

In 2016, the Management Committee decided to open an investigation in the case of nine dossiers based either on the FSMA's own investigations or on complaints. This includes the dossiers for which an investigation is opened in response to requests for cooperation from foreign supervisory authorities addressed to the FSMA<sup>36</sup>.

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

<sup>35</sup> Article 70, § 1 of the Law of 2 August 2002.

<sup>36</sup> For more information on those requests, see this report p. 87.

# Summary of dossiers handled

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

## Proposed agreed settlements

The provisions on the organization of the procedure for imposing administrative fines provides for the possibility to close a dossier with an agreed settlement<sup>37</sup>.

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

In 2016, the investigations officer submitted seven proposed settlements, to which the parties concerned had agreed, for the approval of the Management Committee.

The proposals concerned in total seven legal entities and one natural person. These were more specifically dossiers including indications of non-compliance with:

- the prospectus obligations;
- the obligation to immediately publish inside information;
- the regulations on advertisements for regulated savings accounts;
- the insurance law;
- the rules regarding misuse of inside information.

Some of the agreed settlements that the Management Committee approved in these dossiers are explained in this report<sup>38</sup>.

## Reporting of findings to the Management Committee

After the investigation is complete, the investigations officer draws up a report setting out the facts ascertained that may constitute an infringement liable to give rise to the imposition of an administrative fine or, where applicable, a criminal offence<sup>39</sup>.

<sup>37</sup> Article 71, § 3 of the Law of 2 August 2002.

<sup>38</sup> See this report, p. 83.

<sup>39</sup> Article 70, § 2 of the Law of 2 August 2002.

The investigations officer provides the final report to the Management Committee. Based on that report, the Management Committee then decides on the outcome of that dossier<sup>40</sup>.

In 2016, the investigations officer sent 15 investigation reports to the Management Committee, which related to 7 legal entities and 17 natural persons.

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

In 2011, the new sanctions procedure entered into force by way of the Twin Peaks Law<sup>41</sup>. Between 2011 and 31 December 2016 investigations have been opened in 68 dossiers relating to the existence of one or more practices which could give rise to an administrative fine being imposed on one or more people.

During this same period, the total number of proposals for agreed settlement handled and investigation reports closed by the investigations officer was 90. This ensued in the definitive closure of 56 dossiers.

The dossiers for which an investigation has been opened since 15 July 2011 concern serious indications of infringements of one or more of the laws specified in table 4<sup>42</sup>. It is worthy of note that in 2016, the dossiers related to a greater number of laws, apparently revealing a wish to make use of the FSMA's sanctioning powers in all of its areas of supervision.

**Table 4:** Overview of the laws to which the dossiers handled by the investigations officer since 15 July 2011 pertain

|  | From 15 July 2011 to<br>31 December 2015 | From 15 July 2011 to<br>31 December 2016 |
|--|--|--|
| Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorism financing  | 1  | 1  |
| Law of 2 August 2002 on the supervision of the financial sector and on financial services  |  |  |
| 1. Insider dealing   | 23                                       | 27                                       |
| 2. Market manipulation and failure to disclose information to the market   | 12                                       | 14                                       |
| 3. Rules of conduct  | 2  | 2  |
| 4. Reporting of suspicious transactions  | 1  | 1  |
| Royal Decree of 14 November 2017 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   | 6  | 8  |
| Law of 16 June 2006 on public offers of investment instruments   | 14                                       | 14                                       |
| Law of 2 May 2007 on disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions | 2  | 2  |
| Royal Decree of 3 June 2007 concerning the rules and procedures for transposing the Markets in Financial Instruments Directive                                   | 2  | 2  |

<sup>40</sup> Article 71 of the Law of 2 August 2002.

<sup>41</sup> See the 2011 FSMA annual report, p. 42.

<sup>42</sup> Several of the dossiers handled by the investigations officer concerned infringements of several of the laws specified in the table. This is why the total number of cases of application of the laws specified in this cumulative overview is higher than the number of dossiers.

|  |   |   |
|--|---|---|
| Royal Decree of 27 April 2007 on takeover bids   | 1 | 1 |
| Law of 3 August 2012 on certain forms of collective management of investment portfolios that fulfil the conditions of Directive 2009/65/EC and Financial Vehicle Corporations (last amended by Royal Decrees of 12 November 2012, 25 April 2014 and 2 June 2015) | 1 | 2 |
| Royal Decree of 18 June 2013 laying down certain information obligations in respect of the distribution of regulated savings accounts  | 3 | 4 |
| Law of 4 April 2014 on insurance   | 2 | 2 |
| Economic Law Code (credit intermediation)  |   | 1 |

## Description of four agreed settlements

Article 71, § 3, of the Law of 2 August 2002 determines that the Management Committee may accept an agreed settlement in so far as the interested parties have cooperated with the investigation and have given their prior consent to the agreed settlement. In practice, the investigations officer submits a proposal to the Management Committee for a settlement with which the interested party agrees. This agreement concerns the amount of the settlement, the methods of publication (which as a rule consist of a named publication on the FSMA's website) and the text of the agreed settlement. Once the Management Committee approves the agreed settlement, the investigation is closed.

In 2016, the Management Committee approved agreed settlements in investigations concerning a range of supervisory areas. Below is a brief description of four cases which serve as an illustration. The texts of these and other agreed settlements that came about in 2016 can be found on the FSMA's website.

### Agreed settlement with an insurance company

On 3 May 2016 the Management Committee approved an agreed settlement with an insurance company.

Pursuant to Article 262, § 2 of the Insurance Law, insurance companies may only call upon registered intermediaries and they are liable for transactions executed by non-registered intermediaries. Insurance intermediaries who work in Belgium may not pursue the activity of insurance intermediation without first being registered in the register of insurance intermediaries. The FSMA publishes this register on its website, as well as any updates. This means that this information is available to third parties.

The investigation revealed that the insurance company had continued to work, for almost one and a half years, with an insurance intermediary who was no longer registered in the register of insurance intermediaries. The FSMA had made a record of the automatic expiry of this intermediary's registration and had informed third parties thereof by way of an update to the register. The insurance company had continued to sign or renew various insurance policies through the intermediation of this intermediary. Once it was made aware of the facts and findings of the investigation, the insurance company amended its internal procedures.

The insurance company paid EUR 75,000 to the Treasury. The agreed settlement was published with the company's name on the FSMA's website.

## Agreed settlement with a portfolio manager

On 31 May 2016 the Management Committee approved an agreed settlement with a portfolio manager.

This portfolio manager had launched a new website on which information and advertisements for investment funds were published. The portfolio manager also acted as a distributor for certain funds.

Pursuant to the Law of 3 August 2012<sup>43</sup>, announcements, advertisements and other items relating to a public offer of units in an open-ended undertaking for collective investment (UCI) governed by Belgian law or an announcement or recommendation of such an offer may be published only after the FSMA's approval. UCIs governed by the law of another Member State of the European Economic Area have a similar obligation.

All announcements, advertisements and other items relating to a public offer of units in a UCI must also comply with various requirements as to content and form. These are provided for in the Royal Decree of 12 November 2012 regarding certain public undertakings for collective investment.

It emerged from the investigation that the portfolio manager had not submitted the content of the new website in advance to the FSMA. The FSMA subsequently issued a number of observations on the content of this website, which was finally amended. This episode took more than five months.

The agreed settlement provided for the payment of a sum of EUR 120,000 to the Treasury and a named publication on the FSMA's website.

## Agreed settlement with a Cyprus-based company

On 13 July 2016, the Management Committee approved an agreed settlement with a Cyprus-based company. This was the first settlement in this matter involving a company with a foreign authorization.

It related to an investment firm governed by the law of Cyprus which had been authorized to offer investment services in Belgium under the freedom to provide services. This company offered Contracts for Difference (CFDs) and binary options with a range of underlyings including foreign currencies (Forex). This investment firm did not have a prospectus approved by the FSMA and the FSMA had not previously approved the advertisements.

Pursuant to Articles 17, 20 and 43 of the Prospectus Law, the public offer of investment instruments on the Belgian territory requires previous publication of a prospectus approved by the FSMA. In accordance with Article 4, § 1, of the Prospectus Law, investment instruments include nine specifically defined categories and one broader category which comprises "all other instruments which allow a financial investment to be made, irrespective of the underlying assets". CFDs and binary options are instruments which allow a financial investment to be made, irrespective of the underlying assets. Article 60 of the Prospectus Law requires that advertisements and other documents and announcements which relate to such a public offer also be approved in advance by the FSMA.

<sup>43</sup> Article 60, § 3 of the Law of 3 August 2012 on certain forms of collective management of investment portfolios that fulfil the conditions of Directive 2009/65/EC and undertakings for investment in receivables.

In the agreed settlement, the company undertook proactively to contact the Belgian clients to offer them the opportunity to terminate their contractual relationship at no cost and with the return of their balance. The agreed settlement provided for the payment of a sum of EUR 140,000 to the Treasury. The agreed settlement was published with the company's name on the FSMA's website.

## **Agreed settlement with a Belgian listed company**

On 20 December 2016 the FSMA's Management Committee approved an agreed settlement with a Belgian listed company.

Pursuant to the aforementioned Article 10, § 1, first and third paragraphs, of the Law of 2 August 2002, listed companies must, as a rule, immediately disclose inside information that directly relates to them. In certain cases, they may temporarily postpone such disclosure. Since 3 July 2016, the obligation to disclose inside information and the possibility of postponing this obligation arise directly from Article 17 of the Market Abuse Regulation.

The company had announced through a press release that the board of directors had decided to analyse a number of strategic options for the business and that the market would in due course receive further information. This strategic review process entailed a range of options including a takeover scenario or the termination of a commercial cooperation agreement. This announcement caused the share price to go up. After three months, the company had invoked, in so far as necessary, the procedure for postponement of publication of inside information. The company had adjusted its negotiations strategy after finding out the points of view of several sector peers. The company finally disclosed, once a newspaper article had shown that the confidentiality of the process had been compromised, that it would continue on its own. This caused a sharp fall in the share price. The FSMA is of the opinion that the company should have informed the market on the progress of the strategic review process.

The agreed settlement provided for the payment of a sum of EUR 250,000 to the Treasury. It was published with the company's name on the FSMA's website.

## **Legal proceedings**

In the year under review, the Brussels Court of Appeal ruled in a case in which one of the parties had lodged an appeal against the decision by the Sanctions Committee to impose administrative fines for insider dealing. Also in the period under review, the Supreme Court issued a judgment in a case in which the FSMA had lodged an appeal with the Supreme Court against a ruling by the Brussels Court of Appeal which overturned a decision of the Sanctions Committee to impose an administrative fine for insider dealing.

### **Ruling of the Brussels Court of Appeal dated 18 May 2016 on insider dealing**

The Brussels Court of Appeal ruled in the appeal against the decision of 25 February 2015 of the Sanctions Committee imposing administrative fines of EUR 75,000 and EUR 25,000 respectively to two natural persons for insider dealing<sup>44</sup>. The first person concerned was professionally active within a communications agency specializing in financial publications for companies. As part of

<sup>44</sup> See the 2015 FSMA annual report, p. 192.

this activity, this person had access to information relating to listed companies, which had not been made public. The investigation revealed that the purchase transactions made by this person showed a fixed structure of exclusively purchasing the shares of companies for which the communications agency was involved in the communications and that almost all of these purchases occurred shortly before the publication of a press release by these companies or relating to a takeover bid for these companies, in which the communications agency was involved. It also emerged from the investigation that each purchase transaction of the first person involved was followed by a purchase transaction by the second person in the same shares. Both people knew each other well.

Only the first person involved lodged an appeal against the decision of the Sanctions Committee. In a ruling of 18 May 2016, the Brussels Court of Appeal confirmed the decision of the Sanctions Committee, except in so far as it decided to publish the decision with the names of the people involved.

The Court first of all ruled that the reasonable period had been exceeded. The reasonable period started, according to the Court, at the moment when the person concerned was accused and informed of this accusation. In this case that moment was, according to the Court, the time at which the first person concerned was informed of the decision of the Management Committee of—the at the time—the CBFA, to task the investigations officer with an investigation regarding the share transactions of the person concerned. The person concerned alleged before the Court of Appeal that the reasonable period had already started to run before that time, namely when he was questioned as part of an investigation into transactions in shares of a listed company for which that person's communications agency was involved in the communication. The Court did not admit this argument because the person concerned was, according to the Court, not yet accused and therefore a fortiori could not have been informed of any accusation. The Court furthermore established that from the starting point of the reasonable period, two unjustified periods of inactivity occurred. As a result, the Court considered that the reasonable period had been exceeded. Equally, according to the Court, exceeding this reasonable period did not ensue in no longer correctly being able to assess the facts and the need to close the sanctions procedure with no further effect. For an appropriate legal remedy it sufficed, according to the Court, to take into account the fact that the reasonable period was exceeded when determining the sanction.

The Court ruled on the merits of the case that the first person concerned committed insider dealing (infringement of Article 25, § 1, 1<sup>o</sup>, a) of the Law of 2 August 2002), disclosure of inside information to another person (infringement of Article 25, § 1, 1<sup>o</sup>, b) of the Law of 2 August 2002), and participated in an agreement the object of which was to commit acts as referred to in Article 25, § 1, 1<sup>o</sup> to 5<sup>o</sup> of the Law of 2 August 2002 (infringement of Article 25, § 1, 6<sup>o</sup>, of the Law of 2 August 2002). For the disclosure of inside information to another person, the Court based its decision on all the compelling and coinciding indications by virtue of which it can be ruled that the second person must have proceeded with the purchase transactions after being informed by the first person of the inside information which that latter person possessed.

The Court confirmed the administrative fine of EUR 75,000 imposed by the Sanctions Committee on the first person concerned. The Court ruled that, given the fact that the reasonable period had been exceeded and given the disproportionate consequences (reputational damage and financial consequences) of a publication with the name of the first person concerned, it was not appropriate to name the person in the publication of the decision on the FSMA's website.

## Ruling of the Supreme Court dated 10 June 2016 on insider dealing

In the 2015 Annual Report, the FSMA reported on the judgment of the Brussels Court of Appeal dated 21 May 2015 which overturned the Sanctions Committee decision of 2 September 2013 imposing an administrative fine on a former executive of a credit institution for insider dealing. It was also stated that the FSMA had lodged a Supreme Court appeal against this ruling<sup>45</sup>. In a ruling of 10 June 2016, the Supreme Court rejected this appeal.

## International cooperation

In 2016, the number of requests for international cooperation in dossiers on potential market abuse or unlawful offering of financial services fell slightly in comparison with the previous year.

The FSMA received 36 requests for cooperation from foreign competent authorities as compared with 44 in 2015. All of these requests were responded to within an average of 39 days. The duration of that period was determined by the nature and scale of the investigative duties to be conducted.

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

In 2016, the FSMA addressed 25 requests for cooperation to foreign competent authorities compared to 80 in 2015. The reason for this fall is the end of a dossier on international fraud which required vast investigative actions needing international cooperation.

<sup>45</sup> See the 2015 FSMA annual report, p. 127.





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

## www.wikifin.be

In 2016, [www.wikifin.be](http://www.wikifin.be) was visited close to 1.9 million times. That represents an increase of 68 per cent compared with the previous year. Visitors viewed over 3.4 million pages. Since its launch in 2013, the number of visitors to the website continues to grow. That can be attributed to the unceasing efforts and countless campaigns by Wikifin.be.

The portal [www.wikifin.be](http://www.wikifin.be) aims to provide consumers with neutral, reliable and practical financial information in language that is easy for everyone to understand. In order to promote the themes covered, the quizzes and the simulators, campaigns are set up to stimulate the public's interest in financial matters.

At the end of November 2016, Wikifin.be launched the 'inheritance simulator'<sup>46</sup> in conjunction with the Royal Federation of Belgian Notaries. In one month, this simulator was consulted more than 100,000 times. It offers families a user-friendly way in which to see how an inheritance will be divided up amongst heirs and how much inheritance tax will have to be paid. The inheritance simulator responds to a genuine need from the population. Research by the King Baudouin Foundation<sup>47</sup> showed that most Belgians have a lack of understanding of inheritance tax. In addition to the inheritance simulator, neutral and reliable information on the theme of inheritance was also added to the website.

Other popular tools on [www.wikifin.be](http://www.wikifin.be) are the savings account simulator, the pensions quiz and the real estate simulator. The other themes are continuously updated thanks to contribution from experts from government institutions, trade associations and those who work in the field.

In addition to continuing to build on these tools and themes, Wikifin.be continued to send out its newsletter, which now has around 16,000 subscribers.

<sup>46</sup> [www.wikifin.be/nl/erfenissimulator](http://www.wikifin.be/nl/erfenissimulator) or [www.wikifin.be/fr/simulateur-heritage](http://www.wikifin.be/fr/simulateur-heritage).

<sup>47</sup> De Potter V., Van Dorsselaer I.; Perceptie en verwachtingen over erven en nalaten in België (February 2016); King Baudouin Foundation.

# Money Week

From 14 to 20 March 2016, Wikifin.be organized 'Money Week' for the first time in Belgium, along with the newspapers De Tijd and L'Echo. The Flemish- and French-speaking regional TV and radio companies also participated in this initiative along with a great deal of people who work in the field<sup>48</sup>. The aim of Money Week is to enable money matters to be discussed as widely as possible and devote extra attention to financial education. As part of this themed week, Wikifin.be embarked on a range of joint initiatives and took on the role of coordinator between the various stakeholders.

Wikifin.be and its many partners set up campaigns all over the country aimed both at schools and the public. By pooling the forces of different public institutions and others active in the field, a diverse range of financial education themes were able to be covered. All of those activities can be consulted on [www.deweekvanhetgeld.be](http://www.deweekvanhetgeld.be)/[www.lasemainedelargent.be](http://www.lasemainedelargent.be).

The start of Money Week kicked off in the Euronext building in Brussels with the 'Ring the Bell' event in the presence of several ministers. During this kick-off the results of the study into how money matters are dealt with by Belgian families were presented. In addition, Wikifin.be announced the winners of the Wikifin@School Challenge. That was a competition for secondary school students. Their challenge was to present, as creatively as possible, five pieces of advice on how to budget. The Wikifin.be thesis prize was also awarded. This rewards students who wish to write their final thesis on the subject of financial education and investor protection.

Her Majesty the Queen lent Her support to Money Week by visiting two primary schools in Brussels and taking part in the budget game 'Budg€tPRET' with which pupils could learn to manage a budget. In total, more than 30,000 children from 1,500 primary school classes played Budg€tPRET. Around 40 FSMA employees volunteered to help liven up the game.

In the same week, Wikifin.be was also present on the Infomarkets organized in Brussels, Antwerp and Leuven in conjunction with the Federal Truck of the Chancellery of the Prime Minister. Experts from the Money Week partners were on hand to answer money-related questions from the public. Visitors could also take part in an online quiz to find out whether their finances were running smoothly<sup>49</sup>. The Federal Truck also visited different primary schools to raise pupils' awareness on money-related matters, such as managing a budget.

In the year under review, Wikifin.be also took part in the 'Ondernemen/Entreprendre 2016' entrepreneurial fair to give business owners information on a range of financial themes. This time the theme of pensions was put in the spotlight as well as that of financial fraud, which is a risk often faced by business owners and directors.

Given the success of the first edition of Money Week, the great attention from the public and the press, and the positive reactions from the different participants including schools, Wikifin.be and its partners have decided to organize this event again in 2017.

<sup>48</sup> The Federal Pensions Service, the National Institute for the Social Security of the Self-employed (NISSE), the FPS Economy, FPS Finance, the Insurance Ombudsman, Ombudsfin, the Chancellery of the Prime Minister, the National Bank of Belgium, Febelfin, Assuralia, the Belgian credit and debt observatory, Dag Zonder Krediet [no-credit day], the Vlaams Centrum Schuldenlast [Flemish centre for over-indebtedness] and the Steunpunt voor de Diensten Schuldbemiddeling [Support centre for debt mediation services] of the Brussels-Capital Region.

<sup>49</sup> [www.wikifin.be/nl/geldtest](http://www.wikifin.be/nl/geldtest) or [www.wikifin.be/fr/rapport-argent](http://www.wikifin.be/fr/rapport-argent).

# Other campaigns for the general public

Alongside Money Week, Wikifin.be also embarked on other campaigns directed at the general public.

On 21 July, the Belgian national holiday, Wikifin.be took part in festivities in Brussels with an educational stand called 'Put your other glasses on'. Visitors to the stand were able to ask the Wikifin team any money-related questions and received merchandise with the Wikifin logo.

Wikifin.be also launched an information campaign in the French-language and Dutch-language Metro newspaper to make consumers aware of a range of finance-related themes. Wikifin.be staff also organized a number of roadshows to increase brand recognition for Wikifin.be in the main town centres in Wallonia and Brussels, as well as in the premises of insurance brokers and intermediaries, the latter in conjunction with Assuralia, the professional organization for insurance companies.

## Schools

The younger generations form an important target market for Wikifin.be. Learning to manage money and picking up healthy financial habits should start as early as possible. In order to successfully appeal to this target market, the FSMA has decided to work closely with the educational sector.

The 'Wikifin@school'<sup>50</sup> platform which was launched in October 2015, and which can be accessed through Wikifin.be, counted over 2000 teachers at the end of 2016. This platform contains a wide range of teaching materials for use by teachers and students. These include, for example, teaching worksheets with clear instructions for teachers and suggestions on how to use them in the classroom, videos, and tools on a range of themes linked to financial education and responsible consumption. Over the past year, more than 12,000 teaching worksheets have been downloaded.

Wikifin.be also organized different campaigns for teachers to raise awareness among this target group. Every three months a newsletter is sent out to teachers to keep them informed of new initiatives, there is active participation in educational fairs all across Belgium, training days are organized for teachers and, during Money Week, activities take place in primary and secondary classrooms.

In the Wallonia-Brussels Federation, the Parliament passed a resolution on developing financial education and responsible consumption in compulsory education. This resolution provides for integrating the development of economic and budgetary knowledge, proficiency and knowhow, and education on responsible consumption. It applies both to primary education and to general technical and vocational education.

<sup>50</sup> [www.wikifin.be/nl/wikifin-at-school](http://www.wikifin.be/nl/wikifin-at-school) or [www.wikifin.be/fr/enseignants](http://www.wikifin.be/fr/enseignants).

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

For French-language technical and vocational education, Wikifin.be worked with the Centre de Didactique Economique et Sociale (CeDES) (social and economic teaching centre)<sup>51</sup> to offer the materials necessary for the new 'social and economic education' course.

The Flemish education system embarked on preparations for a major reform. One of the main aspects of this reform consists of updating school teaching materials. A public debate was held around this theme. The teaching materials provided in the future should be in line with society's expectations from the school. It emerged from the debate that financial education should be included in attainment targets. The attainment targets establish the objectives that pupils must attain in terms of understanding, knowledge and proficiency.

The debate concluded that in the area of financial matters, pupils should be self-reliant and possess sufficient practical competencies. Financial literacy is a key skill for pupils. It is currently being examined how this skill can be incorporated into the school curriculum and how it can form part of the basic schooling of each pupils.

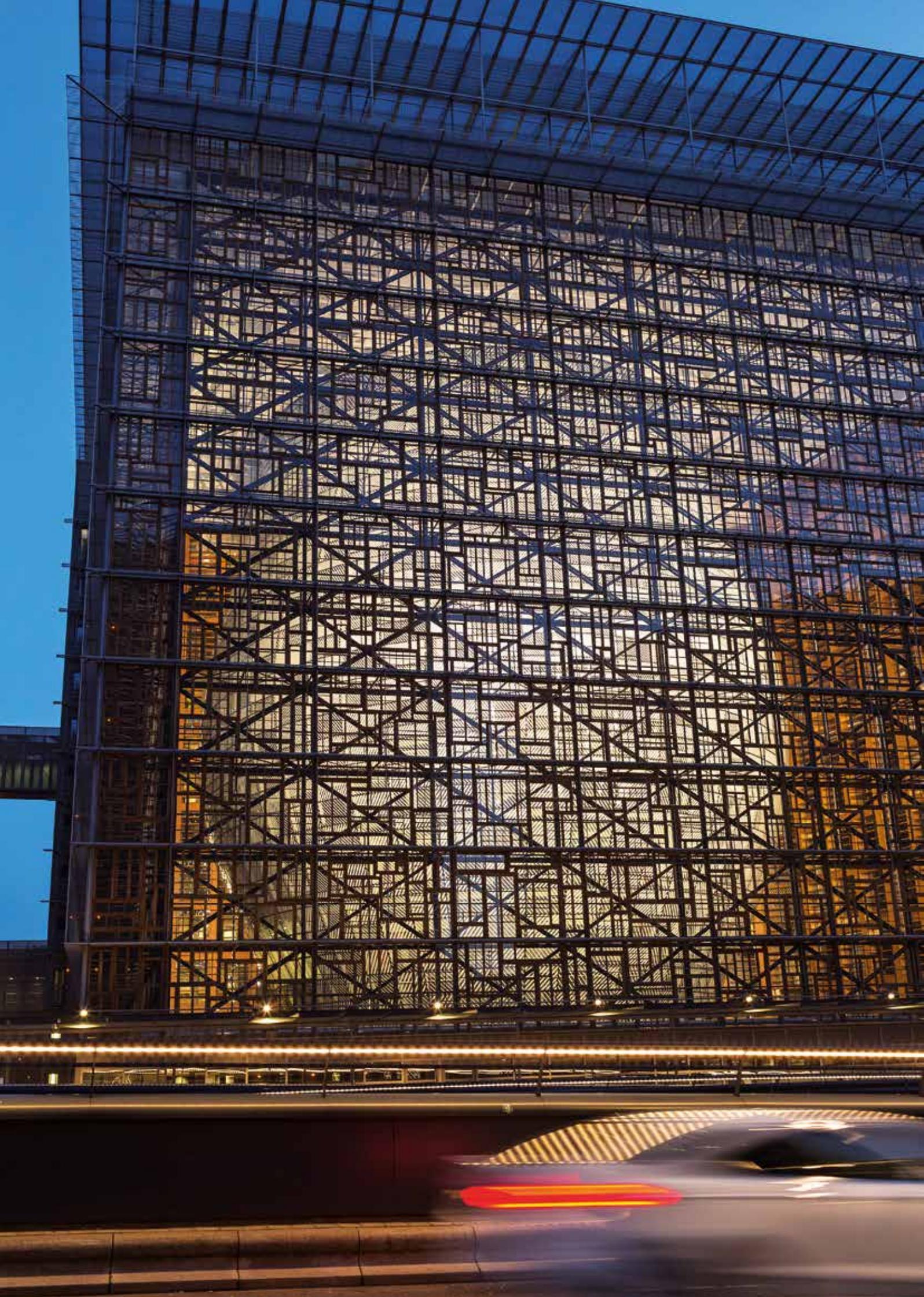
The Flemish Parliament will have to decide on what the attainment targets and the basic schooling should entail and where financial education fits within these. As part of this, Wikifin.be set up the steering group on financial education in order to focus, along with various stakeholders, on the key skill of financial literacy.

In the meantime, Wikifin.be continues to engage in scientific research. For this, Wikifin.be works with the research centres of KU Leuven and the University of Antwerp. These universities received support from the Flemish Fund for Scientific Research for their joint project Financial Literacy@School. This strategic basic research focuses on developing methods that capitalize on each individual child's qualities. The research aims to develop innovative teaching materials along with new training packages for teachers. The idea is also to involve parents more in their classroom activities. Wikifin.be and its partners will develop and fine-tune the results of this research with societal relevance and ensure their widespread application.

In parallel, Wikifin.be launched the Wikifin Chair in Financial Literacy. This Chair was given to the Faculty of Economics and Business, which will work together with the Faculty of Psychology and Educational Sciences from the Free University of Brussels. The work to come out of this Chair can help other stakeholders fine-tune and develop their work. By pooling forces, Wikifin.be, KU Leuven and the Free University of Brussels are convinced that they will be able to make an important contribution.

In 2017, Wikifin.be will further expand on its role of coordinator or partner for financial education through a pragmatic approach and specific initiatives. Money Week is just one practical example of this. Last year, Wikifin.be also worked on developing a new platform for sharing information on initiatives for financial education. With this, the FSMA hopes to encourage joint initiatives in this area. The platform will be launched in 2017 under the name Financial Education Belgium. Over the next few years, there will also be work on setting up a financial education centre to give financial education a specific hub in Belgium and help further promote the subject.

<sup>51</sup> Initiative of the University of Namur and more specifically, the Faculty of Economics, Social Sciences and Business Administration (FSESG). CeDES offers academic support and provides ready-to-use teaching documents, both for transitional and vocational programmes.



# INTERNATIONAL ACTIVITIES

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## International supervisory authorities

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

The Financial Stability Board (FSB) is an international organization whose main task is to promote financial stability. It was set up in 2009 by the G20, the group of the 20 major economies. The FSB coordinates a range of reforms aimed at preventing a new financial crisis, partly by making the financial sector more robust.

The FSB has set up the Official Sector Steering Group, a group of supervisory authorities and central banks that play a coordinating role in the reform of the main financial benchmarks, reference indexes such as Euribor and Libor.

The IFRS Monitoring Board was set up in 2009 to supervise the International Accounting Standards Board (IASB). The IASB develops the International Financial Reporting Standards (IFRS) as a private independent international body. These standards are international standards for reporting in annual accounts and annual reports. At this time, IFRS standards must be used in more than 80 per cent of jurisdictions. In the European Union, around 6,000 companies listed on the regulated market use IFRS.

The International Association of Insurance Supervisors (IAIS) is a network of supervisory authorities for the insurance sector in close to 140 countries. The IAIS, set up in 1994, aims to contribute to safe and financially stable insurance markets. It does so by setting international standards and reinforcing cooperation between insurance supervisory authorities.

The FSMA is also a member of the International Organisation of Pension Supervisors (IOPS), an independent international body of supervisory authorities of supplementary pensions from 75 countries.

The internationalization of the financial markets has led to financial regulations increasingly being set at a European or international level. International cooperation and collaboration between supervisors has gained importance as a result. The FSMA is a member of several international and European organizations which are instrumental in setting new rules and standards for the financial sector worldwide. The FSMA is represented on the International Organization of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS) and the International Organization of Pension Supervisors (IOPS). It is a member of the European Securities and Markets Authority (ESMA) and of the European Insurance and Occupational Pensions Authority (EIOPA). The FSMA takes part in the work of the European Systemic Risk Board (ESRB). It is also actively involved in the introduction of new European legislation.

## IOSCO

Jean-Paul Servais, the Chairman of the FSMA, was selected in May 2016 as Vice Chair of IOSCO for a term of two years. Thanks to this office, he plays a leading role in the Board of IOSCO, which makes the organization's strategic decisions.

As Vice Chair, he represents IOSCO in other international organizations. He takes part in the meetings of the leading bodies of the Financial Stability Board (FSB) and of its working group on financial reference indexes, OSSG.

He is a member of the IFRS Monitoring Board on behalf of IOSCO. He was chosen to chair this Board for a term of two years. That term started on 1 March 2017.

The Chairman of the FSMA also chairs the Financial and Audit Committee of IOSCO and since October 2014 he chairs the European Regional Committee, the European country group of IOSCO.

The FSMA is active in a number of working groups responsible for preparing the principles and standards established by IOSCO. The work that IOSCO does for portfolio management is particularly important. This work runs parallel to the recommendations made by the FSB to tackle the structural vulnerabilities of this activity<sup>52</sup>.

<sup>52</sup> Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities, 12 January 2017. See the FSB website: <http://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf>.

Other work by IOSCO over the past year concerned financial benchmarks and central counterparties. IOSCO published a clarification on important new IFRS accounting standards which will shortly come into force<sup>53</sup>. IOSCO began work on the sale of leveraged products to retail clients. The Belgian experience with the distribution of binary options and other retail products will be included in this<sup>54</sup>.

## FSB

The FSMA is active in the FSB's working group that conducts research into the robustness of private pension schemes<sup>55</sup>. This working group highlights the scale and diversity of the European private pensions sector both for supplementary and individual pensions. It looks into the impact of the pensions sector on financial stability. That research occurs based on a broad assessment of the risks in the private pensions sector in Europe. The FSMA led this research as co-Chair of one of the subgroups in the working group. The FSB's attention for the pensions sector fits in with the FSB's work on the structural vulnerability in the portfolio management sector.

## IAIS

The FSMA has been a member of the IAIS since 2014. It has a seat in this organization with the National Bank of Belgium. In 2016, the FSMA took part in the IAIS annual meeting. During this meeting, the organization approved a document on the supervision of insurance intermediaries. In 2015, the FSMA signed the multilateral Memorandum of Understanding between the IAIS insurance supervisory authorities. This agreement allows the FSMA to share confidential information with other signatories, especially insurance supervisory authorities from outside the European Union.

## ESMA

The FSMA plays an active role in the work of ESMA, especially through the chairmanship of the Financial Innovation Standing Committee (FISC). In 2016, this Committee analysed the developments in the field of blockchain technology and other innovations in the field of financial technology.

The FSMA helped to prepare the implementing rules for the regulation on benchmarks. The FSMA helped to set up the template agreement for the colleges of supervisory authorities of financial reference index managers<sup>56</sup>.

<sup>53</sup> Statement on implementation of new accounting standards, Report of the Board of IOSCO, 15 December 2016. See IOSCO's website: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD548.pdf>.

<sup>54</sup> Report on the IOSCO Survey on Retail OTC Leveraged Products, Report of the Board of IOSCO, 21 December 2016. See the IOSCO website: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD550.pdf>.

<sup>55</sup> The FSMA is a member of the Working Group on Private Pension Schemes Resilience. This working group was set up by the Regional Consultative Group for Europe, the advisory body of the European members of the FSB.

<sup>56</sup> ESMA/2016/1414, 30 September 2016.

ESMA devoted increasing attention to the convergence of supervisory practices in the European Union. In 2016, the authority approved guidelines relating to the remuneration policy for managers of investment institutions. It also set a number of guidelines as part of the Market Abuse Regulation and MiFID II.

MiFID stands for the Markets in Financial Instruments Directive. This Directive includes measures to protect investors and the integrity of the financial markets.

To achieve greater convergence of supervisory practices in Member States, ESMA also conducts peer reviews as part of the activities of the Supervisory Convergence Standing Committee (SCSC). In April 2016, ESMA published a report<sup>57</sup> on its peer review on the application of the capital adequacy requirements specified in MiFID.

The results of this peer review unveiled that the FSMA possesses thorough knowledge of the investment services market in Belgium, a market which it actively supervises through a risk-based approach. The results of the research also show that the thematic analyses and the mystery shopping technique help the FSMA to identify problems in the application of the capital adequacy rules.

In June 2016, ESMA published a report<sup>58</sup> on its peer review of the prospectus approval process. The results from the peer review show not only that the ESMA guidelines, including those on good practices in prospectus supervision, are now properly adhered to, but also show where there are still opportunities for convergence.

## European supervisory authorities

In the wake of the financial crisis, three new European agencies were set up in 2011 to contribute to the stability of the financial system, the proper functioning of financial markets and the protection of financial consumers. The three authorities form part of an integrated network of national and European Supervisory Authorities, in which the daily supervision of financial institutions and markets occurs at a national level. The European Securities and Markets Authority (ESMA) focuses on the securities markets and market participants (stock exchanges, investment firms, funds, etc.). The European Insurance and Occupational Pensions Authority (EIOPA) is primarily involved in insurance companies and institutions for occupational retirement provision. The European Banking Authority (EBA) works in the area of credit institutions, financial conglomerates and payment institutions. The FSMA is a member of ESMA and a permanent representative in EIOPA.

<sup>57</sup> MiFID Suitability Requirements - Peer Review Report, 7 April 2016. See the ESMA website: [https://www.esma.europa.eu/sites/default/files/library/2016-584\\_suitability\\_peer\\_review\\_-\\_final\\_report.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-584_suitability_peer_review_-_final_report.pdf)

<sup>58</sup> Peer Review on Prospectus Approval Process - Peer Review Report, 30 June 2016. See the ESMA website: [https://www.esma.europa.eu/sites/default/files/library/2016-1055\\_peer\\_review\\_report.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-1055_peer_review_report.pdf)

ESMA took initiatives to tackle the problem of cross-border sales of binary options, with which retail investors in different countries suffer great losses.

The three European Supervisory Authorities, ESMA, EIOPA and the EBA handle cross-sectoral matters in the Joint Committee. The FSMA takes part in the subcommittee for this, which researches themes on consumer protection and financial innovation. It was as part of this that the measures for the implementation of the PRIIPs Regulation were prepared.

PRIIPs stands for Packaged Retail and Insurance-based Investment Products. This regulation aims to increase the transparency of investment products and thereby protect the investor. It does so by introducing a document with key information on the nature of the product. From 31 December 2017, this Regulation applies to a great number of investment products and insurance products with an investment component.

## EIOPA

The FSMA plays an active role in the work of EIOPA, especially the work that concerns conduct of business rules, product supervision and the protection of consumers in insurance sales, as well as the work on insurance intermediaries and pension funds.

The FSMA also delivered a considerable contribution to EIOPA's work on the drafting of technical advice at the request of the European Commission with a view to preparing four delegated acts based on European Directive 2016/97 on insurance distribution<sup>59</sup>.

Two of those delegated acts concerned the drafting of implementing measures for, on the one hand, governance and supervision of insurance products by the insurance distributors and, on the other hand, conflicts of interest in the distribution of insurance-related investment products. The two other delegated acts concerned the inducements that an intermediary or an insurance company receives or pays for the distribution of insurance-related investment products, and the assessment of the suitability and appropriateness of insurance-related investment products.

The FSMA plays an active role in the work involved in drafting EIOPA recommendations to the European Commission on a framework for risk assessment and transparency of pension funds<sup>60</sup>.

In 2017, EIOPA plans to subject the pension funds sector to a new European stress test<sup>61</sup>. The FSMA is closely involved in the preparatory work for this. EIOPA subjected the sector to such a stress test for the first time in 2015. At that time, this test looked into the extent to which pension funds can withstand shocks caused by crises on the financial markets.

The FSMA contributed to the preparation of EIOPA's annual report containing an overview of the main information on the IORPs sector in Europe. The report focused on developments relating to cross-border activities<sup>62</sup>.

<sup>59</sup> Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), OJ L 26/19 of 2 February 2016.

<sup>60</sup> Opinion to EU Institutions on Common Framework for Risk Assessment and Transparency for IORPs.

<sup>61</sup> See this annual report, p. 76.

<sup>62</sup> Market development report on occupational pensions and cross-border IORPs, 4 October 2016. See the EIOPA website: <https://eiopa.europa.eu/Publications/Meetings/EIOPA%20presentation%20-%20Report%20on%20pensions%20and%20cross%20border%20IORPs.pdf>.

As in previous years, the FSMA took part in the work for the publication of a report on new consumer trends<sup>63</sup>. This report emphasizes the importance of reinforcing consumer protection. EIOPA considers it vital to draw attention to properly monitoring supplementary pensions systems and for consumers to receive the necessary advice when they plan to retire. Within EIOPA, the FSMA underlined the opening to the public of the DB2P supplementary pensions database<sup>64</sup>. It also specified the importance of suitable internal procedures within pension institutions to promptly inform consumers on the option for payout of their supplementary pension reserves.

As part of the Capital Markets Union, the European Commission asked EIOPA for an opinion on the development of a single market for personal pension products. Personal pension products are long-term personal savings products which are voluntarily signed up to and which neither come under the social security system nor under the occupational pensions system. These products can take on various forms, such as life insurance products or investment funds.

In July 2016, EIOPA provided the European Commission with its advice<sup>65</sup> on developing a single market for personal pension products. In that opinion, EIOPA suggests organizing a harmonized legal framework for a pan-European market for personal pensions. Central to this would be the pan-European personal pension product, a product based on a harmonized legal framework, with a passport, and that at the same time has a number of standard characteristics and a number of flexible characteristics.

## ESRB

Of the subjects handled by the ESRB in 2016, the role of market makers in the area of liquidity provision was subjected to a thorough investigation. Potential imbalances between liquidity supply and demand can have a great impact on financial stability because these can cause an amplification or spread of shockwaves across the financial system. The report on the subject<sup>66</sup> showed that the results vary greatly depending on the categories of assets handled. It emerges from the report that the market for corporate bonds for example is harder hit by the more limited capacity or preparedness of market makers to act as intermediary.

In 2016, the ESRB reflected on a strategy for macro-prudential policy which transcends the banking sector. Although the macro-prudential policy for the banking sector is at the moment operational, the policy details and instruments with which risks even outside the banking sector are tackled, are not yet fully enough developed. Other financial sector parties can after all be a source of risk for financial stability as was demonstrated for example by the near collapse of the Long Term Capital Management hedge fund in 1998.

The European Commission's project for the Capital Markets Union should also ensure that financing through channels other than the traditional banking channels also gains importance. Although the development and implementation of the key aspects of such a macro-prudential strategy does of

<sup>63</sup> EIOPA's Fifth Consumer Trends Report, 16 December 2016. See the EIOPA website: [https://eiopa.europa.eu/Publications/Reports/06.0\\_EIOPA-BoS-16-239%20-%20EIOPA%20Fifth%20Consumer%20Trends%20report%20-%20Clean%20after%20BoS.pdf](https://eiopa.europa.eu/Publications/Reports/06.0_EIOPA-BoS-16-239%20-%20EIOPA%20Fifth%20Consumer%20Trends%20report%20-%20Clean%20after%20BoS.pdf).

<sup>64</sup> See this report, p. 68.

<sup>65</sup> EIOPA's advice on the development of an EU Single Market for personal pension products (PPP), EIOPA-16/457, 4 July 2016. See the EIOPA website: <https://eiopa.europa.eu/Publications/Consultations/EIOPA's%20advice%20on%20the%20development%20of%20an%20EU%20single%20market%20for%20personal%20pension%20products.pdf>.

<sup>66</sup> Market liquidity and market-making, October 2016. See the website of the ESRB: [http://www.esrb.europa.eu/pub/pdf/reports/20161005\\_market\\_liquidity\\_market\\_making.en.pdf?797687aead404cddb51d57b0c7dc9604](http://www.esrb.europa.eu/pub/pdf/reports/20161005_market_liquidity_market_making.en.pdf?797687aead404cddb51d57b0c7dc9604).

# European Systemic Risk Board

The European Systemic Risk Board (ESRB) operates as the macro-prudential supervisor of the EU's financial system as a whole. The ESRB's main objective is to prevent and combat systemic risks. The Board supervises whether risks arise, for example from a sharp rise in lending, the emergence of new financial products or the interconnectedness of financial institutions across borders. The ESRB may formulate warnings and recommendations on the subject. The FSMA has a seat in the General Board, the main body of the committee, which is chaired by the European Central Bank.

course take a lot of time, the report<sup>67</sup> nevertheless proposes certain measures that could be taken in the short- or mid-term such as restricting the leverage effect of alternative investment funds. European Systemic Risk Board

In July, the ESRB published a first report on shadow banking<sup>68</sup>. Shadow banking means credit intermediation involving entities and activities which fall either in whole or in part outside the regulated bank system. The report provides an overview of the developments in the area of shadow banking in Europe and explores the potential risks as regards financial stability.

The ESRB identified a number of potential systemic risks arising from shadow banking. These relate to leverage financing, primarily among leveraged funds but also among funds that invest in real-estate. It also covers interconnectedness within a system, primarily between money market funds and the banking system, and maturity and liquidity transformation within the shadow banking system. This latter risk applies particularly to certain bond funds.

The ESRB estimates that by the end of 2015, the total assets from the shadow banking system came to 37,000 billion euros<sup>69</sup>. Compared with 2012, this is an increase of 22 per cent in these assets. As a result, these assets represent approximately 36 per cent of the financial sector in the EU.

The work begun by the ESRB in 2015 culminated in a number of publications in 2016. Some examples are the report<sup>70</sup> on macro-prudential issues and structural changes in the context of low interest rates, analysis<sup>71</sup> of the issue of systemic risks that could arise from the transition to a low-carbon economy, or the report<sup>72</sup> on the vulnerabilities of the European residential real-estate sector.

Following the aforementioned analysis, the ESRB sent a warning to eight countries in November 2016 on the medium to long-term risks within that sector, concerning the increase in household indebtedness or the evolution in valuations of residential property.

<sup>67</sup> Macroprudential Policy beyond banking: an ESRB strategy paper, July 2016. See the website of the ESRB: [http://www.esrb.europa.eu/pub/pdf/reports/20160718\\_strategy\\_paper\\_beyond\\_banking.en.pdf](http://www.esrb.europa.eu/pub/pdf/reports/20160718_strategy_paper_beyond_banking.en.pdf).

<sup>68</sup> EU Shadow Banking - Monitor, July 2016. See the website of the ESRB: [https://www.esrb.europa.eu/pub/pdf/reports/20160727\\_shadow\\_banking\\_report.en.pdf](https://www.esrb.europa.eu/pub/pdf/reports/20160727_shadow_banking_report.en.pdf).

<sup>69</sup> The ESRB uses a broad definition of shadow banking for its estimates. Entities such as undertakings for collective investment, in which risks could crop up related to shadow banking, are also included.

<sup>70</sup> Macroprudential policy issues arising from low interest rates and structural changes in the EU financial system, November 2016. See the website of the ESRB: [http://www.esrb.europa.eu/pub/pdf/reports/161128\\_low\\_interest\\_rate\\_report.en.pdf](http://www.esrb.europa.eu/pub/pdf/reports/161128_low_interest_rate_report.en.pdf).

<sup>71</sup> Too late, too sudden: Transition to a low-carbon economy and systemic risk, February 2016. See the website of the ESRB: [http://www.esrb.europa.eu/pub/pdf/asc/Reports\\_ASC\\_6\\_1602.pdf?ac9580322cf36b40bb3669cc9d658243](http://www.esrb.europa.eu/pub/pdf/asc/Reports_ASC_6_1602.pdf?ac9580322cf36b40bb3669cc9d658243).

<sup>72</sup> Vulnerabilities in the EU residential real estate sector, November 2016. See the website of the ESRB: [http://www.esrb.europa.eu/pub/pdf/reports/161128\\_vulnerabilities\\_eu\\_residential\\_real\\_estate\\_sector.en.pdf](http://www.esrb.europa.eu/pub/pdf/reports/161128_vulnerabilities_eu_residential_real_estate_sector.en.pdf).

# EU

In order to streamline the handling of the many European legal texts on financial subjects, the FSMA decided in 2016 to set up a unit to deal with legislation. This unit's task is to handle, as a priority, the transposition of European legal texts into Belgian law.

An agreement was reached in 2016 on the following European legal texts. These are the texts subject to transposition:

- Pension funds: The new pension funds Directive IORP II lays down new rules for cross-border activities of pension funds, additional requirements with regard to sound governance and information obligations<sup>73</sup>.
- Insurance distribution: This Directive extends the European conduct of business rules for investment products (MiFID) to the insurance sector. It aims in this way to create a level playing field between banks and insurers in the area of investment products. The so-called Assur-MiFID legislation in our country anticipates the new European rules<sup>74</sup>.
- Benchmarks: a new Regulation regulates the offer of benchmarks, the use of benchmarks for financial products and the provision of input data for reference indexes<sup>75</sup>.
- Prospectus: this new regulation replaces the Prospectus Directive. It aims to facilitate the financing of companies on the market and make this financing cheaper.
- Shareholder rights: this new Directive obliges companies to be more open as to the remuneration policy of their shareholders. Institutional investors must be more transparent about their investment policy. This Directive also includes new rules on transactions with related parties.
- Money market funds: This Regulation provides a framework for money market funds to ensure that financial stability is safeguarded.

## European Union

The FSMA is involved in the preparation and transposition of the new financial legislation and regulations in Europe. It lends its expertise to the preparation of the Belgian position in the European Council of Ministers. As soon as new legislation is introduced, the FSMA makes a considerable contribution to transposing it into Belgian legislation. Since 2008, there has been a wave of financial legislation in Europe. The European Union approved more than 50 directives and regulations. There are a lot of new proposals in the pipeline. The main aim of the new legislation is to prevent a new financial crisis and to better protect consumers.

<sup>73</sup> Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs).

<sup>74</sup> Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution.

<sup>75</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.





The financial sector is in a continuous state of flux. The evolution of products and services, sometimes as a consequence of new technological advances, makes for unceasing changes. The macroeconomic environment and monetary policy means the sector is continually faced with fresh challenges.

## FinTech

There are myriad technological advances in the financial sector. These are often introduced by new innovative players. The FSMA keeps its finger on the pulse of the evolution of this financial technology (FinTech) through different channels.

In June 2016, the FSMA launched a FinTech portal on its website. Through this portal, FinTech companies can get in touch with the FSMA. During the first seven months, there have already been plenty of contacts with FinTech players through this portal. The activities that these players wish to pursue or develop are extremely diverse. Examples of such activities are: crowdfunding, robo-advice, virtual currencies, comparison sites, blockchain, and disintermediation. The stage of development of the various companies and projects is also very diverse. Some are already active; others are only at the idea stage.

The first contacts through the FinTech platform have led to a number of meetings with new players. A number of dossiers were immediately referred to the National Bank of Belgium (NBB) because they concerned activities under the NBB's supervision. Other contacts led to further sharing of information and follow-up within the FSMA.

The aim of the FinTech portal is to facilitate contact with new players. In addition, a number of meetings regarding FinTech took place with established players. FinTech is also central to the work of the discussion platform on the role of Brussels as a financial centre. That platform was set up by the Minister of Finance and the FSMA participated in it.

The FSMA also closely monitors international work in the area of FinTech. The FSMA chairs the Financial Innovation Standing Committee (FISC) within ESMA. Within this committee, experience is shared, as well as information on initiatives, which provides useful information for the FSMA's own FinTech approach. Discussions were held with the FinTech task force of the European Commission and with various foreign supervisor colleagues. Finally, the FSMA took part in several colloquia on the subject.

# Risk-based supervision

The FSMA is working on reinforcing its risk-based supervision. This entails concentrating supervisory resources in the areas in which the risk is greatest. Working in this way is important in the first instance to be able to correctly identify and estimate risks.

To this end, the FSMA operates a permanent risk outlook. This exercise allows the main risks to be detected and brought together into a single instrument. In order to detect risks, the FSMA uses as many sources as possible. These sources include observations that the FSMA makes during its supervisory work, the information it acquires based on its international work, and all sorts of reports.

To further optimize risk detection, the FSMA also devotes particular attention to receiving information from external sources which could be useful for supervision. These include for example questions from consumers to the FSMA or to the ombudsmen. They can also include signals from the sector.

The European Directive MiFID II, which comes into force in 2018, provides for market monitoring by national supervisory authorities of financial instruments and structured deposits distributed in or from their Member State. This exercise can provide additional information for risk-based supervision.

# Supervision of financial benchmarks

A new task for the FSMA in 2016 was the supervision of the Euribor benchmark. This is the outcome of a European Regulation (the Benchmarks Regulation) published on 29 June 2016. The Benchmarks Regulation was a reaction to the scandals relating to attempted manipulation of benchmarks which came to light in 2012.

The regulation imposes the obligation of authorization for managers of benchmarks and sets certain rules regarding management, transparency and calculation methods. The national supervisory authorities supervise compliance with these rules. The Belgian legislature designated the FSMA for this because the manager of Euribor, the European Money Markets Institute (EMMI), has its headquarters in Brussels.

Euribor is a benchmark for the interest rates on the interbank lending market over periods of one week to twelve months. It is updated every working day based on the estimates of a panel of 20 banks.

The Benchmarks Regulation distinguishes between three categories of benchmarks, depending on the quantity of financial instruments and contracts that use them as a reference. The most major benchmarks, with an importance of more than 500 billion euros, are termed 'critical benchmarks'.

In August, the European Commission officially established that Euribor belonged to this latter category. Of the estimated 150,000 to 180,000 billion euros in financial instruments and contracts that use Euribor as a reference, there are also at least 1,000 billion euros in mortgage loans in various European countries, which makes Euribor of great significance to consumers.

As soon as a benchmark is qualified as critical, the supervision thereof no longer falls only to the national authority but rather to a College of Supervisors which must be established. This College's aim is to promote the sharing of information within the supervision of Euribor and it has the power, inter alia, to oblige banks to provide information for the calculation thereof.

In addition to the FSMA as the supervisory authority of the EMMI and the European agency ESMA, the College is also composed of the supervisory authorities of the banks that provide data for Euribor. The supervisory authorities of the Member States in which Euribor is of systemic importance also have a seat in the College. In its first meeting on 21 September 2016, the Euribor College counted 17 supervisory authorities from 13 countries as members.





# LEGISLATION AND REGULATIONS

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

## Ban on distribution

The FSMA has identified certain particularly risky financial derivatives being distributed to the public in Belgium through online trading platforms. Over the last few years, the FSMA has received a considerable amount of complaints on the subject.

The FSMA is of the opinion that such particularly risky financial derivatives are not suitable for ordinary investors. These instruments are moreover sold very aggressively among the general public. The FSMA has detected that often these instruments are even offered to pensioners, unemployed people, people in financial difficulties or consumers which it is perfectly clear do not possess the requisite knowledge and experience.

For this reason, the FSMA has prepared a Regulation to restrict the distribution of certain financial derivatives among Belgian retail clients. This Regulation was approved by the Royal Decree of 21 July 2016<sup>76</sup>. The Regulation entered into force on 18 August 2016.

The Regulation is aimed at derivative contracts distributed to consumers in Belgium, often from abroad, via online trading platforms. The Regulation consists of two pillars which apply cumulatively.

The first pillar is a ban on the distribution to consumers through online trading platforms of certain types of derivative contracts. These are:

- binary options: a binary option is an agreement in which one party commits to another party to pay out a particular amount if the value of an asset has evolved in a certain direction after a specific time. These assets can be: a listed share, currencies, commodities, indexes, precious metals etc. The contracts sometimes have a very short maturity of a few seconds or minutes;
- derivative contracts with a maturity of less than one hour;
- derivative contracts with a leverage effect such as contracts for difference (CFDs) and rolling spot forex contracts. A CFD is an agreement between a buyer and a seller in which the parties settle the difference between the current price of an underlying asset (listed share, currencies, commodity, index, precious metal, etc.) and the price of that asset at the time at which the contract ends. A rolling spot forex contract is an agreement for a currency transaction which is renewed for an unlimited time until one of the parties involved closes their position. At that time the transaction is settled in cash based on the evolution of the underlying asset since the beginning of the contract.

<sup>76</sup> Royal Decree of 21 July 2016 approving the regulation of the Financial Services and Markets Authority for ring-fencing the distribution of certain financial derivatives to consumers (Belgian Official Gazette, 8 August 2016).

The Regulation concerns unlisted or over-the-counter (OTC) derivatives. Derivatives admitted to trading on the regulated market or multilateral trading facilities are not included.

The second pillar is a ban on the number of aggressive or inappropriate sales techniques in the distribution of OTC derivatives among consumers. This includes for example techniques such as cold calling<sup>77</sup> through external call centres, inappropriate methods of payment, fictitious gifts or bonuses etc.

## Crowdfunding

In December 2016, the Belgian legislature approved a new Law<sup>78</sup> which includes a framework for crowdfunding platforms. This Law entered into force on 1 February 2017. The Law only concerns platforms on which the public invests in a company, either by way of a loan, or by way of capital input with a view to potentially obtaining a profit.

The Law introduces an authorization obligation for platforms that offer this activity. This would be an authorization as an alternative finance platform. Prior to granting such an authorization, the FSMA screens the shareholders and the management of the company. It also looks into whether the company has obtained the requisite professional civil liability insurance and whether it is appropriately organized, with particular attention on the IT organization. Regulated undertakings that pursue an activity as an alternative finance platform no longer need to submit a separate application for authorization.

Authorized platforms must continuously meet the authorization requirements. The alternative finance platform is furthermore prohibited from:

- providing investment services other than investment advice, and receiving and forwarding orders for securities or share certificates of seed funds;
- holding client cash or financial products;
- having a debit position vis-à-vis clients;
- having a power of attorney on client accounts.

All companies that offer alternative finance services (both the crowdfunding platforms with an authorization and the regulated undertakings that may operate without an authorization) must adhere to a set of rules:

- they must act honestly, fairly and professionally in the best interests of their clients;
- they must ensure that information to clients meets the quality requirements (accurate, clear and not misleading, in which the advertisement is recognizable as such);
- they must previously provide clients with the obligatory minimum information on a durable medium;
- they must ascertain whether the client possesses the necessary knowledge and experience of investment instruments and inform the client of the result;
- they must deal appropriately with conflicts of interest;
- they must open and keep client dossiers.

<sup>77</sup> Cold calling: a practice by which a consumer is contacted by telephone unsolicited.

<sup>78</sup> Law of 18 December 2016 regulating the recognition and delineation of crowdfunding and containing miscellaneous provisions on finance (Belgian Official Gazette, 20 December 2016).

The Law entrusts the supervision of the compliance of these rules to the FSMA. The FSMA can, inter alia, conduct inspections and request all useful information. It can impose recovery measures and administrative sanctions to companies that do not comply with the legislation. Non-compliance with certain rules is moreover a criminal offence.

The Law also introduced a new prospectus exemption. This new exemption means that a prospectus no longer needs to be published for public offers provided that the total consideration of the offer amounts to less than EUR 300,000, and investors can subscribe for a maximum of € 5,000 per investor.

## Supervision of auditors

Statutory auditors play a major role in society. They provide certainty as to the reliability of annual accounts and other company information. That is important for anyone who does business with a company. Suppliers, lenders, investors or employees should be able to rely on annual accounts giving an accurate reflection of the financial situation of a company.

In the wake of the financial crisis, the European Union decided to introduce legislation<sup>79</sup> to improve the quality of the audit work of statutory auditors and subject statutory auditors to stricter supervision. The Belgian legislature integrated the European measures into Belgian law in 2016 through a Law<sup>80</sup>. A new authority is brought about by this Law, i.e. the College of Supervisors of statutory auditors.

The College is mainly responsible for reviewing the quality control regulations introduced by statutory auditors, organizing the supervision of statutory auditors and looking into complaints addressed to the College. The FSMA provides offices for the College, which also has its headquarters in the FSMA building.

The College is composed of a committee and a secretary-general. The committee has six members: two representatives of the National Bank of Belgium (NBB), two representatives of the FSMA, a previous statutory auditor and an expert who has never been a statutory auditor. The operational management of the College is the duty of the secretary-general. The secretary-general is appointed by the Management Committee of the FSMA and is a member of the management of the FSMA.

The secretary-general heads up a unit of FSMA staff who prepare and execute the decisions of the College. For quality control of statutory auditors, the College can, inter alia, call on FSMA inspectors. The FSMA Sanctions Committee becomes competent for handling disciplinary proceedings of statutory auditors and is expanded for this purpose<sup>81</sup>.

<sup>79</sup> Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

<sup>80</sup> Law of 7 December 2016 on the organization of the profession and the public supervision of auditors (Belgian Official Gazette, 13 December 2016, second edition).

<sup>81</sup> See also this report p. 129.

# Transposition of the Transparency Directive and implementation of the Market Abuse Regulation

The Law of 27 June 2016<sup>82</sup> provides, inter alia, for further transposition into Belgian law of the Directive amending the Transparency Directive<sup>83</sup> and for partial implementation into Belgian law of the Market Abuse Regulation<sup>84</sup>. The Law also includes provisions on the measures that the FSMA can take and the sanctions it can impose in cases such as infringements of the transparency legislation or market abuse.

## Transparency Directive

The amendment to the Transparency Directive means that Member States must simplify the obligations of listed companies. That should make the regulated market more attractive for small and medium enterprises. The Belgian legislature had already transposed this section into Belgian legislation by way of the Royal Decree of 26 March 2014<sup>85</sup>.

The amended Directive also obliges Member States to reinforce the sanctioning powers of supervisory authorities. The Law of 27 June 2016 transposes this section of the Directive (see below). The Royal Decree of 11 September 2016<sup>86</sup> is the final part of the transposition of Directive 2013/50/EU.

<sup>82</sup> Law amending, with a view to transposing Directive 2013/50/EU and implementing Regulation 596/2014, the Law of 2 August 2002 on the supervision of the financial sector and on financial services, the Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets, and the Law of 2 May 2007 on disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions, and laying down miscellaneous provisions (Belgian Official Gazette, 1 July 2016).

<sup>83</sup> Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (OJ L 294/13 of 22 October 2013).

<sup>84</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 2003/124/EC, 2003/125/EC and 2004/72/EC.

<sup>85</sup> See the 2014 FSMA annual report, p. 91.

<sup>86</sup> Royal Decree amending, with a view to transposing Directive 2013/50/EU, Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market and Royal Decree of 14 February 2008 on disclosure of major shareholdings and amending Royal Decree of 27 April 2007 on takeover bids and Royal Decree of 21 August 2008 on the rules for certain multilateral trading facilities (Belgian Official Gazette, 27 September 2016).

## Market Abuse Regulation

The rules regarding market abuse have their origin in a European Directive<sup>87</sup>. The Market Abuse Regulation abrogated this Directive as of 3 July 2016. This Regulation is directly applicable in the Belgian legal order. This approach should prevent national rules regarding market abuse from differing as a result of the transposition of a Directive into national legislation. The Regulation should ensure that the same rules apply throughout the EU and that the complexity of the legislation and regulations and the cost of compliance for companies, especially those that are active internationally, reduce.

However, a number of provisions had to be implemented into Belgian law. The Law designates the FSMA as the competent authority for the supervision of compliance with the Regulation. The Law also repeals a number of provisions in Belgian legal texts which now follow directly from the Regulation. The Law additionally confirms that the FSMA may continue to use its existing investigative powers when exercising its supervision of compliance with the Regulation.

Finally, the Law makes use of the possibility offered by the Market Abuse Regulation to entrust the publication of managers' transactions to the FSMA. As a result, the FSMA can continue to take charge of centralized publication of this investor information.

## The FSMA's measures and sanctions

The Law of 27 June 2016 contains a number of amendments to the sanctioning powers of the FSMA which could have an impact on, for example, infringements of transparency and market abuse provisions.

One of the obligations the amended Transparency Directive and the Market Abuse Regulation lays down is to provide for higher maximum amounts for administrative fines. The Belgian legislation was amended in this respect. As regards infringements of the transparency obligations, the maximum amounts are EUR 2 million for natural persons and EUR 10 million for legal persons. As regards infringements of the Market Abuse Regulation, the maximum amounts are EUR 5 million for natural persons and EUR 15 million for legal persons<sup>88</sup>. Equally, there are no longer minimum amounts specified for such fines.

Where an infringement to the Market Abuse Regulation has delivered a capital gain for the perpetrator, the maximum fine can be increased to three times the capital gain, even in cases where it is not a repeat offence. This does not apply to an infringement of transparency obligations: the maximum fine for these may only be increased to twice the gain obtained.

The Law also clarifies the powers of the FSMA in terms of imposing orders. It is expressly stated that an order serves not only to remedy the current situation, but also as a deterrent against a repeated infringement. The Law also provides that the FSMA may order anyone who has published or disseminated incorrect or misleading information to publish a correction.

The law also includes amendments to the rules on the publication of sanction decisions and to the circumstances that must be taken into account when setting the amount of the administrative fine.

<sup>87</sup> Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

<sup>88</sup> These amounts are "minimum maximums" in the sense that the Member States can provide for higher, but not lower, administrative fines.

# MiFID II

The European legislature has reached an agreement on a Directive<sup>89</sup> amending the existing Markets in Financial Instruments Directive (MiFID). This Directive, MiFID II, enters into force on 1 January 2018 and must be transposed into Belgian legislation.

At the request of the Minister for the Economy and Consumer Affairs and of the Minister of Finance, the FSMA organized a consultation. This consultation served to gauge the opinion of different market players on the various draft texts for the transposition of MiFID II.

The consultation concerned four texts:

- A draft bill on the infrastructures for the markets for financial instruments is intended to transpose into Belgian law the provisions of MiFID II on the regulated markets, MTFs, and OTFs<sup>90</sup>, the supervision of positions in commodities derivatives and Data Reporting Services Providers.
- An amended version of Articles 26 to 28ter of the Law of 2 August 2002 on the supervision of the financial sector and on financial services. The amendments included are intended to transpose into Belgian law the provisions of MiFID II as regards the conduct of business rules for the protection of investors.
- An amended version of the Law of 25 October 2016 on access to the activity of investment services and on the legal status and supervision of portfolio management and investment advice companies.
- A draft Royal Decree establishing more detailed rules on the payment or receipt of fees, commissions and monetary or non-monetary benefits. This draft text also provides for the transposition into Belgian law of the specific organizational requirements for investment firms that engage in algorithmic trading and which grant direct electronic access to a trading venue.

In the transposition into Belgian law, the draft texts opted for a faithful transposition of the provisions of MiFID II. This means that there are as few as possible requirements that go further than the provisions of the Directive. The draft texts also clarify certain options offered to the Member States<sup>91</sup>.

<sup>89</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II).

<sup>90</sup> MTF: multilateral trading facility - OTF: organized trading facility.

<sup>91</sup> For more information, see the consultation document on the FSMA's website.



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**FSMA**  
AUTORITEIT VOOR FINANCIËLE  
DIENSTEN EN MARKTEN  
AUTORITE DES SERVICES ET  
MARCHÉS FINANCIERS

# THE ORGANIZATION OF THE FSMA



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# Structure and governing bodies

## Management Committee



Jean-Paul Servais, Chairman



Annemie Rombouts, Deputy Chairman



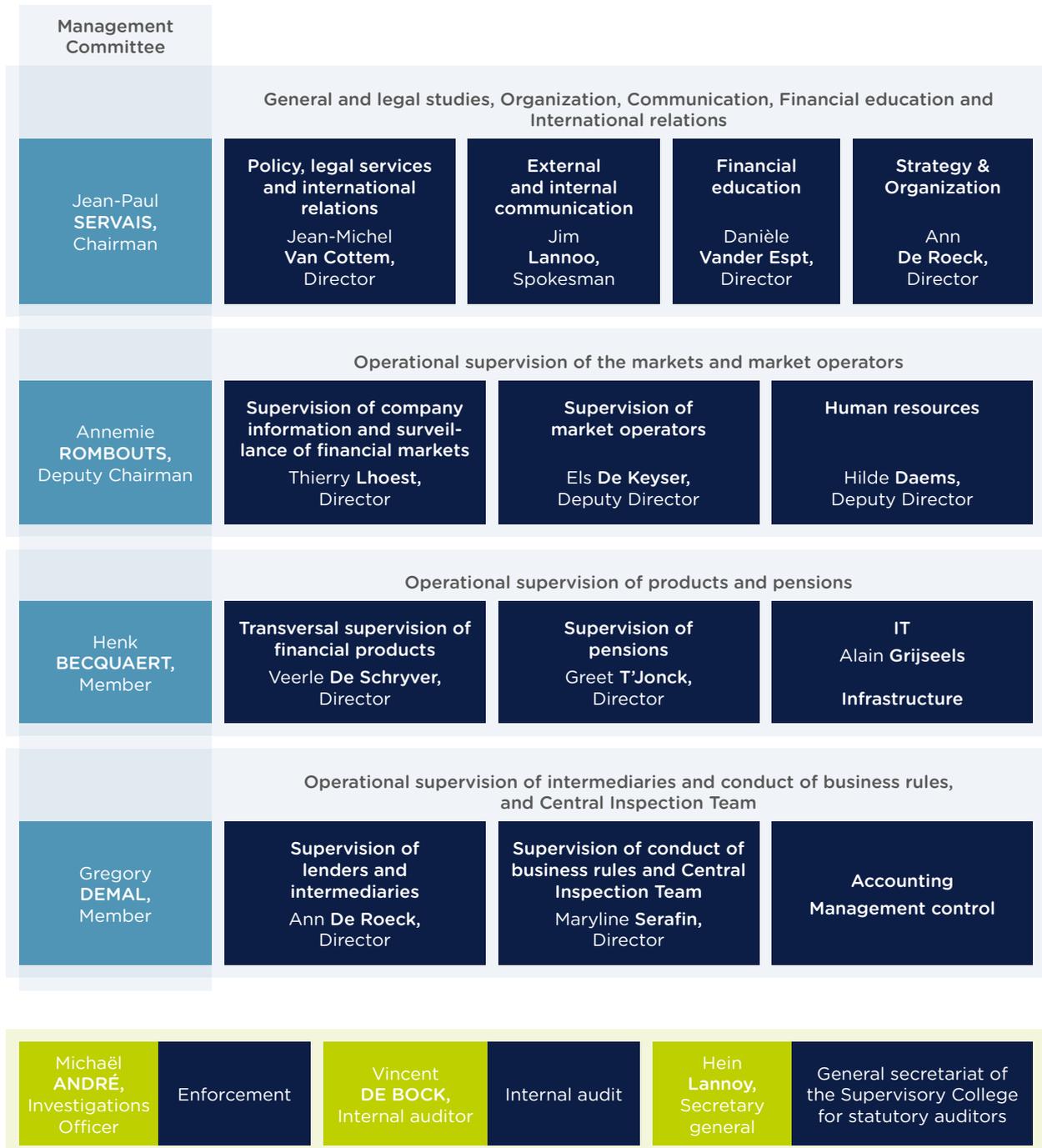
Henk Becquaert, Member



Gregory Demal, Member

# Organization chart of the departments and services

This organization chart is in place since 14 March 2017.



# Supervisory Board

## Composition



Dirk Van Gerven,  
Chairman



Jean-François Cats



Jean Eylenbosch



Roland Gillet



Deborah Janssens



Pierre Nicaise



Frédéric Rouvez



Reinhard Steennot



Marnix Van Damme



Marieke Wyckaert

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

### Composition and operation of the Board

In 2016, Roland Gillet was appointed as a new member of the Supervisory Board<sup>92</sup>. He replaced Didier Matray, whose mandate ended when he reached the upper age limit. The Members wish to thank Mr Matray for his expert contribution to the work of the Board.

<sup>92</sup> Royal Decree of 6 June 2016 (Belgian Official Gazette, 15 June 2016).

The Members elected Pierre Nicaise, Frédéric Rouvez, Reinhard Steennot and Marnix Van Damme as members of the Audit Committee.

In 2016, the Supervisory Board met nine times. The average attendance rate of the Members of the Supervisory Board was 85 per cent of meetings.

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

### **Implementation of the FSMA's tasks**

On the basis of explanations given by the Management Committee, the Supervisory Board found out about the action plans for the various supervisory services of the FSMA and discussed the implementation of these plans. The Members were also kept informed as to the extension of the FSMA's new supervisory task as regards Euribor. The Members also looked at international developments in the area of Fintech. They encourage the FSMA to further develop its initiatives on the subject.

The Members also received several opportunities to exchange ideas on the FSMA's successful initiatives in the area of financial education, especially in schools.

### **Regulatory developments**

The Members were informed on the relevant regulatory developments, such as the reform of the public supervision of statutory auditors. As part of this reform, they were consulted on the implementing Decree regulating the financing of the public supervision of auditors and on which the FSMA had to provide an opinion. In this respect, the Board also discussed the important new powers in audit matters which the Sanctions Committee acquires from the FSMA. The Sanctions Committee will from now on not only be able to impose administrative fines but will be able to take administrative measures against auditors such as temporary suspension and withdrawal of the capacity of statutory auditor in case of non-compliance with the audit rules.

By virtue of their statutory task contained in Article 49, § 3, of the Law of 2 August 2002, the Supervisory Board advised the Management Committee on different regulations including the regulation for ring-fencing the distribution of certain financial derivatives to retail clients. The Members came up with a number of suggestions to refine the area of application of this regulation.

### **Functioning of the FSMA**

The Members also exchanged views on a wide range of topics that concern the organization, HR policy and internal operation of the FSMA.

The Board reviewed the internal regulations of the FSMA and clarified the rules as to potential conflicts of interest among Members of the Board as a result of external work. The revised internal regulations were published on the website.

As part of its statutory tasks, the Board approved the FSMA's 2017 budget. In its last meeting of 2016, the Board deliberated on the global action plan of the FSMA Management Committee for 2017, pursuant to Article 48, § 1, 2°, of the Law of 2 August 2002.

The Board approved the annual accounts for the year 2015 on 28 April 2016 and the annual accounts for 2016 on 26 April 2017. The 2015 annual report was approved on 28 April 2016 whilst the present report, as regards the competences of the Supervisory Board, was approved on 26 April 2017.

### **Recommendations from the High Level Expert Group on the future of the financial sector**

Finally, the Supervisory Board examined the recommendations of the High Level Expert Group set up by the Minister of Finance on the future of the financial sector, which were published on 13 January 2016. The Board recommends that the FSMA work towards the realization of these recommendations for the aspects relating to the FSMA's tasks. The Members also put this message across during meetings held on the Board's initiative with the Deputy Prime Minister and the Minister for the Economy and with the Minister of Finance. The Members are pleased at the interest taken by both Ministers in the FSMA's work.

### **Report on the Audit Committee's exercise of its statutory tasks**

In September 2016 the Supervisory Board changed the composition of the Audit Committee and elected Pierre Nicaise, Frédéric Rouvez, Reinhard Steennot and Marnix Van Damme as Members of the Audit Committee. On 15 September, the Audit Committee elected Pierre Nicaise as Chairman.

The Audit Committee met seven times in 2016. During its meetings, the Audit Committee examined among other things the annual report and the accounts of the FSMA for 2015, as well as the FSMA's budget for 2017. 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, and also to approve the part of the annual report that concerns the Supervisory Board. The Audit Committee took note of the half-yearly accounts of the FSMA as at 30 June 2016.

The Audit Committee took part in the selection of the new head of internal audit. Pursuant to Article 48, § 1ter, 1°, of the Law of 2 August 2002, the Audit Committee approved the choice and appointment of the new head of internal audit.

The audit committee agreed with the audit plan for 2017 prepared by the internal auditor and also discussed plans for the coming years, which will entail certain ad-hoc tasks alongside full audits.

In application of Article 48, § 1ter, first paragraph, 3° of the Law of 2 August 2002, the Audit Committee, after notification by the internal auditor, handled several internal audit reports. It also discussed the follow-up to the recommendations from previous audit reports. It expects a justification in cases in which certain recommendations are not executed or are not executed in full.

The Audit Committee was kept informed of the testimonies of the FSMA in the Special Parliamentary Committee on the Panama Papers and in the Parliamentary Inquiry Committee on 'Optima'.

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

## The internal audit function at the FSMA

The FSMA's governance structure, which is governed by various provisions<sup>93</sup> has gone through a number of changes in the past few years.

The provisions that govern this structure define the Supervisory Board's general task of oversight of the work done by the FSMA, and clarify the tasks of the Audit Committee and its relationship to the Management Committee and internal audit.

The task of internal audit is to contribute to achieving the objectives of the FSMA, by supporting the Management Committee in managing the risks to which it is exposed. For this purpose, internal audit conducted a comparative audit of four models which are currently used in four major operational services of the FSMA to manage risks run by companies and institutions under its supervision.

Internal audit also supports the Audit Committee<sup>94</sup> in its exercise of general supervision on the integrity, compliance, appropriateness and effectiveness of the FSMA's operations.

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 presented their audit reports to the audit committee.

In 2016, the internal audit service conducted several audits to assess the operations of the departments and services. Special attention was paid to the internal control measures and the reasonable certainty they offer of achieving the strategic and operational objectives.

In the first audit task completed in 2016 there was a focus on the supervision exercised by the FSMA on market operators, i.e. portfolio management and investment advice companies, bureaux de change, independent financial planners and regulated real estate companies. This supervision is exercised by one and the same service from different perspectives depending on the legal status of the authorized company. Prudential or semi-prudential supervision is exercised, provision of information is overseen and compliance with the measures against money laundering and terrorism financing is verified.

The internal audit service also directed its attention to the supervision that the FSMA conducts on thematic citizens' lending and insurance products. Thematic citizens' lending was only commercialized for the first time in December 2013. There is therefore not yet a relevant frame of reference. The internal audit service also looked into, on the one hand, the manner in which the operational services organized the supervision on the subject and, on the other hand whether they have been able suitably to identify the procedures and underlying risks. Given the many developments in the regulatory framework for insurance products with the entry into force from 1 January 2016 of the European Solvency II legislation and the prospective European PRIIPs Regulation<sup>95</sup> from 1 January 2017, the internal audit service focused the audit of insurance products on the effectiveness and efficacy of the supervisory framework in place.

<sup>93</sup> The Law of 25 April 2014 containing various provisions, and the Law of 2 August 2002.

<sup>94</sup> The Audit Committee is a special committee set up as part of the Supervisory Board.

<sup>95</sup> PRIIPs stands for Packaged Retail and Insurance-based Investment Products.

In 2016, an audit was also carried out on the supervision of access to the business of lender and credit intermediary, as regards mortgage loans and consumer credit. In this audit, the internal audit service primarily looked at the way in which this supervision is organized by testing the internal control measures used for effectiveness and efficacy.

In addition to the audits for the exercise of the FSMA's operational powers, the internal audit service also focused on the institution's support services. An audit was conducted on the HR policy and more particularly on the payroll administration.

Another noteworthy point in 2016 for the internal audit service was a new plan for the follow-up of its audits in order to verify the implementation of measures taken in light of recommendations made by internal audit. These follow-ups generally take place six months after the reports have been processed by the Audit Committee.

Finally, the audit committee examined the activity reports of the internal audit service for the year 2016, and the service's action plan for the year 2017 was approved.

## Auditor

André Killesse<sup>96</sup>

In accordance with Article 57, second paragraph of the Law of 2 August 2002, the FSMA's accounts are inspected by one or more statutory auditors. They are appointed by the Supervisory Board for a renewable term of three years, and on condition that they not be included on the list of auditors accredited by the FSMA and not exercise any function with a company subject to the FSMA's supervision. The auditors verify and certify every element specified by the regulations on covering the FSMA's operating expenses as referred to in Article 56 of the above-mentioned Law.

<sup>96</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.

# Sanctions Committee

## Composition



Michel **Rozie**, Chairman

Honorary first president of the Antwerp Court of Appeal, member of the Sanctions Committee in the capacity of magistrate who is neither a counsellor at the Supreme Court nor at the Brussels Court of Appeal

(end of term of office: 2 February 2021)



Veerle **Colaert**

member of the Sanctions Committee

(end of term of office: 14 October 2017)



Erwin **Francis**

Counsellor of the Supreme Court, member of the Sanctions Committee at the recommendation of the first president of the Supreme Court.

(end of term of office: 2 February 2021)



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 neither a counsellor at the Supreme Court nor 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)

The composition of the Sanctions Committee underwent a change in 2016<sup>97</sup>. Veerle Colaert was appointed as a member of the Sanctions Committee. She replaces Dirk Van Gerven whose term of office she will complete.

<sup>97</sup> Pursuant to the Royal Decree of 8 October 2016, published in the Belgian Official Gazette, 25 October 2016.

## Powers of the Sanctions Committee

Some important additional powers were vested in the Sanctions Committee. The new powers arise from the reform of public supervision on statutory auditors, which implements the European legislation and regulations on the subject.

In the first phase, the Sanctions Committee acquires the power from 17 June 2016 to take disciplinary measures against statutory auditors tasked with the statutory audit of annual accounts of one or more public-interest entities<sup>98</sup>. However, as a transitional measure, the law delegates this new power to the existing Disciplinary Committee of the Belgian Institute of Registered Auditors (IBR-IRE) until the entry into force of the law which transposes Directive 2014/56/EC<sup>99</sup> into Belgian law.

The Law of 7 December 2016 on the organization of the profession and the public supervision of auditors<sup>100</sup> transposed the aforementioned Directive with effect from 31 December 2016. In particular, it transfers the disciplinary powers of the IBR-IRE fully and effectively to the FSMA's Sanctions Committee. Article 59 of this Law determines that the Sanctions Committee is the competent body for imposing administrative fines and taking administrative measures until the withdrawal of the capacity of statutory auditor in the case of breaches to the aforementioned Law of 7 December 2016, its implementing decrees, as well as Regulation 537/2014.

The composition of the Sanctions Committee was increased by two members with appropriate expertise in the area of statutory audits of annual accounts<sup>101</sup>. The Sanctions Committee is now composed of two chambers. A chamber composed of six judges and four members with expertise in financial services and markets is responsible for the existing powers of the FSMA referred to in Article 45 of the Law of 2 August 2002. Another chamber, composed of the aforementioned six judges and two members with expertise in audit matters, in which the aforementioned four members can act as substitutes, is responsible for the measures and fines in audit matters<sup>102</sup>. One chamber may legitimately act if two members and the Chair are present.

The legal procedure for the Sanctions Committee as regards audit dossiers is in line with the existing procedure. In these dossiers, the College of Supervisors of statutory auditors notifies of the charges. This College can also raise its observations during the hearing. Appeals against the decisions of the Sanctions Committee in audit matters must be lodged with the Brussels Court of Appeal with regard to administrative fines or measures imposed at the same time as a fine for the same facts<sup>103</sup>. For measures which are only administrative, such as temporary suspension or withdrawal of the capacity of auditor, an action for annulment may be lodged with the Council of State.

<sup>98</sup> Article 89, § 1, of the Law of 29 June 2016 containing various provisions regarding the Economy, published in the Belgian Official Gazette of 6 July 2016.

<sup>99</sup> Directive amending Directive 2006/43/EC

<sup>100</sup> Belgian Official Gazette of 13 December 2016, second edition.

<sup>101</sup> Article 48bis of the Law of 2 August 2002, as amended by Article 88 of the Law of 7 December 2016.

<sup>102</sup> As referred to in Article 59 of the Law of 7 December 2016.

<sup>103</sup> Article 121, § 1, 4<sup>o</sup>bis, of the Law of 2 August 2002, as amended by the Law of 7 December 2016.

## Operations

In 2016, the Sanctions Committee had three plenary meetings to deliberate on general policies and on the impact on the Sanctions Committee of new developments in legislation or case law. It paid particular attention to the new rules on the publication of administrative sanctions following the European legislation and regulations on market abuse, which the Sanctions Committee will from now on apply. It also set up a working group to prepare for the aforementioned new powers as regards statutory auditors.

Finally, the Sanctions Committee welcomed a ruling by the European Court of Human Rights (ECtHR) of 1 September 2016. That ruling related to the Sanctions Committee of the French financial markets regulator, Autorité des Marchés Financiers (AMF), the organization of which ties in closely with that of the FSMA's Sanctions Committee. That ruling confirmed the validity of the French Sanctions Committee's organization and procedures in light of the requirements of Article 6 of the European Convention on Human Rights in the area of independence<sup>104</sup>.

<sup>104</sup> ECtHR, 1 September 2016, case 48158/11, X and Y v. France.

# The organizational structure in practice

## Human resources management

### Staff complement

In 2016, the FSMA welcomed 22 new members of staff and 30 members of staff left the FSMA, one third of which had reached retirement age. The year ended with a headcount of 328.

Table 5: Staff complement in figures

|   | 31/12/2016 | 31/12/2015 |
|---|------------|------------|
| Number of staff members according to the staff register (number)        | 328        | 337        |
| Number of staff members according to the staff register (FTE)           | 311.48     | 320.33     |
| Operational staff complement (FTE)                                      | 303.99     | 312.34     |
| Maximum staff complement according to Royal Decree <sup>105</sup> (FTE) | 369        | 336        |

The average age of FSMA members of staff is 42.

The number of statutory and contractual members of staff of the former ISA fell to 18 because of the retirement of two members of staff. The average age of this group of staff is 52 years, the youngest of which is 41.

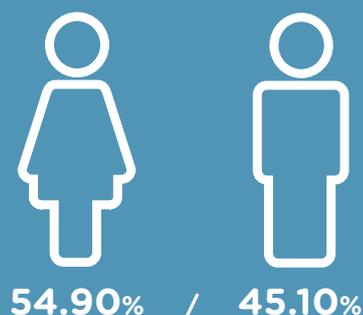
At the end of 2016, 55.79 per cent of FSMA staff had a university education and 30.79 per cent had a bachelor's. There is a slight predominance of female members of staff, of the staff with university and bachelor's education as well as within the management.

### Linguistic composition

In 2016, a new census was taken of the number of institutions under supervision located in the Flanders (Dutch-speaking), Walloon (French-speaking) and Brussels (bilingual) territory.

The FSMA will await the publication of the Royal Decree establishing its linguistic composition.

Graph 27: Distribution of Female/Male staff



<sup>105</sup> See Royal Decree of 17 May 2012 on the operating expenses of the FSMA as amended by the Royal Decree of 28 March 2014.

## **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 the financial instruments of companies subject to the permanent supervision of the FSMA and to avoid any other situation of conflict of interest.

As regards the execution of financial transactions, the number of questions from members of staff on the interpretation of the code remains quite high. Alongside a number of common and more general questions, there were questions on new market techniques, such as crowdfunding, and investments in products linked to funds, such as Class 21 and Class 23 products. In comparison with the two previous years, there were fewer applications for authorization for defensive transactions.

Over the last year, an increased amount of members of staff took on unpaid mandates with non-profit organizations that engage in activities which the FSMA does not object to in light of the prevention of conflicts of interest. The FSMA did however issue a negative opinion to one member of staff who had asked, as a precautionary measure, whether it was possible to carry out work for a company under the FSMA's supervision, even though this was indirect work which bore no relation to the FSMA's supervision.

The requests for consent for the exercise of additional roles which bear a relation to the FSMA's competences related primarily to research mandates or those of assistant for various universities in Belgium. The Management Committee gave its support to the exercise of such additional roles which forge a connection with the academic world.

## **Human resources management**

As regards human resources management, further efforts were invested in the consistent application of evaluation and appointment criteria, and on tackling some—fortunately isolated—cases of members of staff with performance issues.

There were some moves within the management. Four new members of the management were appointed, including a new investigations officer. Career meetings were also held with members of staff of 45 years or more, which sometimes resulted in internal mobility or a review of the tasks included in the role.

The content of the roles of 25 coordinators was also reviewed and they were allocated specific responsibilities in the areas of coaching and quality control. With an average of one coordinator per 7 to 10 members of staff, it must be possible progressively to introduce a culture of permanent feedback, in which it is clear for all members of staff at all times what is expected of them and where they stand in their development.

In a similar vein, a skills model was developed which formalizes the existing expectations and should contribute to the predictability of the career paths of staff. That model should also allow staff to take control of the course of their career path. The model was discussed with the social partners at the beginning of 2017.

Finally, in terms of flexibility, a thorough evaluation took place of telework, taking into account the need for fluid handling of priority supervisory dossiers on the one hand and the pattern of expectations of staff in terms of flexibility on the other, which resulted in a fine-tuning of the current system. A sliding scale of flexible working times was also introduced for executive members.

## Consultation on social matters

The 2015-2016 sectoral agreement was jointly carried out<sup>106</sup>, inter alia by identifying which agreements had been entered into at a company level as regards the allocation of the salary standard margin. A collective bargaining agreement was also entered into for innovation.

At a company level, the organization of the social elections took up a great deal of the first half of the year. For this reason, the negotiations on the new hospitalization insurance and the guaranteed income insurance for all employees, to implement the action plan for the consultation on social matters entered into at the end of 2015<sup>107</sup>, only really kicked off in the second half of the year.

Finally, in 2016, a lot of energy went into the action points arising from the employee satisfaction survey from the end of 2015<sup>108</sup>, namely the set up of two transversal working groups and the follow-up of action plans per department.

## Developments in IT

In 2016, a number of important IT projects were completed or commenced. The efforts that began in 2015 have continued. These efforts are based around four pillars:

- **Internal organization**

In addition to new management for the IT department, the internal organization of the department was also reinforced. This occurred by exhaustively defining the organizational structure and the role and responsibilities of the various members of staff. The main points of this organization are the definition of an architecture process, the reinforcement of performance and better reporting on project and portfolio management, the transformation of the structure and the governance of the IT management and the introduction of controlled resource management. Project managers received the necessary training for this.

- **Development of applications**

Major efforts went in to the delivery of the MCC (Mortgage and Consumer Credit) application and the start of the “Cabrio” project. These applications are for the purpose of being able to manage the registrations of the various categories of intermediaries online. Tenders have also been launched for the development of applications for monitoring financial products as well as for real-time supervision of financial markets.

<sup>106</sup> Along with the National Bank of Belgium, Delcredere Ducreire, the Participation Fund, the Federal Participation and Investment Corporation, and Credibe, the FSMA is part of joint committee 325.

<sup>107</sup> See the 2015 FSMA annual report, p. 198

<sup>108</sup> See the 2015 FSMA annual report, p. 198

- **IT management**

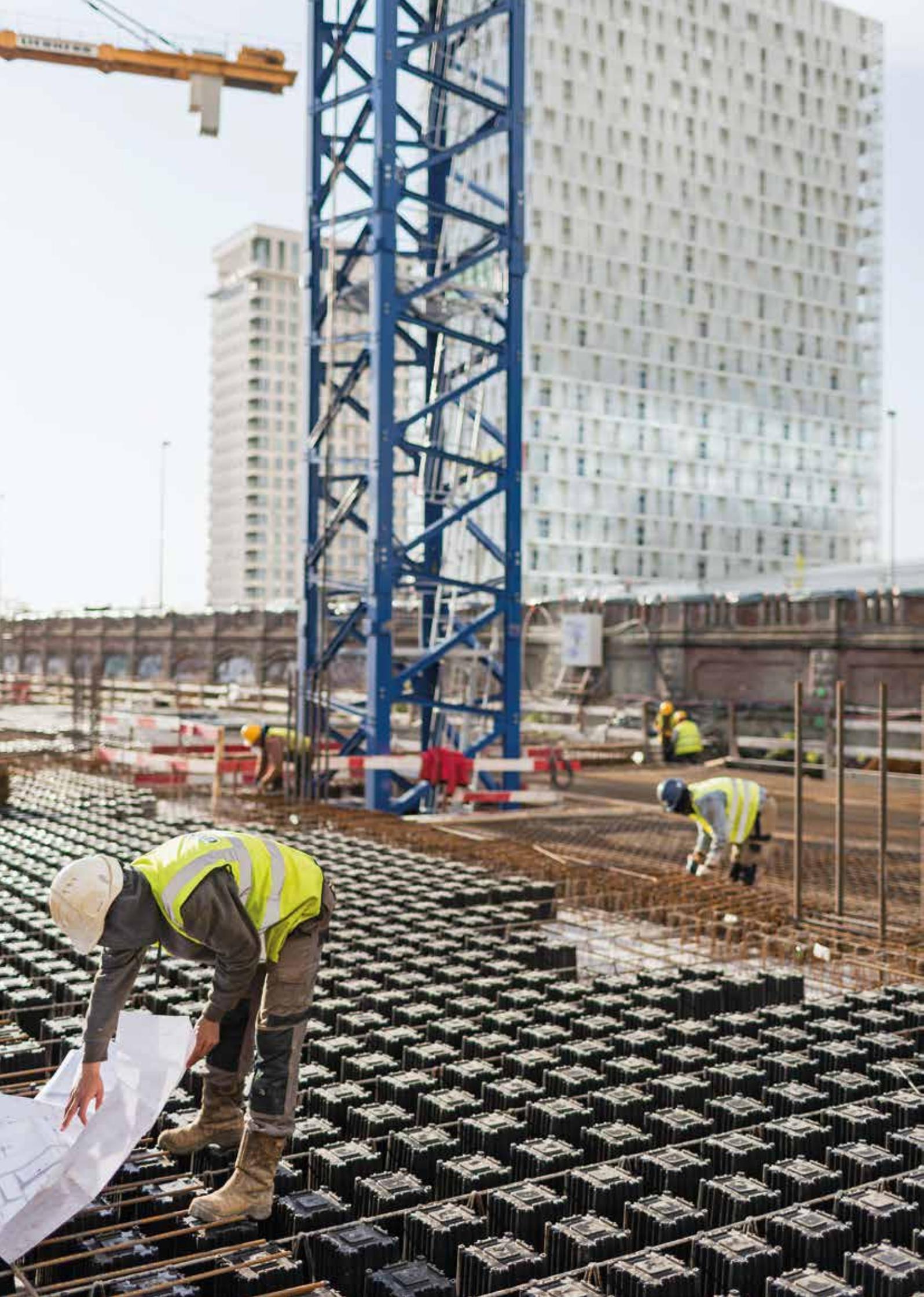
The FSMA wishes to devote the necessary attention to the collection, processing and use of information and data. To this end, the existing application for the surveys will be analysed and proposals will be formulated to make it more user-friendly and to as much as possible automate the collection of data. The initiatives taken in 2015 concerning new forms of reporting, data quality management and data mining were pursued.

- **System infrastructure**

In 2016 the priority was to consolidate the upgrades made in 2015. The installation of WiFi everywhere in the buildings will ensure that even external users have the necessary connectivity to retrieve information or perform demonstrations.

Thirty per cent of the available internal and external IT resources are deployed for internal maintenance, studies and operational activities. External services were called on for areas requiring specialist knowledge especially on projects for which a temporary reinforcement of capacity was necessary. Efforts were mainly directed at the MCC, Cabrio, e-Dossier applications, the tool for internal management of dossiers and the Information Management programme.





# ANNUAL ACCOUNTS FOR THE 2016 FINANCIAL YEAR

Pages 138-147 and footnotes 109-120 are not translated into English, but are available in [French](#) and [Dutch](#) on the FSMA's website.





# ABBREVIATIONS

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

|              |   |
|--------------|---|
| ADS          | American Depository Shares  |
| AIF          | Alternative Investment Fund   |
| AMF          | Autorité des Marchés Financiers (the French financial regulator)  |
| Assuralia    | Professional association of insurance companies   |
| Bevak/Sicafi | Closed-ended investment fund  |
| Bevek/Sicav  | Belgian open-ended investment company   |
| BIRA         | Belgian Investor Relations Association  |
| CeDES        | Centre de Didactique Economique et Sociale (social and economic teaching centre)  |
| CFD          | Contract for difference   |
| CTIF-CFI     | The Belgian Financial Intelligence Processing Unit (CTIF-CFI)   |
| DB           | Defined benefit   |
| DB2P         | Supplementary Pensions Database   |
| DC           | Defined contributions   |
| EBA          | European Banking Authority  |
| ECtHR        | European Court of Human Rights  |
| ECHR         | European Convention on Human Rights   |
| EEA          | European Economic Area  |
| EIOPA        | European Insurance and Occupational Pensions Authority  |
| EMMI         | European Money Markets Institute  |
| ESMA         | European Securities and Markets Authority   |
| ESRB         | European Systemic Risk Board  |
| EU           | European Union  |
| Euribor      | Euro Interbank Offered Rate   |
| FEB          | Federation of Belgian Enterprises   |
| Febelfin     | Belgian financial sector federation   |
| FinTech      | Financial technology  |
| FISC         | Financial Innovation Standing Committee   |
| FPS          | Federal Public Service  |
| FSB          | Financial Stability Board   |
| FSMA         | Financial Services and Markets Authority  |
| FTE          | Full-time equivalent  |
| IAIS         | International Association of Insurance Supervisors  |
| IAS          | International Accounting Standards  |
| IASB         | International Accounting Standards Board  |
| IFRS         | International Financial Reporting Standards   |
| IOPS         | International Organization of Pension Supervisors   |
| IORP         | Institutions for occupational retirement provision  |
| IORP II      | Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision. |
| IOSCO        | International Organization of Securities Commissions  |
| IRE/IBR      | Institut des réviseurs d'entreprises/Instituut der Bedrijfsrevisoren (Institute of statutory auditors)  |

|               |  |
|---------------|--|
| KIID          | Key Investor Information Document  |
| MCC           | Mortgage and Consumer Credit   |
| MiFID         | Markets in Financial Instruments Directive   |
| MiFID II      | Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU |
| MTF           | Multilateral Trading Facility  |
| NBB           | National Bank of Belgium   |
| NISSE         | Belgian National Institute for the Social Security of the Self-employed  |
| Ombudsfin     | Ombudsman for financial services   |
| OSSG          | Official Sector Steering Group   |
| OTC           | Over-the-counter   |
| OTF           | Organized Trading Facility   |
| PensioPlus    | Belgian association of pension institutions  |
| PRIIPs        | Packaged Retail and Insurance-based Investment Products  |
| Privak/pricaf | Belgian private equity closed-ended investment companies   |
| SCSC          | Supervisory Convergence Standing Committee   |
| SIGeDIS       | Database of social data on individuals in Belgium  |
| SME           | Small- and medium-sized enterprises  |
| STORI         | Storage of Regulated Information   |
| UCI           | Undertaking for collective investment  |
| UCITS         | Undertaking for collective investment in transferable securities   |
| WAP/LPC       | The Belgian supplementary pensions law   |







[www.fsma.be](http://www.fsma.be)