ANNUAL REPORT 2013

FSMA

FINANCIAL
SERVICES
AND MARKETS
AUTHORITY

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FOREWORD

Dear readers,

I am pleased to present to you the 2013 Annual Report of the Financial Services and Markets Authority (FSMA). As you know, the FSMA was created on 1 April 2011. 2013 was therefore its third year of operation. In the previous two years, the FSMA took a great many initiatives aimed essentially at ensuring greater protection for consumers of financial services, thereby contributing to restoring confidence in the financial sector. The financial crisis had, among other things, demonstrated the importance of having simpler financial products on offer, of placing the customer's interests at the core of the sector's concerns, and of improving the financial education of consumers. In each of these areas, the FSMA has undertaken innovative actions that, as you can read in this report, were pursued with unfailing commitment during 2013.

In 2013, the FSMA completed its first cycle of inspections bearing on the implementation of the MiFID conduct of business rules. The objective was to verify the extent to which the rules governing conflicts of interest were followed. These inspections brought to light a series of shortcomings at certain credit institutions. The FSMA ordered the institutions in question to remedy these. It also published a document in which it sets out the lessons learned from this first round of MiFID inspections, and draws the attention of the banking sector to several important aspects relating to the MiFID rules of conduct.

The FSMA launched a second cycle of inspections in April 2013. The objective of this round was to verify compliance with the rules relating to the requirement to exercise due diligence. This concept refers to the obligation incumbent upon banks under supervision to act in the best interests of their clients when providing services such as investment advice or executing client orders. In the course of that cycle, the FSMA teams inspected 82% of all credit institutions. The inspections carried out at that stage made it possible to identify 100 weaknesses, of which 57 were addressed by an order issued by the FSMA. Once this round is finished, a general report will once again be published, in order to make the sector aware of the points identified by the FSMA as requiring attention.

Given the increasing importance of on-line services, the FSMA also undertook in 2013 to examine more closely the websites of a number of compa-

nies subject to its supervision. An analysis of these sites and of the on-line services provided was aimed at ensuring that the MiFID rules are being followed and that the rules governing advertising of financial products are being correctly applied. In the process, the FSMA identified a number of shortcomings, in particular as regards offers of UCIs, and instructed the institutions concerned to rectify the situation. The FSMA will continue to engage in this type of supervision. To this end, it will make use of the power conferred upon it by Parliament in 2013 to gain access to the parts of such websites reserved for the institution's clients.

As regards the simplification of the products on offer, the moratorium on the distribution of particularly complex structured products, launched by the FSMA in 2011, has once again demonstrated its utility. As shown in this report, the number of structured products distributed per quarter has remained more or less constant since the launch of the moratorium. The products have, however, become considerably simpler, which was the express objective of the moratorium. Thanks to the moratorium, the number of mechanisms used to calculate the yield of these products is now limited. More than 60% of the structured products distributed since the beginning of the moratorium use no more than two mechanisms.

The year 2013 also saw the birth of Wikifin, the financial education programme set up by the FSMA. Parliament has entrusted the FSMA with the task of contributing to developing the financial literacy of Belgian citizens. After a stage of intense preparation, the Wikifin programme was launched in early 2013. This programme is structured around three components. The first is the website www.wikifin.be, maintained with the aim of providing neutral information, in easily accessible language, on a wide range of financial questions. The site also offers a number of different tools, such as the simulator for regulated savings accounts and the real estate simulator aimed at helping to budget for real estate projects. The Wikifin site has met with great success. A million visits were quickly surpassed.

The second component of the Wikifin programme has to do with collaboration with the educational sector. Contacts were made with the various actors concerned in order to develop specialized materials for the use of secondary school teachers. The third component involves cooperation with other sectors interested in financial education. In order to raise awareness of Wikifin among the general public and to promote its activities relating to financial education, publicity campaigns are held at regular intervals. In 2013, a campaign was launched on the topic of pensions, followed by one on housing. Wikifin's presence at the Batibouw home show in early 2014 marked the high point of the latter campaign.

In addition to its supervisory tasks and other activities provided for by law, the FSMA played a significant supporting role throughout 2013 in the preparation of several legislative texts. Among these are the one that made possible the adoption of the law known as "Twin Peaks 2", which is of particular importance for the FSMA. When moving to the Twin Peaks supervisory model in 2011, plans were made to strengthen the FSMA's powers in view of ensuring greater protection of financial consumers. That project, dubbed Twin Peaks 2, was completed in 2013.

The Twin Peaks 2 legislation increases the resources available to the FSMA to detect problems that arise on the ground. Thus the FSMA can henceforth engage, for example, in mystery shopping. This is a technique intended to enable the FSMA to verify how certain rules are applied in practice in relations with existing or potential customers. The FSMA may carry out this task using either its own staff or third parties. The FSMA has decided to avail itself of the option of drawing on external partners. A pilot project has been launched for 2014.

Another important aspect of the Twin Peaks 2 legislation is the extension of the MiFID conduct of business rules to the insurance sector. This is an important step along the path to creating a level playing field as regards the rules of conduct to be followed when distrib-

uting financial products. To help insurance companies and intermediaries implement the MiFID rules, the FSMA in consultation with the relevant sector drew up a circular and a list of questions and answers. The FSMA will also conduct an awareness campaign in collaboration with the professional associations concerned in order to offer service providers optimal information on the tenor and impact of the new rules.

The Twin Peaks 2 provisions also reinforce the legal basis that enables the FSMA to adopt regulations. The FSMA has made use of this power to prohibit, via a regulation, the distribution of certain financial products to retail clients. Savings and investment products will, moreover, be assigned a risk label whose technical requirements have likewise been determined in a regulation by the FSMA.

The Twin Peaks 2 legislation is not the only one to have conferred new tasks and powers on the FSMA. Under the new regulation concerning regulated savings accounts, the FSMA supervises in particular the information sheets made available to consumers. The new legislation on thematic citizens' lending entrusts the FSMA with additional supervisory tasks, as does the law on the financing of SMEs. The latter lays down an obligation of due diligence in the process of extending credit to SMEs and tasks the FSMA with supervising compliance with those rules. The Economic Law Code also confers additional tasks upon the FSMA. The latter will, in particular, be responsible for verifying that the advertisements for financial products and services comply with the rules of Book VI of the said Code, which comprises the legal provisions governing market practices and consumer protection.

More generally, all the new powers devolved in recent months upon the FSMA constitute an increase of more than 30% in the tasks entrusted to the FSMA. The objective in each case is to contribute to the protection of consumers. A considerable challenge, but one that the FSMA staff are enthusiastic about taking on. The added responsibilities are also a recognition of the credibility of the work pursued tirelessly by the FSMA since its creation.

At the international level as well, the FSMA made an active contribution, over the course of 2013, to a considerable number of activities. For example, it took part in the inspections conducted by both the IMF and the FATF. The FSMA also played an active role within the European supervisory authorities ESMA and EIOPA and submitted an application for membership of the International Association of Insurance Supervisors (IAIS). The FSMA has also been elected a member of the Board of the International Organization of Securities Commissions (IOSCO), and chairs the latter's Finance and Audit Committee.

The increase in its powers and in the resulting supervisory tasks has led the FSMA in recent years to recruit new staff to reinforce its teams. At the end of 2013, the FSMA had 298 employees, which is 15% more than in 2011, its first year of operation. Hiring will continue over the next few years in order to enable the FSMA to fulfil all the tasks entrusted to it. In addition to augmenting its personnel, the FSMA's Management Committee has also approved a new organization of the institution's services.

I am absolutely convinced that with this renewed structure and increased staff, the FSMA will be able to meet the new challenges that await it and to carry out to the full its enhanced role as a supervisory authority. I would like to take this opportunity to thank all the FSMA staff for the work they have done in these past years, and I count on their continued dedication and commitment to ensuring that the expansion of the FSMA's powers will unfold equally harmoniously in the years to come.

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Before closing, I would like to express my most sincere gratitude to Wim Coumans and to Albert Niesten. Wim Coumans held the post of deputy chairman of the FSMA from the time of its creation in 2011 until May 2014. Thanks to his longstanding experience, enormous capacity for work, clear vision of things, attention to detail, loyalty and collegiality, Wim Coumans has not only overseen the smooth functioning of the services under his operational management but has also made a significant contribution to the successful launch of the FSMA and the inauguration of its activities.

Albert Niesten, for his part, had been hired as one of the very first inspectors at the Banking Commission before being appointed, at a very young age, to head the Exchange Agency Guarantee Fund (*Caisse de garantie des agents de change/Waarborgkas voor wisselagenten*). The creation of the fund made it possible to develop and modernize considerably the status of these intermediaries, who play such an essential role in the smooth operation of the stock exchange. Once back at the Banking Commission, which in the meantime had become the Banking and Finance Commission, Albert Niesten was appointed deputy director and later director, before becoming secretary general of the CBF, later the CBFA and finally the FSMA. His keen organizational skills, the rigour he exhibited daily in managing his dossiers as well as his great impartiality and unfailing loyalty to the institution played a decisive role in the successful launch of the FSMA. Albert Niesten is indisputably a great public official, deeply devoted to the common good.

I would like to thank Wim Coumans and Albert Niesten personally as well as on behalf of the other members of the Management Committee and of the entire FSMA staff for all they have done for this institution.

Jean-Paul SERVAIS
Chairman


FSMA

2013 AT A GLANCE

10 January: The FSMA sets up a Twitter account. Press releases and warnings relating to unlawful offers of financial products or services will now also be communicated through Twitter.

17 January: 30 of the 32 banks that offer regulated savings accounts sign on to the protocol for the FSMA savings account simulator. By so doing, they commit to providing all the information necessary for the savings account simulator. The simulator allows consumers to make a personalized comparison of all regulated savings accounts. It can be consulted online since 31 January 2013 on the Wikifin.be website.

25 January: The FSMA publishes a circular directed at institutions for occupational retirement provision (IORPs). This circular, on the subject of reporting, refers to the need to pay particular attention to estimates of expected return and the corresponding discount rate used. The FSMA also requests a specific form of reporting from IORPs with a large bond portfolio.

29 January: The FSMA publishes a warning to alert the public to attempted fraud with bank accounts and credit cards (phishing). This warning comes as a result of a considerable increase in the number of complaints concerning phishing.

31 January: The FSMA organizes the first national conference on financial education in the presence of Her Royal Highness, Princess Mathilde and several ministers. The FSMA financial education programme is launched during this conference which includes, inter alia, a website, www.wikifin.be, providing consumers with neutral, trustworthy and accessible information.

5 February: The FSMA publishes a communication on compliance with anti-money laundering legislation. This communication, directed at insurance intermediaries who are not tied agents and who deal with life insurance products, reminds these intermediaries of their obligations.

28 February: The European supervisory authorities ESMA and the EBA warn consumers about the risks associated with contracts for difference (CFDs). The FSMA also publishes this warning on its website.

3 May: The FSMA publishes a warning indicating that four issuers have failed to publish their 2012 annual financial report on time. That report should have been published at the latest on 30 April 2013.

10 January: The FSMA sets up a Twitter account.

31 January: Wikifin is launched.

17 May: The International Monetary Fund (IMF) publishes its inspection report for the Financial Sector Assessment Program (FSAP). This report states that the FSMA has treated the reform of financial supervision as an opportunity to create a new institution that gives pride of place to consumer protection.

27 May: The FSMA launches its first campaign under the Wikifin programme for financial education. This campaign focuses on pensions. The goal is to raise awareness on pension issues among consumers through an advertising campaign and a quiz on pensions while at the same time drawing attention to Wikifin.

28 May: The FSMA organizes three training days on the theme of MiFID in conjunction with the Belgian Institute of Registered Auditors (*Institut des réviseurs d'entreprises/Instituut van de Bedrijfsrevisoren*). The aim of this training course is to train auditors and their colleagues to support the FSMA with MiFID inspection tasks. 85 people took part.

17 June: The FSMA Sanctions Committee imposes an administrative fine of EUR 500,000 on a listed company for market manipulation and failure to comply with the disclosure of inside information. The Sanctions Committee also accuses three directors of that undertaking who were involved in the communications the dossier relates to. Two directors are fined EUR 400,000; one director is fined EUR 250,000.

25 June: The FSMA publishes its 2012 annual report. The presentation of the report highlights certain aspects such as the simplification of the market for structured products, the first wave of inspections relating to the conduct of business rules, the initiatives in the area of financial education and the further legislative developments on the powers of the FSMA.

28 June: The FSMA publishes its biennial reports on sectoral pension schemes and the voluntary supplementary pension for self-employed persons.

3 July: The FSMA publishes a report on its first round of inspections on the MiFID conduct of business rules. The inspections are on the theme of conflicts of interest. The report highlights the importance of financial institutions regularly evaluating the internal procedures on conflicts of interest as well as the importance of the compliance function.

17 July: IOSCO publishes a document establishing the principles for financial benchmarks. The document is the result of, inter alia, a consultation launched in February 2013 in which the FSMA took part.

6 August: The Royal Decree of 18 June 2013 laying down certain information obligations in respect of the distribution of regulated savings accounts enters into force. The FSMA oversees the standardized info sheets which the banks must from now on provide.

25 June: The FSMA publishes its 2012 annual report.

30 August: The Laws of 30 and 31 July 2013 establishing Twin Peaks 2 are published in the Belgian Official Gazette. The most significant provisions of Twin Peaks 2 are on the strengthening of the FSMA's powers and supervisory instruments, the broadening of the prohibition on market abuse, the introduction of new obligations for the financial sector, and civil penalties.

17 September: The Board of IOSCO elects the Chairman of the FSMA as Chairman of IOSCO's Finance and Audit Committee. That Committee assists the Board in auditing the organization's budget and accounts.

27 September: The Royal Decree amending the Royal Decree implementing the Belgian Income Tax Code of 1992 with regard to the conditions for exemption of savings deposits was published in the Belgian Official Gazette. This Royal Decree introduces the quarterly payment of loyalty premiums as from 1 October 2013. The FSMA oversees the new info sheets and adjusts the savings account simulator accordingly based on the new legislation.

2 October: The FSMA takes part, as a member, in the first meeting of the new committee within IOSCO on retail investors. This committee will focus principally on the subject of financial literacy.

16 November: The FSMA starts a major recruitment campaign with advertisements in the press and on job websites, with the aim of attracting economists, jurists, auditors, and IT and administrative staff.

18 November: The FSMA launches a new Wikifin campaign on the theme of 'housing'. Wikifin.be is also launched on Facebook.

22 November: Two royal decrees dated 18 November 2013 are published. The first reappoints Mr Jean-Paul Servais as Chairman of the Management Committee of the FSMA and the second reappoints Mr Henk Becquaert as Member of the Management Committee of the FSMA.

18 December: The FSMA and the NBB publish a circular on recent developments in the area of prevention of money laundering. The circular includes details on the warning by the Financial Intelligence Processing Unit (FIPU) on the high risk of money laundering in certain transactions in gold and precious metals and in large capital movements.

I.
SIGNIFICANT DEVELOPMENTS IN SUPERVISION BY THE FSMA

1. Development of the regulatory framework

1.1. National

The Belgian legislature has extended the powers of the FSMA via several laws. This extension occurs, inter alia, through what is called the 'Twin Peaks 2' legislation. In the transition to the Twin Peaks supervisory model, where the prudential supervision of the CBFA was transferred to the NBB[1], a strengthening of the powers of the FSMA was introduced with a view to improving the protection of financial consumers. That project, named 'Twin Peaks 2', gave rise to the Law of 30 July 2013[2].

The main provisions of this Law can be broken down into four categories:

1. the strengthening of the powers and supervisory instruments of the FSMA;
2. the expansion of the prohibition on market abuse;
3. the introduction of new obligations for the financial sector;
4. civil penalties.

The first category

To begin with, the Law grants the FSMA three new supervisory instruments to enable it to better detect problems that occur in the field.

- First of all, the Law bestows on the FSMA the power to conduct mystery shopping. This is to enable the FSMA to evaluate how certain rules—including the MiFID conduct of business rules and the new requirement for essential product knowledge—are applied in practice in relations with clients or potential clients. The FSMA may use either its permanent employees or third parties for this.
- Secondly, the FSMA obtains the right to demand that institutions under its supervision grant the FSMA permanent access to the parts of their websites reserved for their clients. The FSMA is, of course, not able to view any individual client data. This access does, however, enable the FSMA to examine the standardized information offered through those websites to all or certain categories of clients.

1 See the FSMA Annual Report 2011, p. 13.
2 Law of 30 July 2013 on strengthening the protection of consumers of financial products and services, strengthening the powers of the Financial Services and Markets Authority, and containing various provisions (Belgian Official Gazette, 30 August 2013). This Law was supplemented by the 'obligatory bicameral' Law (within the meaning of Article 77 of the Constitution) of 31 July 2013 with the same title.

- Thirdly, the FSMA can demand that external complaints-handling services report to it at least once a year on the nature of the most frequent complaints and the follow-up to these complaints given by these services. In order not to undermine the operation of these ombudsman services, these records are anonymized and aggregated.

The Law also extends the powers of the FSMA in order to further improve its ability to act against infringements it identifies.

- The FSMA from now on also has the power to impose administrative fines and penalties in the event of infringements of the Law on non-marine insurance contracts (WLVO/LCAT). In the legislation relating to supplementary pensions, the distinction between fines and penalties is clarified. More generally, it provides for the publication in principle by the FSMA of a penalty if its orders pertaining thereto have not been followed on time.
- The Law also grants the FSMA more specific powers to perform its statutory task of contributing to protecting the public from the offer or provision of financial products or services by persons who do not possess the authorization from the NBB or the FSMA required by law. This relates to the power to publish warnings and to impose an order that may give rise to a penalty or administrative fine.
- The Law also provides for the exercise by the FSMA of its usual powers to ensure compliance with the regulations it adopts by virtue of the Twin Peaks Law, with a view to prohibiting the distribution of certain financial products or attaching conditions thereto, and to promoting the transparency of financial products. The Law specifies that the latter point may include the use of a label.
- The Law also provides for the FSMA to use its existing powers to supervise compliance with Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.
- Finally, the powers of the FSMA to impose a cease and desist order are also extended and adapted to the changes in the legislation.

The second category

The Law broadens the prohibition against market abuse (misuse of inside information and market manipulation).

- Derivative products that are themselves not listed but the value of which depends on financial instruments that are admitted to trading on a regulated market will from now on fall not only under the prohibition of misuse of inside information but also under the prohibition of market manipulation.
- Credit default swaps that are not admitted to trading on a regulated market will from now on fall under the prohibition of misuse of inside information and of market manipulation if these credit default swaps relate to the issuer of financial instruments admitted to trading on a regulated market (or to a company linked to such an issuer).
- Manipulation of a benchmark (e.g. Euribor) is also expressly prohibited.

With this broadening of the Law, the Belgian legislature is already anticipating significantly the extension of the prohibition of market abuse on which political agreement has in the meantime been reached at a European level within the process of the revision of the current Directive 2003/6/EC[3].

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

The third category

The Law also introduces a number of new obligations for the financial sector in order to enhance the protection of customers of financial products and services.

In this regard, the extension of obligatory compliance with the MiFID conduct of business rules is a major aspect of that Law.

- The Twin Peaks Law had already provided for the possibility of extending the obligatory enforcement of the MiFID conduct of business rules to insurance companies by way of a Royal Decree, and the Twin Peaks 2 Law implements this extension. Although the Law follows the principle that the MiFID conduct of business rules are extended to all types of insurance (not only investment insurance), it allows for that principle to be nuanced by way of a Royal Decree. The scope and range of these conduct of business rules for the insurance sector may also be further specified in a Royal Decree.
- Insurance intermediaries, for their part, must comply with the same conduct of business rules as insurance companies. As soon as the MiFID conduct of business rules (likely in amended form) enter into force for insurance companies, insurance intermediaries will also have to follow these rules. Further amended versions of those conduct of business rules can be provided by way of a Royal Decree for all or certain categories of insurance intermediaries, to take into account the specific nature of their role.
- Brokers in banking and investment services must also from now on follow the MiFID conduct of business rules. Although agents in banking and investment services already had to follow the same rules of conduct as credit institutions and investment firms, brokers in banking and investment services were until now subject only to the 'general rules of conduct' (the obligation to act honestly, fairly and professionally in the best interests of their clients and the obligation to provide information that is correct, clear and not misleading). The Law also makes compliance with the more specific MiFID conduct of business rules obligatory from now on for brokers in banking and investment services.
- Finally, compliance with the 'general rules of conduct' by regulated undertakings is extended to the offer or provision of all financial products or services. As a result, a credit institution for example not only has to apply these general rules of conduct to the offer or provision of investment services but also to the offer or provision of other financial products or services (including savings accounts).

Moreover, the Law introduces the requirement of 'essential product knowledge'. As is the case with the extension of the MiFID conduct of business rules, a multipronged approach is used, targeting both the banking and insurance sectors and within those sectors, credit institutions, investment firms and insurance companies, as well as intermediaries. The fundamental principle of this new requirement is that every person who is in contact with clients must be in a position to inform those clients of the essential characteristics of a product.

Both the extension to the MiFID conduct of business rules and the requirement of 'essential product knowledge' enter into force on 30 April 2014[4].

4 The Law of 30 July 2013 provided for entry into force on 1 January 2014. This entry into force was, however, postponed until 30 April 2014 by Article 9 of the Law of 21 December 2013 (Belgian Official Gazette, 30 December 2013).

Equally, in the area of savings accounts, the Law provides for a regulatory framework which (by way of inclusion thereof in the Law of 2 August 2002) falls under the supervision of the FSMA.

- Without prejudice to the powers conferred on the tax authorities, the FSMA is granted the power to act in the interest of savers where a credit institution wrongly offers a savings account as a 'regulated savings account' (to which an exemption from the withholding tax on income from movable assets applies).
- As a result of the inclusion in the Law of 2 August 2002 of the power of the King to regulate advertising for savings accounts, the FSMA can from now on make use of its regular powers to supervise compliance with (and act against infringements of) the Royal Decree of 18 June 2013 laying down certain information obligations in respect of the distribution of regulated savings accounts. Initially this Royal Decree was passed on the basis of Article 3 of the Law of 6 April 2010 on market practices and consumer protection, which in reality bestowed few powers on the FSMA to exercise its supervision.
- The King was also given the power to issue additional rules to promote the transparency and comparability of savings accounts distributed within the territory of Belgium. A Royal Decree has been issued restricting the conditions that can be attached to base rates of interest and loyalty premiums[5].

The fourth category

The Law also introduces a number of 'civil penalties'. These are rules to help aggrieved clients seek redress from the courts in cases of certain infringements. It is important to note that this is not a competence of the FSMA.

These civil penalties can be summarized as follows:

- For infringements of certain rules of conduct, the transaction in question shall be deemed to be the consequence of the infringement unless proven otherwise.
- Transactions carried out with persons who do not possess the authorization or registration by the NBB or the FSMA required by law shall be declared null and void (by a judge) and any damage resulting from the transaction shall be deemed to be the consequence of the infringement. The same goes for offers of investment instruments if, contrary to the Prospectus Law or the UCI Law, no approved prospectus has been published, the advertising was not approved by the FSMA, or if the rules governing intermediation in investments on behalf of clients have been breached.

5 Article 3 of the Royal Decree of 21 September 2013 amending the Royal Decree implementing the Belgian Income Tax Code of 1992 with regard to the conditions for exemption of savings deposits envisaged in Article 21, 5°, of the Income Tax Code of 1992 and the conditions for offering rates on the latter.

1.2. European level

1.2.1. ESMA activities

The FSMA contributes substantially to the work of ESMA. Since 2011, ESMA is the European authority responsible for developing common European supervisory standards and for the convergence of supervisory practices for securities and markets. It is also tasked with the supervision of registered credit rating agencies[6] and trade repositories. In 2013, ESMA, by virtue of EMIR, registered the first six trade repositories.

In 2013, ESMA made a substantial contribution to the development of a single rulebook for European legislation. This included drafting proposals for binding technical standards and providing recommendations to the European Commission. ESMA's principal regulatory work was on the adoption of the implementing measures for EMIR and the AIFMD. In the preparation of these rules, a public consultation was organized to seek the advice of all stakeholders. The advice of the Securities and Markets Stakeholder Group, which was recomposed at the end of 2013, was also sought.

ESMA can also issue guidelines and recommendations to competent national authorities with a view to contributing to the establishment of consistent, efficient and effective supervisory practices and ensuring consistent application of EU legislation. Pursuant to Article 16 of the Regulation establishing ESMA, competent authorities must make every effort to comply with these guidelines and recommendations. In the year under review, a number of guidelines were approved with respect to the AIFMD[7] and EMIR[8]. Other guidelines were on the exemption for market-making activities and primary market operations under the Short Selling Regulation. The methods for implementing each of these guidelines in Belgium are detailed further in this report. ESMA and the EBA also adopted the Principles for Benchmark-Setting[9].

ESMA has also adopted a new multilateral memorandum of understanding in the form of guidelines. This MMoU provides a general framework for cooperation and the mutual sharing of information between competent authorities, as well as between competent authorities and ESMA. The ESMA MMoU replaces the CESR MMoU. As before, the MMoU determines how requests for sharing of information must be made and how these must be acted upon. It also specifies confidentiality restrictions and permissible uses of information. This MMoU also contains specific articles relating to procedures for taking a statement from a person or for opening an investigation on behalf of a foreign authority.

6 ESMA exercises supervision of 22 credit rating agencies.
7 These guidelines related, inter alia, to sound remuneration policies and the key concepts of the AIFMD. Based on ESMA guidelines, several memorandums of understanding for alternative investment funds were also entered into with third-country supervisory authorities. This shall be explained in further detail in this report on p. 140 (available in the French and Dutch versions only).
8 Guidelines and recommendations were adopted for setting up consistent, efficient and effective assessments of interoperability arrangements and on written agreements between members of a central counterparty college.
9 Read more about this in this report, p. 25.

Within ESMA, the FSMA chairs the Investor Protection and Intermediaries Standing Committee. This working group was behind the ESMA guidelines, adopted in 2013, on remuneration policies and practices under MiFID. In the area of investor protection, Article 9 of the Regulation establishing ESMA provides the option of publishing a warning where a financial activity constitutes a serious threat for one of the tasks of ESMA. ESMA made use of this option by warning retail investors about the pitfalls of investing online. ESMA and the EBA also drew attention to the risks associated with contracts for difference in a joint warning.

ESMA also contributed to the convergence of supervisory practices in a number of other areas. For example, it published the key points that the national supervisory authorities in Europe will focus on in the review of the 2013 financial statements of listed companies. Within ESMA, the Review Panel is the permanent committee responsible for determining the extent of supervisory convergence by way of peer reviews. In 2013, the Review Panel expanded on the methodology used for peer reviews. Topics covered included the ESMA Money Market Fund Guidelines and the supervisory practices relating to rules on market abuse.

Cross-sector topics are dealt with by the three European supervisory authorities in the Joint Committee. The FSMA participates in a subcommittee of the Joint Committee that is involved with consumer protection and financial innovation and in that respect focuses on the potential rules for PRIPs and the aspects of product supervision that occur across all sectors. At the initiative of this Joint Committee, the three European supervisory authorities published a report on 18 December 2013 on *Manufacturers' Product Oversight & Governance Processes*.

1.2.2. EIOPA activities

EIOPA has drafted its first Implementing Technical Standards, which it submitted to the European Commission. These draft standards regulate reporting by the Member States to EIOPA on the national provisions of a prudential nature relevant to the field of IORPs. They lay down the procedures to be followed and the formats and templates to be used by the competent authorities. It is up to the European Commission either to ratify the Implementing Technical Standards or to ask that EIOPA revise the draft standards.

Outside the area of occupational retirement provision schemes, EIOPA has also started work, at the request of the European Commission, on developing a European supervisory framework for the individual form of private pension schemes, which is known as the 'third pillar'. This framework is set to include aspects of a prudential nature as well as consumer protection. The FSMA plays an active role in this work, which has already culminated in the publication of a consultation document[10]. Broadly on the same subject, EIOPA has started the preparation of a European database of types of supplementary and individual pension plans and products.

10 *Discussion Paper on a possible EU-single market for personal pension products*, 16 May 2013.

As part of EIOPA's Quantitative Impact Study (QIS) on the review of the IORP Directive, the FSMA has played an active role in the working group that led this QIS and wrote the EIOPA report on the findings of this study. This report[11] was published on 4 July 2013, along with a discussion document on an alternative method for calculating the value of sponsor support[12].

As a follow-up to this report, EIOPA has continued work on developing a new solvency framework, based on the Solvency II Directive, for pension funds. To this end it set up a Solvency working group tasked with exploring the following five areas: sponsor support, supervisory responses, discretionary decision-making process, benefit reductions and contract boundaries. The FSMA is an active participant in this working group.

EIOPA's Review Panel started a peer review in 2013 on the supervisory practices of national supervisory authorities for authorization and registration of IORPs as provided for in Article 9 of the IORP Directive, and the notification of cross-border activity as provided for by Article 20 of the IORP Directive. The FSMA, along with every member of EIOPA, took part in this review.

As in previous years, the FSMA contributed actively within EIOPA to a number of publications and activities. These included the annual report on developments in the cross-border IORP market[13], the report that identifies good practices for complaints handing by insurance intermediaries[14], the report on good practices for supervision and training standards for insurance intermediaries[15], the report on the methodology for collecting, analysing and reporting on consumer trends[16] and finally, the report that details good practices for websites that compare insurance products[17]. These reports have now been completed and published by EIOPA. The FSMA also played an important role in defining the guidelines for customer complaints handling by insurance intermediaries[18].

1.2.3. ESRB activities

The FSMA has attended the meetings of the General Board of the ESRB, which is tasked with the macro-prudential supervision of the financial system in the European Union. The task of the ESRB is to detect, analyse and mitigate possible systemic risk factors that could pose a threat to financial stability in the EU.

The main instrument used by the ESRB in this task is that of issuing recommendations for remedial action to be taken in response to the risks identified. As a follow-up to its recommendation of December 2011 on the macro-prudential task of the national authorities, the ESRB issued a recommendation on the intermediate objectives and instruments of macro-prudential policy.

11 *Report on QIS on IORPs*, 4 July 2013. The preliminary results of the Quantitative Impact Study (QIS) carried out by EIOPA on institutions for occupational retirement provision were published on the FSMA's website in April 2013.
12 *Discussion Paper On Sponsor Support Technical Specifications*, 4 July 2013.
13 *Report on Market Developments in cross-border IORPs*, 25 July 2013.
14 *Report on Best Practices by Insurance Intermediaries in handling complaints*, 27 November 2013.
15 *Report on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products*, 9 December 2013.
16 *Review of Consumer Trends Methodology*, 15 January 2014.
17 *Report on Good Practices on Comparison Websites*, 30 January 2014.
18 *Guidelines on Complaints-Handling by Insurance Intermediaries*, 3 December 2013.

One of the subjects addressed by the ESRB in 2013 was the systemic risk that could be caused by central counterparties (CCPs) responsible for clearing the ever-increasing number of transactions in financial instruments. This subject was covered in a document published in November 2013[19]. Over the next two years, this subject will be explored in further depth, in particular as part of the evaluation of EMIR.

In November 2013, the ESRB published the result of its analyses on the extent to which its recommendation of 11 September on lending in foreign currencies has been followed. The ESRB assessment team found Belgium to be largely compliant with this legislation.

1.2.4. Supervision of financial benchmarks

Following the manipulation of financial benchmarks such as the European Interbank Offered Rate (EURIBOR) and the London Interbank Offered Rate (LIBOR) in 2012, both ESMA/EBA and IOSCO set up working groups on the subject. Benchmarks such as EURIBOR, LIBOR and the Tokyo Interbank Offered Rate (TIBOR) serve as reference rates for financial transactions and have an impact on a very wide public. This is why the reliability of these benchmarks has significant importance for the smooth functioning of financial markets.

The activities of ESMA/EBA's and IOSCO's benchmarks working groups continued in 2013, with active participation of the FSMA. On the basis of these activities, ESMA/EBA and IOSCO published principles for financial benchmarks[20].

The European Commission has put forward a proposal for a regulation on the supervision of benchmarks[21]. This proposal implies that the benchmark's main supervisor is the Member State where the manager of the benchmark is recognized as a legal person. The head office of EURIBOR's manager, EURIBOR-EBF, is based in Brussels. For this reason, Belgium would be responsible for EURIBOR's main supervision. The FSMA provides its cooperation and expertise in the negotiations concerning the European regulation.

Finally, the FSB set up the Official Sector Steering Group (OSSG), which in turn asked IOSCO to carry out a review of the aforementioned crucial benchmarks. The FSMA forms part of this review panel and takes part in the review of EURIBOR.

19 Macro-prudential Commentaries, issue 6: Central counterparties and systemic risk.
20 ESMA/EBA published on 6 June 2013 the report entitled *ESMA-EBA Principles for Benchmark-Setting Processes in the EU,* and IOSCO published on 17 July 2013 the report entitled *Principles for Financial Benchmarks.*
21 The European Commission launched on 18 September 2013 a *Proposal for a Regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts.*

1.3. International

1.3.1. IOSCO activities

In 2012, the FSMA was elected to the Board of IOSCO by IOSCO's European Regional Committee. In this capacity, the FSMA plays an important role within this organization. The Board elected the Chairman of the FSMA as Chairman of IOSCO's Finance and Audit Committee on 17 September 2013. That Committee assists the Board in auditing the organization's budget and accounts.

In 2013, the FSMA also became a member of the Committee on Retail Investors, which, among other things, is responsible for drawing up a strategy on financial education. The FSMA has also remained active in a number of IOSCO's working groups, which are responsible for preparing the standards and best practices set by the organization. These include the Committee on Multinational Disclosure and Accounting, the Committee on Enforcement and the Exchange of Information, and the Committee on Investment Management[22]. The FSMA was also involved in the work to prepare the IOSCO principles for financial benchmarks[23].

In the year under review, IOSCO undertook several initiatives to contribute to the transparency and integrity of financial markets, as well as to enhance consumer protection. A working group in which the FSMA participated prepared a report on retail structured products[24]. In that report, a toolkit was devised that includes possible options for the regulation of structured products with regards to issuance, distribution and investment. The report refers to the FSMA's moratorium on the distribution of particularly complex structured products as regards the way in which risks relating to particularly complex structured products can be addressed. Other work in the area of investor protection was on the subjects of the sale of complex financial instruments[25], the protection of client assets[26], and ETFs[27].

In addition, IOSCO has published reports on technological challenges to effective supervision and on regulatory issues raised by changes in market structure. In conjunction with the Basel Committee, a framework was also laid down for margin requirements for non-centrally cleared OTC derivatives. IOSCO has also made a marked progress on the development of a methodology for identifying Global Systemically Important Financial Institutions (G-SIFIs)[28]. IOSCO has agreed a joint protocol with the IFRS Foundation to enhance consistency in the implementation of IFRS[29] globally.

22 For more information on the work of these committees, see: IOSCO, *Annual Report* 2012, p. 24 et seq.
23 For more information, see this report, p. 25.
24 Final report, *Retail structured products*, December 2013.
25 IOSCO, *Suitability Requirements with Respect to the Distribution of Complex Financial Products*, January 2013.
26 *Recommendations regarding the protection of client assets*, February 2013.
27 *Principles for the Regulation of Exchange Traded Funds*, June 2013.
28 IOSCO and *Financial Stability Board*, *Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions*, *Consultative Document*, January 2014.
29 IOSCO and IFRS Foundation, *Statement of Protocols for Cooperation on International Financial Reporting Standards,* 16 September 2013.

The FSMA also took part in the work of the Assessment Committee. This Committee is responsible for assessing full and consistent compliance with IOSCO principles and standards by the members of the organization. The FSMA took part in two themed assessments of the Assessment Committee. One of these concerned the implementation of the IOSCO principles on the identification of (systemic) risks relating to financial markets[30]. The FSMA has also assisted with the themed assessment of the investor information provided by issuers and undertakings for collective investment.

Finally, IOSCO has taken measures to further broaden the network of members that accede to the IOSCO Multilateral Memorandum of Understanding (MMoU)[31]. Now, 100 of the 125 IOSCO members have acceded to the MMoU. The use of the MMoU in investigations into cross-border breaches of regulations increases every year.

1.3.2. Financial Sector Assessment Programme (FSAP)

The International Monetary Fund's primary purpose is to ensure the financial stability of the international monetary system. To this end, the IMF regularly evaluates the stability of the financial sector in its member countries. The Financial Sector Assessment Programme (FSAP) enables the IMF to obtain a comprehensive and in-depth analysis of a country's financial sector and to identify the main sources of risk that exist in the country concerned.

At the invitation of the Belgian authorities, in 2012 and 2013 the IMF carried out an evaluation of the stability of the Belgian financial system. As the supervisory authority for the financial sector in Belgium, the FSMA took part in this evaluation alongside the National Bank of Belgium (NBB).

The IMF conducted an in-depth examination of the banking sector on the basis of the Basel Core Principles for Effective Banking Supervision, and of the insurance sector based on the IAIS Insurance Core Principles. As for the securities markets, these were evaluated in the form of an update to the evaluation carried out in 2006. That evaluation was based on the IOSCO Objectives and Principles of Securities Regulation. Finally, the evaluation of the sector of securities clearing and settlement systems based on the CPSS/IOSCO Recommendations for Securities Settlement Systems was carried out by means of a parallel exercise jointly undertaken by several European countries.

In May 2013 the IMF published on its website the evaluation reports with the main findings of its analysis. The conclusions of the report, entitled *Technical Note on Securities Markets Regulation and Supervision*[32], are discussed below.

The report describes how the FSMA, as supervisor of the financial sector, has responded to market developments since the last FSAP in 2006. More specifically, it analyses the measures taken by the FSMA following the introduction of the new supervisory architecture in Belgium, and formulates recommendations.

30 The findings of that assessment were published in the report titled 'Thematic Review of the Implementation of Principles 6 and 7 of the IOSCO Objectives and Principles of Securities Regulation, September 2013'.
31 *IOSCO Reinforces Standard on Cross-Border Cooperation,* IOSCO *Press release*, 18 September 2013.
32 See the IMF website*: Technical Note on Securities Markets Regulation and Supervision, IMF Country Report No. 13/136*, May 2013.

The general conclusions are that the FSMA has seized the opportunity of the restructuring of the financial sector's supervisory architecture to adapt to cultural changes, and has developed a new institution for which investor protection and financial education are matters of priority. Moreover, the FSMA is described as an open, proactive and committed institution.

The IMF emphasizes in its report that the FSMA has developed the required know-how and expertise in the supervision and analysis of market developments, both nationally and internationally. It also recommends that the FSMA make use of that expertise to respond rapidly and efficiently to the new sources of risk.

In this regard, the IMF underlines the importance of the numerous initiatives taken by the FSMA soon after its creation. According to the IMF, "the FSMA has responded creatively to the regulatory challenges posed by complex structured products by agreeing a 'Moratorium' … the FSMA has taken a more interventionist and innovative approach" to such products, which represent a vast market in Belgium (EUR 83 billion at the end of 2011). The IMF's analysis shows that the moratorium is effective in enabling the attainment of the objectives set out, namely a simplified and more transparent range of products offered to retail clients, which also increases comparability. The IMF recommends a future extension of the moratorium to other products representing significant risks for investors.

Furthermore, the IMF refers to the FSMA's initiative regarding supervision of compliance with the rules of conduct by financial institutions, and to its active participation in the drawing up of a new regulation for savings accounts. The IMF also discusses the ongoing projects, more specifically the development of a mystery shopping programme and a draft regulation for financial planners.

Moreover, the IMF devotes attention to the FSMA's new power in the area of financial education. The report concludes that the FSMA has developed an impressive financial education programme that reflects best international practices. The IMF recommends that the FSMA continues its current activities and builds on the numerous initiatives already addressing consumer protection. The IMF underlines that it is of the utmost importance for the FSMA to have the necessary means at its disposal to further develop its education programme.

Another conclusion of the IMF's analysis is that an efficient and far-reaching cooperation between the FSMA and the NBB is essential for the adequate functioning of the new supervisory architecture of Belgium's financial sector. In that respect, the IMF refers to the general cooperation agreement concluded between the FSMA and the NBB in March 2013, and recommends that the signatories implement the cooperation mechanisms mentioned in that agreement, a recommendation immediately acted upon by both authorities.

Finally, the IMF advises the FSMA to pursue its activities intended to achieve a level playing field for all financial products, and to continue supporting the European initiatives, more specifically those aimed at extending the application of the MiFID rules of conduct to the insurance sector.

1.3.3. Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) is an intergovernmental body aimed at establishing standards and furthering the implementation of the legislative, regulatory and operational measures to combat money laundering, the financing of terrorism, the financing of the proliferation of weapons of mass destruction as well as all other related threats to the integrity of the financial system.

In 2013 the FATF started the fourth round of mutual evaluations of its members. Belgium was one of the first countries to be evaluated as part of that fourth round. The FSMA is required to participate in that evaluation round as competent authority for the supervision of compliance with the legal and regulatory provisions on the prevention of money laundering and the financing of terrorism by certain categories of financial institutions subject to the provisions of the Law of 11 January 1993[33].

The FATF evaluations are aimed at verifying the extent to which its members comply with the 'international standards on combating money laundering and the financing of terrorism and proliferation', better known as the 'FATF recommendations'. Those recommendations have set out a comprehensive framework of measures which the FATF countries should implement in order to combat money laundering.

During the evaluation, the various Belgian actors involved must prove their formal compliance with the legal and regulatory framework to combat money laundering. Furthermore, they must provide evidence that they have efficient supervisory systems at their disposal that effectively allow them to realize their supervisory objectives.

The FSMA and the other actors involved have concluded the first phase of the evaluation procedure, that is, a self-assessment on the basis of questionnaires. The next phase of that procedure consists of an on-site inspection by a team of FATF assessors in July 2014. In 2015 the FATF evaluation will be concluded by the publication of the mutual evaluation report presenting the official conclusions of the evaluation exercise.

1.3.4. International Association of Insurance Supervisors (IAIS)

The FSMA has submitted an application for membership of the IAIS. This is an application for membership as secondary authority, alongside the NBB. The NBB has been a member of the IAIS since the Twin Peaks reform, as was the CBFA previously. Having regard to the FSMA's tasks with respect to the insurance sector, particularly those concerning supervision of rules of conduct and insurance intermediaries, the FSMA should be a member of the international organization establishing the standards for that sector.

The FSMA will obtain voting rights within the IAIS as soon as its application is formally approved by the annual meeting of October 2014 in Amsterdam. While awaiting this approval, the Executive Committee of the IAIS in February 2014 accepted the FSMA as provisional member.

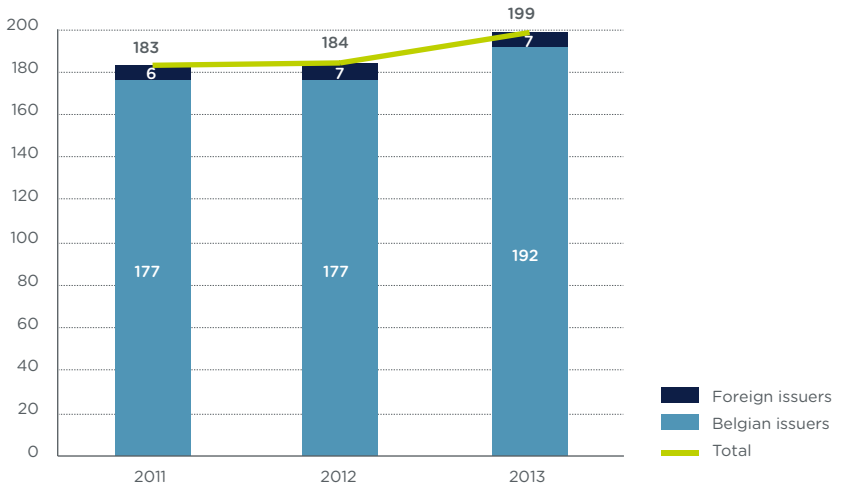
33 The financial institutions subject to the provisions of the Law of 11 January 1993 and the supervision of the FSMA are the portfolio management and investment advice companies, management companies of undertakings for collective investment, bureaux de change, mortgage companies, intermediaries in banking and investment services, investment firms, insurance intermediaries and market operators.

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

2.1. Supervision in figures

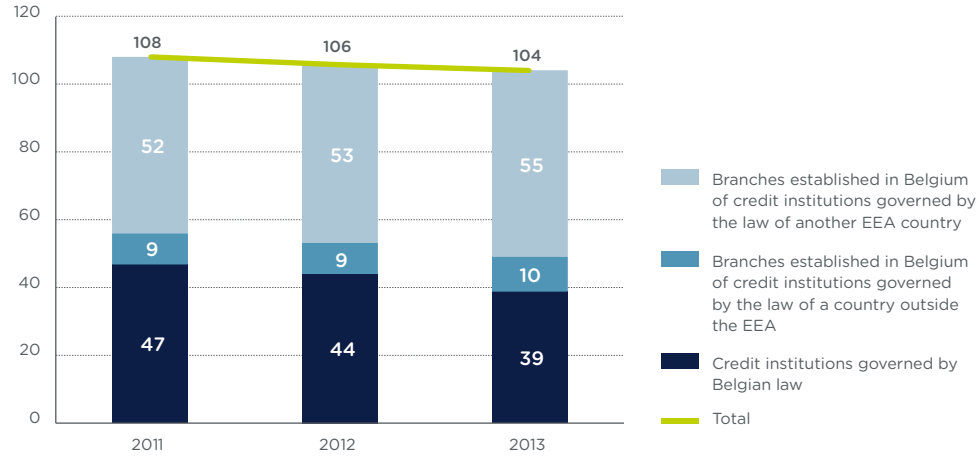
Listed companies (as at 31 December 2013)

Graph 1: Listed companies

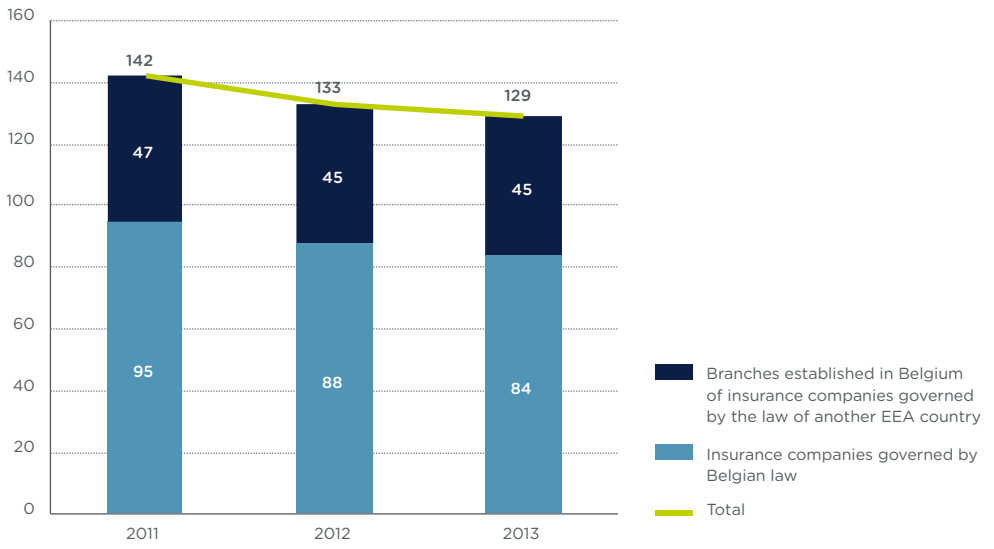


Institutions under product and conduct of business supervision

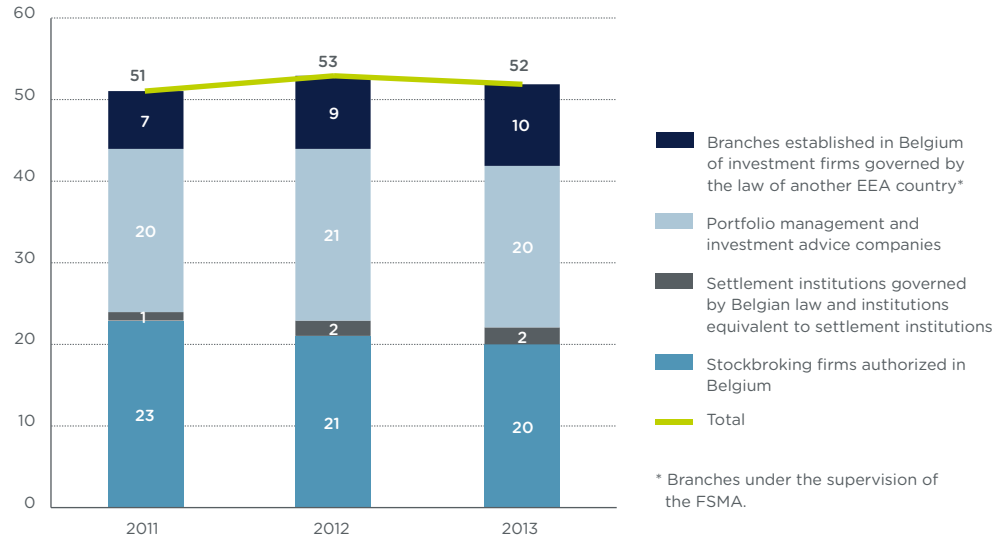
Graph 2: Credit institutions



Graph 3: Insurance companies



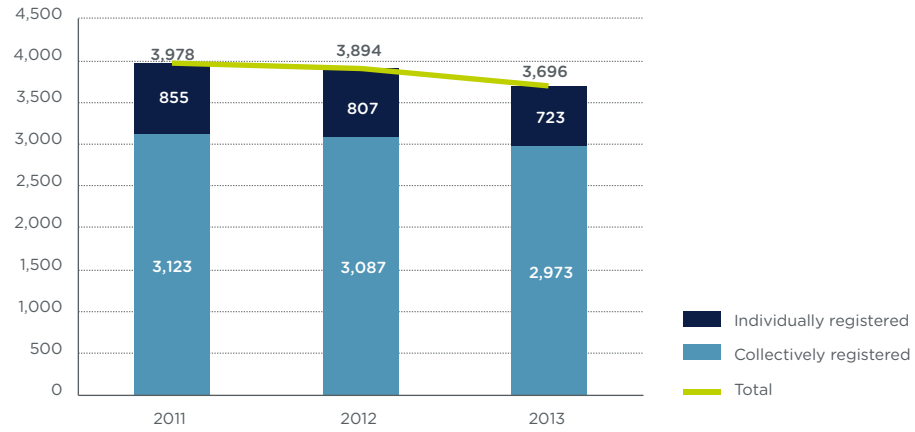
Graph 4: Other



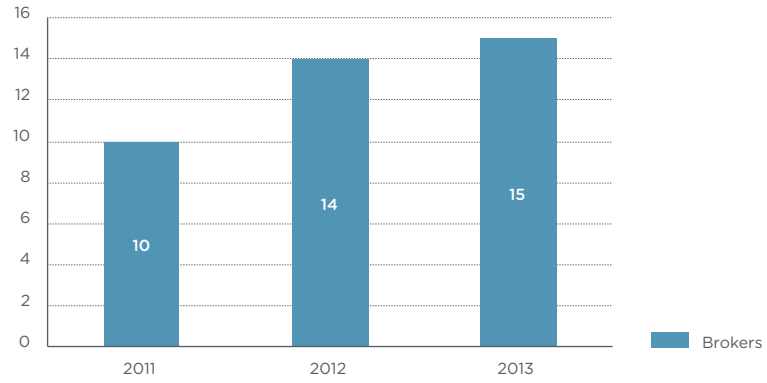
* Branches under the supervision of the FSMA.

Intermediaries

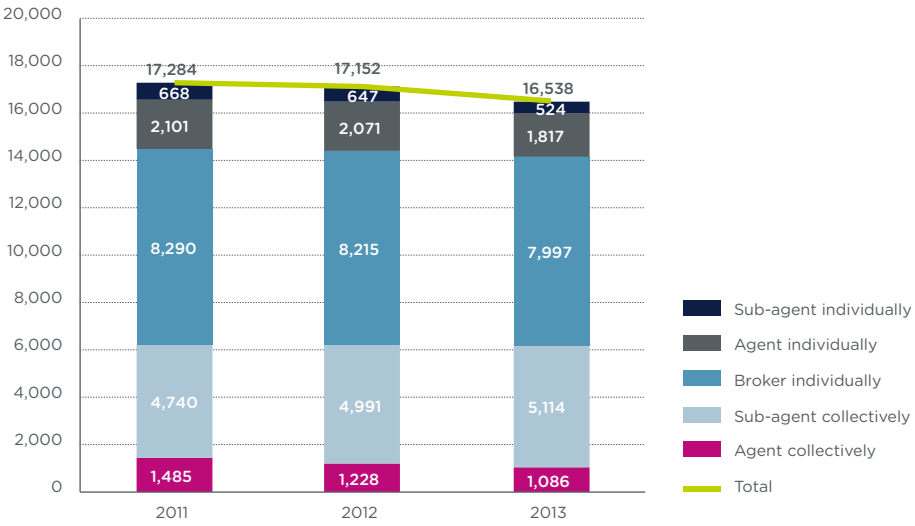
Graph 5: Intermediaries in banking and financial services (agents)



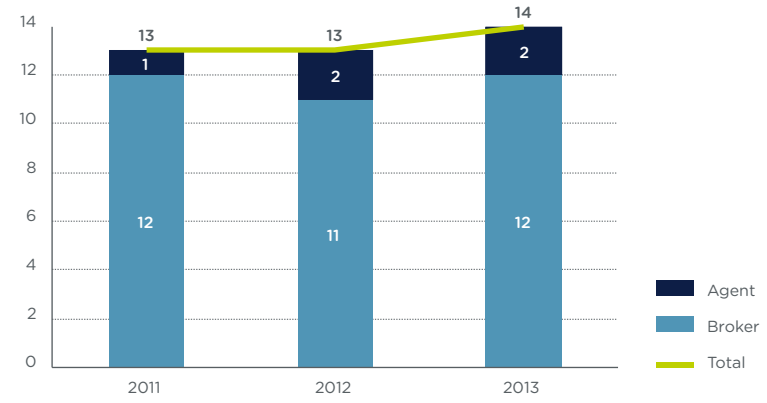
Graph 6: Intermediaries in banking and financial services (brokers)



Graph 7: Insurance intermediaries

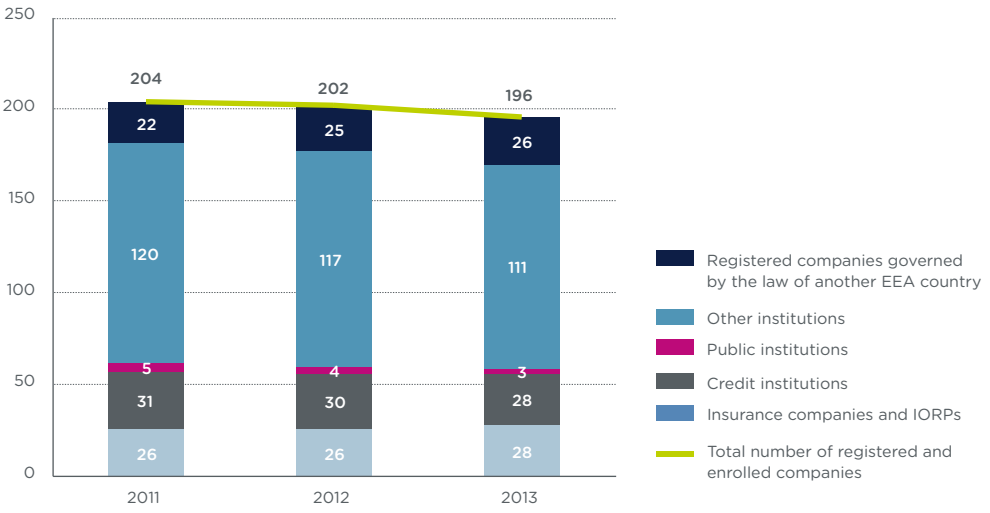


Graph 8: Reinsurance intermediaries



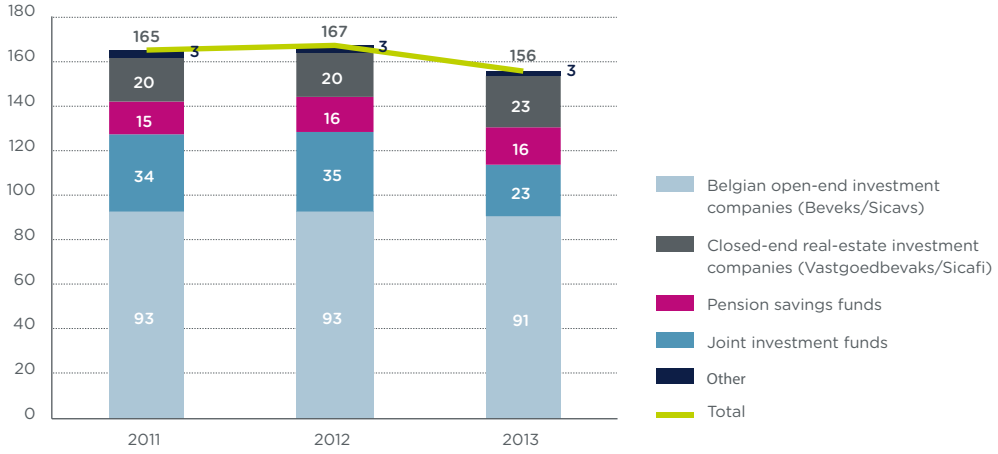
Mortgage companies

Graph 9: Mortgage companies

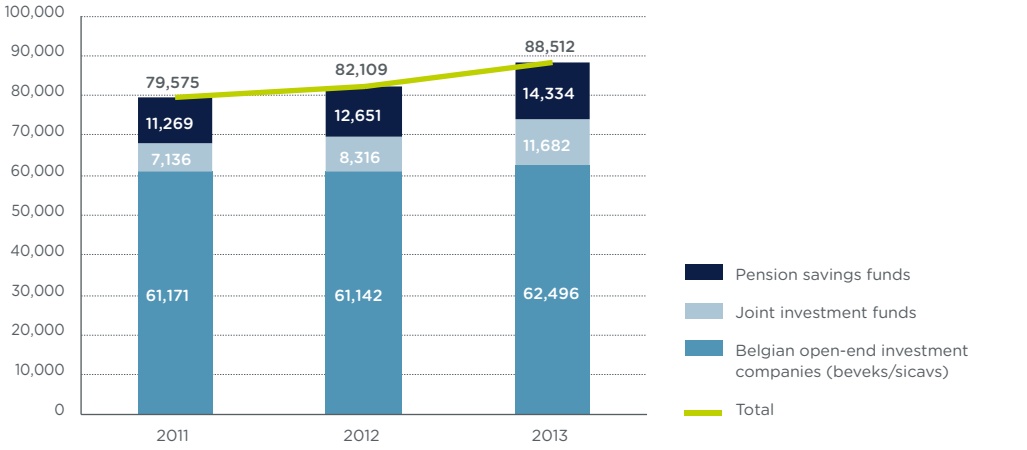


Undertakings for collective investment

Graph 10: Number of Belgian institutions

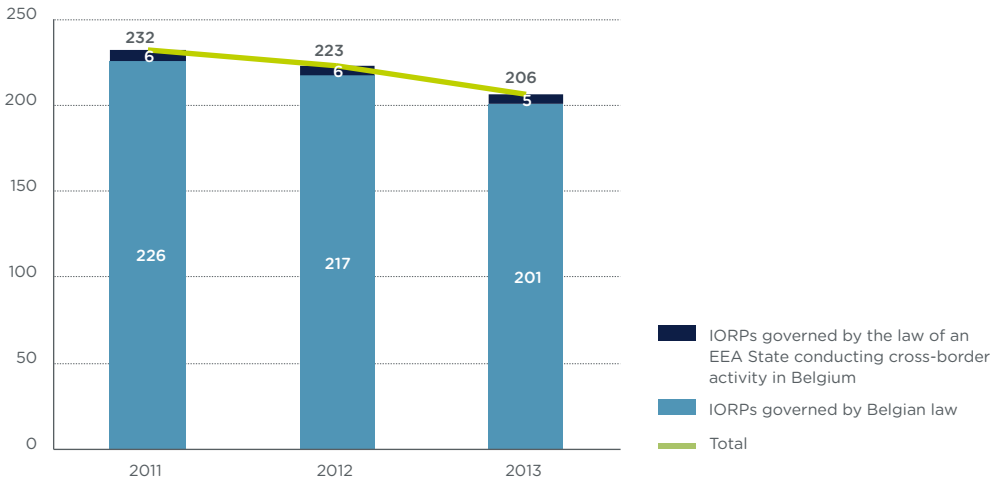


Graph 11: Asset value (in EUR million)

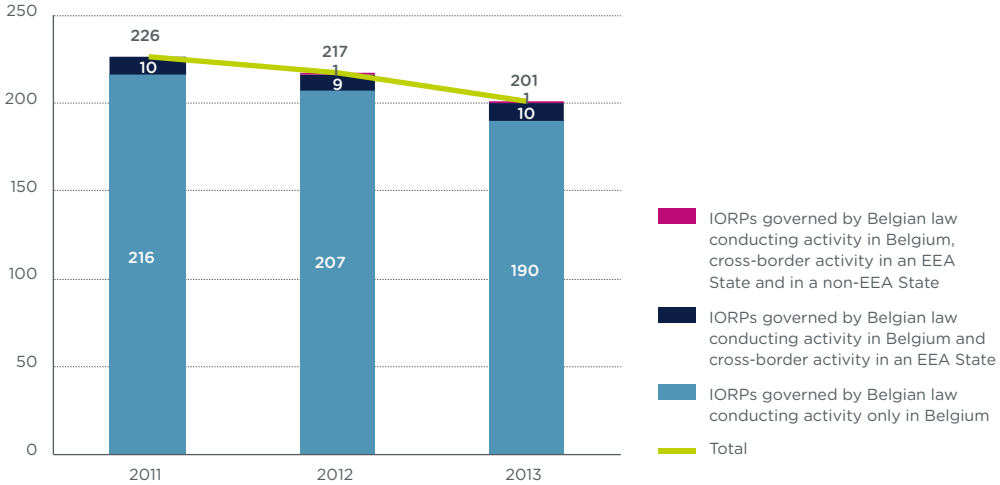


Institutions for occupational retirement provision (IORPs)

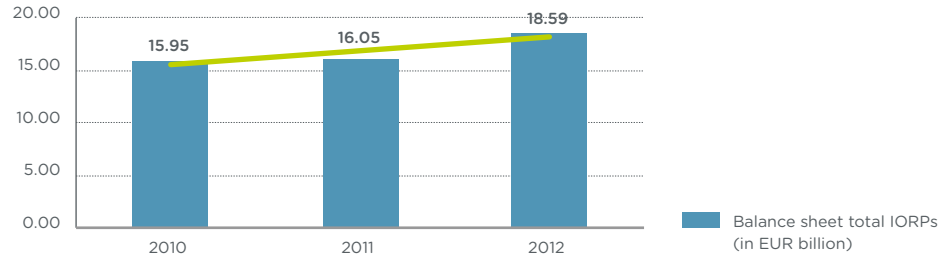
Graph 12: Number of IORPs



Graph 13: IORPs governed by Belgian law

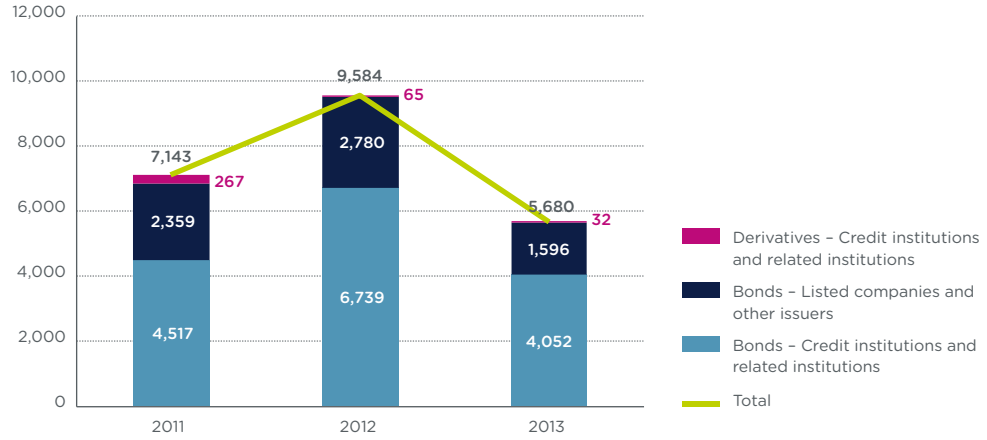


Graph 14: Balance sheet total IORPs (in EUR billion)

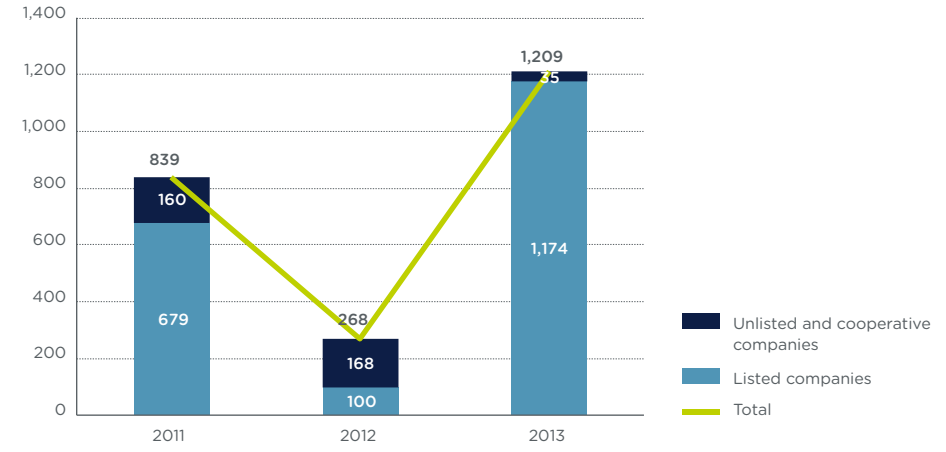


Public offers in Belgium

Graph 15: Volume of bonds and derivatives issued (in EUR million)



Graph 16: Volume of shares issued (in EUR million)



2.2. Areas of supervision

2.2.1. Supervision of listed companies and surveillance of financial markets

The FSMA's supervision of listed companies involves monitoring the information disseminated by these companies. The FSMA ensures that this information is complete, gives an accurate picture, and is made available to the public on time and in the correct way. The FSMA also oversees the fair treatment of all holders of securities in listed companies, and supervises the functioning of both the financial markets themselves and market infrastructures.

2.2.1.1. Supervision of listed companies

2.2.1.1.1. Supervision of financial transactions

This reporting period has shown a modest recovery of IPOs on the stock exchange. The bpost IPO was by far the most significant in terms of scale, followed by the real-estate UCI [*sicafi/bevak*] Quares (QRF) and the biotech company Cardio3 BioSciences. In addition, four real-estate UCIs raised additional share capital through the issuance of shares to the public. In 2013, the volume of shares offered to the public was also markedly higher than in previous years. There were eight public bond issues, of which five were handled through the accelerated authorization procedure.

The obligation to publish a prospectus applies not only to public issues of shares and bonds to be listed on the stock exchange but also to the admission to the trading (specifically on the regulated market) of shares or bonds issued privately. During the reporting period, 11 admission prospectuses were approved for privately issued bonds, of which four were for real-estate UCIs.

In 2013, the FSMA again handled a number of takeover bid dossiers. Three of these were voluntary exchange bids on bonds maturing in a relatively short period of time. These bids were launched by the issuers of the bonds themselves. The bids were aimed at extending ongoing funding and benefiting from favourable market conditions. In one case, the bid related to a portion of the bonds issued; in the two other cases the bids related to all the bonds issued[34].

34 See the present report, p. 103 [Available in the French and Dutch versions only].

2.2.1.1.2. Supervision of disclosure of financial information

Table 1: Issuers under supervision

	01/01/2012	01/01/2013	01/01/2014
Belgian issuers	**177**	**177**	**192**
Euronext Brussels[35]	161	163	172
Alternext	12	11	15
Foreign regulated markets	4	3	5
Foreign issuers	**6**	**7**	**7**
Euronext Brussels[36]	5	6	6
Alternext	1	1	1
Total	**183**	**184**	**199**

The number of issuers under supervision experienced a further increase, as can be observed in Table 1. The number of share issuers remained more or less constant thanks to the IPOs that took place over the course of the year. The number of issuers of which only bonds are listed did, however, increase, both on the regulated market[37] and on Alternext. The new issuers mainly issued bonds with a denomination per unit of at least EUR 100,000.

The supervision of listed companies, which in principle is ex post, is conducted with reference to a selection model based on risk and rotation. This is the same selection model as that used in previous years. What is new is that, during the selection, account is now taken of the relevance for the companies of the key points established for supervision. The selection model determines which companies undergo more thorough supervision. The FSMA determines which information in particular will be scrutinized for the companies selected. It does so taking account of the risks identified for each company and the special points for attention that have been noted for the supervision.

The FSMA's supervision is aimed at identifying whether the reporting obligations have been correctly met. A more thorough inspection to establish whether the financial reports give a truthful picture of the financial situation and of the scale and composition of the results, funds and cash flows, is in the first instance the task of the auditor. The estimates and opinions of the management are therefore tested only to a limited extent by the FSMA.

In certain cases, the FSMA adapts the supervision plan already established in light of events on the market or within the companies themselves. Companies that have not been selected do not in principle undergo more thorough supervision. However, an ad hoc supervision of these companies is possible if the FSMA becomes aware of certain facts. The FSMA is also open to dialogue with companies and/or their shareholders, for example with reference to the accounting treatment of transactions or the application of the transparency legislation.

35 Including public issuers (the State, the Communities, the Regions and the local authorities), real estate certificates and undertakings for investment in debt securities.
36 Issuers that have chosen Belgium as their home Member State as regards their obligations with respect to periodic and certain ongoing information.
37 The number of public bond issuers rose from 3 on 1 January 2013 to 12 on 1 January 2014.

Points for attention

Every year, the FSMA identifies particular points requiring the attention of the supervision of financial information provided by listed companies. The points for attention identified by the FSMA in 2013 for the supervision of 2012 financial information were in line with the priorities that ESMA had established for the supervision of 2012 financial statements. The FSMA has included five particular points for attention for the supervision of 2012 financial information.

The first point for attention was the application of IFRS 7 (Financial instruments: disclosures). The information the audited companies provided on their exposure to risks arising from financial instruments was inspected as well as the provision of information on the extent and type of risks. Further to this matter, the FSMA participated in the ESMA "Task Force on the comparability of financial statements of financial institutions". This working group has scrutinized a number of aspects of the financial statements of 39 large European financial institutions. ESMA has published a report[38] on this subject.

The second point for attention was the application of IAS 39 (Financial Instruments: recognition and measurement). Attention was focused on two areas in particular. One was the application of the criterion of "significant or prolonged decline" in the fair value of an investment in an equity instrument below its cost as objective evidence of impairment. The second area was the accounting treatment of loans that were adjusted as a result of the borrower's financial difficulties.

The third point for attention was IAS 19 (Employee benefits). With regard to this matter, the FSMA conducted a study on post-employment benefits. The approach and results of this study will be explained in further detail in this report[39]. The explanatory notes on employee benefits will be a significant point for attention of the FSMA, along with the points identified by ESMA, for the supervision of consolidated financial statements of listed companies for the 2013 financial year.

IAS 36 (Impairment of assets) continued to be a point for attention in 2013 after the FSMA published a follow-up study in 2012 on the provision of information on goodwill. The reason IAS 36 has continued to be a point for attention is that a period of sluggish economic growth increases the likelihood of impairment needing to be booked.

The fifth and last point for attention was IAS 37 (Provisions, contingent liabilities and contingent assets). This involved supervising the information provided on the different classes of provisions.

In its supervision of consolidated financial statements for the 2013 financial year, the FSMA has based its key points for attention on the priorities determined by ESMA for the supervision of 2013 financial statements. The points for attention by the FSMA in 2014 are: impairment of non-financial assets, valuation of and provision of information on post-employment benefits; valuation of and provision of information on fair value; provision of information on significant principles of financial reporting; assessment and sources of estimation uncertainty; valuation of financial instruments and provision of information on risks associated with these instruments, especially relevant for financial institutions.

38 Review of accounting practices, comparability of IFRS financial statements of financial statements in Europe (ESMA/2013/1664).
39 See the present report, p. 39.

Disclosure of information

Since the beginning of 2011, all regulated information from companies listed on Euronext Brussels and Alternext is available on STORI. This is a database created by the FSMA which can be accessed by anyone via the website[40]. It makes it possible to conduct online searches with different search criteria. STORI already contains more than 7,500 documents.

The FSMA strictly supervises compliance with the statutory deadlines for publishing periodic information. Publishing this information on time is very important to ensure the transparency, integrity and proper functioning of the market. For this reason, the FSMA has published warnings in May and September of the year under review. Issuers that had not complied with the statutory deadline for publishing the annual and half-yearly financial report were named in those warnings.

The FSMA also suspended the listing of a British issuer that is listed only on Euronext Brussels. This issuer had still not published its 2013 half-yearly financial report several weeks after the statutory deadline. The FSMA took this measure despite the fact that Belgium is only the host Member State for the issuer concerned. The listing was resumed only after the publication of the 2013 half-yearly financial report, which also included a trading update for the third quarter.

In 2013, the FSMA received 281 transparency notifications (compared to 253 in 2012). These are notifications regarding upward or downward crossing of certain statutory or regulatory thresholds with regard to the shareholding of a listed company.

At the beginning of 2013, the FSMA published a communication with recommendations on the content of notices convening general meetings[41]. This communication included a number of recommendations illustrated with examples on the specific points that must be included in such a notice[42]. The communication also includes more general recommendations for improving the readability of such notices. Over the reporting period, the FSMA updated both the circular on the obligations of issuers[43] and the circular on eCorporate[44].

40 Stori.fsma.be.
41 Communication FSMA_2013_06.
42 Such as the description of the conditions for being admitted to a general meeting, information on the right to ask questions, on the procedure to be followed for voting by proxy, on where certain documents can be obtained, etc.
43 Circular FSMA_2012_01.
44 Circular FSMA_2013_16.

Publication of studies

The FSMA conducted a study[45] on the provision of information in consolidated financial statements for the 2012 financial year by Belgian listed companies with significant defined benefit plans. From this study it emerged that on the whole, companies have applied the information requirements in IAS 19 (employee benefits), as in force in 2012, quite accurately.

However, in a considerable number of cases there was insufficient disaggregated information to allow readers of the financial statements to form a clear understanding of the characteristics of the pension plans, the associated risks and the context of actuarial assumptions. Equally, very little information was provided about the sensitivity to certain assumptions of the figures reported.

The study has shown that practically all the companies concerned report the expenses and income associated with the defined benefit plans in the statement of profit and loss and in the presentation of other comprehensive income. IAS 19 also requires disclosure of the line item in which an expense is recognized. This information is not always provided. The FSMA insists on the importance of such information being provided.

It emerged from this study that the specific terminology used in IAS 19 to indicate various types of employee benefits is not used consistently throughout the financial statements. This gives rise to some doubt as to the correct accounting treatment of certain employee benefits.

With the publication of this study, the FSMA also wishes to draw attention to a number of changes in the disclosure requirements in IAS 19. These changes will apply for the first time to the financial statements for the 2013 financial year.

Dialogue at a national level and participation in international activities

As part of its brief to supervise listed companies, the FSMA plays an active part in numerous national and international forums. At a national level, the FSMA engages in regular dialogue with Euronext and the Listed Companies Committee of the Federation of Belgian Enterprises (FEB/VBO). The FSMA also takes part in the permanent working group of the Committee for Corporate Governance and consults with the Belgian Institute of Registered Auditors (*Institut des réviseurs d'entreprises/Instituut van de Bedrijfsrevisoren*).

At an international level, the FSMA participates in a series of working groups within ESMA. The FSMA participates actively in:

- the Corporate Finance Standing Committee (CFSC), which coordinates all activities relating to corporate governance, prospectuses and notifications by major shareholders;
- the Corporate Reporting Standing Committee (CRSC), where the topics of discussion include bookkeeping, audit, periodic reporting, and the storage of regulated information;
- the European Enforcers Coordination Sessions (EECS), the standing group within ESMA where emerging issues and decisions by supervisory authorities regarding the application of IFRS are discussed. In 2013, the FSMA presented three Belgian cases to the EECS: seven decisions of the FSMA were discussed in the EECS;
- the IFRS Project Group, where IFRS issues are discussed and the IFRS approval process within the EU is monitored.

45 Study 43: "Considerations regarding the information about post-employment benefits disclosed by listed companies in their 2012 annual financial statements" is available in English on the FSMA website.

2.2.1.2. Supervision of financial transactions of non-listed companies

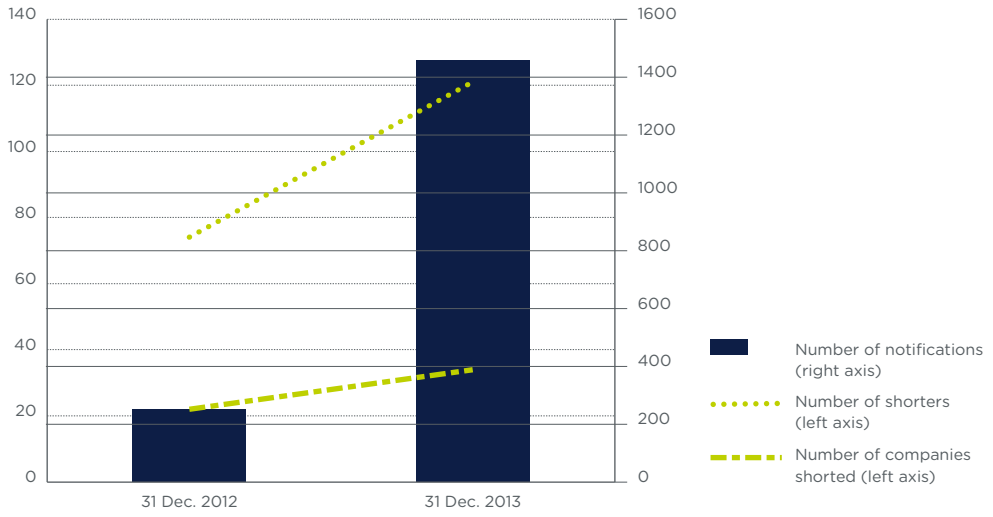
In addition to handling dossiers of listed companies, the FSMA also deals with those for public offers of securities by non-listed companies. In 2013, there were 12 public offers of securities by cooperative companies, which is more than in previous years. The total issue volume of these cooperative share placements has, however, fallen sharply as compared with previous years, a decline that can be attributed almost entirely to the lower volumes issued by cooperative companies in the financial sector[46]. In 2013, a further five dossiers for public offers of securities by non-listed companies were handled, of which four were from tax shelters for investments in audiovisual productions.

2.2.1.3. Supervision of financial markets

Short selling

The legislation on short selling is in force since 1 November 2012. Graph 17 shows how many different companies were shorted by how many different shorters that fell under the disclosure requirements[47], and how many disclosures this led to after two and fourteen months, respectively, of entry into force of the legislation.

Graph 17: Short selling



Any net short positions amounting to 0.2% or more of the share capital of the company concerned must be disclosed to the FSMA. The FSMA publishes disclosures of positions of 0.5% or more on its website.

46 See also graph 16 in this report, p. 35.
47 By way of reminder, since 1 November 2012 investors must notify the FSMA of their net short positions in Belgian shares that represent more than 0.2% of the issued share capital. Above that level, additional reporting thresholds apply for every interval of 0.1%. Where a net position exceeds the threshold of 0.5% over and above that figure, the positions are published on the website of the FSMA.

Analyses

The Supervision of Financial Markets department carries out a preliminary analysis where there are indications of possible market abuse. These indications may come from the market surveillance unit's own means of detection, but also from communications by intermediaries (investment firms), from other supervisory authorities or from market operators. In 2013, 27 analyses were initiated. Of these, 13 were submitted to the investigations officer and 6 were dropped.

Monitoring market transparency

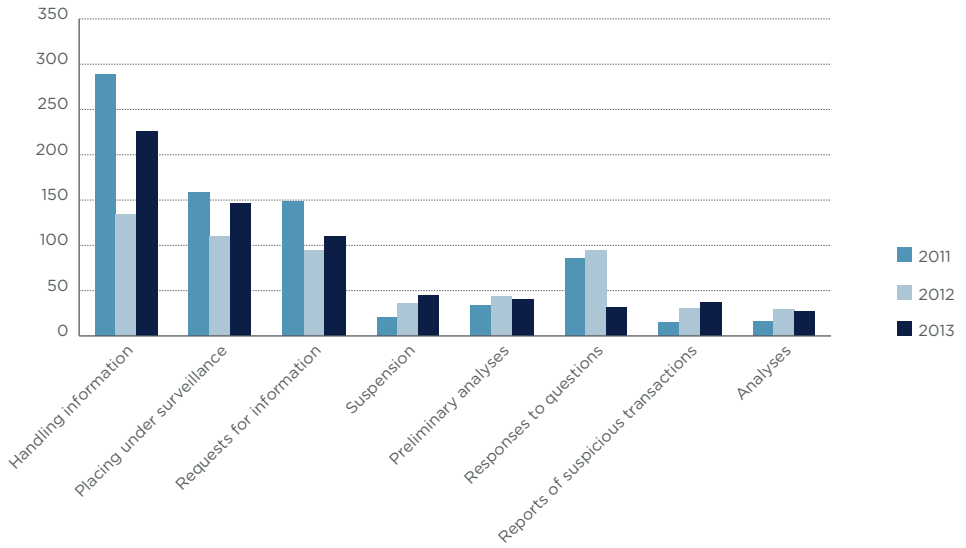
The FSMA supervises financial market transparency and has a room specially designed for this purpose (the market surveillance unit). This room is equipped with all the traditional information instruments that are used in market rooms. This includes real-time access to the Euronext markets and the European MTFs on which Belgian shares are traded, a link to the major electronic distributors of financial information, the financial press, studies by financial analysts on listed companies, and the information published by those companies.

The market surveillance unit ensures the proper provision of information to the markets. It does so by supervising compliance by listed companies with their obligations as regards the disclosure of privileged information both with respect to its completeness and to the correct dissemination of that information. Alongside this, the task of the market surveillance unit includes detecting situations or behaviour that may constitute market abuse.

The market surveillance unit, in order to report on its activities, splits these activities into several categories: handling information received, placing shares under surveillance, requests to issuers or other market participants for information, suspensions, preliminary analyses (more thorough examination of transactions that are not yet under formal investigation), responses to questions received and formal analyses. Graph 18 shows the activity of the market surveillance unit in figures and also shows the number of suspicious transactions reported.

In 2013 an increase was noted in the core activity of the market surveillance unit as compared with 2012. This is likely to be the result of increased activity on the stock market. The number of suspensions increased although these were usually technical suspensions, especially to allow private placements in the form of accelerated bookbuilding. An increase can also be seen in the number of reports of suspicious transactions, which appears to be a result of the FSMA communication addressed to compliance officers on the subject and of the update to the circular pertaining thereto.

Graph 18: Market surveillance unit activity 2011-2013



Transaction reporting

In order to evaluate the quality and thoroughness of transaction reporting, the FSMA in 2013 conducted quality tests on the relevant data. The tests were fine-tuned in collaboration with the other competent authorities that are members of ESMA. On the whole, the intermediaries subject to a reporting obligation who were notified that there were gaps in their reporting remedied these gaps adequately. The FSMA intends to conduct such tests more systematically in the future.

These tests are part of the work to prepare for the introduction of the future MiFID II toolbox, which provides for a more consistent harmonization of the national systems for collating information. As part of this preparatory work, the FSMA has organized an informal consultation on the reporting systems of different trading scenarios in parallel with the other members of ESMA.

Following the political agreement reached by the Council of Ministers and the European Parliament on 14 January 2014, the MiFID II toolbox will have to be published in the Official Journal of the European Union and enter into force at the start of 2017. In the meantime, ESMA needs to develop a series of technical standards on reporting, on which it intends to organize a round of sectoral consultations over the next few months. In addition to extending the scope of the reporting obligation to other categories of markets and instruments, additional information will need to be collected such as a unique identifier for the client and trader and the indication, where applicable, that a transaction relates to short selling. The intention here is to make reporting a more complete supervisory tool.

The FSMA is competent for the market supervision of trading in Belgian government securities since 1 April 2012. Since then, the FSMA receives specific transaction reporting from primary dealers in addition to the current transaction reporting based on MiFID. With a view to improving the quality of reporting, in 2013 the FSMA has conducted a comparative study on the scale and cause of differences in transaction volumes reported through both channels. This study has already led to some improvements and will be continued into 2014.

2.2.1.4. Supervision of market infrastructures

Acquisition by InterContinentalExchange of NYSE Euronext

On 19 December 2012, InterContinentalExchange (ICE), which has its headquarters in Atlanta, USA, announced the takeover of NYSE Euronext. NYSE Euronext is the indirect owner of Euronext Brussels NV/SA, which is the market operator of the Belgian regulated markets. This transaction causes an indirect change of control of Euronext Brussels NV/SA and has an impact on the regulated markets operated by Euronext Brussels NV/SA.

The FSMA studied the planned takeover with the Euronext College of Regulators ('College'). This College is made up of the supervisory authorities of Euronext NV (Belgium, the Netherlands, France, the UK and Portugal). The College has set up a special working group, in which the FSMA actively participates. The FSMA in particular focused its attention on the following points[48]:

- the effect of the takeover on the continuity, organization, management and resources of the Belgian regulated market as well as on the supervision by the FSMA, given the matrix organization that cuts across all business units of NYSE Euronext.
- the undiminished application of commitments undertaken by NYSE Euronext at the time of the merger of NYSE and Euronext in 2006;
- the adequate representation of the continental regulated markets within ICE;
- guarantees of the appropriate organization of Euronext NV NewCo to ensure that it is able to operate the markets appropriately.

Central Securities Depositories (CSD)

On 7 March 2012, the European Commission proposed the introduction of an EU-wide regulatory framework for Central Securities Depositories. At the moment, Central Securities Depositories in Belgium must comply with the CPSS-IOSCO Principles for Financial Market Infrastructures to guarantee safe and efficient settlement of securities. These are however soft law principles and cross-border settlement of securities remains a complex matter owing to the diversity of national market practices. The existing principles also pay little attention to minimizing the number of settlement fails, defined as transactions that are not settled on the envisaged settlement date. Settlement fails are, however, unfavourable to the efficient operation of the financial markets.

The draft CSD law must, inter alia, ensure the harmonization of national legislation and a minimization of settlement fails. In this regard, the proposal determines that a settlement institution must use a control system that registers settlement fails. The CSD must also report its findings to the competent authority at regular intervals.

48 See this report, p. 110 (available in the French and Dutch versions only).

Given that settlement fails are generally attributable to users delivering the securities late, or failing to deliver them at all, a Central Securities Depository must impose the necessary discipline on its participants by issuing fines to late clients. A buy-in procedure must also be started if the securities still remain undelivered four days after the planned settlement date[49]. A settlement institution will also be able to take additional disciplinary measures against repeat offenders.

Furthermore, the draft regulation stipulates a shorter[50] term for securities settlement. In this way, the CSD draft regulation not only aims to make securities settlement in Europe more efficient but also to harmonize the settlement period. The European legislature also wants Central Securities Depositories to comply with stricter organizational, prudential and operational requirements in order to remain financially sound and protect their users.

On 18 December 2013, the European Commission, the European Parliament and the European Council reached an agreement in principle on the final draft of the regulation. In 2013, the FSMA opted to take part in an ESMA task force responsible for developing technical standards for the implementation of the CSD draft regulation. A discussion paper was drafted in conjunction with other European supervisory authorities and central banks and was published at the beginning of 2014 to obtain feedback from the sector.

European Market Infrastructure Regulation (EMIR)

The FSMA has contributed to implementing the supervision of obligations arising from the entry into force of EMIR[51]. The institutions concerned were informed of their obligations arising from Title II of that Regulation through a joint communication[52] by the NBB and the FSMA. That information was published on the FSMA's website.

Given that a large number of non-financial counterparties were, until recently, not subject to the FSMA's supervision, specific campaigns were organized to raise awareness on EMIR[53], in particular aimed at professional associations and sectoral federations.

Given the complexity of this Regulation, the FSMA answers numerous questions from both financial counterparties and non-financial counterparties. Those questions can be sent to an e-mail address set up especially for that purpose[54]. The FSMA has also put information on its website on the code to be used to identify counterparties as part of the obligatory reporting on derivative transactions[55].

49 In such a buy-in procedure, securities are purchased from a third party if the initial seller continues to fail to deliver.
50 The draft regulation provides for a securities settlement term for transactions on the trading platform of no longer than two days (T+2), whilst the standard settlement period in Belgium is at present three days (T+3).
51 Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.
52 See the present report, p. 91 (available in the French and Dutch versions only).
53 With the exception of some listed companies to which EMIR applies, non-financial counterparties were until now not subject to supervision by the FSMA.
54 The e-mail address to use is EMIR@fsma.be; questions can also be sent to EMIR@nbb.be.
55 These are the pre-LEI-Legal Entity Identifiers allocated by one of the pre-LOU-Local Operating Units of the Global LEI System.

Since this is a European Regulation, all aspects of the obligations that arise therefrom apply with direct effect and in a harmonized manner on the territory of the Member States. The forum where the supervisory authorities can discuss these obligations is the ESMA Post-Trading Standing Committee, which the FSMA also attends.

Pursuant to the EMIR Regulation, non-financial counterparties established in Belgium that take positions in OTC derivative contracts above the regulatory clearing thresholds must notify ESMA and the FSMA thereof immediately.

Alongside this, financial counterparties were also asked to report any disputes over EUR 15 million that remain unresolved for 15 days or more to the FSMA[56].

The FSMA also sits on supervisory colleges, either as the authority tasked with the supervision of the trading platform to which the central counterparty provides services or as the competent authority that exercises supervision of the central securities depositories with which the central counterparty is connected. The FSMA is a member of six colleges of central counterparties governed by foreign law. These colleges are involved in the procedures for granting authorization to and the supervision of those counterparties.

2.2.2. Supervision of financial products

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

2.2.2.1. Transversal aspects of product supervision

2.2.2.1.1. Moratorium

In 2011, the FSMA called upon the financial sector not to distribute to retail investors structured products which are considered particularly complex. A structured product is considered particularly complex if it does not meet the four criteria laid down in the moratorium on the distribution of particularly complex products introduced by the FSMA. These criteria relate to the accessibility of the underlying asset, the strategy of the derivative component, the number of mechanisms used and the product's transparency. Financial institutions can sign on voluntarily to the moratorium since 1 August 2011.

56 In accordance with Article 15(2) of Commission Delegated Regulation No 149/2013 supplementing EMIR.

Number and type of products

Table 2: Structured products distributed since the launch of the moratorium (1 August 2011 – 31 December 2013)

	Number of products issued	Issue volume (in EUR million)[57]
Class 23	**205**	**9,614.8**
Under the moratorium	204	9,614.8
Opt-out	1	N.A.
Note[58]	**342**	**4,178.7**
Under the moratorium	338	4,178.7
Opt-out	4	N.A.
Term deposit	**10**	**149.7**
Under the moratorium	10	149.7
ICB	**148**	**5,254.0**
Under the moratorium	146	5,254.0
Opt-out	2	N.A.
Private Note[59]	**546**	**N.A.**
Under the moratorium	55	N.A.
Opt-out	491	N.A.
Total	**1,251**	**19,197.2**

Since the launch of the moratorium, the FSMA keeps an updated overview of structured products distributed in Belgium by distributors that have signed on to the moratorium. It emerges from this overview (see Table 2) that since the start of the moratorium, 1,251 products have been launched. Of these, 498 have done so under the opt-out regime and 55 in the form of Private Notes. The remaining 698 products represent an issue volume of EUR 19,197.2 million.

Half of this total volume was issued in the form of Class 23 products; UCIs represented 27% of the issue volume, Notes represented 22%, and structured deposit accounts 1%. In the second half of 2013, the percentage of Class 23 products fell. In terms of the number of products distributed, 48% were Notes, 29% were Class 23 products, 21% were UCIs and 1% were structured deposit accounts.

The distribution of particularly complex structured products under the opt-out regime was principally via Private Notes (98.5%).

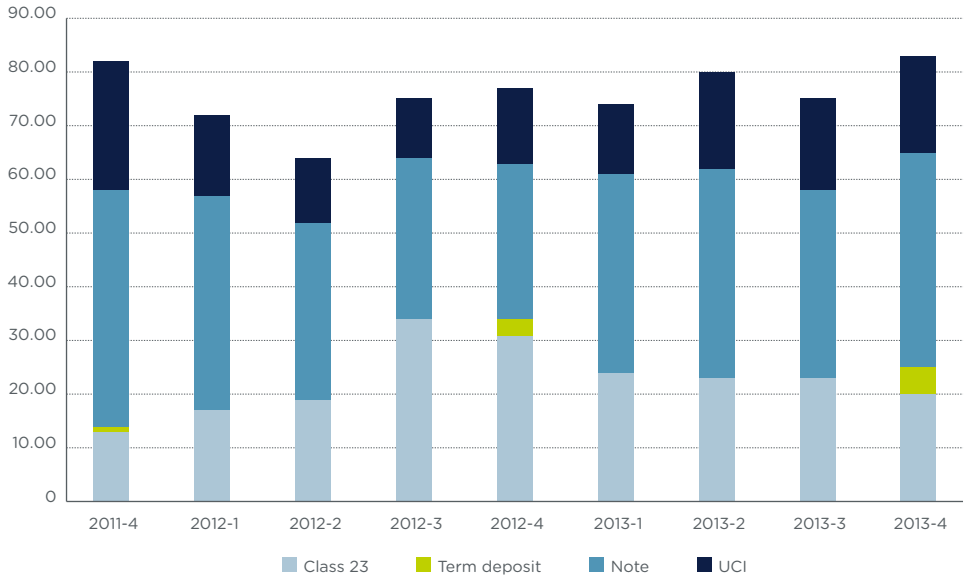
57 The FSMA has no data on the issue volume of the 55 Private Notes or of the products distributed under the opt-out regime. The opt-out regime offers distributors the option not to apply the moratorium to retail investors who hold deposits and financial instruments with the distributor with a value, at the time of distribution, of more than EUR 500,000. The opt-out applies only to the portion of the assets that exceeds EUR 500,000.

58 Notes are debt instruments issued as part of an offer that is of a public nature within the meaning of Article 3, § 2, of the Prospectus Law.

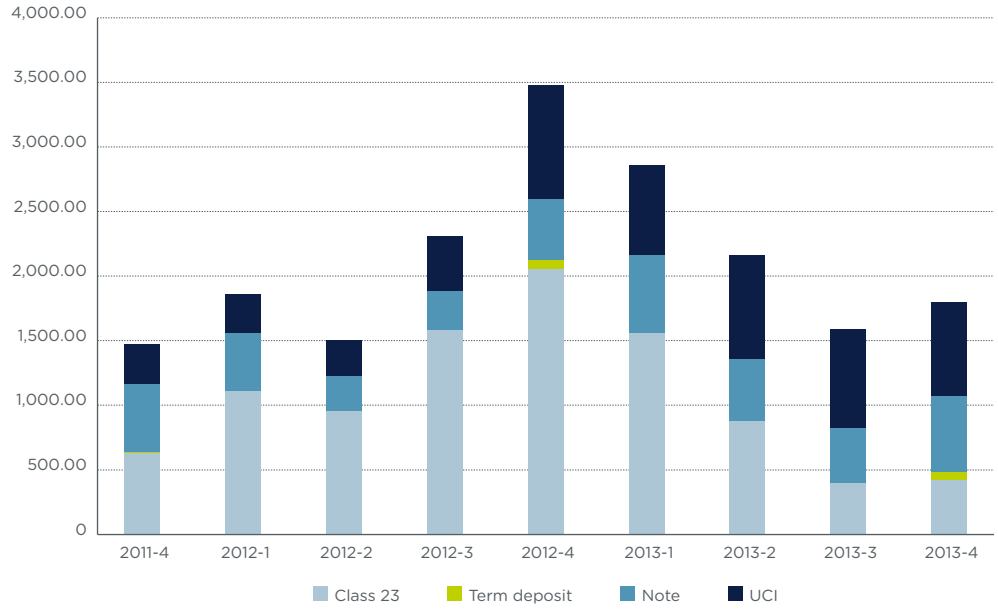
59 Private Notes are debt instruments issued as part of an offer that is not of a public nature within the meaning of Article 3, § 2, of the Prospectus Law.

Analysis since the launch of the moratorium

Graph 19: Evolution of the number of structured products distributed (per quarter)



Graph 20: Evolution of the issue volume of structured products distributed (in EUR million per quarter)



The number of structured products distributed per quarter since the launch of the moratorium has remained virtually constant. In terms of the issue volume, there was a decrease in the second half of 2013 that is due mainly to a fall in the issue volume of Class 23 products.

The moratorium stipulates that the underlying assets of a structured product must be accessible: the retail investor should be able to find information on the underlying assets through the usual channels such as the internet or the written press. As a result, some underlying assets are excluded.

In terms of issue volume, 60% of the structured products launched under the moratorium had a basket as their underlying. These are baskets that include shares, currencies and UCIs as well as indices. In 24% of the cases the underlying asset was an interest rate; 11% of the products had an index of securities and 4% an inflation rate as underlyings.

85% of the sums invested were in structured products with a guaranteed repayment of the invested capital at maturity, less any applicable entry charges and taxes. This percentage was 98% in the case of Notes and 92% for Class 23 products. As regards UCIs, only 60% of the sums invested were in products with capital repayment. These figures indicate that investors in structured products prefer those with guaranteed capital repayment at maturity, even though this limits the scope for structuring and thus also the potential yield.

Products that do not offer capital protection had either baskets (91%) or indices (9%) as their underlying assets. All structured products with interest rates or inflation indices as underlyings confer a right to capital repayment at maturity.

Table 3: Maturity of the structured products issued between 1 August 2011 and 31 December 2013 (excluding opt-outs and Private Notes)

	Less than 2 years	Between 2 and 5 years	Between 5 and 8 years	8 years or more	Total
Number of products	1	58	431	208	698
Total issues (in EUR million)	5.2	839.5	11,763.1	6,589.4	19,197.2

More than half the structured products distributed under the moratorium had a term of between 5 and 8 years (see Table 3). In addition to the influence of the low interest rates on the term of the products launched, a link can be seen between the term of a structured product and its legal form. Thus, 56% of the total issues linked to a Class 23 product had a term of more than 8 years, and 92% of the UCIs a term of between 5 and 8 years. In terms of issue volume, 94% of the products without a guaranteed capital repayment at maturity had a term of between 5 and 8 years. 82% of the amounts invested in products that had interest rates as the underlying assets were invested in products with a term of over 8 years.

In accordance with the moratorium, the formula for calculating product yields must not comprise more than three mechanisms. These do not, however, include mechanisms that are to the client's benefit. Measured in terms of issue volume, 38% of the products distributed under the moratorium comprised three mechanisms, 37% had two mechanisms, and 24% had only one mechanism. Products for which no mechanisms were used represented 1% of the issue volume. These products had inflation, interest rates, a securities index or a UCI as the underlying asset.

2.2.2.1.2. Supervision of advertising

The FSMA in general promotes sound advertising policies for financial products, with the aim of obtaining a more level playing field for the various types of financial products.

In 2013, the FSMA has focused particular attention on the supervision of websites relating to UCIs and regulated savings accounts. This consisted in supervising the advertising rules for UCIs and regulated savings accounts, and the structure of websites and lists of UCIs that can be consulted on these websites.

The websites supervised were those of credit institutions, investment firms, foreign UCITS and those of intermediaries in insurance and in banking and investment services. Sites subject to complaints or questions as part of an FSMA inspection were also checked.

The FSMA was able to identify a number of shortcomings as a result of this supervision. These included the offer of UCIs that were not registered on the FSMA's list, certain information missing or not updated, shortcomings with regard to legally required documents and disclaimers of responsibility for the content of the website. Based on these findings, the FSMA has had the sites concerned amended.

A point that continues to be under scrutiny in the supervision of advertising of structured products is the question of whether or not the advertising documents make the usefulness of the product concerned clear to the investor. The FSMA also ensures that the advertising allows circumstances under which a product will return a yield to be assessed.

In 2013, the FSMA contributed to the preparation of a royal decree on pre-contractual information and advertising rules. This royal decree aims to introduce a cross-sectoral approach to the format of information documents (following the example of the KIID) and of advertising for financial products.

The FSMA is also preparing for the new competences conferred on it by the Code of Economic Law. These will enable the FSMA, inter alia, to oversee whether advertising for financial products and services is in line with the rules contained in Book VI of the aforementioned Code, transposing the provisions of the Law of 6 April 2010 on market practices and the protection of consumers[60].

60 See the present report, p. 120 (available in the French and Dutch versions only).

2.2.2.2. Product-related aspects of supervision

2.2.2.2.1. Transactions in investment instruments

Table 4: Number of transactions in debt instruments[61]

	2011	2012	2013
Issues of debt instruments in which the capital is not subject to market risk through:	**228**	**217**	**243**
listed companies and other issuers	11	14	11
credit institutions and related	217	203	232
Issues of debt instruments in which the capital is subject to market risk through:	**45**	**14**	**9**
credit institutions and related	45	14	9

As Table 4 shows, in 2013 a total of 252 transactions in debt instruments took place. This represents an increase of 9% as compared with the 231 transactions that took place in 2012. As in 2012, the number of transactions in debt instruments with capital subject to market risk continued to decline. Transactions in debt instruments with capital not subject to market risk rose in 2013 by 12%.

In 2013, the FSMA approved a prospectus for the issue of contracts for difference (CFDs). A CFD is a contract between two parties who undertake to pay each other, at maturity, the difference between the initial value of the underlying asset and its value at the end of the contract term.

In the evaluation of this prospectus, particular attention was paid to the manner in which it illustrated how CFDs work and how the risks and costs attached to CFDs were explained. As a result, the risks are covered in the prospectus and a warning is included on the front page. This warning draws the investor's attention to the fact that the investment could generate a loss greater than the initial outlay and that positions should be actively monitored. A similar warning will be included in the advertising documents.

In general, when evaluating prospectuses, particular attention has been focused on the summary of the prospectus. The FSMA strives to ensure that these summaries are as comprehensible as possible to consumers.

Table 5 shows how many foreign (base) prospectuses were used in 2013 in connection with an offer programme in Belgium. These came to a total of 148 (base) prospectuses. A distinction was made between the types of financial instrument to which the (base) prospectus related.

61 The number of issues in 2011 is calculated based on the date of submission of the dossier to the FSMA; the number of issues in 2012 and 2013 is calculated based on the issue date.

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

	Shares	Debt instruments with/without capital risk	Warrants	Total
Base prospectus	0	103	4	107
Prospectus	11	30	0	41
Total	**11**	**133**	**4**	**148**

Table 6: Number of incoming approval declarations per supervisory authority

	Base prospectus	Prospectus	Total
AFM (Netherlands)	17	2	19
AMF (France)	17	5	22
BAFIN (Germany)	7	2	9
CSSF (Luxembourg)	38	25	63
FCA (United Kingdom)	18	6	24
Central Bank of Ireland (Ireland)	10	1	11
Total	**107**	**41**	**148**

Table 6 shows how many notifications the FSMA received from foreign supervisory authorities of (base) prospectuses approved by them. As in previous years, the Luxembourg supervisory authority, the CSSF, made by far the most notifications of (base) prospectuses approved by them (63). The British supervisory authority (the FCA), and the French supervisory authority (the AMF), were in second and third place, with 24 and 22 respectively.

In 2013 the FSMA granted a passport at the issuer's request to 11 transactions for which it had approved the prospectus. These passports were for 13 countries, including the Grand Duchy of Luxembourg (7), the United Kingdom (4), and Germany (4).

2.2.2.2.2. Regulated savings accounts

Over the last few years, credit institutions have substantially increased their offer of regulated savings accounts, with the total deposits on these accounts climbing to around EUR 250 billion. Although regulated savings accounts may at first sight appear fairly simple and standard, the way they work is rather complex and differs from one institution to another.

On 13 July 2012, the Minister of Finance, the Minister of Economy, the FSMA and Febelfin reached an agreement for the reform of savings accounts. This reform was aimed at improving the transparency of savings accounts for savers and making savings accounts easier to compare with each other. Four fundamental changes were introduced to regulated savings accounts in 2013, which are explained in further detail below.

The Royal Decree of 18 June 2013 introduced a number of information obligations relating to the distribution of regulated savings accounts. The content of that Decree is detailed in Chapter II of this report[62].

Subsequently, in a second Royal Decree dated 21 September 2013, the fiscal aspects of regulated savings accounts were considered[63]. This Decree contains a number of measures governing conditional offers and the payment of the income from regulated savings accounts. It was drafted in parallel with the Royal Decree of 18 June 2013 laying down information obligations, which it supplements.

First, the Royal Decree of 21 September 2013 prohibits attaching conditions to the application of a basic interest rate or a loyalty premium. As a result, it is no longer possible to offer a return exclusively to new clients, on 'fresh' money or to clients who have a privileged relationship with the credit institution. The following arrangements are not, however, to be considered to fall under the definition of 'conditions': a deposit of a minimum amount (and/or maximum amount) to the account, online-only management of the account, the saver's age (young saver accounts), restrictions on staff or partners of the credit institution's shareholder, restrictions on business savers and restrictions on legal persons or unincorporated associations.

Alongside this, the Royal Decree of 21 September 2013 on the one hand lays down the obligation of using 1 January as the value date for payment of the basic interest and on the other hand the obligation to pay loyalty premiums earned every quarter instead of once a year. Consider, for example, that an amount is deposited to an account on 20 January 2014: the loyalty premium for that amount is earned on 20 January 2015. This loyalty premium is paid out on 1 April 2015 and begins to accrue interest at the latest on the following day. This new rule brings forward the actual payment of the loyalty premium.

Finally, the aforementioned Royal Decree provides for the transfer of the loyalty premium. The first three transfers in a year of a minimum of EUR 500 to another regulated savings account held by the saver in the same bank have no impact on the loyalty premium.

Two instruments were also introduced as a result of the agreement in principle reached between the Minister of Finance, the Minister of Economy, the FSMA and Febelfin.

The first of these is a savings account simulator, which has been in operation since January 2013 on the Wikifin.be website. The savings account simulator gives savers an overview of the potential return on their savings, per savings account and per institution, based on a set of parameters that they have entered.

The second instrument is the interest calculator, which the majority of credit institutions put in place for their clients from 1 January 2014, which shows savers a calculation of the interest (both basic interest and loyalty premiums) earned on their account and allows them to calculate, for example, the impact of any withdrawals.

62 For more information see this report, p. 123 (available in the French and Dutch versions only).
63 Royal Decree of 21 September 2013 amending the Royal Decree implementing the Belgian Income Tax Code of 1992 with regard to the conditions for exemption of savings deposits envisaged in Article 21, 5°, of the Income Tax Code of 1992 and the conditions for offering rates on the latter.

As part of the new rules for regulated savings accounts, the FSMA oversees the documents containing essential information for savers. In Belgium, there are 36 credit institutions that offer regulated savings accounts. Together, these institutions offer around 120 regulated savings accounts. For each account of this kind, an information document must be approved by the FSMA any time there is any amendment to the conditions of the account. In 2013, the FSMA approved more than 400 of these documents.

2.2.2.2.3. Thematic citizens' lending

The legislation on thematic citizens' lending[64] confers on the FSMA a number of supervisory tasks. The FSMA oversees whether the products offered as thematic citizens' loans comply with all legal requirements. These requirements pertain, inter alia, to the term of the products, the minimum outlay, the product coming under the deposit guarantee scheme, the accessibility of the products for retail investors and the use of an interest rate in line with market standards.

Furthermore, the FSMA also conducts ex ante supervision of certificates of deposit and term deposits offered under the legislation on thematic citizens' lending to check whether these documents include the information prescribed by the Law. The FSMA grants its approval to documents that contain the aforementioned information.

Over the first two months of 2014, the FSMA granted approval to 49 certificates of deposit and term deposits offered by 13 credit institutions under the thematic citizens' lending legislation. The products offered have a term of five to ten years.

64 Law of 26 December 2013 laying down miscellaneous provisions on thematic citizens' lending. See also the present report, p. 125 (available in the French and Dutch versions only).

2.2.2.2.4. Undertakings for collective investment

Table 7: Change (in number) of Belgian undertakings for collective investment)[65]

	2011	2012	2013
Belgian open-ended investment companies *(bevek/sicav)*	93	93	91
Number of sub-funds at end of period	*1,936*	*1,618*	*1,511*
of which money sub-funds	*13*	*13*	*9*
Joint investment funds[66]	*34*	*35*	*23*
Number of sub-funds at end of period	*0*	*1*	*23*
Pension savings funds[67]	15	16	16
Total	142	144	130
Closed-ended real-estate investment companies[68]	20	20	23
of which institutional closed-ended real-estate investment companies[69]	*3*	*5*	*7*
Undertakings for investment in debt securities[70]	2	2	2
Number of sub-funds at end of period	*0*	*0*	*0*
Private equity closed-ended investment companies (privak)[71]	1	1	1
Grand total	165	167	156
Number of sub-funds at end of period	*1,936*	*1,619*	*1,534*

Table 8: Change in capital (open-ended UCIs - in EUR million)[72]

	2011	2012	2013
Belgian open-ended investment companies *(bevek/sicav)*	61,170.8	61,141.8	62,496.2
Joint investment funds	7,135.7	8,316.1	11,681.7
Pension savings funds	11,268.7	12,650.8	14,334.1
Total	**79,575.3**	**82,108.7**	**88,512.0**
of which money sub-funds	4,361.9	967.8	1,015.2

The total net asset value of UCIs governed by Belgian law grew in 2013 to EUR 88.5 billion. This represents an increase of 7.8% as compared with 2012. For the first time since 2007, the amount of subscriptions was higher than the requests for repayment. The net contribution of capital at the end of 2013 amounted to EUR 3.7 billion.

65 As at 31 December of each year.
66 Exclusive pension savings funds.
67 Pension savings funds recognized under Article 14516 of the Income Tax Code 1992.
68 Investment companies investing in real estate and regulated by the Royal Decree of 7 December 2010.
69 Institutional investment companies investing in real estate and regulated by the Royal Decree of 7 December 2010.
70 Undertakings for investment in debt securities, regulated by the Royal Decree of 29 November 1993.
71 Investment companies investing in unlisted companies and growth businesses and regulated by the Royal Decree of 18 April 1997.
72 As at 31 December of each year.

With regard to the number of UCIs, a sharp fall (-34%) can be seen in the number of joint investment funds. This fall is predominantly the result of the new provision in the law that allows sub-funds to be created within these funds. This has encouraged promoters to merge different funds together to streamline their range. The number of sub-funds within funds rose from 1 to 23.

For open-ended UCIs governed by Belgian law as a whole, there was a decrease of 6.6% in the number of sub-funds. This comes as a result of the distribution of certain sub-funds being stopped and the merging of sub-funds.

Table 9: Closed-ended real-estate investment companies

Closed-ended real-estate investment companies	2011	2012	2013
Issues and/or admissions of shares, bonds or convertible bonds (for which a prospectus or a securities note with a reference document must be approved by the FSMA)	5	3	9
Number of registration documents approved by the FSMA (the annual report of a closed-ended real-estate investment fund can, in the context of a transaction, be used as part of the prospectus)	7	7	7

In 2013, the FSMA has granted an authorization to a new real-estate UCI called QRF Comm. VA, and registered it on the list referred to in Article 33 of the UCI Law. The FSMA has also approved the prospectus for the IPO of this real-estate UCI.

In 2013, the FSMA contributed to the work to transpose the AIFMD. The FSMA also provided information to the sector relating to the transitional period for the implementation of the AIFMD rules and raised awareness in the sector of the need to prepare for the introduction of these rules. The FSMA has signed Memoranda of Understanding (MoUs) with 34 supervisory authorities from non-EEA countries[73].

In the year under review, the FSMA focused further attention on the problem of valuing the properties in real estate UCIs. Downward pressure can be seen on the value of properties in the portfolio of certain real estate UCIs. In the exercise of its supervision, the FSMA aims to ensure that real estate UCIs communicate transparently on occupancy, changes in rental income and their policy on incentives and rent-free periods.

The FSMA has also closely monitored the amount of goodwill recognized under assets on the balance sheets of real estate UCIs if this is required for reasons of materiality. In a number of cases, the FSMA has requested additional information on the procedures and hypotheses used for the calculation of the impairment test. The investigation of these records led in one specific case to the company concerned adjusting the calculation, which led in turn to a substantial write-down of the amount of goodwill.

2.2.2.2.5. Insurance

Information documents

In 2013, the FSMA, in conjunction with the professional associations concerned, developed info sheets on life insurance. These sheets include essential information on life insurance such

73 See the present report, p. 140 (available in the French and Dutch versions only).

as the objectives, risks, return and costs involved. The documents will enable consumers to compare the different products on the market and make informed investment decisions.

Complaints handling

On 7 June 2012, EIOPA published guidelines on complaints handling by insurance companies. These guidelines are addressed to the national supervisory authorities, which are obliged to ensure that the guidelines are suitably integrated in the legislative or supervisory practices of their Member State.

Belgium communicated to EIOPA its intention to adopt these guidelines on 17 January 2013. The FSMA, as the competent supervisory authority, has prepared a draft Royal Decree for the application of these guidelines. This Royal Decree can be passed on the basis of the legal provision[74] that gives the King the power to expand the rules of conduct with provisions that apply to complaints handling in order to promote the honest, fair and professional treatment of the interested parties.

The draft Royal Decree on complaints handling by insurance companies has been sent to the competent Ministers.

This draft Royal Decree covers three aspects in particular. Firstly, there are provisions on the insurance company's complaints management policy and organization. These provisions must ensure that complaints are handled in an independent and objective way within the insurance company and that, where necessary, appropriate corrective measures are taken. Secondly, there are provisions on internal reporting on complaints management and external reporting to the supervisory authority. Thirdly, the preliminary draft includes provisions regulating relations between the person making the complaint and the insurance company.

The preliminary draft Royal Decree provides for the application thereof to insurance companies governed by Belgian law, including mutual health funds for their transactions in Belgium. This Decree will also apply to branches established in Belgium and to insurance companies that conduct insurance business in Belgium through the freedom to provide services, for their transactions in Belgium.

2.2.3. Supervision of compliance with rules of conduct

The FSMA is responsible for supervising compliance with the rules of conduct by regulated undertakings. These rules are intended to ensure that the undertakings in question act honestly, fairly and professionally in accordance with the best interests of their clients. The rules of conduct require regulated undertakings to have a suitable organizational structure and use the required procedures to ensure the correct and diligent treatment of consumers of financial services. This includes correct information provision, suitable management of possible conflicts of interest, best execution of clients' instructions and the sale of products matching the client's risk profile.

74 Article 45, § 2, first paragraph, seventh point of the Law of 2 August 2002.

Inspections

Since 2012 the FSMA has been carrying out inspections, organized thematically. These inspections enable the FSMA to assess – for each type of financial institution – how the rules of conduct are applied both individually within one institution and transversally within the financial sector.

In principle, a cycle of inspections on a specific theme starts in April of each year, after which the inspections are spread over a twelve-month period. The choice of the central theme is based on a risk assessment specifically developed for the evaluation of the rules of conduct.

Compliance with the conflict of interest rules was the central theme of the inspections between April 2012 and April 2013. The FSMA carried out its on-site inspections at regulated undertakings representing at least 53.5% of the assets of retail clients to whom investment services are offered in Belgium. These inspections resulted in 24 orders[75] being issued and 85 recommendations being made.

The findings of the inspections as regards conflicts of interest were discussed in a general note addressed to the sector. That note is available on the FSMA website (www.fsma.be). Its overall conclusion is that a significant number of undertakings fails to apply adequately the conflict of interest rules. An important element in that respect is that, in practice, the setting and enforcement of sales objectives that prompt staff to sell given investment products, appear to be more problematic than the granting of variable remunerations.

In April 2013 the FSMA began a new cycle of inspections focusing on the assessment of the adequacy and appropriateness of the services provided (duty of care). Considering the impact of that theme in the area of consumer protection as well as the numerous findings of the first inspections, the FSMA decided to prolong this cycle of inspections by six months. The inspections are carried out by the inspection teams of the FSMA, since the end of 2013 in collaboration with audit firms. For that purpose, the FSMA and the Belgian Institute of Registered Auditors (IBR/IRE) have organized specific training sessions on the rules of conduct. The auditors participating in the inspections have been selected via a tendering procedure. The inspections continue, however, to be coordinated by the FSMA and carried out under its full responsibility.

The duty of care inspections are aimed at verifying whether the regulated undertakings act honestly, fairly and professionally, and, when giving investment advice or executing client orders, in accordance with the best interests of their clients.

Calculated on the basis of the total number of transactions for retail clients, the inspections covered 82% of the credit institutions. During those inspections 86 points requiring attention were identified, 49 of which led to an order. Inspections have been carried out at all types of regulated undertaking, including undertakings essentially providing their services via the internet. This is an important element as an ever increasing number of banks offer online banking services.

75 An 'order' is a measure with which the FSMA orders an undertaking's senior management to take remedial action by a deadline set by the FSMA. The FSMA takes this measure when it has identified an infringement of the MiFID rules of conduct or a shortcoming in the undertaking's organization. This remedial action must be approved by the FSMA, and its implementation by the undertaking is meticulously monitored. Orders are based on Article 36 and/or Article 36*bis* of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

The findings of the cycle of the duty of care inspections will, like those of the conflict of interest cycle, be discussed in full detail in a general report. The aim of that report is to sensitize the sector to the good practices in the area of assessing the adequacy and appropriateness of the services provided.

In addition to the thematic inspections, short inspections were conducted paying special attention to specific aspects. The weaknesses revealed during those inspections will continue to be followed up closely and could result in an order or a recommendation being formulated if the regulated undertaking fails to take adequate measures to remedy them.

Methodology

During those two first years the FSMA developed a specific supervisory methodology which is applied systematically and in a standardized way during the inspections. That methodology is presently being fine-tuned with the assistance of an external consultant. Moreover, a specially adapted IT tool will be available as from the second half of 2014.

Portfolio management agreements

Regulated undertakings offering portfolio management services must see to it that the agreements they conclude with their clients meet the regulatory requirements[76]. Over the period under review, the FSMA has paid special attention to the compliance of those agreements with the regulatory framework, and has, where necessary, requested the companies concerned to adjust those agreements. The remarks frequently concerned the inadequate description of the remuneration that the portfolio managers receive from third parties, in this case from fund managers. Such remuneration might give rise to conflicts of interest on the part of portfolio managers, as – when selecting the investment products – they may be influenced by the remuneration they receive from the producers of those products. Consequently, the FSMA has insisted that, as required by the applicable rules, the clients be informed of the remuneration in a sufficiently transparent way, so as to allow them to make an informed decision about whether or not to accept the offer of services made. Moreover, the companies concerned were asked to justify how the remuneration in question allowed the services rendered to the clients to be improved.

Other remarks concerned the calculation of the portfolio management results. That calculation can be based on various internationally recognized formulas. The calculation of the results appeared to be inadequately explained in the agreements.

Finally, various institutions were informed that their agreements may not depart from the common law liability rules by limiting their own responsibility.

76 Article 20 of the Royal Decree of 3 June 2007 laying down detailed rules on the implementation of the Directive on markets in financial instruments.

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

The Belgian legislature chose to extend the MiFID rules to the insurance sector[77]. Consequently, 129 insurance companies and over 16,500 insurance intermediaries will be subjected to more specific rules of conduct as from 30 April 2014. The MiFID rules will not, however, be extended to the insurance sector as they stand: three draft Royal Decrees will specify the way in which the sector's distinctive character will have to be taken into account when applying those rules[78].

The rules of conduct will apply to all insurance intermediation services provided within the territory of Belgium. There are limited exceptions for major risks[79]. However, no distinction is made between professional and non-professional clients. Some rules apply only to savings and investment insurance products.

The rules shall apply to both insurance undertakings and insurance intermediaries (jointly referred to as "service providers" in the legislation). Insurance agents will be required to inform the FSMA as to whether or not they are associated with one particular insurance undertaking and, if so, for which classes of insurance. Insurance undertakings will also be required to mention the extent to which they work with tied agents. This has major consequences for the distribution of responsibilities: insurance undertakings are responsible for the insurance intermediation services provided by their tied agents in the same way as credit institutions are responsible for the investment services provided by their agents in banking and investment services. Insurance intermediaries are in turn responsible for their insurance subagents.

Service providers in the insurance sector will be obliged to apply a set of rules governing the management of conflicts of interest, the duty of care, the provision of information to clients and the transparency of the remunerations that they receive from or pay to third parties (the so-called inducements). Finally, service providers will have to retain sufficient data to allow the FSMA to carry out its supervision.

To help the sector with the introduction of the MiFID rules, the FSMA in collaboration with the sector drew up a circular and a list of questions and answers. The FSMA will also conduct an awareness campaign jointly with the professional associations, to ensure that the service providers concerned are optimally informed about the content and impact of the new rules.

As was done for credit institutions, the FSMA established a methodology to facilitate supervising the compliance of insurance companies and intermediaries with the MiFID rules.

Even more than in the banking sector, the proportionality principle must prevail when applying the MiFID rules of conduct to the insurance sector. Nevertheless, the extension of the MiFID rules of conduct to the insurance sector represents an important step towards a level playing field regarding the rules of conduct when distributing financial products.

77 Law of 30 July 2013 on strengthening the protection of consumers of financial products and services, strengthening the powers of the Financial Services and Markets Authority, and containing various provisions (Belgian Official Gazette, 30 August 2013). For more information, see the present report p. 18.

78 Three draft Royal Decrees:
- the Royal Decree on the rules governing the application to the insurance sector of Articles 27 to 28*bis* of the Law of 2 August 2002 on the supervision of the financial sector and on financial services;
- the Royal Decree on the legally mandated rules of conduct and rules governing the management of conflicts of interest as applicable in the insurance sector;
- the Royal Decree amending the Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance.

79 The exceptions relate to specific rules on the information to be provided to clients.

Mystery shopping

The Belgian legislators have entrusted the FSMA with the power to engage in mystery shopping[80] within the framework of both its supervision of compliance with the rules of conduct and its powers in the area of the protection of financial consumers against the illegal offer or provision of financial products or services or of credit.

Mystery shopping enables FSMA employees and/or external contractors authorized by the FSMA to do so, to go to regulated undertakings without revealing that they are acting under the FSMA's authority. For this purpose, the FSMA has decided to select an external partner to carry out certain mystery shopping exercises. A public tendering procedure was launched to that effect, and in 2014 a pilot project will be launched with the partner selected. Within the framework of the supervision of the MiFID rules of conduct, the mystery shopping exercises will deal mainly with the information obligation and the duty of care.

Law on the financing of SMEs

The Law on the financing of SMEs[81] introduces the duty of care with regard to the process of granting credit to SMEs. It entrusts the FSMA with the power to supervise compliance with those specific rules. The FSMA will establish policy instructions and draw up working programmes in order to be able to organize that supervision as efficiently as possible.

Compliance officers

The FSMA is responsible for the recognition of compliance officers and training programmes for compliance officers. Those programmes proved to be a success and the experiences are positive. Within the framework of the extension of the MiFID rules to the insurance sector the FSMA shall see to it that the training programmes are adequately geared that effect.

2.2.4. Supervision of financial service providers and intermediaries

2.2.4.1. Supervision of financial service providers

The FSMA's role with regard to financial service providers essentially consists of exercising prudential supervision of management companies of undertakings for collective investment and of investment firms that have applied for authorization as a portfolio management and investment advice company.

The purpose of this supervision is to see to it that the companies under supervision are able to meet all their obligations at all times and can guarantee the continuity of their business. Supervisory tasks include analyzing the administrative and accounting structure and the internal control system, the quality of management, the suitability of the shareholders, the development of activities and risks, and the monitoring of the financial structure as a whole. There is also ongoing supervision of compliance with authorization and business practice conditions.

80 Law of 30 July 2013 on strengthening the protection of consumers of financial products and services, strengthening the powers of the Financial Services and Markets Authority, and containing various provisions (Belgian Official Gazette, 30 August 2013). For further details on this Law, see this report p. 18.

81 Law of 21 December 2013 on financing for small and medium-sized enterprises, published in the Belgian Official Gazette on 31 December 2013.

The FSMA is also tasked with the supervision of bureaux de change. The focus here is on the prevention of money laundering, the professional integrity of managers, and the qualities necessary for shareholders.

Table 10: Change in the number of firms

	31/12/2011	31/12/2012	31/12/2013
Portfolio management and investment advice companies	20	21	20
Branches established in Belgium of investment firms governed by the law of another EEA country and falling under FSMA supervision.	7	9	12
Investment firms governed by the law of another EEA country and that do business in Belgium through the free provision of services	2,576	2,606	2,783
Investment firms governed by the law of a country that is not in the EEA, which have notified of their intention to provide investment services in Belgium under the free provision of services	80	79	83
UCI management companies governed by Belgian law	7	7	7
Branches established in Belgium of UCI management companies governed by the law of another EEA country.	UCITS III: 4	UCITS III: 3 UCITS IV: 2	UCITS III: 3 UCITS IV: 3
UCI management companies governed by the law of another EEA country and operating in Belgium under the free provision of services	UCITS III: 53 UCITS IV: 4	UCITS III: 49 UCITS IV: 7	UCITS III: 51 UCITS IV: 23
Bureaux de change authorized in Belgium	13	13	12

In terms of the change in the number of firms, the trend of recent years is continuing. This translates into a slight fall in the number of portfolio management and investment advice companies. This fall appears because a number of companies belonging to a foreign group have concentrated their foreign business into one establishment. The United Kingdom is frequently chosen as the country of establishment. A continued increase can be seen in the number of foreign investment firms offering investment services in Belgium, either through a branch or through the freedom to provide services.

Supervision

Over the course of 2013, the FSMA has handled new application dossiers submitted for obtaining authorization as a portfolio management and investment advice company. These dossiers are in varying stages of development. Some dossiers are pending further preparation by the applicants, others are being further analyzed by the FSMA, and there was also one application dossier withdrawn by the applicant. In order to further clarify the FSMA's expectations for such an authorization dossier, there has been a complete review in 2013 of the 'Memorandum on the procurement of authorization by an investment firm governed by Belgian law', originally drawn up in September 2005, which was available on the FSMA website. The new memorandum was published on the FSMA's website on 18 June 2013[82].

82 See the present report, p. 153 (available in the Dutch and French versions only).

Since the introduction of the Twin Peaks supervisory model in 2011, emphasis has been placed over the last few years on recruiting and training new inspectors to carry out on-site inspections in institutions under supervision. This inspection methodology builds on the inspection methodology in existence at the time of the CBFA, but takes into account the new supervisory architecture. The traditional audit philosophy is retained (risk identification and analysis, drawing up an annual audit plan). Over the past year, a total of nine on-site inspections were carried out, both at UCI management companies and at portfolio management and investment advice companies. The emphasis was above all placed on evaluating control functions (internal audit, risk management and compliance).

If the FSMA identifies that:

- an investment firm is not working in accordance with the provisions of the law and its implementing decrees and regulations;
- the management or the financial situation of an investment firm risks jeopardizing the due fulfillment of their commitments or does not offer adequate safeguards for its solvency, liquidity or profitability;
- the management structures, administrative or accounting organization or internal control of an investment firm show serious shortcomings,

it can set a deadline by which the failing identified must be remedied[83]. In the year under review this option was used once.

Inspections conducted at bureaux de change were aimed at supervising compliance by these bureaux de change with the rules on preventing the use of the financial system for purposes of money laundering.

Preventing the use of the financial system for purposes of money laundering and the financing of terrorism is an ongoing point of focus for the FSMA. This came to the fore in 2013 firstly through placing an increased emphasis on the quality of the annual money laundering reports submitted by financial service providers and secondly through incorporating this theme more systematically in on-site inspections, especially in those of bureaux de change. The great importance attached to the prevention of money laundering was further illustrated by the publication of a joint circular with the NBB on recent developments regarding the prevention of money laundering[84].

The legal framework introduced to bring about the reform of the Twin Peaks system provides for the obligatory consultation of the FSMA when assessing the professional integrity of persons appointed for the first time to the management of a financial undertaking under the supervision of the NBB. In mid 2013, this scope was extended *ratione personae* with the responsibilities for the independent control functions at a financial undertaking under the supervision of the NBB. The FSMA provides its opinion on the person's professional integrity to the NBB within one week of receipt of a request for an opinion. In 2013, the FSMA sent the NBB such communications for 236 persons.

83 In accordance with Article 104 of the Law of 6 April 1995.
84 Circular FSMA_2013_20.

Work other than prudential supervision

Over the past year work was carried out and supported which, strictly speaking, falls outside of prudential supervision of financial service providers. Here is a short overview of the principal areas of work of this kind.

Over the course of 2013, the FSMA was greatly involved in the preparation of the fourth round of FATF evaluations, Belgium being one of the first countries evaluated[85]. This involved preparing answers to a detailed list of questions on UCI management companies, portfolio management and investment advice companies, and bureaux de change. These questions are aimed at evaluating the effectiveness of the system for preventing the use of the financial system for purposes of money laundering and the financing of terrorism.

The FSMA also contributed to preparing the legislation on Alternative Investment Funds and their managers. In anticipation of the transposition of the European Alternative Investment Fund Managers Directive[86] into Belgian Law, the FSMA also assisted in preparing the sector for the need for managers who pursue activity in accordance with this Directive to submit a request for authorization prior to 22 July 2014. The focus was, first, on setting up the internal organizational infrastructure to handle these requests for authorization and secondly, on entering into dialogue with the sector on the subject[87].

The FSMA also greatly contributed to the preparation and development of the legislation on the status and supervision of independent financial planners and on financial planning advice given by regulated undertakings.

As part of the entry into force on 15 March 2013 of Commission Delegated Regulation of 19 December 2012 laying down the regulatory technical standards of EMIR[88], all UCI management companies and portfolio management and investment advice companies were alerted to the measures that must be taken to comply with the obligations included in the Regulation.

85 See also the present report, p. 29.
86 Directive 2011/61 EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.
87 See also Communication FSMA_2013_11.
88 See Communication FSMA_2013_15.

The FSMA has also adopted a new Regulation on the periodic statements of management companies of undertakings for collective investment and of portfolio management and investment advice companies[89].

There was also work done on the development of a Memorandum of Understanding with the NBB for the supervision of foreign investment firms operating on Belgian territory. The purpose of this MoU is to set down agreements between the two authorities on the distribution of their competences with regard to these foreign investment firms. The basis used for this was the distribution model that applies to investment firms governed by Belgian law.

Finally, as a result of the Twin Peaks reform, in which responsibilities were divided between the FSMA and the NBB, the need arose to review Circular CBFA_2009_19 of 8 May 2009 on the duty of cooperation of accredited statutory auditors, in order to limit its scope to the relevant companies under the supervision of the FSMA. A new circular was therefore drafted, which deals with the duty of accredited statutory auditors at management companies of undertakings for collective investment governed by Belgian law and at branches of such institutions established in Belgium to lend their cooperation to the prudential supervision exercised by the FSMA.

2.2.4.2. Supervision of intermediaries

The FSMA's role with regard to intermediaries[90] essentially involves overseeing access to the profession of intermediary in banking and investment services or insurance. This mainly consists of:

- **handling applications for inclusion in the registers of insurance and reinsurance intermediaries and of intermediaries in banking and investment services, and maintaining these registers;**
- **supervising compliance with the legal conditions for retaining such registration.**

Table 11: Registrations

Intermediaries (Insurance)	31/12/2012	31/12/2013
Collectively registered	**6,219**	**6,200**
Agent	1,228	1,086
Sub-agent	4,991	5,114
Individually registered	**10,933**	**10,338**
Broker	8,215	7,997
Agent	2,071	1,817
Sub-agent	647	524
Total	**17,152**	**16,538**

89 FSMA Regulation of 12 February 2013 on the periodic statements of management companies of undertakings for collective investment and of portfolio management and investment advice companies. See also p. 152 (available in the Dutch and French versions only).

90 The supervision of intermediaries is regulated by the Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance, and the Law of 22 March 2006 on intermediation in banking and investment services and the distribution of financial instruments.

Reinsurance intermediaries	31/12/2012	31/12/2013
Individually registered	**13**	**14**
Broker	11	12
Agent	2	2

Intermediaries in banking and investment services	31/12/2012	31/12/2013
Collectively registered	**3,087**	**2,973**
Agent	3,087	2,973
Individually registered	**821**	**738**
Broker	14	15
Agent	807	723
Total	**3,908**	**3,711**

Number of changes in the lists

In 2013, 1,927 insurance intermediaries and one reinsurance intermediary were included in the register of insurance and reinsurance intermediaries. Of these, 1,405 insurance intermediaries were registered via collective registration through which the application dossier is submitted to the FSMA by a central institution. 179 new intermediaries were registered in the register of intermediaries in banking and investment services, of which 160 collectively.

Most of the deregistrations related to collectively registered insurance intermediaries with whom the principal had terminated collaboration, or insurance intermediaries who had their registration cancelled at their own request.

In 2013, the FSMA struck 43 insurance intermediaries off the register for not complying with the registration conditions, including for failing to insure themselves against professional liability risks or not answering questions posed by the Insurance Ombudsman. Not answering questions posed by the FSMA can also lead to being struck off the register.

The FSMA has additionally temporarily suspended or definitively struck off 28 insurance intermediaries because doubts were raised as to their fitness and propriety[91]. Ten intermediaries in banking and investment services were struck off the register because the bank agent agreement between the agent and the principal was terminated. The registration of 19 insurance intermediaries and one intermediary in banking and investment services automatically expired due to bankruptcy.

91 See also p. 157 (available in the Dutch and French versions only).

2013 also saw a rise in the number of registrations of insurance intermediaries. This upward trend has already been observed for a number of years. At the time of entry into force of the Law of 27 March 1995 there were 28,000 insurance intermediaries registered.

European passports

In accordance with European Directive 2002/92/EC, intermediaries registered in another European Economic Area (EEA) country can notify their home country supervisory authority that they also wish to pursue insurance and reinsurance intermediation business in Belgium, either under the freedom to provide services or via a branch. In turn, intermediaries registered in Belgium can notify the FSMA that they wish to operate in one or more other EEA countries under the freedom to provide services or via a branch.

In 2013, 412 insurance intermediaries registered in another EEA country notified, through their national supervisory authority, their wish to pursue insurance intermediation business in the Belgian market; 266 ceased their activity.

At the end of 2013, the number of insurance intermediaries who made such a notification came to 6,473.

In 2013, the FSMA received requests from 515 Belgian insurance intermediaries to pursue insurance intermediation business in one or more other EEA countries; 54 Belgian insurance intermediaries that had previously been active through the freedom to provide services sought to extend their business to additional EEA countries.

At the end of 2013, the number of Belgian intermediaries active on this basis in other EEA countries came to 876.

On-site inspections

In 2013, 22 on-site inspections were conducted with a view to verifying the registration dossiers of insurance intermediaries. Nine of these took place at central institutions responsible for collective registrations.

In on-site inspections at central institutions, the manner in which these institutions are organized to exercise first-line monitoring of the conditions for registration is scrutinized. The completeness and accuracy of the dossiers kept by these central institutions is also verified.

On-site inspections of individually registered intermediaries provide the FSMA with the opportunity to verify the registration conditions, such as compliance with information obligations, which are difficult to check on the basis of the registration dossier submitted.

Anti-money laundering legislation

In 2013, the FSMA sent a communication to all insurance intermediaries who carry out their professional activities without an exclusive agency agreement in the “life” business group (insurance intermediaries who are not tied agents) to remind them of their obligations under the anti-money laundering legislation. This includes the obligation to identify their clientele

and check their identity, special vigilance when signing life insurance contracts and the importance of working with the FIPU[92].

Accreditation for training providers

In 2012, the rules of conduct and the FAQs on continuing professional education of insurance and reinsurance intermediaries and of intermediaries in banking and investment services were reviewed. The reviewed rules of conduct and FAQs, which are common to both sectors, were the subject of 25 inspections in 2013 of training providers accredited by the FSMA and professional associations from both sectors.

These inspections focused predominantly on compliance with the criteria that training providers commit to as part of their accreditation. The new rules of conduct and FAQs appear on the whole to be properly applied by the accredited training providers. The inspections have further shown that the training provided fully achieves the objective of improving the professional knowledge of intermediaries. The inspection visits provided the opportunity to exchange information about the training offered as part of the legal obligation to engage in continuing professional education and to answer any questions the training providers had on their obligations.

New exam rules

In order to demonstrate their professional knowledge, holders of a certificate of higher secondary education are currently required to successfully complete a specialized course recognized by the FSMA. Article 11, § 3, 2° of the Law of 27 March 1995 provides for the replacement of this requirement with that of passing an exam recognized by the FSMA on a date determined by the King.

The FSMA has led discussions with the sector throughout the year to enable the entry into force and implementation of this new provision. Exam rules for the insurance and reinsurance sector are being studied and are soon to be completed.

Participation in working groups

Pursuant to the Law of 27 March 1995, the FSMA has attended meetings of the Committee on Consumer Protection and Financial Innovation at EIOPA and helped draw up the Guidelines on Complaints Handling by Insurance Intermediaries. These Guidelines are addressed to the competent authorities of Member States and are intended to help ensure the same high level of supervision of complaints-handling by insurance intermediaries throughout the EEA. The FSMA has also assisted in drawing up the Good Supervisory Practices Report on knowledge & ability requirements for distributors of insurance products, which aims to address the need for an appropriate level of professional knowledge and suitability of distributors of insurance products in the EEA.

The FSMA has also regularly attended the meetings of the Accreditation Committee for the insurance sector set up as part of the rules of conduct on continuing professional education. This Committee must rule on accreditation requests from training providers and withdraw accreditations where necessary. It also monitors compliance with the criteria included in the rules of conduct adhered to by accredited training providers.

92 See also this report, p. 149 (available in the Dutch and French versions only).

2.2.4.3. Supervision of mortgage companies

The task of the FSMA with regard to mortgage companies is essentially to oversee how these companies grant and manage non-commercial residential mortgage loans to natural persons.

This consists in supervising the manner in which the mortgage companies comply with the provisions of the Law of 4 August 1992 on mortgage loans when offering contracts (including in the pre-contractual stage), as well as in their performance and progress, with a view to protecting the borrower. The supervision also encompasses the prevention of money laundering in undertakings which do not come under prudential supervision.

The supervision mainly concerns the legality of the documents provided to consumers.

These documents include application forms, prospectuses, offers in principle and the mortgage contract. These documents are approved by the FSMA prior to being offered to the market.

Complaints handling is also a valuable source of information which enables the FSMA to detect cases in which the Law of 4 August 1992 is not correctly applied.

On-site inspections are an important tool to allow the FSMA to oversee compliance with, and correct application of, the Law of 4 August 1992.

In 2013, the FSMA had occasion to highlight to these mortgage companies specific aspects of this Law, such as the variability of interest rates, charging costs to clients and dispute management.

Table 12: Change in the number of registered and enrolled companies

	31/12/2012 (*)	31/12/2013 (**)
Insurance companies and IORPs	26	28
Credit institutions	30	28
Public institutions	4	3
Others	117	111
Total	**177**	**170**
Enrolled companies	25	26
Grand total	**202**	**196**

* Published in the Belgian Official Gazette of 4 February 2013.

** Published in the Belgian Official Gazette of 30 January 2014.

The inspections have highlighted certain shortcomings relating to undue claims for administrative fees, management fees and solicitor fees for the management of dossiers, or errors in the calculation of early repayments. On certain occasions, emphasis needed to be placed on meeting deadlines for sending registered letters in the event of arrears.

The companies concerned have been asked to redress this situation and, depending on the case:

- to reimburse clients for solicitor fees and administrative fees unduly charged;
- to claim only the postage costs for sending a registered letter;
- to reimburse the surplus received for early repayments;
- to meet the deadlines for sending registered letters;
- and to keep the FSMA informed of the follow-up to the dossiers.

In 2013, inspections also focused on compliance with the anti-money laundering legislation at mortgage companies which are not credit institutions or insurance companies.

And finally, the inspections additionally focused on the application by mortgage companies of the code of conduct issued by the Professional Lenders' Association (UPC/BVK) in 2009.

This code defines a number of rules relating to responsible lending and tackling over-indebtedness.

Mortgage companies voluntarily apply various principles of this code, although knowledge of this code could be more widespread.

Because it is a code, the fact that it is based on voluntary and non-restrictive involvement does not encourage companies to become acquainted with it, nor to systematically apply all of its principles.

The proposed Regulation of the European Parliament and of the Council on mortgage credit was adopted on 10 December 2013 by the European Parliament and on 28 January 2014 by the European Council of Ministers.

Member States have a period of two years from the publication of the Regulation within which to transpose the text into their national law.

2.2.5. Supervision of supplementary pensions

The FSMA is responsible for supervising supplementary pensions that employees and the self-employed build up through their professional activities ('second-pillar pensions'). The FSMA oversees compliance of the second pillar pensions with social legislation. The FSMA also supervises the financial health of institutions for occupational retirement provision (IORPs), which manage pension plans.

2.2.5.1. Prudential supervision of institutions for occupational retirement provision (IORPs)

The IORP sector has seen a sharp increase in the number of participants. At the end of 2012, the number of participants had increased to 1.395 million, an increase of 57% on the previous year. This increase is a result of the introduction of two new sector funds with a large number of participants. The balance sheet total for the IORP sector grew in the same period to EUR 18.59 billion, an increase of 15.8%. IORPs predominantly invest in share or bond UCIs. The large majority of IORPs provide a form of guaranteed return[93]. Because of the emergence of these two new sector funds, the majority of members have a defined contribution plan.

Monitoring the recovery and reorganization measures of IORPs

The number of ongoing recovery and reorganization measures dropped in 2012. At the end of 2012, 33 IORPs remained with funding gaps compared with 66 at the end of 2011. Of the 33 IORPs with funding gaps, 29 already had recovery or reorganization measures underway in 2011 to eliminate those gaps. These recovery and reorganization measures often consist in additional funding by the sponsoring undertaking(s) based on a recovery process defined in the recovery plan. Four IORPs identified a new funding gap at the end of 2012, which was caused primarily by the fact that these IORPs use stricter, and therefore safer, hypotheses to calculate their commitments. Over the course of 2012, the number of ongoing recovery and reorganization plans fell to 27.

The aggregate funded ratio[94] rose for the whole sector. At the end of 2012, the aggregate funded ratio for short-term liabilities amounted to 145.63% compared with 136.96% at the end of 2011; at the end of 2012, the aggregate funded ratio for long-term liabilities amounted to 122%, compared with 114.92% at the end of 2011.

Following on the policy lines developed in 2012, the FSMA focused particular attention on the IORPs' engagement to follow a path of recovery with maximum headline deficits or minimum funded ratios. The FSMA furthermore asks that sponsoring undertakings commit to making a minimum annual contribution to a recovery fund.

93 Fixed-return plans and cash-balance plans, as well as defined contribution plans with guaranteed returns constitute forms of guaranteed return.

94 The aggregate funded ratio is the degree to which the sum of assets of all Belgian IORPs taken together is able to fund the commitments of the whole sector.

Cross-border activity

IORPs governed by Belgian law can pursue their activity in other countries by managing foreign pension schemes from Belgium. At the end of 2012, there were 11 IORPs pursuing such cross-border activity in 11 countries: 10 EU Member States and Switzerland.

Where an IORP pursues such cross-border activity, the Belgian prudential rules apply but the applicable social and labour legislation is that of the country in which the pension schemes are entered into. The FSMA wishes to exercise its role of home supervisory authority to the full and has therefore further expanded its contacts with supervisory authorities of the host countries and made them more systematic. Through those contacts, the FSMA acquires the know-how necessary to enable it to efficiently conduct its supervision of the cross-border activity of Belgian IORPs. The FSMA chairs the working group on this subject within EIOPA, which looks into the prudential impact of social law aspects of the host country in the home country.

When operating a foreign pension scheme, as is the case when managing a Belgian one, Belgian prudential standards require that prudent long-term reserves be set up to guarantee the sustainability of the pension commitments. Moreover, the technical reserves for that scheme may never amount to less than the vested reserves set out by the pension plan, with the minimum level of the vested reserves determined by the applicable social or labour legislation. These vested reserves—the short-term reserves—are the reserves to which a policyholder has a right at a particular moment in time under the terms of the pension contract, and which the policyholder can also transfer on exit. This transfer value can sometimes lie higher pursuant to the foreign social and labour legislation than the long-term reserves set on the basis of the Belgian prudential standards. The technical reserves must therefore be determined per country, where the highest of the long-term and short-term reserves is taken.

One particular focal point for the FSMA is the case in which there is a transfer of management of a pension scheme to a Belgian IORP from a country in which there is the option, in the case of a funding gap, to reduce the pension rights under certain conditions. In such a case, the FSMA verifies that the policyholders are correctly informed of the impact of such a possible reduction of the pension rights and of the circumstances under which this could occur.

In cases where doubts arise as to the obligatory involvement of the sponsor in the case of funding gaps, pursuant to the foreign social and labour legislation that applies, the FSMA proactively seeks solutions to provide additional guarantees to policyholders and thereby to protect the continuity of the commitments. Possible solutions may for example be contractual guarantees by the sponsor or additional buffers.

Points for attention

The FSMA devotes particular attention to estimates of expected return and the corresponding discount rate used. In a context of sustained low interest rates, this attention is directed at IORPs with a large bond portfolio. In light of continuing low interest rates, the FSMA wishes IORPs to continue to devote sufficient attention to the interest-rate sensitivity of their portfolio of fixed-rate instruments and the impact thereof on the expected return. If when calculating the long-term provisions, there is no parallel reduction in the discount rate, this can give a distorted picture of the actual level of coverage of the commitments and an underlying funding gap can fail to be appreciated.

In light of this, the FSMA has conducted a sectoral enquiry on this subject among IORPs with a portfolio composed at least 50%, whether directly or indirectly, of bonds. A number of records were requested including the recalculation of the expected return of the global portfolio, taking into account the yield to maturity of the fixed-rate portfolio. The FSMA wished, with this material, to examine the influence of the low interest rate on the IORPs' expected return and what the impact of the commitments would have been on the funded ratio if these had been set with a discount rate for expected return recalculated by the FSMA using its own methodology. The FSMA also subjected the figures submitted to a stress test with a scenario of an increase in interest rates that only impacts the fixed-rate portfolio on the asset side.

It emerged from this enquiry that half of the IORPs enquired into use a discount rate that matches the expected return they have recalculated. The lion's share of the IORPs included in the enquiry could absorb a rise in interest rates of one percentage point without showing a significant funding gap (funded ratio lower than 95%). The majority of IORPs can even absorb an increase of 2% without risk of their commitments no longer being fully covered. The five IORPs that would show a significant funding gap with an interest-rate increase of one percentage point already have a recovery or reorganization plan underway.

Inspection methodology

The FSMA is extending its supervision of IORPs with more systematic on-site inspections. In this way, the FSMA responds to a recommendation under the EIOPA peer review. The FSMA has also designed and drawn up an inspection methodology adapted to the characteristics of the IORP sector.

The first series of on-site inspections will start in 2014. These inspections will relate to data management at IORPs. IORPs to be inspected are selected on the basis of the criteria relevant for the theme of the inspections.

Advisory services

In 2013, the FSMA has provided advisory services to Ministers responsible for Pensions, the Economy and Finance. These advisory services related to: the accrual of pension rights in proportion to the time of employment; the right of individual choice of employees in supplementary pension plans ('cafeteria plans'); the impact of divorce on supplementary pensions; the distinction between blue- and white-collar workers; dynamic management; and the responsibilities of prudential supervision of IORPs.

The FSMA has, moreover, offered technical support for other aspects of future legislation including: payouts of supplementary pensions at the legal retirement age; the supplementary pension for self-employed business owners, information to policyholders on supplementary pensions and the competence of the employment courts.

EMIR

The FSMA has put in a special effort in 2013 to support IORPs with the introduction of EMIR. As part of this initiative, the FSMA sent a letter to all IORPs with a practical and comprehensive explanation of the specific consequences and obligations for IORPs resulting from EMIR. The FSMA has also set up a single point of contact to which IORPs can go with any questions on EMIR.

International

A significant number of Belgian IORPs took part in the QIS (Quantitative Impact Study) conducted by EIOPA in advance of the review by the European Commission of the IORP Directive. The findings from this study showed that the possibility of additional involvement by the employer (sponsor support) as a safety mechanism is, in Belgium, largely negligible and that the impact of the introduction of a new solvency regime based on Solvency II would likely lead to a funding gap for the average Belgian IORP, even if sponsor support were taken into consideration. Although the 14 IORPs that took part represent a balance sheet total of 23% of the Belgian pension funds sector, these results cannot be considered representative of the whole Belgian IORP sector. The results can be explained on the one hand by the participation by some IORPs with significant overfunding of their commitments and on the other hand by the fact that some large IORPs cannot rely on sponsor support to absorb an increase in their commitments. At the request of the FSMA, the EIOPA report added a nuance to the findings of the QIS in light of the atypical nature of Belgian IORPs that took part in the study.

Participation in this study has, however, allowed the FSMA, the IORPs that took part, the working group of the Belgian Association of Pension Institutions (BVPI/ABIP), and the Institute of Actuaries in Belgium (IABE) to obtain clear insight into the inner workings of the Holistic Balance Sheet[95] and the potential failings of this concept.

The FSMA has benefited to the full from this experience for its active participation in the other work of EIOPA on a potential new solvency framework for IORPs. The emphasis here lies on explaining the primary mechanisms of the Holistic Balance Sheet, namely:

- the role of the sponsoring undertaking in the financial equilibrium of the IORP;
- the role of the supervisory authority in maintaining that equilibrium;
- the impact of the decision-making procedure with respect to payouts, sponsor support and the contribution of equity on the scale of the IORPs commitments;
- the impact of the option to reduce pension payouts on the scale of the IORPs commitments;
- the delineation of the IORPs pension commitments.

95 In its recommendation of 15 February 2012, EIOPA explained the concept of the Holistic Balance Sheet. This Holistic Balance Sheet is a prudential assessment instrument in which not only the accounting- and financial-technical assets and liabilities of IORPs are included but also the safety mechanisms an IORP or its policyholders can resort to in the case of funding gaps. In this way, the Holistic Balance Sheet should be able to offer a clear view, from the perspective of the policyholders, on the way in which the pension scheme is assured.

2.2.5.2. Social supervision

Complaints and questions

The FSMA is the central point of contact for questions and complaints in connection with second-pillar supplementary pensions. As in previous years, enquiries were sent by members or beneficiaries as well as by IORPs, sponsoring undertakings, lawyers or consultants. These enquiries concerned compliance with social legislation (acquired rights, change of pension institution, transfer of reserves, changes to the pension plan, discrimination, individual pension commitments, etc.) and interpretation of the prudential legislation (technical provisions, financing plan, sound governance, notification of cross-border activities, liquidation procedure, etc.).

In 2013, the FSMA received 176 complaints or requests for information in connection with a pension institution (IORP or insurance company) or pension plan. This is exactly the same number as last year. Most enquiries were on the subject of payouts from the pension plan (19%). The second most common subject was exit by policyholders[96] (12%). Compared with 2012, questions in connection with payouts from pension plans showed the biggest increase. The number of questions in connection with the insolvency of a pension institution has seen a marked decrease as a result of the decrease in the number of questions on the winding-up of the insurance company, Apra Leven.

Database

Nowadays, supervision of compliance with social legislation is conducted mainly on an occasional basis, when processing an IORP's application for authorization, handling complaints or answering requests for clarification and interpretation.

The development of the Database of Supplementary Pensions (DB2P) opens up prospects for a more structured social supervision.

The main objective of this database is to make the social, fiscal and parafiscal supervision of supplementary pensions more efficient and effective.

In the long run, thanks to the database, people will for the first time have an overview of the benefits they have built up for their supplementary pension.

The database was opened up for data input by pension institutions in 2011. Although in the first instance it was only data on employers' pension plans that was collected, in 2013, data on policies for self-employed persons were included as well (the Belgian VAPZ/PLCI and RIZIV/INAMI contracts).

96 "Exit" in the context of a company scheme means termination of the employment contract other than through death or reaching retirement age, or change of an employer as part of a company transfer under which the employer's pension scheme is not transferred.

From 1 January 2014, the scope of application of the database will be further extended to:

- policies specifically devised in the LPC/WAP to regulate what happens after the exit of a policyholder. This includes the transfer facility for pension assets, the individual pension requirements and agreements with a pension institution that distributes the total profit and reduces the costs;
- individual pension plans financed internally;
- other policies for the self-employed (for example collective and individual pension commitments for self-employed business owners).

The FSMA has also put further work into building the database in 2013. This work included on the one hand establishing the new declaration instructions, and on the other hand developing applications for the database's use.

For the declarations, the principal area of work was on drawing up declaration instructions for what are called 'reduced contracts'. These are insurance contracts for which the link with the original pension plan was broken, for example because of the sponsoring undertaking going bankrupt. Part of this work involved regular consultation with the pension institution sector on a number of technical aspects.

Alongside this, IT applications were developed in conjunction with SIGeDIS, to enable the FSMA to consult the data in the database. When the database is ready for use, the FSMA will have more options for checking compliance by pension plans with social legislation. The first limited applications were in their test phase at the end of 2013 and they will be rolled out over the course of 2014.

Biennial reporting

The FSMA must publish biennial reports on sectoral pension schemes and the voluntary supplementary pension for self-employed persons. Both of these biennial reports were published in 2013. They relate to the period 2010-2011. The reports contain extended information on all sorts of aspects of second-pillar pensions and can be consulted via the FSMA website.

2.2.6. Relations with consumers of financial services

The FSMA answers consumer questions on financial topics. It also alerts the public and the judicial authorities when it identifies financial products being offered unlawfully.

In 2013, the FSMA dealt with a total of 957[97] written enquiries for information. In 2012, this figure was 774. In addition to these written enquiries, the FSMA also receives a large number of telephone enquiries.

97 Since 4 November 2013, all written enquiries from consumers are handled centrally. This figure is made up of the number of written enquiries made to the department concerned, up to and including 3 November 2013, and of the written enquiries handled centrally from 4 November 2013.

In the year under review, the FSMA opened 204 investigations on possible unlawful offers of financial services. In 2012, 161 such dossiers were opened for further investigation; in 2011, this figure was 142. These investigations were opened on the basis of reports from third parties and the FSMA's own observations.

Such investigations can lead to the publication of a warning to alert the public to the unlawful offer. In 2013, the FSMA published 22 such warnings. In 2012 and 2011, this figure was 18 and 23 respectively.

Alongside its own warnings, the FSMA also publishes warnings by its fellow European supervisory authorities. These warnings are provided to the FSMA through the secretariat of ESMA-PoI. This is a section of ESMA within which supervisory authorities share information on their supervisory activity. In 2013, the FSMA published 276 such warnings. Warnings from foreign supervisory authorities that are members of IOSCO are also published through a hyperlink on the FSMA's website.

At the end of 2013, the FSMA noted increasing media and public interest in virtual currencies, in particular Bitcoin. The FSMA and the NBB have published a joint text on the subject. This text warns of the risks associated with the use of virtual money, such as the fact that it is not legal tender and that there is no supervision of such virtual currencies. This warning was published at the beginning of 2014.

The FSMA has also commenced an investigation on compliance with legislation on travel cancellation insurance and 'warranty' insurance for electronic and mobile devices (warranty and theft). The FSMA has identified complaints regarding this type of insurance, including to the Insurance Ombudsman.

2.3. Financial education

As a result of the reform of financial supervision, the Belgian Parliament has entrusted the FSMA with the task of contributing to financial education. Better financial education of consumers can help restore confidence in the financial system.

To accomplish this legal task, the FSMA has set up a separate department and has worked to develop and implement an action plan in the field of financial education. Within the framework of this action plan, the FSMA has launched a new programme for financial education, known as Wikifin. This programme was launched on 31 January 2013 during the first national conference on financial education.

The programme developed by the FSMA for financial education is intended to deploy initiatives to improve consumers' financial literacy and to help them with their financial decisions at every stage of their life. The programme is built around several different components, which are explained in more details below.

The www.wikifin.be portal

The first component of the financial education programme is the website www.wikifin.be. This portal provides neutral, trustworthy and practical information on financial topics. The information on the website is written in clear and accessible language. The website also features practical tools for consumers.

The website is constantly being developed and updated. In the course of the year 2013 information was added on the important stages of life, in addition to the information on specific topics (saving, investing, insurance, etc.). Studying, housing and pensions are examples of those stages of life. In the beginning of 2014 a real estate simulator was added to the website. This simulator makes it possible to calculate the cost of a real estate project.

Wikifin.be was met with considerable interest. One year after the online launch of the website, it had already been visited 750,000 times. In the meantime the number of subscribers to Wikifin's monthly newsletter has reached 10,000. In 2013 Wikifin also became active on the social networks Facebook and Twitter.

Campaigns

In order to boost awareness of Wikifin and of the website www.wikifin.be and to increase consumers' knowledge of certain financial topics, campaigns are organized on a regular basis. Such campaigns include among other things advertising on the internet as well as radio and other media.

In 2013 two campaigns were held. The first focused on the theme of pensions and was launched in June 2013 during a press conference in the presence of the Minister of Pensions and the Minister of Finance. Within the framework of that campaign, a quiz on pensions was posted on www.wikifin.be. Thanks to the collaboration of a certain number of press outlets, quiz participants had a chance to win a subscription to a newspaper.

15,000 people participated in the quiz and the average score was 3.7 out of 7. The results of the quiz indicate that Belgians generally have a good knowledge of the different pension pillars, of supplementary pensions, of hospital insurance and of the rules on when people can receive a complete pension. The worst results were obtained for the questions concerning the yield of pension products and the payout of pension capital in the form of an annuity, the advantage of the annuity often being underestimated. People's knowledge on those topics could thus certainly be improved.

The quiz results also indicate that Belgians underestimate their own knowledge about pensions.

The second campaign took place in November and focused on the theme of housing. On the occasion of that campaign, consumers were given the opportunity to ask questions on that topic. Everyone who asked a question had a chance to win a prize. On the basis of these questions, a top 10 of the most frequent questions was established. These ten questions and answers were published in the form of a brochure in early 2014 and made available during the Batibouw home show, where Wikifin had a stand.

In addition to conducting its own campaigns, Wikifin also supported those run by associations involved in these areas. In this way Wikifin endeavours to come into contact with a public that is more difficult to reach. This is the case, for example, with is sponsorship of the 'Credit-free day' platform in November 2013. This platform consists of associations involved in the prevention of over-indebtedness and in consumer protection.

Schools

Another component of the Wikifin programme is to support teaching in the schools. Financial education begins with young people. Schools are the ideal place to provide students with knowledge, competence and sound attitudes towards money matters. The FSMA has therefore developed contacts in both the north and the south of the country in order to determine how Wikifin can best contribute to financial education via the schools. To this end Wikifin developed its first educational packages in 2013 and submitted these for advice to teachers and educationalists. The aim is to test these packages on a larger scale within the schools. After the feedback has been processed, the material will be made available to the teachers, schools and educational networks via a special section devoted to the purpose on the website.

Collaboration and exchange of good practices

The FSMA also plays a role in promoting collaboration among various actors and exchanging good practices in respect of financial education. In this regard, the FSMA has been organizing meetings on the topic of financial education. In 2013, such an occasion arose with the first national conference on financial education, where Wikifin was launched. In addition, the FSMA itself participates in conferences on financial education and sits on international fora that work on the topic. Thus, for example, the FSMA takes part in the consultation held by the OSCE and is a member of the ESMA network of those responsible for financial education and of the IOSCO committee set up in 2013 which focuses primarily on financial literacy.

2.4. Administrative sanctions

2.4.1. Cases referred by the departments and preliminary investigation phase

As part of the procedure for the imposition by the FSMA of administrative fines (Articles 70ff of the Law of 2 August 2002) the investigations officer decides whether to open an investigation into circumstances liable to give rise to the imposition of an administrative fine[98]. The decision is often made based on information supplied the FSMA's supervisory departments (following a complaint).

In 2013 the investigations officer received 19 new cases with indications that could give rise to a decision to open an investigation.

Usually, the dossiers sent to the investigations officer prompt the Enforcement department to seek further information prior to deciding whether or not the investigations officer should open an investigation within the meaning of Article 70, § 1, of the Law of 2 August 2002.

During the preliminary investigation of the dossiers concerning potential cases of market abuse, the Enforcement department proceeds to identify the ordering parties in the case of suspect transactions, as well as conducting a preliminary investigation of the facts.

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

As soon as the ordering parties have been identified and the preliminary investigation of the facts has confirmed the indications of an infringement, the investigations officer decides to open an investigation.

2.4.2. Decisions to open an investigation

In 2013, the investigations officer decided to open an investigation within the meaning of Article 70, § 1, of the Law of 2 August 2002, into seven dossiers concerning circumstances liable to give rise to an administrative fine. Furthermore, two investigations have been performed within the framework of an investigation opened in 2012.

In that same period, the investigations officer decided not to open an investigation in eight cases in view of the investigation activities carried out during the preliminary investigation phase.

As in the past, the term 'dossier' refers to the investigations officer's decision to open an investigation under Article 70, § 1, of the Law of 2 August 2002. Such a decision may relate to serious indications that one or more persons has/have infringed one or more laws. The estimated number of persons concerned by the dossiers only serves as an indication. The investigation concerns facts and it could occur that the examination of the facts in question leads to a reconsideration of the number of persons concerned.

2.4.3. Summary of dossiers handled

The investigations officer's investigations relate to circumstances liable to give rise to an administrative fine. Under the investigations officer's management, the FSMA Enforcement staff perform the investigative activities they consider necessary in connection with the dossiers entrusted to them in their capacity as rapporteurs, and investigate the evidence collected in the light of the applicable legislative provisions.

Proposed agreed settlement

Under the provisions of the procedure on the imposition of administrative fines, a dossier may conclude in an agreed settlement[99].

The decision to consent to an agreed settlement is made by the Management Committee. The person concerned must have cooperated with the investigation and must first agree to the settlement.

In the year under review, the investigations officer submitted to the Management Committee, for approval, one proposal for an agreed settlement, to which the perpetrators in question had agreed.

The proposal concerned four natural and three legal persons in a dossier concerning insider dealing. The proposal was approved by the Management Committee on 27 November 2013 and is commented on in this report in the chapter about decisions made by the Management Committee[100].

99 Article 71, § 3, of the Law of 2 August 2002.
100 See the FSMA website under the heading "Administrative Sanctions" (available in French and Dutch only).

Submission of findings to the Management Committee

After the investigation has been completed, a report is compiled. This states whether the facts ascertained may constitute an infringement liable to give rise to an administrative fine, and/or a criminal offence[101].

The investigations officer must submit the final investigation report to the Management Committee. The Management Committee will then decide how to proceed with the dossier based on this report[102].

In the year under review, the investigations officer communicated 24 investigation reports to the Management Committee. These reports concerned in total 27 natural or legal persons.

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* *

Between 2011, the year in which the new procedure introduced by the Twin Peaks law[103] entered into force, and 31 December 2013, the investigations officer decided to open an investigation in 18 dossiers concerning the existence of one or more practices, by one or more persons, liable to give rise to an administrative fine.

During that same period the total number of proposed agreed settlements and preliminary reports closed by the investigations officer amounted to 47. Several of those agreed settlements and reports related to dossiers of which the investigation had been entrusted to the investigations officer by the Management Committee before the new procedure introduced by the Twin Peaks law had entered into force.

These agreed settlements and preliminary reports have enabled 18 dossiers to be closed definitively. Some of those dossiers date back to the period preceding the entry into force of the new sanction procedure.

The decisions taken by the investigations officer since 15 July 2011 to open an investigation concerned serious indications of infringements of one or more of the following laws[104]:

101 Article 70, § 2, of the Law of 2 August 2002.
102 Article 71 of the Law of 2 August 2002.
103 See the FSMA Annual Report 2011, p. 42.
104 Several dossiers handled by the investigations officer concerned potential infringements of several of the laws referred to in this table. This explains why the total number of cases of application of the laws mentioned in this cumulative list is higher than the number of dossiers.

Table 13: Laws to which the dossier handled by the investigations officer since 15 July 2011 related

Cumulative list	From 15 July 2011 to 31 December 2013
Law of 11 January 1993 on preventing the use of the financial system for purposes of money laundering and the financing of terrorism	1
Law of 2 August 2002 on the supervision of the financial sector and on financial services	
1. Insider dealing	10
2. Market manipulation and lack of information provided to the market	5
Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market	2
Royal Decree of 5 March 2006 on market abuse	3
Law of 16 June 2006 on public offers of investment instruments	3

2.4.4. International cooperation

Requests for international cooperation for dossiers concerning potential cases of market abuse are henceforth centralized with the Enforcement department.

In 2013 the number of requests for international cooperation in relation to market abuse, both those received by the Enforcement department and those addressed by that department to the competent authorities of Member States of the European Union or of a third country, remained roughly stable in comparison to 2012.

The Enforcement department received 29 requests for cooperation from foreign competent authorities. All of these requests were responded to within a period ranging from 15 days to maximum three months, the turnaround time being determined by the nature and scale of the tasks to be completed.

The tasks in question often relate to identifying the beneficiary of a transaction. They can also, for example, include collecting information from an issuer or an operator of telecommunication services, or even organizing a hearing of witnesses or persons who are suspected of having committed an infringement.

In addition, over the course of the same period, the Enforcement department addressed 32 requests for cooperation to foreign competent authorities. These requests primarily ask for the beneficiary of a transaction to be identified. In all cases, requests made by the Enforcement department, as is the case with requests received from foreign competent authorities, can relate to obtaining a range of information from an issuer or another person. In two of the cases the hearing of foreigners not being domiciled in Belgium who were suspected of having committed an infringement was organized in the offices of the FSMA. In one of those cases the competent supervisory authority agreed to the hearing being held at the offices of the FSMA. In the other case two staff members from the Enforcement department attended the hearing at the offices of the foreign supervisory authorities.


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II.
DEVELOPMENTS IN THE REGULATION AND PRACTICE OF SUPERVISION PER AREA OF COMPETENCE

Pages 85 -167 and footnotes 105-318 are not translated into English, but are available in French and Dutch on the FSMA website (www.fsma.be).


FSMA

III.
THE ORGANIZATION OF THE FSMA

1. Organization

1.1. Structure

1.1.1. Governing bodies

Management Committee

Jean-Paul **Servais,**
Chairman

Wim **Coumans,**
Deputy Chairman [319]

Annemie **Rombouts,**
Deputy Chairman [320]

Henk **Becquaert,**
Member

Gregory **Demal,**
Member

Albert **Niesten,**
Secretary General [321]

319 By the Royal Decree of 25 April 2014 (Belgian Official Gazette, 7 May 2014), which entered into force on 2 May 2014, Mr Wim Coumans was discharged of his duties as deputy chairman of the FSMA. Mr Wim Coumans is authorized, by virtue of the same decree, to use the honorary title of his position as deputy chairman and member of the Management Committee of the FSMA.

320 By the Royal Decrees of 18 November 2013 and 25 April 2014 (Belgian Official Gazette, 7 May 2014), which entered into force on 2 May 2014, Mrs Annemie Rombouts was appointed member of the Management Committee and deputy chairman of the FSMA for a renewable term of six years.

321 By the Royal Decree of 25 April 2014 (Belgian Official Gazette, 6 May 2014), which entered into force on 2 May 2014, Mr Albert Niesten was discharged of his duties as secretary general of the FSMA. Mr Albert Niesten is authorized, by virtue of the same Decree, to use the honorary title of his position of secretary general of the FSMA.

1.1.2. Organization chart of the departments and services

The following organization chart has been in force since 2 May 2014.

1.1.3. Supervisory Board

1.1.3.1. Membership

Dirk **Van Gerven**, Chairman

Jean-François **Cats**

Jean **Eylenbosch**

Robert **Geurts**

Hilde **Laga**

Didier **Matray**

Pierre **Nicaise**

Jean-Paul **Pruvot**[322]

Michel **Rozie**[323]

Reinhard **Steennot**

Marnix **Van Damme**

Marieke **Wyckaert**

322 The mandate of Mr Jean-Paul Pruvot came to an end on 1 May 2013.
323 The mandate of Mr Michel Rozie came to an end on 1 May 2013.

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

In 2013, the Supervisory Board of the FSMA met nine times and used the written procedure once.

The Supervisory Board focused during the year under review mainly on the FSMA's fulfilment of its tasks after the Twin Peaks reform of financial supervision and in particular of its tasks in respect of protection of consumers of financial services and products. In addition, the Board exchanged views about numerous subjects relating to the supervisory practice and the internal operation of the FSMA. The Board wishes to thank the Management Committee, the secretary general and the staff of the FSMA for their cooperation in the fulfilment of the Board's tasks.

Fulfilment of the FSMA's tasks

As in previous reporting periods, the Management Committee gave a series of presentations to the Supervisory Board of the initiatives developed by the FSMA in view of fulfilling its supervisory tasks and other duties relating to the protection of consumers of financial services and products.

During its meetings, the Board devoted particular attention to the work carried out in view of fulfilling the FSMA's task of making a contribution to financial education. It also monitored the gradual development of the web portal on financial education launched in 2013, on which the simulator for savings accounts managed by the FSMA is also available. The large number of visits to the site indicates that this tool fills a need on the part of consumers. The Board welcomes the fact that new initiatives are being prepared in this area.

The Board also had the opportunity to discuss the FSMA's principal supervisory actions. In particular, the Board was informed of the first findings from the supervision of compliance with the MiFID conduct of business rules.

The Board also noted the achievements of the FSMA in addressing failures to comply with the rules by imposing administrative sanctions, in particular where insider dealing and other forms of market abuse were concerned. Since adequate enforcement is a key element of an effective supervisory apparatus, the Board recommended that these enforcement actions be extended to the entire range of powers exercised by the FSMA, including supervision of compliance with the rules aimed at protecting consumers of financial services and products.

The Board was further informed of the findings of the IMF obtained through its Financial Sector Assessment Program (FSAP) aimed at analysing the Belgian financial sector, in particular as regards the role of the FSMA. The Board welcomes the favourable assessment by the IMF of the way in which the newly created FSMA launched its activities, and encourages the FSMA to follow up on the IMF's recommendation as regards the efficient and concrete implementation of these projects. Explanations were also provided to the Board concerning the EIOPA peer review, which examines the supervisory practice of national supervisors (including the FSMA) with respect to pension funds and which evaluated the supervision conducted by the FSMA positively.

The Management Committee provided the Supervisory Board with further details on the status of the moratorium on the distribution of particularly complex structured products. The Board took note of the attention this initiative garnered at international level and of its positive assessment by the IMF made during the FSAP, in particular on account of the horizontal approach of the moratorium to all products whatever their legal form. The Board welcomes

the efficient relationship with the financial sector in this regard, which helps reinforce the prior supervision of new products.

Regulatory developments

The Board was regularly informed of new regulatory developments. Its members received explanations regarding the Law of 30 July 2013, which further expands the tasks and supervisory instruments of the FSMA, as well as regarding the draft royal decrees on the implementation of the relevant MiFID rules of conduct in the insurance sector.

Board members were also informed of the initiatives aimed at enhancing the protection of savers who hold regulatory savings accounts, as well as of the main lines of the reform of the insurance law in respect of the aspects for which the FSMA is competent.

The Board also discussed the future status of independent financial planners and, among other things, the demarcation of the scope of this new status from other regulated professions.

On the basis of its statutory task laid down in Article 49, § 3, of the Law of 2 August 2002, the Supervisory Board advised the Management Committee on the FSMA's regulations on the organization of external periodic reporting, and on a regulation on the accreditation of statutory auditors and audit firms.

The Board was also informed of the preparation of the FSMA regulation on the mandatory inclusion on financial products of a label indicating the associated risks, and made a number of suggestions for refining this initiative. Members of the Board also exchanged views regarding the regulation that the FSMA can adopt prohibiting distribution of certain products to retail investors.

Finally, the Board also received information on a number of significant market developments and the potential risks associated with them, including the growth in high frequency trading on the financial markets. The members paid particular attention in this regard to the technical and human resources which the supervisor needs in order to monitor this phenomenon.

Appointments to senior management

Upon the request of the competent ministers, the Board gave advice, in accordance with its statutory tasks, on the proposed appointments to the senior management of the FSMA.

Internal organization and functioning of the FSMA

For the execution of its general task of supervising the functioning of the FSMA, the Board discussed on a number of occasions the internal operation of the different departments of the FSMA as well as the institution's human resources management. The Board was also informed of the budget for the staffing needs of the FSMA arising from the set of new tasks and powers conferred upon the FSMA under the new legislation that will come into force in the course of 2014.

Within the scope of its statutory tasks, the Board approved the FSMA's budget for 2013 on 4 February 2013 and the budget for 2014 on 20 December 2013.

The Board approved the 2012 annual report on 24 April 2013 and the annual accounts for 2013 on 30 April 2014.

The 2012 annual report was approved on 16 May 2013, and the section of the present report concerning the powers of the Supervisory Board was approved on 30 April 2014.

Over the course of 2013, the mandates of two members of the Supervisory Board came to an end: Mr Michel Rozie and Mr Jean-Paul Pruvot. The members are grateful to both of them for their valuable contribution to the activities of the Supervisory Board..

1.1.3.3. Report on the audit committee's exercise of its statutory tasks

Since the Twin Peaks reform of financial supervision, the FSMA has an audit committee. Article 48, § 1, of the Law of 2 August 2002, as amended by the Royal Decree of 3 June 2011, provides that the Supervisory Board of the FSMA conducts general supervision of the FSMA and that such supervision requires the creation of an audit committee from among its members[324].

Tasks relating to the budget, accounts and annual report of the FSMA

In application of the aforementioned Article 48, the audit committee plays a role in the process for approving the financial statements and the annual report of the FSMA.

Over the course of 2013, the audit committee examined the FSMA's budget for 2013 and 2014, which serves as the foundation for the pre-financing of the FSMA's operating costs in accordance with the rules laid down in the royal decree on the financing of the FSMA. The committee also examined the FSMA's accounts for 2012. Pursuant to the aforementioned Article 48, the audit committee reported to the Supervisory Board on the accounts and budgets drawn up by the Management Committee, and after requesting a number of clarifications, it proposed that these be approved. The audit committee also deliberated on the part of the 2012 Annual Report that concerns the powers of the Supervisory Board, and proposed to the Board that the annual report prepared by the Management Committee be approved.

The audit committee also took note of the FSMA's half-yearly accounts as at 30 June 2013.

Relationship with the FSMA's internal audit

In application of Article 48, §1, third paragraph, of the Law of 2 August 2002, the Management Committee provided the audit committee with two internal audit reports on the operational audits conducted by the internal audit department as part of its audit programme. These reports concern the following topics:

- Audit of the regime introduced by the moratorium on the distribution of particularly complex structured products;
- Audit of the supervision, by the 'Supervision of listed companies' and the 'Supervision of financial product compliancy' services, of listed companies and issue operations.

The internal auditor commented on these reports before the audit committee, which in turn discussed its findings. The audit committee will continue to monitor the way in which the Management Committee follows up on these reports.

The committee also discussed with the internal auditor the operation of the internal audit function at the FSMA.

324 For an overview of the tasks of the audit committee, see the 2011 FSMA Annual Report, pp. 97-98. The audit committee, which is composed of three members chosen by the Board, remained unchanged in 2013.

Relationship with the Management Committee and the Supervisory Board

In the course of the year under review, the audit committee reported to the Supervisory Board on its activities of the previous year.

The committee made no formal recommendations in 2013 to the chairman of the Management Committee.

1.1.4. Statutory auditor

André Kilesse[325]

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

1.1.5. Sanctions Committee

1.1.5.1. Composition

Pursuant to the Royal Decree of 9 March 2014[326], the Sanctions Committee went through a change. Claude Parmentier's term of office ended at his request and Christine Matray was appointed, in her capacity as emeritus judge at the Belgian Supreme Court (*Cour de Cassation/Hof van Cassatie*), as member of the Sanctions Committee. She will complete Claude Parmentier's term of office. The members of the Sanctions Committee would like to thank Mr Parmentier for his valuable contribution to the work of the Sanctions Committee. The King has authorized him to continue to use the honorary title of his position.

325 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.
326 Belgian Official Gazette of 19 March 2014.

Michel **Rozie**, Chairman

Luc **Huybrechts**

Guy **Keutgen**

Christine **Matray**[327]

Pierre **Nicaise**

Claude **Parmentier**[328]

Philippe **Quertainmont**

Hamida **Reghif**

Reinhard **Steennot**

Marnix **Van Damme**

Dirk **Van Gerven**

1.1.5.2. Procedures and operation

Pursuant to Article 48*bis* of the Law of 2 August 2002, the FSMA Sanctions Committee determines the imposition of administrative fines by the FSMA[329].

The sanctions procedure commences with a decision by the Management Committee as a result of which a notification of charges is sent to the persons concerned. This notification includes the investigation report drawn up by the investigations officer once the investigation launched and conducted under his auspices is complete.

327 Ms Christine Matray was appointed member of the Sanctions Committee of the FSMA by the Royal Decree of 9 March 2014 (Belgian Official Gazette, 19 March 2014), to replace Mr Claude Parmentier until the end of his term.
328 Mr Claude Parmentier was discharged of his office as member of the Sanctions Committee of the FSMA, at his request, by the Royal Decree of 9 March 2014 (Belgian Official Gazette, 19 March 2014).
329 See the FSMA Annual Report 2011, p. 99-101 for a description of the tasks, the members and the operation of the Sanctions Committee.

In 2012 and 2013, the Management Committee forwarded a total of 11 dossiers to the Sanctions Committee, some of which concerned more than one person. In 2012, a ruling was made on two of those dossiers and in 2013, seven decisions were reached. The Sanctions Committee imposed an administrative fine in six of the cases, four of which have appeals pending. In three dossiers, it was concluded that no infringement had occurred. The rulings made in 2013 will be explained further below[330].

In 2013, as part of a number of dossiers, the Sanctions Committee issued statements as to its capacity and as to the principle used in determining whether Article 6 of the ECHR applies to it. The Sanctions Committee noted in this regard that the governing body of the FSMA authorized to impose administrative penalties has been explicitly designated by the Brussels Court of Appeal as an administrative authority and not an administrative court (Brussels, 18th chamber, 1 February 2008, *Bank Fin. R. /D.B.F. 2008*, p. 167). As such, Article 6 of the ECHR does not apply to the Sanctions Committee's administration of justice (Brussels, 13 December 2011, FSMA website, No 43). Nevertheless, the Sanctions Committee considers that this administration of justice may not jeopardize compliance by the appeal courts, in this case the Brussels Court of Appeal, with the safeguards afforded by Article 6 of the ECHR, which indirectly holds the Sanctions Committee to complying with the fundamental guarantee of the right to a fair trial (see: FSMA Sanctions Committee, Decision of 17 June 2013 No 19.2, FSMA Sanctions Committee, Decision of 17 June 2013 No 20, and FSMA Sanctions Committee, Decision of 25 October 2013 No 10.1, FSMA website).

1.1.5.3. Decisions of the Sanctions Committee

1.1.5.3.1. Insider dealing - Appeal

On 19 February 2013, the Sanctions Committee ruled to impose an administrative fine on a legal person and to convict by simple declaration of guilt two natural persons in an insider dealing case. An appeal was lodged against this ruling at the Court of Appeal in Brussels. Pursuant to Article 72, § 1 of the Law of 2 August 2002, as applicable at the time of the events in question, the Sanctions Committee decided to defer the publication of this ruling until the legal proceedings have come to a close.

1.1.5.3.2. Insider dealing - Defining 'inside information'

In a ruling of 12 March 2013, the Sanctions Committee imposed an administrative fine as a result of a breach of the prohibitions against insider dealing. In this dossier, the Sanctions Committee further clarified the definition of 'inside information'. In particular, it ruled that information on an intermediate step in the case of a protracted process can be considered precise information, even if the outcome of that process remains uncertain. In that respect, the Sanctions Committee made reference to the interpretation by the Court of Justice of the European Union that "in the case of a protracted process intended to bring about a particular circumstance or to generate a particular event, not only may that future circumstance or future event be regarded as precise information, but also the intermediate steps of that process which are connected with bringing about that future circumstance or event" (Court of Justice, Case C-19/11, Markus Geltl v Daimler AG, 28 June 2012). In the case handled by the Sanctions Committee, the person concerned gave a buy order on shares in a listed company while in possession of inside information on the decision by the senior management of another company to prepare a takeover bid of the aforementioned listed company and of the

330 See the FSMA Annual Report 2012, p. 112-113, for an explanation of the two decisions made in 2012.

work involved in that process. This person was therefore aware that a significant intermediate step had been taken in the takeover process and was aware, or ought to have been aware, that this constituted inside information.

The Sanctions Committee considered that the penalty to be imposed should serve as a deterrent to the persons concerned as well as to other market participants, and so it follows that the amount of the fine should exceed the value of the material gain. For this breach, the Sanctions Committee would normally have imposed a fine of EUR 60,000 but in light of the reasonable time being exceeded since the defendant was under threat of a sanctions procedure, the administrative fine was reduced to EUR 52,500. For the same reasons it was decided that naming the defendant and publishing the full details of the ruling would cause the defendant a disproportionate disadvantage and therefore that the publication in accordance with Article 72, § 1, of the Law of 2 August 2002, as applicable at the time of the events, would occur in summary form and would not include names. No appeal was lodged against this decision.

1.1.5.3.3. Market manipulation by a listed company and its management - failure to publish inside information - alleged irregularities in the proceedings[331]

On 17 June 2013, the Sanctions Committee imposed an administrative fine of EUR 500,000 for an infringement of Articles 10, § 1, and 25, § 1, first paragraph, 4°, of the Law of 2 August 2002 and of Article 5 of the Royal Decree of 14 November 2007 on a listed company which, at the time of the event, formed part of a bancassurance group.

The Sanctions Committee has also declared three managers who were acting as spokespersons of the company at the time of the disputed communications to be guilty of infringing Article 25, § 1, first paragraph, 4°, of the Law of 2 August 2002[332]. One of these managers was ordered to pay a fine of EUR 250,000 and the other two were ordered to pay a fine of EUR 400,000.

In accordance with Article 72, § 3, fourth paragraph, of the Law of 2 August 2002, the Sanctions Committee has decided to publish these decisions to impose a sanction, including names, because publication did not risk seriously disrupting the financial markets or cause a disproportionate disadvantage to the persons concerned. On this point, the Sanctions Committee has also taken into consideration the great media interest shown in this dossier.

It must be pointed out that the company concerned submitted, as a preliminary point, a request for removal of certain members of the Sanctions Committee on the grounds that namesakes of theirs appeared as claimants in legal proceedings against the company. Article 48*bis*, § 3, sixth paragraph, of the Law of 2 August 2002, on this subject provides that the members of the Sanctions Committee may not deliberate on a matter in which they have a personal interest that might influence their opinion. This obligation is also one of the rules of ethics laid down in Article 39, first paragraph, of the internal rules of the Sanctions Committee dated

331 The Sanctions Committee has published two decisions pertaining thereto: one in Dutch and another in French, depending on the language of the proceedings as chosen by the person concerned.

332 The Sanctions Committee pointed out that Article 25, § 1, of the Law of 2 August 2002 holds both legal persons and natural persons liable for administrative infringements given that it provides that the disputed acts can be attributed to the legal person and/or to the natural person in light of the circumstances concerned. For an infringement of this Article to be attributed to a legal person, the Sanctions Committee considers that the disputed information must be, and it suffices that it is, in the form of an official document from the legal person (such as a press release) or that the information is disseminated by natural persons who act in the name and on behalf of the legal person. The infringement can also be attributed to the natural persons who have disseminated the disputed information if it transpires that the constituent elements also exist by their doing. In the present case, the Sanctions Committee ruled that the fact that these natural persons act as spokesperson or the fact that their communications are approved collegially, does not in any way absolve them from their own responsibility.

21 November 2011. When questioned on the matter, the members concerned responded to the Chairman of the Sanctions Committee that they did not consent to being removed from the case because the persons concerned, despite being namesakes of theirs, had no kinship or connection of any kind with them. The Sanctions Committee, after having debated this point on 25 October 2012 in the absence of the Members in question, decided to reject the request for removal[333].

In this dossier, the ruling of the Sanctions Committee on the substance of the case was that the company concerned had infringed Article 10 of the Law of 2 August 2002 by failing to immediately publish certain inside information on its solvency forecasts. The Sanctions Committee has also ruled that there had been repeated breaches of Article 25, § 1, first paragraph, 4°, of the Law of 2 August 2002 on the part of the company and its spokespersons as a result of the dissemination of information over the course of the same period that could give false or misleading signals on the company's share when they knew or ought to have known that this information was false or misleading. The Sanctions Committee has also ruled that infringements by the company concerned of Articles 10 and 25, § 1, first paragraph, 4°, of the Law of 2 August 2002 also constituted an infringement by that company of Article 5 of the Royal Decree of 14 November 2007. If an issuer fails to exercise its duties to immediately publish inside information in its possession, or if it provides false or misleading information to the market, it also fails herewith to comply with the obligations imposed by Article 5 of the Royal Decree of 14 November 2007 pursuant to which it must make information available to the public that is necessary to ensure the transparency, integrity and proper functioning of the market.

Prior to this decision, the Sanctions Committee refuted a number of allegations of irregularities in the procedure:

Allegation of partiality on the part of the Sanctions Committee

As part of this dossier, the persons concerned called into question the impartiality of the Sanctions Committee on the grounds that it could not rule on the action brought against them without ruling on the quality of the decisions that the FSMA (then the CBFA) made in the past in its capacity of supervisory authority of the Belgian financial sector with respect to the company concerned.

In this respect, the Sanctions Committee has ruled that combining preventive and punitive functions is the very essence of the FSMA. Although the Sanctions Committee is a governing body of the FSMA, the Law of 2 August 2002 tasks it with ruling entirely impartially and presumes it to have the capacity to do so. Given its composition as determined by Article 48*bis* of the Law of 2 August 2002 and the procedure laid down in its internal regulations, the Sanctions Committee has ruled that it offers all the safeguards necessary to ensure fair administration of justice. Furthermore, none of the existing members has ever been a member of the Management Committee of the FSMA. The fact that two current members had sat on the Supervisory Board of the FSMA, a governing body that does not enquire into individual dossiers but is exclusively tasked with the supervision of the overall operation of the FSMA, could not undermine the presumption of their impartiality as members of the Sanctions Committee. Moreover, Article 48*bis*, § 3 of the Law of 2 August 2002 permits members of the Supervisory Board to be members of the Sanctions Committee.

333 Such a decision to reject a request for removal is a purely preliminary procedure. No appeal may be made against the decision, with the proviso that the persons who requested the removal may dispute the decision once the definitive decision on the substance of the matter has been ended down; the latter decision may be appealed to the Brussels Court of Appeal.

The Sanctions Committee has ruled that if the legislators have conferred on the FSMA the power to impose penalties on a listed bancassurance group and its management for infringements of the Law of 2 August 2002 and its implementing decrees, the exercise of this power by the designated governing body of the FSMA does not, in itself, make this governing body partial.

Allegation of partiality on the part of the investigations officer

According to the persons concerned, the investigations officer had infringed Article 70, § 2, of the Law of 2 August 2002 by not investigating the charges and the defence in the dossier as required by the legislation that applied at the time. They also claimed that the investigations officer could not, as a governing body of the FSMA, be impartial vis-à-vis the institution. They also criticized the fact that the investigations officer, in his capacity as Secretary General of the FSMA, participates in meetings of the Management Committee of the FSMA with an advisory vote.

On this point, the Sanctions Committee ruled that the fact that the investigations officer is also Secretary General of the FSMA and therefore forms part of the institution does not prevent him from investigating cases impartially. The Sanctions Committee recalled that the investigations officer does not participate in the Management Committee's deliberations on the decision as to whether to call in the investigations officer to handle a dossier. The Sanctions Committee also ruled that neither the investigation dossier nor the handling of the dossier for the Sanctions Committee gave any reason to suggest that the investigations officer would have failed in his obligation of impartiality. Finally, the Sanctions Committee also pointed out that the fact that one of the persons concerned only became involved in the investigation towards the end, because it was only then that his role in the affair came to light, in no way prevented the investigation from having been conducted with due regard to both the charges and the defence.

Allegation of overstepping, by the investigations officer, of the boundaries of his referral

One of the persons concerned alleged that, in the investigation conducted of him, the boundaries of the investigations officer's referral were overstepped since the communication that he had made as the company's spokesperson was not included in the letter of referral. The Sanctions Committee rejected this argument on the basis that there is nothing to prevent the investigations officer from extending the investigation he has been called in to conduct to other persons involved. The Sanctions Committee furthermore ruled that the facts for which the investigations officer was called in related to external communications on solvency over a set period by the company concerned and that the communications referred to in the letter of referral were those that were already known as part of the preliminary investigation and, consequently, that they did not in any way represent a boundary to the investigations officer's referral.

Allegation of violation of the right of defence by failing to conduct a hearing during the investigation, and dispute of certain facts of the investigation which purportedly occurred after the closure of the investigation

The company concerned alleged that its right of defence was disregarded as it was not heard by the investigations officer during the investigation. The Sanctions Committee has established on this point that when the investigations officer communicated the provisional findings, the company had stated that it did not consider a hearing necessary.

Another person alleged that the right of defence had been violated on the basis that he had only been given a short period of time in which to respond to the investigations officer's provisional findings, without a hearing. This person also argued that he only came under suspicion after the investigations officer had sent the letter in which he communicated his provisional findings to the other persons already involved in the investigation, in which they were invited to contribute their observations on the practices under investigation. According to this person, this letter marked the closure of the investigation by the investigations officer.

The Sanctions Committee pointed out in this respect that the investigations officer, in accordance with Article 71, § 1, of the Law of 2 August 2002, as applicable at the time, had communicated his provisional findings to the persons concerned to enable them to contribute their observations on the practices in question. This communication by the investigations officer in no way marked the closure of his investigation. The investigations officer could still employ any investigative action he deemed necessary thereafter as a result of the observations of the parties concerned, extend his investigation to an additional person, or even change his provisional findings. The Sanctions Committee has therefore ruled that the investigations officer's investigation was concluded only at the time when he made his final report to the Management Committee.

Allegation of violation of the right to remain silent

Finally, the company concerned alleged that there was a violation of its right to remain silent as well as of its right not to be compelled to assist in its own incrimination as a result of the requests for information from the FSMA, on the grounds that these requests were paired with threats of criminal penalties based on Articles 36 and 41, 3°, of the Law of 2 August 2002. In this respect, the company also considered that the internal exchange of emails that the AFM[334] had forwarded to the FSMA should be eliminated from the dossier because of the threat of penalties by the AFM.

In this respect, the Sanctions Committee firstly pointed out that this argument is founded on the incorrect premise that criminal proceedings, within the meaning of Article 6 of the ECHR, were commenced when the FSMA addressed a request for information to the company.

The Sanctions Committee also brought up the fact that no coercion or threat of criminal penalties was paired with these requests for information.

The Sanctions Committee also recalled that according to the European Court of Human Rights, the right not to be compelled to assist in self-incrimination relates in the first place to respecting a suspect's wish to remain silent. In the interpretation given to this aspect in the legal systems of the parties to the ECHR and elsewhere, this right does not extend to the use, in criminal matters, of data that could be obtained from the suspect through coercive measures but that also exist independently of the will of the suspect, such as documents obtained by way of a court order[335]. The Sanctions Committee has concluded from this that the right to remain silent had no bearing on these documents obtained by the FSMA pursuant to Article 34 of the Law of 2 August 2002 insofar as the documents existed independently

334 The Dutch Authority for the Financial Markets.
335 ECHR No19187/91, 17 December 1996 (Saunders v UK), § 69.

of the will of the person concerned. The right to remain silent primarily relates to statements that the parties could have given as part of the proceedings against them. In this respect, the Sanctions Committee established that the investigations officer had always reminded the persons concerned of their right to remain silent prior to starting any questioning.

In addition, the Sanctions Committee pointed out that, in another case, the Brussels Court of Appeal ruled that the FSMA's sanctions procedure[336] did respect the right to remain silent.

With respect to the documents that the AFM forwarded to the FSMA, the Sanctions Committee has ruled that these did not need to be eliminated from the case since the criticism related to the way in which the Dutch authority had ordered the company to assist in the investigation conducted in the Netherlands. The Sanctions Committee has decided that it is unable to rule on the legality of the collection of information by the AFM. Moreover, there was no evidence at all that the procedure in the Netherlands could come into question.

Finally, the Sanctions Committee pointed out that the information and documents requested were forwarded without invoking the right to remain silent.

Allegation of exceeding reasonable time

The persons involved in this case also alleged that the reasonable time for a decision to be made had been exceeded.

The Sanctions Committee pointed out in this respect that the provision for reasonable time of a procedure that could lead to the imposition of a penalty of a criminal nature within the meaning of Article 6.1 of the ECHR, requires a specific and overall assessment of the duration of the procedure, taking into account (1) the complexity (both actual and legal) of the case, (2) the conduct of the person concerned, (3) the diligence of the national authorities, and finally (4) what is at stake in the proceedings. The Sanctions Committee reiterated that the time within which the case must be heard only starts when the persons concerned are suspected of having committed an infringement or when, as the consequence of other preparatory enquiry or investigation work, they come under threat of criminal prosecution with grave repercussions for their personal situation, particularly because they are obliged to take certain measures to defend themselves from the accusations brought against them within the meaning of the ECHR[337].

The Sanctions Committee has touched on the fact that the extent to which the duration of the procedure is reasonable must be assessed based on the criteria arising from case law of the European Court of Human Rights and in accordance with specific circumstances of the case, which requires an assessment based on the total duration of the procedure[338] and not only based on the time that has elapsed between certain facts under the investigation or between the closure of the preliminary investigation and the submission of the case to the courts[339]. The Sanctions Committee has pointed out that exceeding reasonable time can

336 Brussels, 4 December 2012, AR No 2007/SF/5, Nos 40 to 42.
337 Cass. (2nd ch.) AR 1545, 19 September 1989.
338 ECHR No 45891/99, 7 November 2000 (Piccolo/Italy).
339 Cass. (2nd ch.) AR P.06.0604.N, 26 September 2006.

be penalized by declaring the inadmissibility of the proceedings leading to the imposition of a penalty of a criminal nature only if the evidence is destroyed or lost as a result, or if it has rendered the normal exercise of the right to a defence impossible[340]. If that is not the case, the courts must be able to reduce this penalty in a measureable way or even acquit the persons concerned[341].

Given the great complexity (actual and legal) of the case, the number of parties concerned, the considerable scale of the documents to be processed, as well as the need for the Sanctions Committee to set matters straight and the consequent obligations related thereto, the Committee has ruled in this case that the duration of the procedure could not be considered unreasonable on the day the judgment was delivered, even if taking into account the period of inactivity invoked.

Allegation of disregard of the right to a two-stage procedure

One of the persons concerned alleged that, as a result of the fact that the Sanctions Committee did not need to comply with the safeguards of the ECHR, he would be deprived of a procedure, which would contravene Article 2 of Protocol No 7 of that Convention. The Sanctions Committee, citing the Protocol's explanatory report, ruled in that respect that the right to a two-stage procedure only applies to a person judged by a court. The Sanctions Committee pointed out that it is not a 'tribunal established by law' within the meaning of Article 6 of the ECHR. Pursuant to the ECHR, the decision of the Sanctions Committee must indeed be able to be disputed before a court which offers the safeguards stated in Article 6 of the ECHR, i.e. in this case the Court of Appeal in Brussels, but this means of appeal is also sufficient.

Allegation of disregard of the principle of fair play and equality of arms

One of the persons concerned alleged that his belated involvement in the proceedings had a detrimental effect on his right of defence, especially because he had very little time to prepare his defence.

Furthermore, the persons concerned alleged a violation of the equality of arms principle, by way of which the Management Committee had a longer period of time than they did to submit their observations to the Sanctions Committee.

The Sanctions Committee has pointed out in that respect that pursuant to Article 28, first paragraph, of its internal rules, the parties, as well as the Management Committee, can submit an additional statement within a period of twenty days after the hearing. The second paragraph of that Article sets down that, in the case of the Management Committee making written observations, these are forwarded to the parties concerned, who will have a non-extendable term of twenty days within which to respond. This right to respond relates to what has been said and discussed in the hearing. This is the reason why the internal rules grant the parties and the Management Committee similar rights. The Sanctions Committee has ruled that the additional statement that the Management Committee submitted after the hearing did not include new facts or arguments that were not invoked during the hearing, meaning that it could come as no surprise to the parties that they had been granted a term of twenty days within which to respond.

340 Cass. (2nd ch.) AR P.10.1319.F, 7 September 2011.
341 Cass. (1st ch.) AR F.07.0076.N, 12 November 2009.

Otherwise, the Sanctions Committee established that during the hearing of the persons concerned, special attention had been paid to the equality of arms principle by spreading the hearing—at their request—over four separate days so that they were able to have more time to prepare their response.

Allegation of infringement of the non bis in idem principle

The persons concerned alleged that this principle had been infringed on the grounds that there were concurrent procedures of an administrative and criminal nature against them in Belgium or the Netherlands, depending on the case. Furthermore, the principle based on which criminal proceedings take precedence over civil proceedings and the subsidiarity of the administrative proceedings vis-à-vis the criminal proceedings was invoked in line with the 'una via' principle used in tax cases.

The Sanctions Committee pointed out in this respect that one of the conditions of the non bis in idem principle, as referred to in Article 54 of the Schengen Agreement or Article 50 of the Charter of Fundamental Rights of the European Union, is the existence of a final judgment in another Schengen country or another Member State of the European Union. Given that those provisions also apply to administrative proceedings that could lead to the imposition of a penalty of a criminal nature, the Sanctions Committee has consequently established that the condition that there must be a final judgment was not met in any way in this dossier because there was still an appeal pending against the penalties imposed in the Netherlands.

The Sanctions Committee has also pointed out that, in the national context, the non bis in idem principle is exclusively applicable where prior to the new prosecution or rulings, a final judgment is already in existence.

Furthermore, the Sanctions Committee has ruled that neither Article 4 of the previous title of the Code of Criminal Procedure on the basis of which the criminal procedure takes precedence over the civil procedure, nor the precedence of criminal law, would prevent the claims laid down by the administration for the imposition of administrative penalties because these claims are not civil claims within the meaning of this legal provision[342]. Finally, the Sanctions Committee has ruled that the scope of the 'una via' regulations is limited to tax matters. The Sanctions Committee has ruled that there is no legal framework whatsoever with regards to market abuse that provides for such rules.

Allegation of a violation of the presumption of innocence

The company concerned alleged a violation of the right to be presumed innocent pursuant to the consideration that the Dutch AFM and the Courts of Rotterdam had ruled on the constituent elements of the 'market manipulation' and 'public disclosure of inside information' infringements of Dutch law, which were largely identical to the same infringements of Belgian law given that both legislations are based on the same European Directive, meaning that the presumption of innocence was irrevocably violated because of the declarations of guilt included in those judgments. The company invoked the same reasoning with regard to the articles published in the press at the time.

342 Cass. (1st ch.) AR F.06.011.F, 12 December 2008.

The Sanctions Committee has ruled that the mere fact that a foreign court had already ruled, in a non-final judgment, on the merits of an accusation of a criminal nature in connection with which the Sanctions Committee was also called in, could not constitute an infringement of the suspect's presumption of innocence. The Sanctions Committee has also pointed out that it was competent to issue a ruling without thereby taking into account the judgment of the AFM and—in the appeal—the findings of the Courts of Rotterdam, against which an appeal was ongoing at the time before the Dutch Trade and Industry Appeals Tribunal. The Sanctions Committee has also emphasized that it took no account whatsoever of the articles that had appeared in the press.

Allegation of violation of the principle of legitimate expectation

Finally, a violation of the principle of legitimate expectation was alleged on the grounds that the FSMA had been kept informed of the evolution of the company's solvency estimates and that the FSMA had never asked for the information concerned to be amended. Certain persons involved claimed that the FSMA approved a disputed press release, including via its Chairman, and that it later confirmed this approval in its annual report. They were of the opinion that the FSMA had thereby created the legitimate expectation that the disputed communications were appropriate and sufficient.

The Sanctions Committee in that respect pointed out that the supervision of the FSMA (the CBFA at the time) of the company concerned was twofold at the time of the offence. On the one hand, the company was, as a banking group, subject to prudential supervision on compliance with the regulatory solvency and liquidity ratios pursuant to the banking law. On the other hand the company was, as a listed company, subject to information obligations pursuant to Article 10 of the Law of 2 August 2002 and its implementing decrees, including the Royal Decree of 14 November 2007. These obligations are intended to ensure the transparency, integrity and proper functioning of the market. The Sanctions Committee has emphasized that it was specifically non-compliance with those obligations that was the focal point of the procedure. The investigation bore no relation to compliance with regulatory ratios, on which prudential supervision was exercised.

Furthermore, the Sanctions Committee also recalled that, in accordance with Article 5 of the Royal Decree of 14 November 2007, on the basis of which issuers bear the sole responsibility for the provision of necessary information to the public to ensure the transparency, integrity and proper functioning of the market, the supervision by the FSMA of the information provided by the company did not incorporate any mechanism whatsoever for prior approval of the communications disseminated.

The Sanctions Committee has also ruled that the Chairman of the FSMA in no way validated ex post the information provided by the company. Furthermore, the annual report referred to was dated a long time after the disputed facts and could therefore have no influence whatsoever on the communications that had been made previously by the company.

The Sanctions Committee also recalled that the information provided by the company concerned to the FSMA (the CBFA at the time) under the latter's prudential supervisory task did not have the same aim as the information presented to the market. The obligation to inform the market went further than compliance with the regulatory solvency and liquidity ratios, which is one of the objectives of prudential supervision. The obligation of the company to inform the market related to the communications made previously by the company, in particular on the solvency objectives that it had itself set and that went further than the regulatory ratios applicable at the time. The information provided by the company to the FSMA (the CBFA at the time) for the exercise of its task as prudential supervisory authority had to enable it to oversee compliance with the regulatory ratios, but was insufficient to allow it to form an exact picture of the progress of the solvency objectives that the company had set for itself. In addition, the information that the company had to publish to inform the market also included inside information within the meaning of the Law of 2 August 2002.

According to the Sanctions Committee, it was demonstrated in this case that the FSMA was not aware of the exact and in fact seriously negative evolution of the company's solvency. The company could not therefore claim a failing or an error in the ex post supervision of financial information by the FSMA in order to evade its liability and not have to comply with its legal obligation to disclose information required for the purposes of the transparency, integrity and proper functioning of the market. Finally, the Sanctions Committee reiterated that under no circumstances can the principle of legitimate expectation be invoked to justify unlawful conduct. The conclusion of the Sanctions Committee was that the principle of legitimate expectation could not be invoked in this dossier and pointed out that it was obliged to punish any infringement.

All persons on whom a penalty was imposed in this dossier lodged an appeal. That appeal is currently pending before the Brussels Court of Appeal. Pending the result of that appeal, the decisions of the Sanctions Committee have been published, without revealing any names, on the FSMA website.

1.1.5.3.4. Misuse of inside information – suspected use of inside information

On 2 September 2012, the Sanctions Committee imposed a fine of EUR 71,400[343] on a former senior manager of a credit institution because he had sold part of his portfolio of shares in the listed holding company of the group when he was in possession of information that he knew, or at least should have known, constituted inside information. This represented an infringement of Article 25, § 1, first paragraph, 1°, a), of the Law of 2 August 2002.

During the exercise of this person's tasks, it came to his knowledge that the credit institution for which he worked had serious liquidity problems and that the NBB had agreed to grant it ELA[344]. He was specifically alerted to the fact that all information on the granting of ELA was strictly confidential, first by email and later in an NDA he was asked to sign.

In this dossier, the person involved claimed that the signature of this NDA had not influenced his decision to sell. The Sanctions Committee reiterated on this point that no causal link need be demonstrated between the inside information and the transaction executed to prove that

343 i.e. double the material gain obtained.
344 ELA or Emergency Liquidity Assistance.

an infringement exists of Article 25, § 1, first paragraph, 1°, of the Law of 2 August 2002. Having referred to the case law from the Court of Justice of the European Union[345], the Sanctions Committee indicated that to be able to qualify a transaction as prohibited insider dealing, it is sufficient for an insider in possession of inside information to execute a transaction in the financial instruments on which he/she possesses inside information and that there is no need to further demonstrate that the person concerned specifically 'used' that information in his/her investment decisions. The Sanctions Committee has concluded therefrom that it was of little import that the person concerned based his decision to sell the shares on his inside information on the ELA. In reality, the presumption is that persons in possession of inside information make use of it.

In its judgment, the Sanctions Committee also pointed out that the Court of Justice allows for a rebuttal of this presumption. According to the Sanctions Committee, the rebuttal of this presumption can only be admitted in cases in which it is not possible that the possession of inside information could have influenced the decision to invest or divest. In those cases, the insider does not make unlawful use of the advantage held vis-à-vis other investors thanks to the inside information he/she possesses. In this case, the person involved attempted to rebut the presumption by invoking the reasons underlying the sale of his shares, namely the fact that he had to pay a certain sum in taxes that precisely matched the equivalent value of the transaction, or the fact that his portfolio was largely made up of shares in his employer. According to the person involved, the legitimacy of that argument was further strengthened by the fact that the disputed sale represented a small proportion of his portfolio. He argued that should the information he possessed really have been the driver behind his decision to sell, he would have sold far more shares. The person involved also pointed out the fact that he had not decided to sell his shares at just any price but that he had placed a limit order on them.

With respect to this argument, the Sanctions Committee pointed out that the aforementioned taxes were not yet due at the time of the disputed transaction, and that the person concerned had not proven in any way that he did not have other funds with which to finance that sum. Furthermore, the Sanctions Committee was of the opinion that, even if this argument could have been demonstrated to be pertinent, its existence would not have had any effect on the unlawful character of the transaction. That argument in no way ruled out the possibility that the person involved, when deciding to sell, was nevertheless influenced by the inside information he possessed at that time.

The person involved also cited the fact that he had approached the compliance department on the possibility of selling the shares and that the compliance department did not alert him that the ELA would constitute an obstacle to their sale. The Sanctions Committee established that the person concerned had in fact contacted the compliance department and had said that he only possessed information on the company that was in the public domain. The Sanctions Committee has ruled that the answer of the compliance officer in no way constituted carte blanche because he was not giving his opinion on the qualification of the ELA in light of the definition of inside information. The compliance department could not in fact have been supposed to know that the person concerned was directly involved in the ELA dossier, the strictly confidential nature of which required absolute discretion, even internally. It was therefore also normal that the compliance officer did not refer to that information in his an-

345 By way of reminder, it was pointed out that the Court of Justice, in its response to a question as to the meaning of the expression 'use of inside information' within the meaning of Article 2 of the Market Abuse Directive, stated that 'Article 2, first paragraph of Directive 2003/6 provides that the fact that a (...) person in possession of inside information, acquires or disposes of, or tries to acquire or dispose of, for his/her own account or for the account of a third party, either directly or indirectly, the financial instruments to which that information relates implies that that person has 'used that information' within the meaning of that provision, but without prejudice to the rights of the defence and, in particular, to the right to be able to rebut that presumption. (ECJ, 23 December 2009 (Spector) C-45/08, point 62)

swer and that he specified only that the person concerned could execute the transaction in these shares only if he had not had any access whatsoever to confidential information. The Sanctions Committee has established that this was indeed indisputable. It has also ruled that the fact that the person concerned was asked two days later to sign an NDA, in which the privileged nature of the information on the ELA was clearly emphasized, should have made him refrain from executing any transaction whatsoever.

In this dossier, the Sanctions Committee has decided, pursuant to Article 72, fourth paragraph, of the Law of 2 August 2002, to publish its decision without mentioning the names of the parties on the grounds that publishing the name of the person concerned, who was unemployed, risked causing a disproportionate disadvantage. Naming his name in the publication of the decision could only have compromised his professional career. The Sanctions Committee has in this case taken into consideration the fact that the person concerned declared no longer to wish to work in the banking sector.

It must be noted that, in this case, the person concerned had asked the Sanctions Committee for a suspended or deferred sentence on the grounds that he assisted in the investigation and that he himself had informed the investigations officer of the existence of the NDA. The Sanctions Committee has, however, decided that there was no legal provision that permitted it to take such measures, unlike judges in criminal matters. The Sanctions Committee has also drawn attention to the fact that, in administrative cases, there is no provision for confiscation of the gain from the infringement. In this case, it is the fine that fulfils that objective, and serves as a deterrent.

The person concerned has lodged an appeal against this decision. This appeal is currently pending before the Brussels Court of Appeal.

1.1.5.3.5. Insider dealing - Principle of impartiality - Price-sensitive information - Naming names in publications

In a ruling of 25 October 2013, the Sanctions Committee imposed an administrative fine on a legal person and a natural person for an infringement of the prohibition on insider dealing.

In this ruling, the Sanctions Committee further explored the principle of impartiality because the defendant alleged subjective, or at least objective, partiality on the part of the investigations officer in this dossier. In this respect, the Sanctions Committee made reference to the position of the Brussels Court of Appeal, according to which the general principle of impartiality requires the FSMA to ensure that its activity cannot raise any suspicion of partiality. The Court reiterated in this respect that partiality cannot be deduced solely from the fact that the legal proceedings (including the organization of the structure of the bodies that conduct the investigation and make the ruling) are not transposed in the same way within the administrative penalty procedure (Court of Appeal, Brussels, 13 December 2011, No 56, available on the website of the FSMA and Court of Appeal, Brussels, judgments of 4 December 2012, referred to in the FSMA Annual Report, 2012, p. 80). The Sanctions Committee agreed with the opinion of the Court of Appeal that the manner in which the role of the investigations officer is regulated does not in itself justify a suspicion of partiality. The Sanctions Committee furthermore considered that all items contributed by the defendants for their defence were included in the investigation report and checked for their veracity. Since the defendants did not otherwise raise any specific facts from which the investigations officer could have been deduced to have acted impartially, this defence has been rejected as unfounded.

Contrary to the arguments raised by the defendants, the Sanctions Committee was also of the opinion that the information possessed by the person concerned was price-sensitive.

Information is considered price-sensitive if a reasonable investor would be likely to take into account this particular piece of information as part of the investment decision-making process. In accordance with the purpose of the Market Abuse Directive 2003/6/EC, capacity to have a significant effect on prices must be assessed, a priori, in the light of the content of the information at issue and the context in which it occurs. It is therefore not necessary, in order to determine whether information is inside information, to examine whether its disclosure actually had a significant effect on the price of the financial instruments to which it relates. (Court of Justice, 23 December 2009, case C-45/08, No 69) Nor, contrary to what was invoked by the defendant, is it of any bearing that in the past, information similar to the information at issue had no – or very little – effect on the price of the shares concerned.

When determining the amount of the fine to be imposed, the Sanctions Committee took into consideration the severity of the facts and the subjective culpability of the parties, bearing in mind the principle of proportionality. In this regard, the Sanctions Committee also bore in mind the fact that the insider was a director of a listed company at the time of the events and the judgment, and should in that capacity have been particularly vigilant as to the integrity and the reputation of the markets. As a director and additionally a member of the audit committee, this person could justifiably be expected to have a thorough knowledge of the rules on insider dealing. On the other hand, account was taken of the fact that there was no evidence of infringement with intent, even though this aspect is not a constituent of the infringement, as well as the fact that this was a first offence. In light of the circumstances mentioned, the natural and legal persons concerned were each fined EUR 50,000.

In accordance with Article 72, § 3, fourth paragraph, of the Law of 2 August 2002, the decision of the Sanctions Committee was published, naming the names of the parties, on the website of the FSMA. The Sanctions Committee was of the opinion that this publication could not seriously disrupt the financial markets. On the contrary, the intention of the publication was to contribute to investor confidence in the effectiveness of the supervisory mechanisms for the financial markets, which aim to ensure the integrity thereof. The Sanctions Committee also ruled that the publication of this decision could not cause a disadvantage to the persons concerned disproportionate to the severity of their infringement. As a director of a listed company, the natural person in question should have strictly adhered to the rules on insider dealing. Publishing the penalty for the infringement, including the names of the parties, contributed, according to the Sanctions Committee, to the punitive nature of the fine vis-à-vis the persons concerned, as well as to the dissuasive effect thereof, both vis-à-vis the person concerned, who continued to have a managerial role, and vis-à-vis investors in general. After one year, this publication, which names the parties, will be replaced with an anonymized publication in which any data that could enable the parties or other persons to be identified is removed.

No appeal was lodged against this decision.

1.1.5.3.6. Decision not to impose a penalty in a case of misuse of inside information

Finally, on 6 June 2013, as part of a procedure against an employee of a listed company, the Sanctions Committee concluded that no infringement had been committed of Article 25, § 1, first paragraph, 1°, c), and Article 25, § 1, first paragraph, 7°, of the Law of 2 August 2002, owing to a lack of sufficient evidence.

The Sanctions Committee has decided not to publish this decision pursuant to the least stringent legislation since the facts occurred. Article 72 of the Law of 2 August 2002, as applicable between 25 April 2007 and 14 July 2011, provides that only administrative fines need be published. This legislation was less stringent than the legislation in force at the time of the facts, on the basis of which the FSMA could publish an acquittal, and the legislation that applied at the time the decision was made, on the basis of which all decisions had to be published, even those in which no infringement had been identified or no fine had been imposed.

1.2. The organizational structure in practice

1.2.1. The internal audit function at the FSMA

The internal audit department carried out its activities during the 2013 reporting year under the terms of the new audit framework established in 2012. Under this framework, the internal audit department carries out audits based on an audit programme approved by the Management Committee. The resulting audit reports are addressed to the Management Committee, which, after having examined them, forwards them in full to the audit committee together with an explanation of the conclusions drawn.

Each year, the audit committee discusses the operation of the internal audit department with the Management Committee.

The internal audit department has already carried out a number of audits with a view to assessing the operation of the departments and services and of the reasonable guarantees they can offer as to the attainment of the proposed objectives.

One of these audits focused on the organization of the supervision of the information obligations of listed companies and of the information that companies must disclose on the occasion of public issues and takeover bids. In view of the existence of several statutory regimes governing these matters, the internal audit department paid particular attention to the requirement to ensure equal supervisory treatment by the FSMA's services of the companies in question when these are in equivalent circumstances.

The internal audit department also audited the organization of the FSMA's supervision of compliance with the MiFID conduct of business rules. Since the Twin Peaks reform, the FSMA allocates a sizeable budget to developing this supervisory activity and creating an appropriate set of instruments intended, on the one hand, to encourage the companies concerned to adopt organizational measures guaranteeing compliance with the MiFID rules and, on the other hand, to enable the FSMA itself to enforce such compliance consistently. To this end, the FSMA has put together an audit team that evaluates compliance with the said rules, and makes recommendations for remedying any problems that may be identified on the ground. The FSMA works hard to achieve a truly level playing field in its supervision.

Upon the request of the Management Committee, the internal audit department made its expertise available to the department that supervises institutions for occupational retirement provision (IORPs). Internal audit served as coordinator of an audit which the aforementioned service carried out at an IORP at the end of 2012 and the beginning of 2013.

Likewise at the request of the Management Committee, an organizational audit was conducted of the process of examining the professional integrity, expertise and adequate experience of candidates for members of the senior management and the board of directors of institutions authorized by and subject to supervision by the FSMA. The audit was carried out from the perspective of the efficiency of operational processes.

Finally, the internal audit department completed the task it had been carrying out since 2011, namely, the coordination of the expansion and revision of the reporting that institutions subject to the FSMA's supervision must provide to it at regular intervals.

At the invitation of the audit committee, the internal auditor presented the audit reports and rendered an account of the department's operation. The internal auditor also put forward the proposed audit programme which, with the approval of the competent bodies, will be carried out in 2014.

1.2.2. Code of professional ethics

The code of professional ethics approved by the Supervisory Board in accordance with Article 62, second paragraph, of the Law of 2 August 2002 on the supervision of the financial sector and on financial services applies to members of the FSMA staff as well as to the chairman, the members of the Management Committee and the secretary general. The code contains the following provision: *"The Chairman shall report regularly to the Supervisory Board on the implementation of and compliance with the Code of Professional Ethics. He shall inform the Supervisory Board of the interpretations he or the Secretary General apply, in particular as regards the implementation of Article 10. He shall keep the Supervisory Board updated as to any conflicts of interest as referred to in Article 7, second paragraph, and of the measures taken by the Management Committee in this regard."*

In 2013, no situations arose requiring the Management Committee to take action or calling for a specific report to the Supervisory Board.

1.2.3. Developments in IT

The FSMA can, after a year's work, give a positive evaluation of the adjustments to its IT environment occasioned by the introduction of the new financial supervisory architecture, and more particularly by the takeover and autonomous management of its own IT infrastructure, which had previously been handled by the NBB. In terms of its IT applications, the FSMA's autonomy from the NBB has meant on the one hand the takeover of certain previously shared applications and on the other, the development of new ones. Partly as a result of the smooth cooperation with the NBB, the changes could be introduced smoothly and without any inconvenience to the users.

The changes have, of course, demanded a great investment of time on the part of the IT department, which as a result of the Twin Peaks reform had been reduced to half its original size. An inevitable result of this was that the IT staff had less time available to deal with requests for support to the operational departments.

In the light of the new IT needs arising from the many new powers conferred on the FSMA, the latter evaluated the needs, resources and organization of the IT department and the management of its priorities in developing the various projects. The action plan drawn up in this regard will gradually be introduced in 2014 and is intended to lead to a strengthening of the support which IT offers the FSMA. In the meantime, the IT resources were in 2013 used primarily for the further roll-out of generic applications (eDossier to manage dossiers and FiMiS for the collection, management and analysis of financial information), which make it possible to offer support more quickly to the new needs of the FSMA.

1.2.4. Human resources management

Recruitment

The Royal Decree of 17 May 2012 on the coverage of the FSMA's operating expenses increased the number of employees the FSMA may hire in order to fulfil its tasks to 311 full-time equivalents (FTEs). This number should in principle be reached by the end of 2015. The new expansions of the FSMA's powers will require a further increase in numbers. At the end of 2013, the FSMA had 298 employees (282 FTEs).

The FSMA continues to face the great challenge of recruiting, in a relatively short period, a large number of new staff in order to be able to meet the demands of its expanded powers and address ordinary turnover.

The FSMA is looking primarily for talented employees with a university degree in law or economics, as well as candidates with a Master's degree in communications management and IT. To a lesser degree, candidates with a Bachelor's degree in law, insurance or programming as well as management assistants are also being recruited.

In autumn 2013, the FSMA launched a recruitment drive with full-page advertisements in the country's major newspapers. The vacancies were also advertised via a number of specialised databases and the websites of professional organizations relevant to the FSMA.

In addition to the recruitment drive, the principal channels for identifying the most appropriate future employees are the FSMA's website, where the vacancies are published, and collaboration with recruitment agencies.

These initiatives have made possible the recruitment of 17 additional staff members.

Training

The FSMA, as a knowledge institution, offers its employees the opportunity to continue developing their professional expertise. Training is directed at both professional knowledge and support skills such as languages, soft skills, personal development, office applications, etc.

Every year, the Training unit submits a training programme for the approval of the Management Committee. This programme takes into account the needs of the various departments and individual staff needs.

Increasing numbers of employees participate in the training sessions organised by European and international institutions such as ESMA, EIOPA, IOSCO and the EBA. The topics addressed are of immediate utility to staff members. Such training programmes have the

further advantage of making it possible to meet colleagues from other supervisory authorities and exchange views.

Like every year, attention in 2013 was also paid to internal training programmes, ensuring that these address the true needs of staff members and offer a larger number of employees the chance to take part in the sessions. In order to make it possible for employees to become more familiar with the various tasks carried out by the FSMA, brief information sessions were held, with great success, concerning the various powers of the FSMA.

In 2013 ESMA organised two of its training days at premises of the FSMA. In the course of this collaboration, a number of specialists from the FSMA were invited to serve as speakers. The first training day was on the topic of *Regulation and Supervision of Benchmarks*[346]. The second was devoted to the *Consistent Application of IFRS*[347]. These events assuredly contribute to the image and visibility of the FSMA as an institution.

Finally, team-building initiatives were held and the annual family day, started in 2012, continued with success in 2013. A group of staff representatives have volunteered to take on responsibility for a 'staff club', which organised a number of socio-cultural activities in 2013.

1.2.5. Consultation on social matters

The working groups within the Works Council tasked with refining the evaluation system and with considering remuneration, the career progression of young executives and work opportunities for older employees, came forward with specific recommendations. These were approved and implemented.

346 On 23 October 2013.
347 On 21 November 2013.

2. Composition of the departments and services

Situation as at 31 December 2013

Reporting to Mr Jean-Paul Servais, Chairman

Communications

Jim **Lannoo**, spokesman

Julie **Dienga**

Internal audit

Herman **De Rijck**

Els **Lagrou**

Policy, international relations and market infrastructures

Jean-Michel **Van Cottem**, *Director*

Lieven **Baert**

Guillaume **Bérard**

Aimery **Clerbaux** [348]

An **De Pauw**

Amaury **de Vicq de Cumptich**

Hervé **Dellicour**

Christophe **Majois**

Didier **Niclaes**

Randy **Priem**

Renée **Spierings**

Antoine **Van Cauwenberge*** [350]

Hendrik **Van Driessche**

Supervision of listed companies and surveillance of financial markets

Thierry **Lhoest**, *Director*

Vincent **De Bock**

Mélanie **De Roock**

Luk **Delboo** [349]

Geoffrey **Delrée**

Valérie **Demeur**

Sonja **D'Hollander***

Kristof **Dumortier**

Katrien **Kestens**

Annick **Lambrighs**

Johan **Lembreght***

Martine **Nemry**

Stefaan **Robberechts**

Koen **Schoorens**

Katrien **Van De Poel**

Lynn **Van Thillo**

Dieter **Vandelanotte***

Véronique **Weets**

Reporting to Mr Henk Becquaert

Supervision of funds and product promotion

Gaëtan **Laga**, *Deputy Director*

Nathalie **Flamen***

Séverine **Fratta**

Ivan **Roisin**

Yannick **Simon**

Koen **Verstraete**

Benoît **Zinnen**

Supervision of financial products compliancy

Veerle **De Schryver**, *Deputy Director*

Cyrielle **Allard**

François **Bayi**

Bénédicte **Clerckx***

Quentin **Deschepper**

Philippe **Despontin**

Johan **Lammens**

Bregtje **Van Bockstaele**

Nathalie **Van Duyse**

Sofie **Van Eetveldt**

Luc **Vynckier**

* Serves as coordinator.

348 Seconded by the permanent representation of Belgium to the European Union.
349 Also working in the 'Financial education' department.
350 Also serves as Secretary to the Supervisory Board and the Sanctions Committee. Likewise serves as coordinator for international relations.

Reporting to Mr Gregory Demal

Operational supervision of financial service providers and intermediaries

Georges **Carton de Tournai,** *First Director*

Supervision of financial service providers

Christian **Janssens**
Philippe **Leirens**
Magali **Martin**
Annick **Mettepenningen**
Pieter **Naudts**
Christine **Pécasse**
Marc **Van de Gucht***
Gertjan **van Gastel**
Glenn **Van Noten**
Matthew **Verhaeren**

Supervision of intermediaries

Herlinde **Boogaerts***
Timotheus **Gieles**
Nathalie **Gigot**
Nicole **Peeters**
Marie-Ange **Rosseels**
Christophe **Viaene**
Rosanne **Volckaert**

Supervision of conduct of business rules (MiFID)

Hein **Lannoy,** *Deputy Director*
Virginie **Bassem**
Stéphanie **Brandt**
Pascale **Coulon**
Els **De Keyser***
Isabel **Lopez Martinez**
Cyril **Saliba**
Maryline **Serafin***
Aldo **ten Geuzendam**
Jelle **Van Caekenberghe**
Lien **Verhegghe**

Reporting to Mr Wim Coumans, Deputy Chairman

Financial education

Danièle **Vander Espt,** *Deputy Director*
Luk **Delboo**[351]
Karine **Huet**
Tony **Langone**
Marc **Nolf**

Supervision of IORPs and supplementary pensions

Greet **T'Jonck,** *Director*
Luk **Behets**
Saskia **Bollu**[352]
Christelle **D'Alessandro**
Ann **Devos***
Nicolas **Deltour**
Maria **Di Romana**
Gerhard **Gieselink**
Caroline **Gillain**
Fabienne **Maudoux**
Marc **Meganck**
Marie-Paule **Peiffer**
Johanna **Secq**
Paul **Teichmann**
Marleen **Tombeur**
Ingrid **Trouillez**[353]
Diederik **Vandendriessche**
Caroline **Vandevelde***
Mieke **Van Leeuwe**

Relations with consumers of financial services

Marie-Sheila **Bastians**
Jan **De Pagie**
Fleur **De Mil**
Julie **Depickere**
Annick **Dewulf**
Aurélie **Leclercq**[354]
Brigitte **Leën**
Monique **Siscot**
Luc **Van Cauter***
Han **Van Denhouwe**

* Serves as coordinator.

351 Also working in the 'Supervision of listed companies and surveillance of financial markets' department.
352 Also serves as Secretary of the Commission for Voluntary Supplementary Pensions for the Self-employed and of the Board for Voluntary Supplementary Pensions for the Self-employed.
353 Also serves as Secretary of the Supplementary Pensions Commission and of the Supplementary Pensions Board.
354 Also serves as Secretary of the Insurance Commission

Reporting to Mr Albert Niesten, Secretary General

Enforcement

Albert **Niesten,** *Secretary General, serves in the capacity of investigations officer*

Michaël **André***
Conny **Croes**
Stéphane **De Maght**
Jessica **Heyse**
Patrick **Van Caelenberghe**

Legal department

Annemie **Rombouts**[355]**,** *Director*

Sylvie **Decoster**
Christophe **Geys**
Antoine **Greindl**
Clarisse **Lewalle**
Hans **Seeldrayers***
Dounia **Shita**
Annelies **Verrijdt**

Translation unit

Françoise **Danthinne**
Jan **Leers**
Monica **Sandor**
Mathieu **Saudoyer**
Christine **Triest**

General support services

Tom **Plasschaert,** *Deputy Director*

Hilde **Daems**

Reception, Facilities & Infrastructure

Egwin **Schoolmeesters***

Management control & accounting

Sabine **Philippart**

Jan **Vanholle**

People & Communication

Hilde **Dierckx**
Annemie **Hoogewijs**
Marie-Josèphe **Léonard**
Myriam **Penninckx***
Marianne **Van Hoorebeke**

IT

Emmanuel **De Haes**
Véronique **Léonard***
Johan **Vanhaverbeke**
Jan **Vyverman**
Sébastien **Welsch**

* Serves as coordinator.

355 As a result of the secondment of Mrs Annemie Rombouts to the office of the Minister of Finance, this position was filled in the first instance by Mrs Greet T'Jonck, director of the Supervision of IORPs and Supplementary Pensions service, and thereafter temporarily by Mr Jean-Michel Van Cottem, director of the Policy, international relations and market infrastructures service.

The FSMA wishes to thank the following staff members whose careers reached completion in the course of the year under review: Magda De Joncker and Annie Van der Meersch.

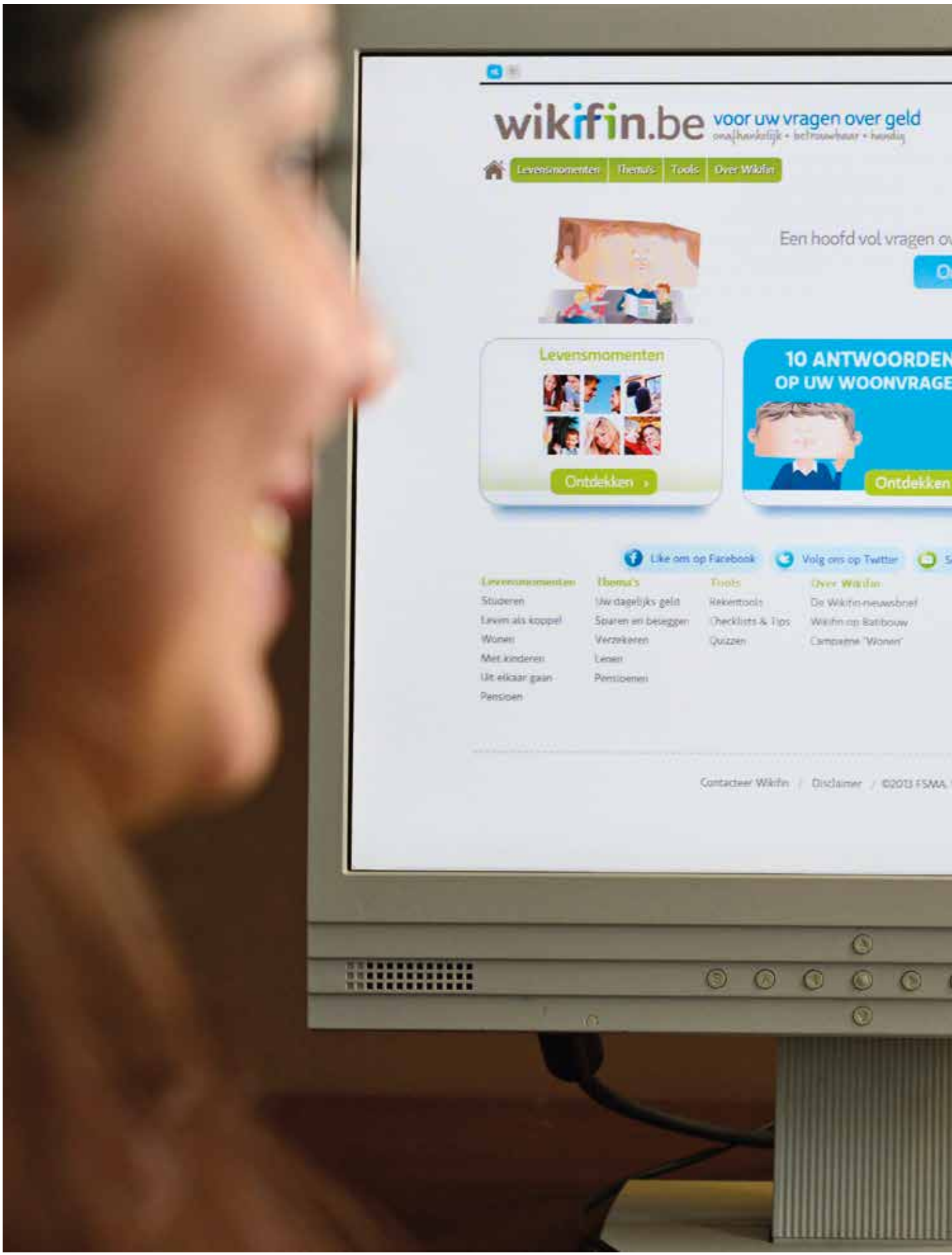
In Memoriam

The FSMA mourns the loss of Mr Jozef Van Goethem, Honorary Member of the Banking and Finance Commission, who died on 8 March 2013.

Mr Van Goethem was a member of the Commission from 1 May 1975 until 31 December 1994 when he reached the age limit for the position.

During his twenty-year term of office, during which he served as acting Commission chairman from October 1988 until January 1989, Mr Van Goethem was a competent and faithful member of the Commission, making his mark with the support he provided through his unfailingly wise advice.

Pages 201 - 212 and footnotes 356-364 are not translated into English, but are available in French and Dutch on the FSMA website (www.fsma.be).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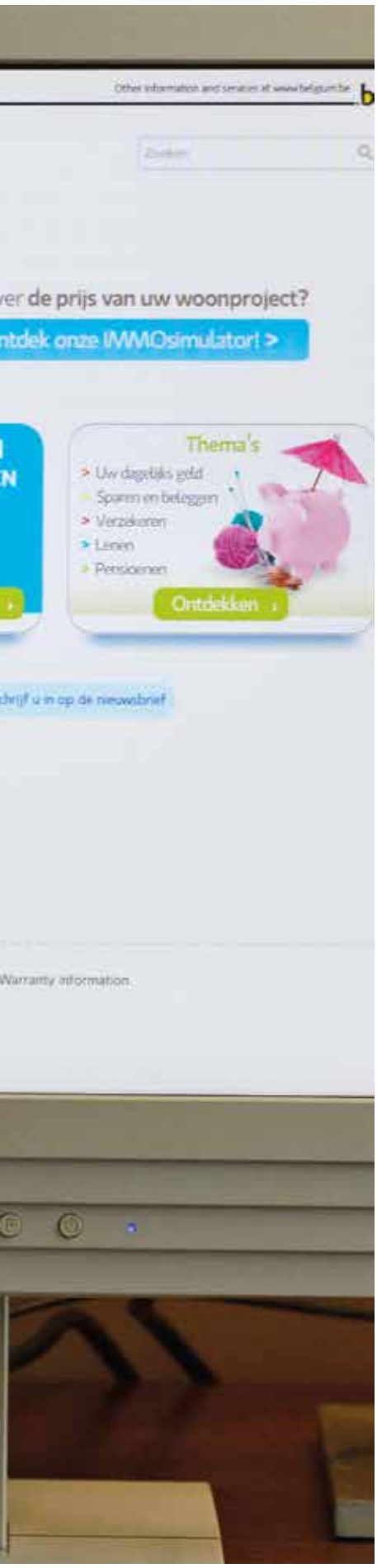


ABBREVIATIONS

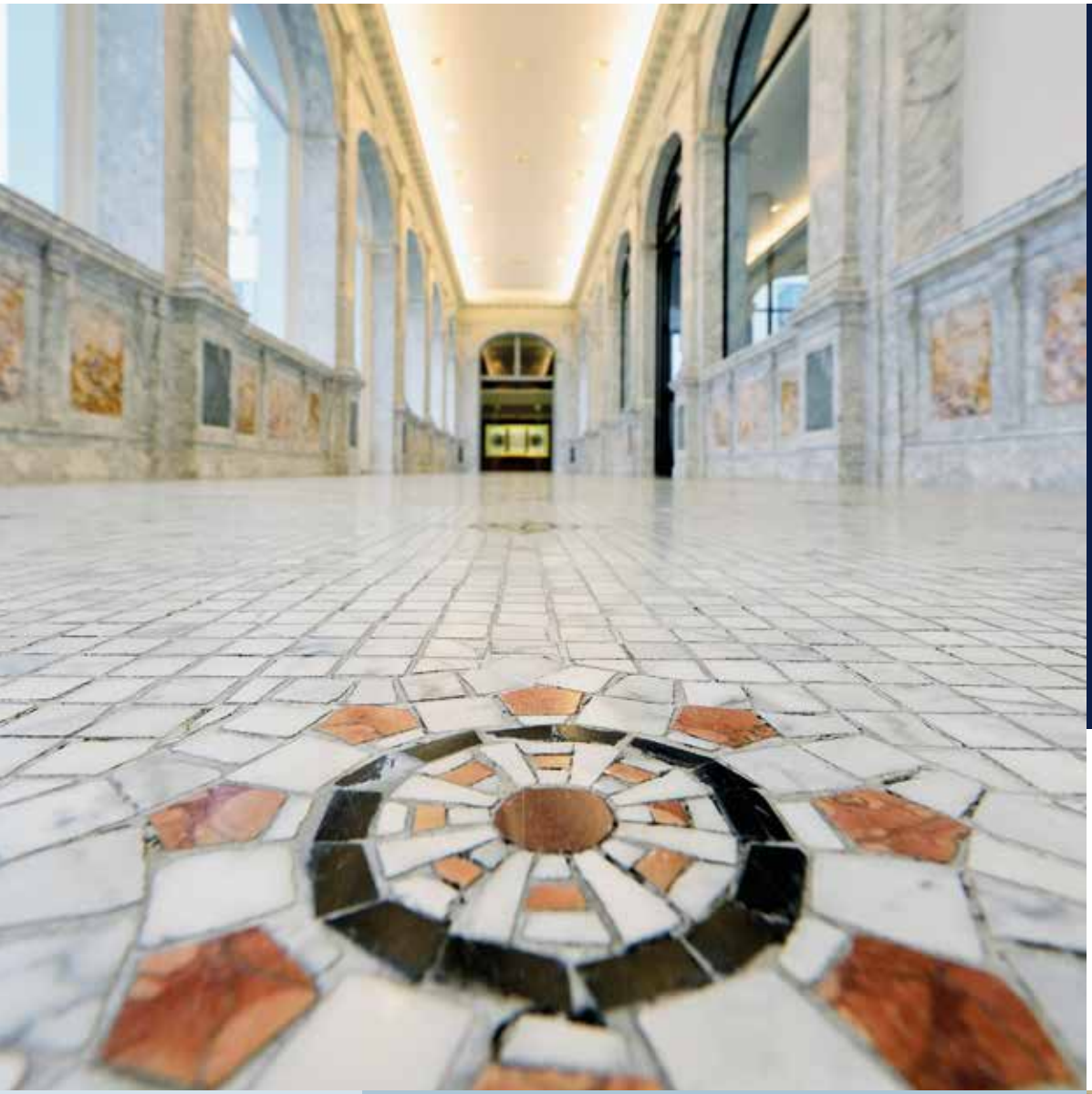
For purposes of readability we have used abbreviations throughout the annual report, for which the full official names are given below:

AIF	Alternative investment fund
AIF manager	Manager of alternative investment funds
AIFM Directive	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
Assuralia	Professional association of insurance companies
Banking Law	Law of 22 March 1993 on the legal status and supervision of credit institutions
BEAMA	Belgian Asset Managers Association
CBF	Banking and Finance Commission (before its merger with the Insurance Supervisory Authority (CDV/OCA)
CBFA	Banking, Finance and Insurance Commission
CC	Companies Code
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
Closed-ended real estate investment company Decree	Royal Decree of 7 December 2010 on closed-ended real estate investment companies (*sicafis/bevaks*)
Consolidated Banking Directive	Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)
EBA	European Banking Authority
ECB	European Central Bank
EEA	European Economic Area
EECS	European Enforcers Coordination Sessions
EFRAG	European Financial Reporting Advisory Group
EIOPA	European Insurance and Occupational Pensions Authority
EMIR Regulation	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and transaction registers
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
FASB	Financial Accounting Standards Board
FATF	Financial Action Task Force
FEBELFIN	Belgian Financial Sector Federation
FIPU	Belgian Financial Intelligence Unit (CTIF/CFI)
FPS	Federal Public Service

FSMA	Financial Services and Markets Authority
General Insurance Regulation	Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies
IAASB	International Auditing and Assurance Standards Board
IAIS	International Association of Insurance Supervisors
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IFRS	International Financial Reporting Standards
Insurance Supervision Law	Law of 9 July 1975 on the supervision of insurance companies
IORP	Institution for occupational retirement provision
IORP Decree	Royal Decree of 12 January 2007 on the prudential supervision of institutions for occupational retirement provision
IORP Directive	Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision
IOSCO	International Organisation of Securities Commissions
ISA	Insurance Supervisory Authority (CDV/OCA) (before its merger with the Banking and Finance Commission, CBF)
KIID	Key Investor Information Document
Law of 2 August 2002	Law of 2 August 2002 on the supervision of the financial sector and on financial services
Law of 21 December 2009	Law of 21 December 2009 on the status of payment institutions, access to the activity of payment service provider and access to payment systems
Law of 22 March 2006	Law of 22 March 2006 on intermediation in banking and investment services and on the distribution of financial instruments
Law of 27 March 1995	Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance
Law of 6 April 1995	Law of 6 April 1995 on the legal status and supervision of investment firms
LCAT/WLVO	Law of 25 June 1992 on the non-marine insurance contract
Life Regulation	Royal Decree of 14 November 2003 on life insurance
LIRP/WIBP	Law of 27 October 2006 on the supervision of institutions for occupational retirement provision
LPC/WAP	Law of 28 April 2003 on supplementary pensions and their tax regime, and on certain additional social security benefits
LPC/WAP Decree	Royal Decree of 14 November 2003 implementing the Law of 29 April 2003 on supplementary pensions and their tax regime and on certain additional social security benefits
LPCI/WAPZ	Title II, Chapter 1, Section 4, of the Programme Law (I) of 24 December 2002 on supplementary pensions for the self-employed

Market Abuse Decree	Royal Decree of 5 March 2006 on market abuse
Market Abuse Directive (MAD)	Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)
MiFID Directive	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC
Money laundering Law	Law of 11 January 1993 on preventing the use of the financial system for purposes of money laundering and the financing of terrorism
MoU	Memorandum of Understanding
MTF	Multilateral trading facility
NBB	National Bank of Belgium
OFP	Organisation for Financing Pensions
OJ	Official Journal of the European Union
Prospectus Directive	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC
Prospectus Law	Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets
Prospectus Regulation	Regulation (EC) No 809/2004 of the Commission of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements
Reinsurance Supervision Law	Law of 16 February 2009 on reinsurance
Royal Decree of 14 November 2007	Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market
Royal Decree of 23 August 2004	Royal Decree of 23 August 2004 implementing Article 63, §§ 1 and 3 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services
Royal Decree of 3 June 2007	Royal Decree of 3 June 2007 laying down detailed rules on the implementation of the directive on markets in financial instruments
Squeeze-out Decree	Royal Decree of 27 April 2007 on squeeze-out bids
Takeover Decree	Royal Decree of 27 April 2007 on Takeover Bids
Takeover Directive	Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids
Takeover Law	Law of 1 April 2007 on takeover bids
Transparency Decree	Royal Decree of 14 February 2008 on disclosure of major shareholdings

Transparency Directive	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC EG
Transparency Law	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
Twin Peaks Decree	Royal Decree of 3 March 2011 on developments in the supervisory architecture for the financial sector
Twin Peaks Law	Law of 2 July 2010 amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services and of the Law of 22 February 1988 determining the organic status of the National Bank of Belgium, and containing various provisions
UCI	Undertaking for collective investment
UCI Decree	Royal Decree of 12 November 2012 on certain public undertakings for collective investment
UCI Law	Law of 3 August 2012 on certain forms of collective management of investment portfolios
UCITS	Undertaking for Collective Investment in Transferable Securities (which has a European passport)
UCITS Directive	Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
UCITS IV Directive	Directive 2009/65/EEC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)



Legal responsibility
for this edition
J.-P. Servais
Rue du Congrès /
Congresstraat 12-14
1000 Brussels
Photography
Michel Wiegandt
Layout
Gramma nv, Antwerpen