ANNUAL REPORT 2014

FSMA

FINANCIAL SERVICES AND MARKETS AUTHORITY


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FSMA
AUTORITEIT VOOR
DIENSTEN EN MARKTEN
AUTORITÉ DES SERVICES ET
MARCHÉS FINANCIERS

FOREWORD

Dear readers,

I am pleased to present to you the 2014 Annual Report of the Financial Services and Markets Authority (FSMA). In the current economic context, the role and the mandate of a financial supervisor regarding the protection of financial consumers are growing in importance. And as you can read in this report, the FSMA continued in 2014 to fulfil that role via very concrete initiatives and campaigns.

With its various actions, the FSMA seeks to contribute to the provision of appropriate financial services and products that place the consumer's interests at the core. It further strives to guarantee that the financial markets operate in an honest and efficient manner, thus laying the basis for a sound financing of the real economy. The FSMA also wishes to contribute to the financial education of consumers, thus enabling them to develop a critical confidence in the financial system.

The FSMA has in recent years taken a series of initiatives in pursuit of these objectives. It has also developed an action plan that set out the priorities for 2015 and for the years to come. The action plan takes as its starting point the current economic context and the associated risks.

Thus, for instance, the current low interest rate drives consumers to search for yield. Apart from the traditional savings and investment products, therefore, new types of risky products come into play. I would like to mention the rise of binary options and forex products, for example. In 2014 the FSMA issued warnings about the risks of the latter and against illegal offers of such products; it also submitted several such cases to the judicial authorities.

In addition, technological developments are giving rise to great changes in the financial sector. New technologies not only create new opportunities for the existing financial actors. They also mean that other operators from outside those well-established participants enter the market and cut out the middleman. In this regard, it is worth mentioning the rise of crowdfunding, for example, whereby investors invest directly in certain projects via the internet. Other contextual factors that need to be taken into account include the greying of the population and the increasing interest in supplementary pensions, not to mention the continuing vulnerability of consumer confidence.

Based on these observations, the FSMA designed a number of concrete work programmes for 2015. A first topic is supervision of the way in which financial products are distributed to the public. In 2014, the FSMA conducted a cycle of inspections in order to examine compliance with 'duty of care' obligations. In addition, the inspections looked at whether financial institutions and intermediaries placed the interests of their clients at the core. By means of these inspections, the FSMA has covered 87 per cent of the sector, measured on the basis of the number of retail clients. It identified 179 shortcomings, which gave rise to 90 orders. Institutions that receive such an order are required to set up an action plan for adjusting their working methods.

These inspections are being continued. Attention will continue to be paid in the process to the central theme of duty of care. In 2015, a new topic will be added, that of best execution. Mystery shopping is also being further developed as a supervisory instrument, and in 2014 a pilot project was set up to gain experience with this way of operating. The FSMA will further conduct inspections relating to the extension of the MiFID rules of conduct to the insurance sector and in the context of the legislation on the financing of SMEs.

A second topic has to do with the supervision of advertisements for financial products. In 2014, the FSMA handled close to 1500 dossiers with regard to advertisements for investment funds and several hundred dossiers involving advertisements for regulated savings accounts, notes and thematic citizens' lending. In 2015, in addition to approving advertisements, the FSMA will also carry out a targeted supervision in order to identify any advertisements that may not have received prior approval by the FSMA.

The FSMA will also pay special attention to the offer of complex or exotic products with a higher or underestimated risk. This will be an extension of the actions that the FSMA took in 2014 regarding the offer of binary options and forex products. The FSMA issued a communication to offerors of such products, advising them of the rules that apply in Belgium to their distribution, and warned consumers repeatedly of specific actors who nevertheless unlawfully offered such products. These efforts will be continued and expanded in 2015.

In addition, the moratorium on the distribution of particularly complex structured products that the FSMA drew up at the time of its foundation in 2011 continues to prove useful. In 2014, the FSMA examined 118 structured products that exhibited these new characteristics. Of those, 46 were deemed to be particularly complex, and were thus not brought to market. The moratorium contributes in this way to simplifying the offer of structured products on the Belgian retail market, by keeping out overly complex products.

The FSMA carried out several sectoral inspections in 2014 in connection with specific insurance products. The subject of this round of inspections was financial reporting to clients regarding class 23 life insurance policies, theft and guarantee policies and trip cancellation insurance. These inspections led to the elimination of quite a number of shortcomings in these three types of insurance contract. In 2015, the supervision of insurance will focus among other things on atypical class 23 insurance products on offer, and on fire insurance.

Another important topic has to do with the entry into force of the new statuses of credit provider and of intermediary in mortgage and consumer credit. The FSMA will supervise access to these activities. It has developed an entirely new web application for this purpose, which makes it possible to submit and to update registration dossiers on line.

Given the rise of crowdfunding as a financing technique, the FSMA will further monitor and contribute to potential regulatory initiatives in this regard. In light of the important role of auditors for the task of supervision, we are also working on a supervision of the audit tasks they perform.

Lastly the FSMA is focusing on systematizing the social supervision of the second pillar pension plans and on the provision of information regarding supplementary pension rights.

In addition to these specific supervisory goals, the FSMA will continue its activities in the area of financial education. In 2013, the FSMA launched the Wikifin programme with a view to making a contribution to financial education in Belgium. Two years on, the Wikifin.be website has already had 1.7 million visits, and 14 per cent of Belgians are familiar with Wikifin.

In 2014, the Wikifin programme began to run in the schools. The FSMA launched a pilot project with 25 schools in order to test and fine tune the educational materials on financial topics that was made available to teachers. Based on this pilot project, in the 2015-2016 school year these educational materials will be made available to schools and teachers on a wider scale.

In early 2015, the FSMA held a second national conference on financial education in the presence of Her Majesty the Queen. During this conference, the results of the national survey measuring financial literacy were presented. Belgium is the first country that has conducted such a survey using the new methodology and questionnaire designed by the OECD. A key conclusion of this survey was the lack of correlation between financial knowledge, behaviour and attitudes. This means that financial education must continue to target all three aspects, as the FSMA is already doing via its Wikifin programme.

The economic and technological developments and the more rapid spread of information make it essential for a supervisor to be able to identify new developments at an early stage. For this reason, the FSMA has developed a systematic 'market watch'. This will enable the FSMA to keep more effectively abreast of what is happening both domestically and abroad, and thus also to be able to respond more rapidly to certain phenomena and developments. The market watch will also help to identify the annual priorities for supervision.

Similarly, it is essential for the FSMA to be present in international fora where topics within its field of competence are discussed. For this reason, in 2014 the FSMA acceded to the International Association of Insurance Supervisors (IAIS). The FSMA has, since 2014, chaired the European Regional Committee of the International Organization of Securities Commissions (IOSCO), and in that capacity also sits on the IOSCO Board. The FSMA is also very active as a member of the European supervisory authorities ESMA and EIOPA. Within ESMA, it chairs the Investor Protection and Intermediaries Standing Committee (IPISC), which in 2014 made an important contribution to the implementing measures for the MiFID II Directive.

Despite the above-mentioned initiatives and actions, and notwithstanding the considerable expansion of its powers since its creation in 2011, there remain cases in which the FSMA does not have the legal competence or resources to be able to intervene. In certain cases, there is thus an expectation gap between what certain stakeholders expect and what the FSMA can in fact do. This phenomenon is present in all countries and goes hand in hand with being a supervisory authority. Our task is to keep that expectation gap to a minimum, knowing that it will never entirely disappear.

For the development of its initiatives and for the implementation of its action plan, the FSMA relies on a team of competent and motivated staff. As was already the case in previous years, I count on their continued dedication and enthusiasm for the further development of FSMA activities and the successful achievement of our objectives and actions.

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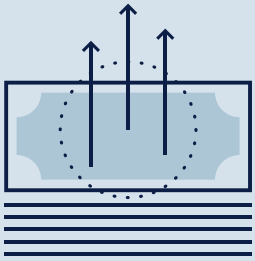
We mourn the loss of Mr Luc Huybrechts, who died on 24 March 2015. Mr Huybrechts served as member of the FSMA Sanctions Committee from 15 October 2011 and was honorary adviser to the Court of Cassation. Mr Huybrechts made a significant contribution, during his mandate as member of the FSMA Sanctions Committee, to the operation of that committee and to a number of important decisions. I would like to express, in my own name and on behalf of the FSMA, my gratitude for the dedication with which Mr Huybrechts carried out his work on the FSMA Sanctions Committee and offer our sincere condolences to his family.

Jean-Paul SERVAIS
Chairman

THE FSMA IN 2014

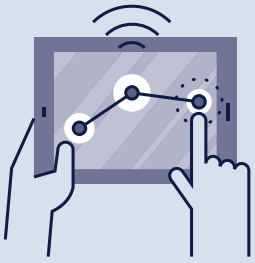
SUPERVISION OF COMPANY INFORMATION

Market surveillance:
The FSMA initiated 22 analyses relating to possible market abuse; it suspended the listing of a share 46 times.



Disclosure of information:
The extension of the deadline for publishing the half-yearly financial statement has meant a better spread in the timing of this information, which should benefit smaller businesses by drawing more attention to their publications.

Shareholding structure:
The FSMA has since September 2014 placed on its website an overview of the current shareholding structure of listed companies. This increases transparency and meets a request by market participants.

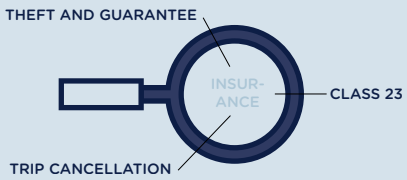


PRODUCT SUPERVISION

Product screening:
The FSMA examined 118 structured products with new characteristics, of which 46 were deemed to be particularly complex and thus were not launched on the market. The FSMA registered 4 new Belgian UCIs and 113 new sub-funds of Belgian UCIs. The total net assets under management by Belgian public UCIs exceeded EUR 100 billion.

Advertisements:
The FSMA handled 1,466 dossiers relating to advertising for UCIs; 210 advertisement dossiers and 199 key information documents for savers having regulated savings accounts; 315 dossiers for advertisements for notes; and it gave its approval to 157 thematic citizens' lending projects.

Sectoral inspections:
The FSMA carried out sectoral examinations of the financial reporting to clients regarding class 23 life insurance policies, theft and guarantee policies and trip cancellation insurance. These sectoral examinations led to identification and subsequent elimination of a number of shortcomings.



SUPERVISION OF COMPLIANCE WITH RULES OF CONDUCT

Inspections:
The FSMA carried out a cycle of inspections of compliance with the duty of care, in the course of which it checked among other things whether the products being offered are suitable for the client. The inspections covered 87 per cent of the sector, measured in terms of the total number of retail clients. The FSMA identified 179 shortcomings, of which 90 resulted in an order.

Insurance:
The FSMA has developed a methodology for verifying compliance with the conduct of business rules in the insurance sector. The priority in 2015 will be to apply this methodology to supervising compliance with the rules of conduct within the life insurance sector.

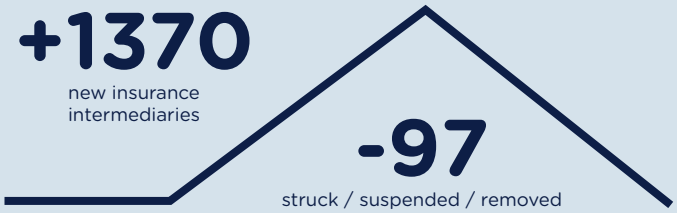
Mystery shopping:
The FSMA has engaged the services of an external partner to carry out a series of mystery shopping visits.

SUPERVISION OF MARKET OPERATORS, CREDIT PROVIDERS AND INTERMEDIARIES

Revocation of authorization:
The FSMA revoked the authorization of a portfolio management and investment advice company because the company had not remedied the shortcomings that had been identified.

New authorizations:
The FSMA handled 16 applications to obtain the new status of regulated real estate investment company and 8 applications for recognition as an alternative investment fund.

Deleting intermediaries:
The FSMA has struck 73 insurance intermediaries from the register because they did not comply with the registration requirements, and has temporarily suspended or definitively removed 24 insurance intermediaries because their fitness and propriety was at risk. 1,370 new insurance intermediaries were registered. In 2015, a new system of exams will be launched for those who seek to be registered as intermediaries.



SUPERVISION OF SUPPLEMENTARY PENSIONS

Fewer recovery plans:
The number of IORPs with a financial shortfall has further decreased. At the end of 2013, there were 20 IORPs with a financial shortfall, of which 15 already had recovery plans under way in order to make up the shortfall. The degree of coverage of the IORPs' commitments rose further.

On-site inspections:
The FSMA began in 2014 with the systematic inspection of IORPs. These inspections are intended to supplement the existing supervisory methods and can give rise to the imposition of special measures.

Systematized social supervision:
The FSMA drafted the main outlines for a systematized social supervision of supplementary pensions. The systematized supervision will replace the current periodic supervision and will be built around four key points: informing, supervising, regulating and complaints handling.

CONSUMER PROTECTION AND INFORMATION

Answering questions:
In 2014, the FSMA received and replied to 1,692 written questions from consumers about financial matters, and set up a centralized system to handle such questions. A third of these questions were about saving and investing; a quarter about warnings and authorizations.

Examinations:
The FSMA opened 270 investigations into possible cases of unlawful offering of financial services.

Warnings:
Based on these examinations, the FSMA published 59 warnings against unlawful offerings and also informed the judicial authorities.

1692 written questions | **270** investigations | **59** warnings

FINANCIAL EDUCATION

Schools:
The FSMA launched a pilot project in 2014 with 25 schools in the Flemish and the French-language school system. These projects were intended to test whether the educational material provided by the FMSA meets the needs in the classroom. Based on the pilot project, the teaching material was adjusted, improved and expanded. In the 2015-2016 school year, this material will be made available on a wider scale.

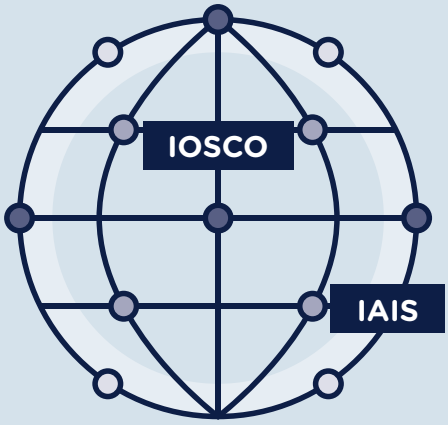
Campaigns:
In the context of its Wikifin programme, the FSMA conducted several campaigns, including on the themes of 'Housing' and of 'Inheriting'. The Wikifin.be website was also further developed and expanded; by the beginning of 2015 it had attracted more than 1.7 million visitors. 14 per cent of Belgians are familiar with the site.

Collaboration:
The FSMA launched focus groups with a number of stakeholders in the area of financial education. It was the first to carry out a measurement of financial literacy in Belgium, based on a questionnaire drawn up by the OECD.

INTERNATIONAL

IOSCO:
The Chairman of the FSMA was elected chair of the European Regional Committee of IOSCO. The regional committee has 51 members and discusses the topics addressed by IOSCO that are of importance for the region. The election also confirmed the FSMA as member of the IOSCO Board, the highest decision-making body of the organization.

IAIS:
The FSMA became a member of the International Association of Insurance Supervisors, and can thus follow the activities of the IAIS that are relevant to the tasks of the FSMA in respect of the insurance sector.



ADMINISTRATIVE SANCTIONS

Investigations:

The FSMA launched 19 new investigations that could give rise to the imposition of administrative sanctions.

Fines:

The FSMA's Sanctions Committee imposed fines in two cases of insider dealing.

Agreed settlements:

The FSMA entered into six agreed settlements in cases involving the infringement of various laws.

I.
SIGNIFICANT DEVELOPMENTS IN SUPERVISION BY THE FSMA

1. Development of the regulatory framework

1.1. National

During the reporting period, several legislative initiatives were taken at national level to enhance the protection of investors and consumers.

These include the FSMA Regulation of 3 April 2014, which introduced a ban on selling certain financial products to retail clients. This regulation was approved by the Royal Decree of 24 April 2014. Further legislation included the publication of the Royal Decree of 25 April 2014 on certain information obligations applicable to the marketing of financial products to retail clients, as well as the FSMA Regulation on the technical requirements for the risk label. This regulation was approved by the Royal Decree of 25 April 2014.

In the field of insurance, the Law of 4 April 2014 on insurance was drawn up, along with three royal decrees dated 21 February 2014 on the application of the MiFID rules of conduct to the insurance sector.

The regulations governing the domain of financial planning also entered into force. These were enacted in the Law of 25 April 2014 on the status and supervision of independent financial planners and on the provision of financial planning advice by regulated companies, and amending the Companies Code and the Law of 2 August 2002 on the supervision of the financial sector and on financial services. The Royal Decree of 8 July 2014 implements the said Law.

Other texts included the Royal Decree of 23 March 2014 on taking special measures and on derogations from certain provisions of Book VI of the Code of Economic Law for certain categories of financial services and the provisions of Book VII of the Code of Economic Law on payment and credit services.

These legal texts will be discussed in greater detail farther on in this report.

During the reporting period, a number of European initiatives in consumer protection also saw further development. Thus on 26 November 2014, Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) was approved[1]. The Regulation enters into force on 31 December 2016. It introduces a harmonized information document for all packaged investment products that must contain among other things a summary risk indicator and appropriate performance scenarios. The Regulation only lays down the general framework. Implementing provisions have still to be drawn up by the European Commission on the recommendation of the three ESAs. Their content is not yet known.

There were further discussions of the proposal for a directive on insurance mediation (IMD 2) submitted by the European Commission on 3 July 2012. The European Commission proposes to impose an obligation on distributors of insurance to give customers, prior to the conclusion of a contract, sufficient information about the insurance product, in a comprehensible format, to allow them to make an informed decision. The European Council and the European Parliament support this approach, although their opinion differs on certain points. They began discussions on the matter, which are still ongoing.

In the light of the developments at European level, the FSMA organized a public consultation, upon request from the Minister for the Economy and Consumer Affairs, regarding a draft royal decree to postpone implementing certain national measures and to re-evaluate the situation as soon as there is some clarity as to the specific contents of the European regulations. These affect a few provisions of the Royal Decree of 25 April 2014 on certain information obligations applicable to the distribution of financial products to retail clients.

1.2. European level

1.2.1. ESMA activities

The FSMA takes an active part in the activities of ESMA. Thus, for example, the FSMA chairs its Investor Protection and Intermediaries Standing Committee. In 2014, the committee made a substantial contribution to the development of a single European rulebook, via the technical advice it provided to the European Commission regarding the implementation of MiFID II. The advice was presented after an extensive consultation of market participants, and had to do, among other things, with determining the conditions under which investment advisors should be allowed to receive inducements from third parties. The advice was supplemented by proposals for binding technical standards regarding other aspects of MiFID II, which are intended to strengthen investor protection in the European Union.

ESMA also prepared implementing measures for new European regulations such as in the area of secondary markets and market abuse.

1 See the Official Journal (OJ L 352 of 9 December 2014 and corrigendum in OJ L 358 of 13 December 2014).

ESMA contributes in various ways to the introduction of consistent, efficient and effective supervisory practices, to the convergence of those practices and to ensuring a harmonized application of the European regulations.

- Guidelines and recommendations: ESMA may address guidelines and recommendations to the national competent authorities. The competent authorities must do their utmost[2] to abide by the guidelines and recommendations. During the reporting year, important guidelines were approved relating to supervision of financial information[3]. Other guidelines had to do with ETFs and other UCITS issues[4]. ESMA has also approved a new multilateral collaboration agreement on information exchange in the form of guidelines. This agreement entered into force on 29 May 2014 and was signed by 31 authorities including the FSMA.
- Peer reviews: The review panel is a permanent committee in charge of determining the level of supervisory convergence. In 2014, the review panel handled supervisory practices in particular in the area of MiFID conduct of business rules in the areas of information to investors and best execution. These peer reviews conducted by ESMA were the first to use site visits to a number of supervisory authorities, in order to gain better insight into the supervisory practices they examined.
- Opinions: ESMA also draws up opinions addressed to national supervisory authorities. In 2014 they published an opinion to draw the attention of supervisors to the MiFID rules of conduct that apply to the sale of complex products[5]. In order to help national supervisory authorities carry out their mandate, ESMA approved an opinion on good practices in the area of product governance for structured products[6]. Within ESMA, experiences were exchanged about financial education initiatives, and the FSMA took part in these as well[7].

The three European supervisory authorities handle cross-sectoral matters in the Joint Committee. The FSMA participates in this regard in a sub-committee of the Joint Committee which examines topics relating to consumer protection and financial innovation. It is in this context that the implementing measures are being prepared for the regulation on Packaged Retail and Insurance-based Investment Products (PRIIPs)[8]. These technical provisions will have to do specifically with the content and presentation of the key information documents (KID) which will in future have to be handed over to buyers of those products.

The Joint Committee also approved a set of guidelines for complaints-handling in the securities and banking sector[9]. Special attention was also paid to potential risks for retail investors if financial institutions place (capital) instruments issued by themselves with their clientele[10].

2 Pursuant to Article 15 of the regulation establishing ESMA.
3 ESMA Guidelines on enforcement of financial information, 28 October 2014. See the present report, p. 93. (available in the French and Dutch versions only).
4 ESMA Guidelines on ETFs and other UCITS issues, 1 August 2014.
5 ESMA, *MiFID practices for firms selling complex products*, 7 February 2014.
6 ESMA, *Structured retail products – Good practices for product governance arrangements*, 27 March 2014.
7 See also: ESMA, *How can financial education enable individuals to make better saving and investment decisions*, 5 December 2014.
8 On Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), see the present report p. 126 (available in the French and Dutch versions only).
9 Joint Committee, *Guidelines for complaints-handling in the securities (ESMA) and banking (EBA) sectors*, 13 June 2014.
10 Joint Committee, *Placement of financial instruments with depositors, retail investors and policy holders ("Self placement"), Reminder to financial institutions*, 31 July 2014.

On a related matter, ESMA put out an additional statement about the potential risks of contingent convertible instruments (CoCos), a specific category of instrument that is issued by financial institutions in order to fulfil their prudential requirements[11].

Finally, it should be mentioned that the European Commission published a report[12] on 8 August 2014 evaluating the operation of ESMA and the other European supervisory authorities. The report reviews the achievements of ESMA and identifies areas for improvement.

1.2.2. EIOPA activities

In 2014, activities at EIOPA were continued in view of a new solvency framework for IORPs. Based on a survey in which the FSMA also took part, further information was collected by EIOPA on the current practice of European supervisory authorities regarding the components of the Holistic Balance Sheet[13].

The concept of the Holistic Balance Sheet was further developed in a consultation document published in October 2014. The document provides a concrete description of five possible applications of the Holistic Balance Sheet and one application as an instrument for risk measurement. The valuation of the different components of the Holistic Balance Sheet was also discussed extensively. The consultation document raises the prospect of a new quantitative impact study.

The FSMA has also worked within EIOPA on the drafting of Implementing Technical Standards[14]. The draft version of these standards was enacted by the European Commission in June 2014 via a Regulation[15]. At the end of 2014, the FSMA reported to EIOPA for the first time under these implementing standards.

On 20 October 2014, EIOPA published Guidelines on the use by IORPs of the Legal Entity Identifier. The FSMA informed EIOPA that it would apply these guidelines to IORPs that carry out transactions falling under the provisions of EMIR, and published a communication to this effect on its website.

The FSMA chaired the EIOPA working group on social and labour law reporting in the framework of cross-border activities by IORPs. The working group is preparing a report on this topic. As regards individual pensions, known generally as the 'third pillar' pension, EIOPA submitted a preliminary report to the European Commission in February 2014 titled *Towards an EU-single market for personal pensions: An EIOPA preliminary report to COM*. On the occasion of the publication of this report, in June 2014 the European Commission sent EIOPA a call for advice about individual pension products, and in particular about their cross-border and prudential aspects, their impact on consumer protection and the potential measures for developing a European framework for the activities concerning and the supervision of such products. EIOPA is working on the answer to the European Commission's call for advice and the FSMA is taking an active part in that work.

11 ESMA, *Potential risks associated with investing in contingent convertible instruments*, 31 July 2014.
12 Based on Article 81 of the regulations establishing the ESAs.
13 The Holistic Balance Sheet is a prudential assessment instrument in which not only the assets and liabilities of IORPs are included, measured at market value, but also the safety mechanisms available to an IORP or its members 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 members, of the way in which the pension scheme is assured.
14 Implementing Technical Standards with regard to the reporting of national provisions of prudential nature relevant to the field of occupational pension schemes according to Directive 2003/41/EC of the European Parliament and of the Council (see also the FSMA Annual Report 2013, p. 23).
15 Commission Implementing Regulation (EU) No 643/2014 of 16 June 2014.

The FSMA has also contributed to EIOPA's preparation of an answer to the request made by the European Commission on 19 May 2014 to provide technical advice on the possible contents of the forthcoming delegated acts under Article 13*quater*, paragraph 3 of Directive 2002/92 on insurance mediation[16]. The delegated acts are aimed at:

a) describing the measures that insurance intermediaries or companies might reasonably be expected to take to identify, prevent, manage and/or disclose conflicts of interest in the course of distributing insurance;
b) establishing adequate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the insurance intermediary or company.

In response to the request by the European Commission, EIOPA prepared a draft technical advice[17].

As in previous years, the FSMA contributed actively within EIOPA to various activities and to the drafting of a number of publications. Significant among the latter was the EIOPA opinion on the sale of insurance and pension products via the Internet[18].

1.2.3. ESRB activities

The FSMA attends the meetings of the General Board of the ESRB. Within the European System of Financial Supervision, the ESRB is tasked with macro-prudential supervision. The ESRB's objective is thus to detect, analyse and mitigate, in light of macroeconomic developments, possible systemic risks that could pose a threat to the financial stability of the European Union.

Following upon work begun in 2013, the ESRB focused several times on the question of settlement of transactions by central counterparties (CCPs). In accordance with the requirements of the EMIR Regulation, the ESRB thus gave its opinion on various consultations conducted by ESMA regarding the obligations of settlement for three categories of over-the-counter derivative instruments: interest rate derivatives, credit derivatives and non-deliverable forwards on foreign exchange rates.

The ESRB also addressed the problem of loans made by investment funds. In the context of a consultation by the Central Bank of Ireland on the subject, the ESRB's General Board analysed in particular the potential risks regarding financial stability that such an activity could pose (risk of contagion, of excessive credit growth or of pro-cyclicality). The ESRB also highlighted the need to ensure adequate consumer protection in cases where funds that engage in lending may offer their loans to retail investors.

16 Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L9 of 15 January 2003) as amended by Directive 14/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2001/61/EU (OJ L173 of 12 June 2014).
17 *Technical Advice on Conflicts of Interest in direct and intermediated sales of insurance-based investment products,* EIOPA 15-135, 30 January 2015.
18 *EIOPA Opinion on sales via the Internet of insurance and pension products*, EIOPA-BoS-14/198, 28 January 2015.

Lastly, the ESRB dealt with the implications relating to the number and importance of cases of misconduct within the European banking sector. These cases may give rise not only to significant costs, but could also lead to loss of confidence in the financial system, which is a potential source of systemic risk. Additional studies will therefore be conducted in order to include the risk of misconduct in future bank stress-tests.

1.2.4. Supervision of financial benchmarks

On 24 September 2013 the European Commission sent the EU Council a proposal for a regulation on indices used as benchmarks in financial instruments and financial contracts. The proposal was made in the context of the manipulation of financial benchmarks such as the European Interbank Offered Rate (EURIBOR) and the London Interbank Offered Rate (LIBOR).

The main purposes of the draft regulation are:

- to improve management and supervision of the benchmarking process;
- to improve the quality of data input and of the methods used by the administrators of the benchmarks;
- to ensure that stakeholders contributing to the benchmarks are subject to appropriate controls;
- to ensure that there is adequate protection of the consumers and investors who use the benchmarks.

All delegations to the EU Council support a compromise proposal for a negotiating mandate with the European Parliament. This means that the European presidency has been mandated by the EU Council to initiate the trialogue with the European Parliament. These negotiations can start in the course of 2015 after the European Parliament has determined its position.

The administrator of EURIBOR, EMMI, is based in Brussels. As a result, the FSMA is the competent authority for the supervision of the crucial EURIBOR benchmark.

1.3. International

1.3.1. IOSCO activities

In October 2014, the chairman of the FSMA was elected chair of IOSCO's European Regional Committee (ERC) for a two-year term. This regional committee is made up of 51 members from both the EU and beyond and addresses themes that are important for the region. In the course of December 2004, the European Regional Committee met in Brussels at the invitation of the FSMA. As a result of being chosen president of the ERC, the FSMA was also confirmed as member of the Board of IOSCO, the organization's highest governing body. The Board chose the chairman of the FSMA to chair the IOSCO Finance and Audit Committee, which assists the Board in examining the organization's budget and accounts. As a consequence, the FSMA is also involved in the process of shaping the organization's strategy for the next five years, and to determining the resources needed to implement it. As part of this process, a pilot project to establish one or more regional hubs was explored, chiefly in order to offer training programmes or other support projects to its members.

The FSMA is also active in a number of working groups that help prepare the standards and good practices which the organization sets:

- The Committee on Retail Investors develops strategy in the area of financial education, for example. To this end, in November 2014 IOSCO published a report titled *Strategic Framework for Investor Education and Financial Literacy*. This report describes the role of IOSCO in promoting investor education and financial literacy.
- Committee 1 (C1) on *Issuer Accounting, Auditing and Disclosure.* At the invitation of the FSMA, the October 2014 meeting of C1 was held in Brussels.
- The FSMA is also a member of the team that was partly responsible for the review of the implementation of IOSCO's principles for benchmarks by Euribor, Libor and Tibor[19]. That report was prepared at the request of the Official Sector Steering Group (OSSG) of the Financial Stability Board.

Important other activities of IOSCO included, among other things, designing a methodology to identify non-bank global systemically important financial institutions (G-SIFIs).

Along with the Basel Committee, IOSCO worked on developing a framework for the margin requirements for non-centrally cleared transactions in OTC derivatives, and on setting criteria for identifying simple, transparent and comparable securitizations.

Within the Joint Forum (IOSCO, the Basel Committee and IAIS), a report was also published about point of sale disclosure[20].

IOSCO also published a consultation report on cross-border regulation explaining the various techniques for addressing the challenges of cross-border supervision[21].

Finally, IOSCO devoted much attention to identifying (systemic) risks on the financial markets. As part of its activities in this area, IOSCO published in October 2014 the annual IOSCO Securities Markets Risk Outlook 2014-2015. It also put out a report on the methods being developed by IOSCO and national securities regulators in order to identify and assess new risks[22].

19 *Review of the Implementation of IOSCO's Principles for Financial Benchmarks by Administrators of Euribor, Libor and Tibor*, July 2014.
20 *Joint Forum, Point of Sale disclosure in the insurance, banking and securities sectors*, April 2014.
21 *Consultation report prepared by the IOSCO Task Force on Cross-Border Regulation*, 25 November 2014.
22 *Risk Identification and Assessment Methodologies for Securities Regulators*, June 2014.

1.3.2. Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) is an intergovernmental body tasked with establishing standards and furthering the implementation of legislative, regulatory and operational measures to fight money laundering, terrorist financing, the financing of the proliferation of weapons of mass destruction and other related threats to the integrity of the financial system.

The FATF supervises compliance with the 'International standards on combating money laundering and the financing of terrorism and proliferation', better known as the FATF Recommendations. In this context, the process of mutual evaluation constitutes a basic element of the work of the FATF. This is the process by which the body ensures the implementation of its recommendations in its member states and evaluates the global effectiveness of their measures to fight money laundering and terrorist financing (AML/CFT).

In 2013, the FATF launched the fourth cycle of mutual evaluations, placing the emphasis on the analysis of the effectiveness of the AML/CFT systems. Belgium was one of the first countries to undergo this new evaluation cycle.

As the competent authority for supervising compliance with the legal and regulatory obligations regarding the prevention of money laundering and terrorist financing by certain categories of financial institutions subject to the provisions of the Law of 11 January 1993, the FSMA participated actively in this evaluation.

During the exercise, which continued throughout 2014, the Belgian authorities had to prove their formal compliance with the legal and regulatory framework to combat money laundering. They also had to demonstrate that they had effective controls in place enabling them to achieve their supervisory objectives.

The evaluation process took place in several stages. First, the Belgian authorities carried out a self-evaluation based on a questionnaire. In July 2014, a site visit was organized to enable a team of evaluators to meet the various competent authorities and certain representatives of the private sector. Lastly, the final evaluation of Belgium took place during the FATF Plenary Meeting in 26 February 2015.

The Mutual Evaluation Report for Belgium, published on 23 April 2015, set out the measures for AML/CFT put in place in Belgium and analysed the degree of compliance with the 40 FATF Recommendations, as well as examining the effectiveness of the Belgian AML/CFT instruments. The report also issued recommendations in view of strengthening those instruments.

The report underlines that the FSMA identified the principal risks of money laundering and terrorist financing (ML/CFT) at the institutions which it supervises. The FSMA's work to ensure that the institutions under its supervision understand the risks of ML/CFT and the obligations in this area takes the form of a concrete and well developed guideline. Generally speaking, the report noted that the financial sector has a good understanding of the risks, and generally seems to take the appropriate preventive measures to counter these risks, including in high-risk situations. Nevertheless, the evaluators invited the FSMA to strengthen its pedagogical activity in this area.

As regards the controls put in place by the FSMA, the report stresses the particular and in-depth nature of the measures to combat ML/CFT for the sector of bureaux de change, identified as being the sector exposed to the greatest ML/CFT risk. Nevertheless, in light of the difficulties encountered by certain bureaux de change in detecting, analysing and reporting to

the Belgian financial intelligence unit (CTIF-CFI) on suspicious operations, the evaluators invited the FSMA to reinforce its control of the quality of the reports of suspicious operations.

Given the lower risk profile as regards ML/CFT for the other sectors under the supervision of the FSMA, namely, portfolio management and investment advice companies, financial intermediaries, management companies of undertakings for collective investment and mortgage companies, the report explains that AML/CFT checks are a part of the overall on-site inspections.

As regards intermediaries, although their activity is associated with a low risk level, the evaluators emphasize that this analysis should not be a reason for limited on-site checks as regards AML/CFT obligations, and recommend a stronger set of checks. In this regard, the report underlines that the FSMA is currently working on reorganizing its on-site supervisory methodology and its reallocation of resources, notably in view of taking into account considerations of AML/CFT within a general programme of on-site inspections for the sector of financial intermediaries.

Following on its analysis, the report presents a series of recommendations for the supervisory authorities of the financial sector, some of which are directly addressed to the FSMA:

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

The FSMA is currently working on implementing the recommendations of the evaluators, with a view to improving its supervisory measures and ensuring it is compliant with the FATF standards.

1.3.3. International Association of Insurance Supervisors (IAIS)

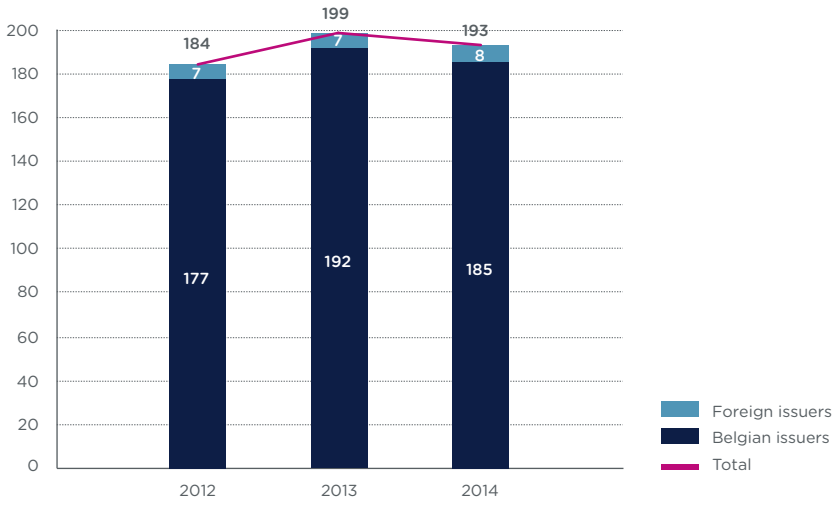
Since 2014 the FSMA has been a member of the International Association of Insurance Supervisors (IAIS) as a secondary authority, alongside the NBB. The FSMA's application for membership was formally approved during the annual meeting of the IAIS held in Amsterdam on 25 October 2014. The FSMA will mainly follow up on the activities of the IAIS in line with the FSMA's tasks with respect to the insurance sector, notably in the field of supervision of the conduct of business rules.

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

2.1. Supervision in figures

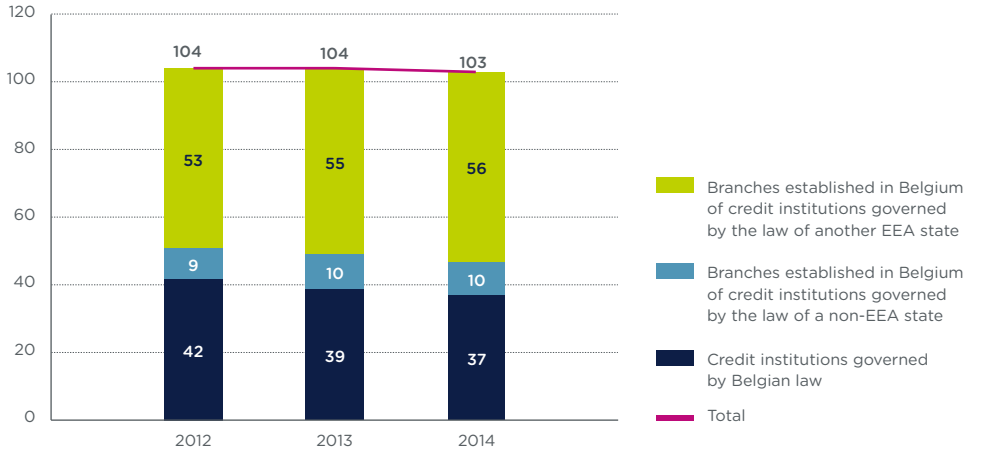
Listed companies (as at 31 December 2014)

Graph 1: Listed companies

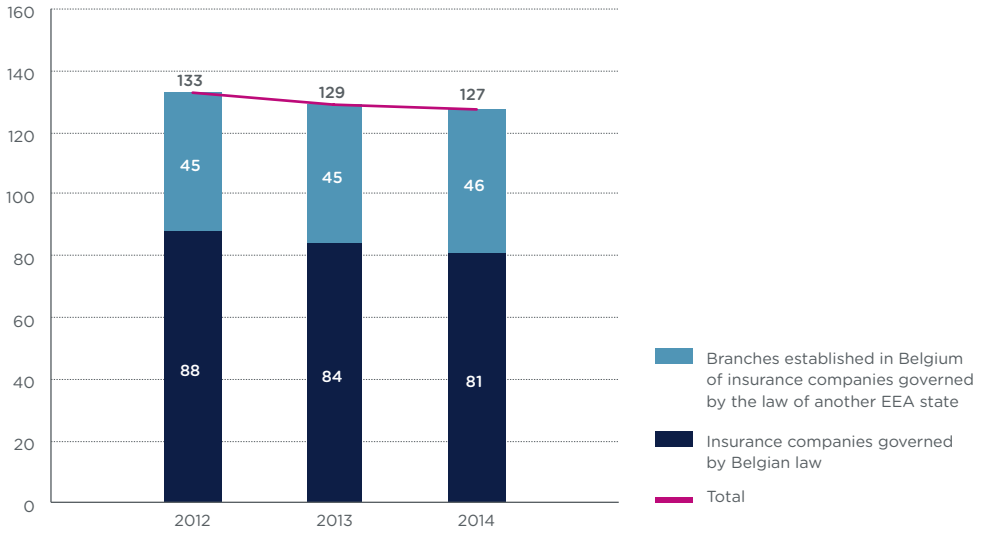


Institutions under product and conduct of business supervision

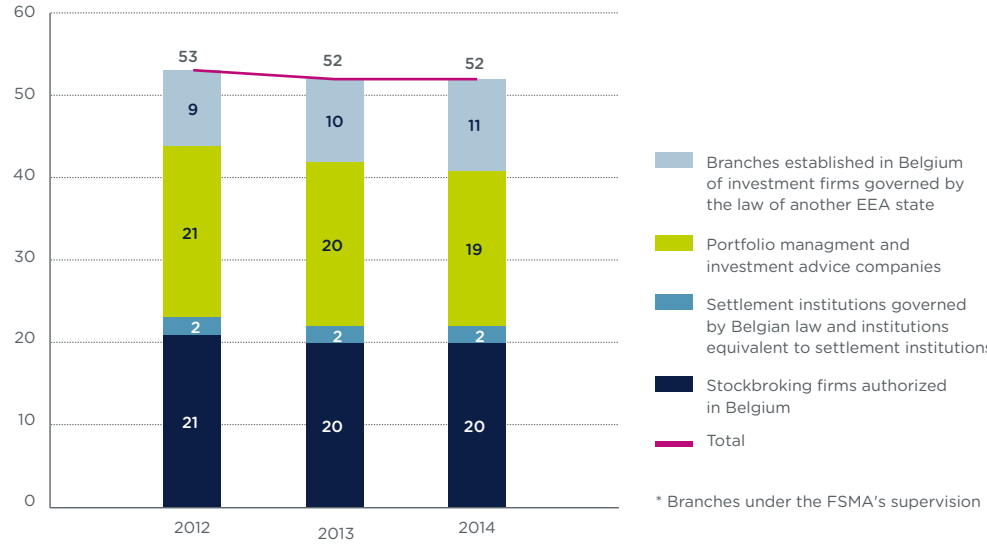
Graph 2: Credit institutions



Graph 3: Insurance companies



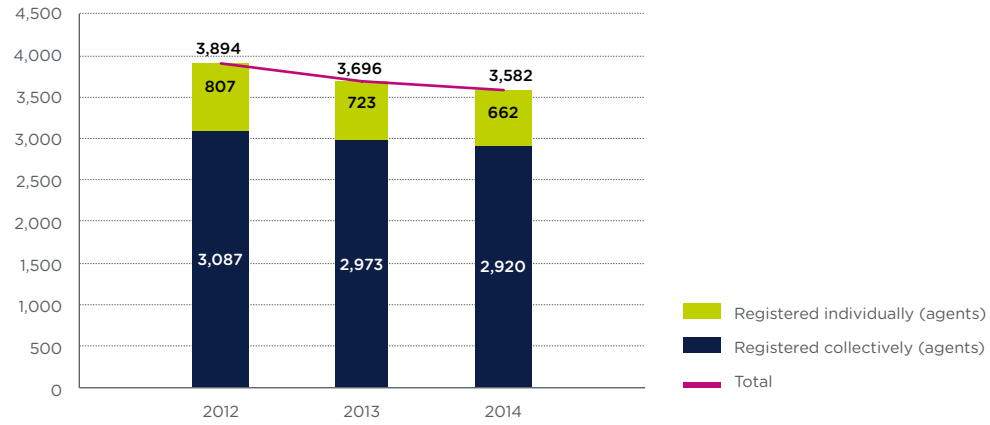
Graph 4: Other



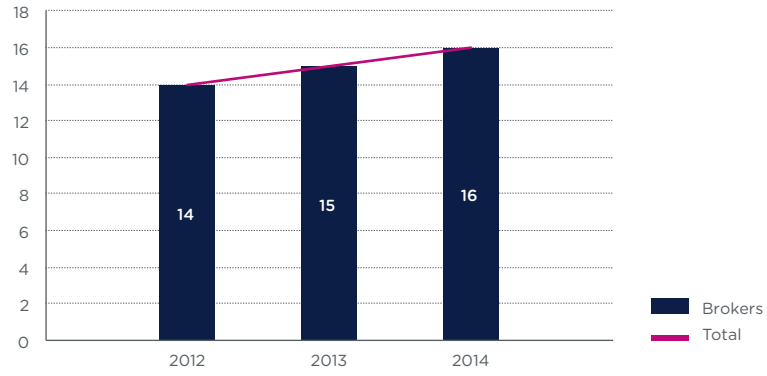
* Branches under the FSMA's supervision

Intermediaries

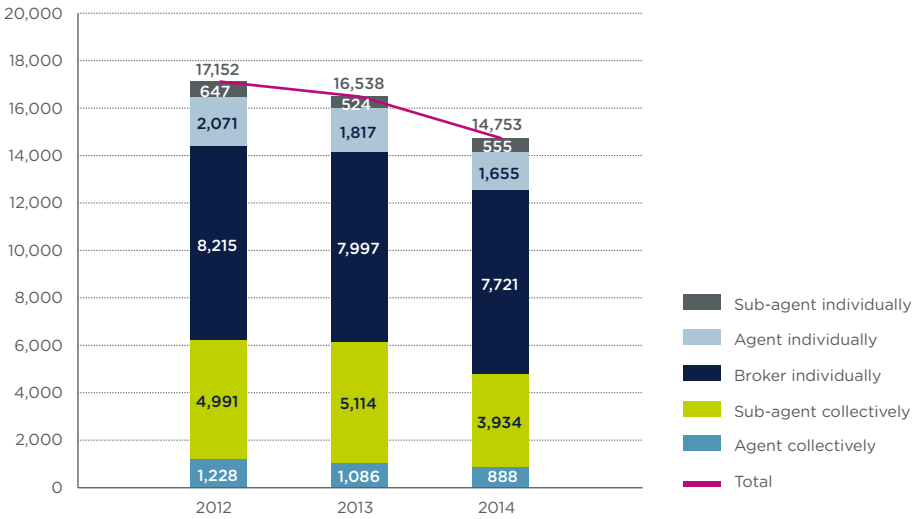
Graph 5: Intermediaries in banking and investment services (agents)



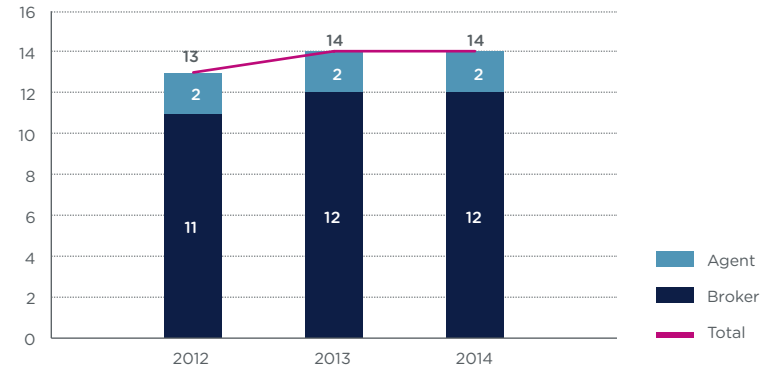
Graph 6: Intermediaries in banking and investment services (brokers)



Graph 7: Insurance intermediaries

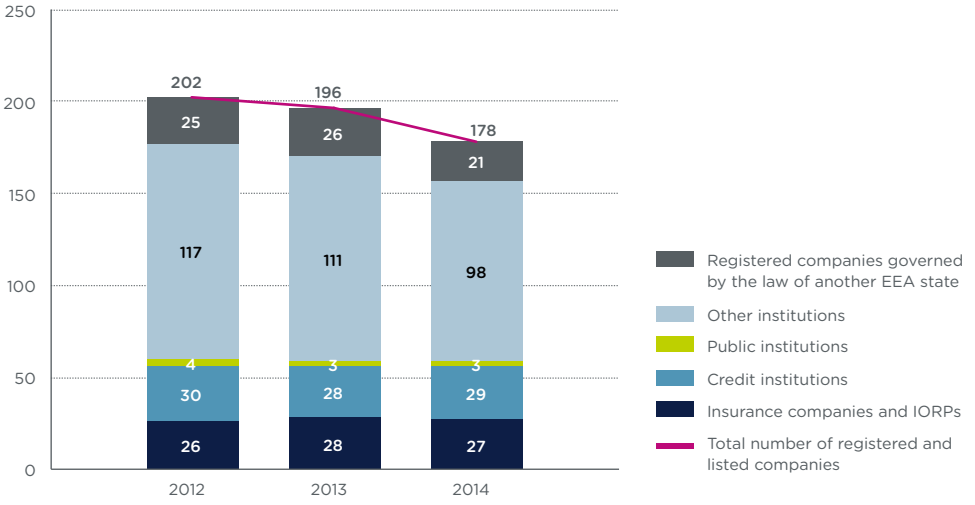


Graph 8: Reinsurance intermediaries



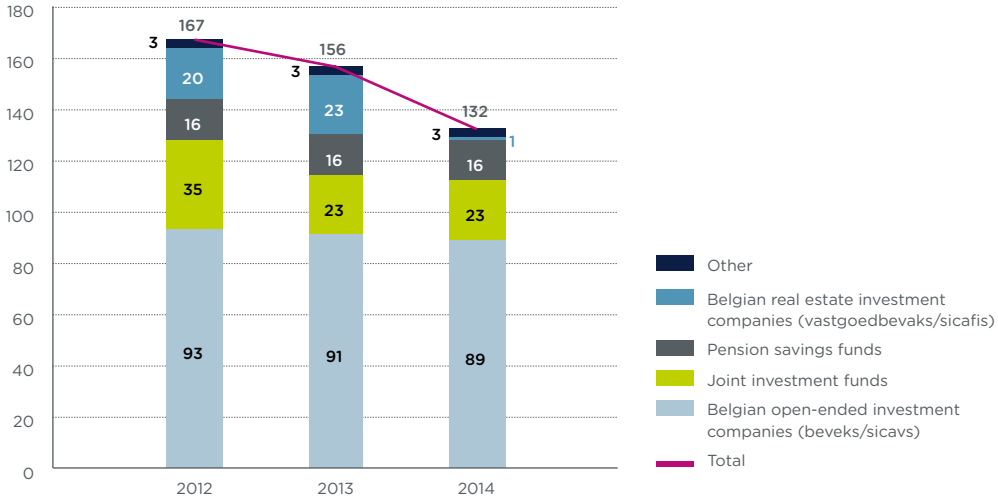
Mortgage companies

Graph 9: Mortgage companies

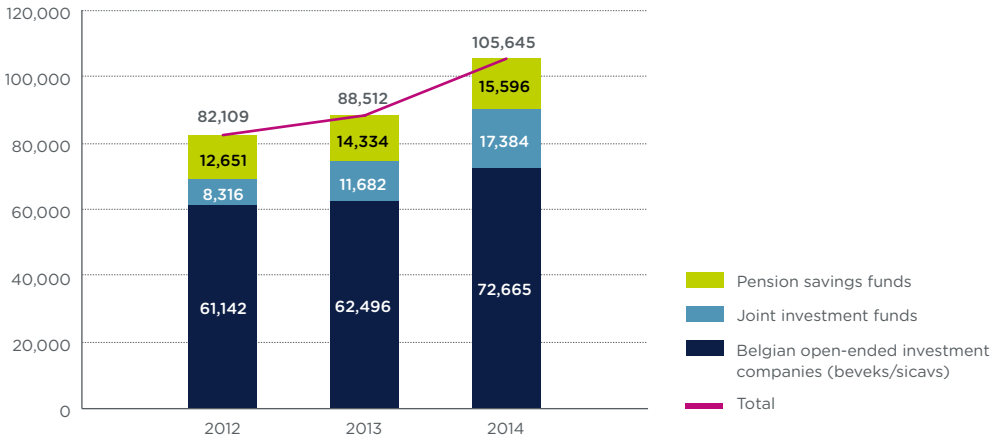


Undertakings for collective investment

Graph 10: Number of Belgian institutions

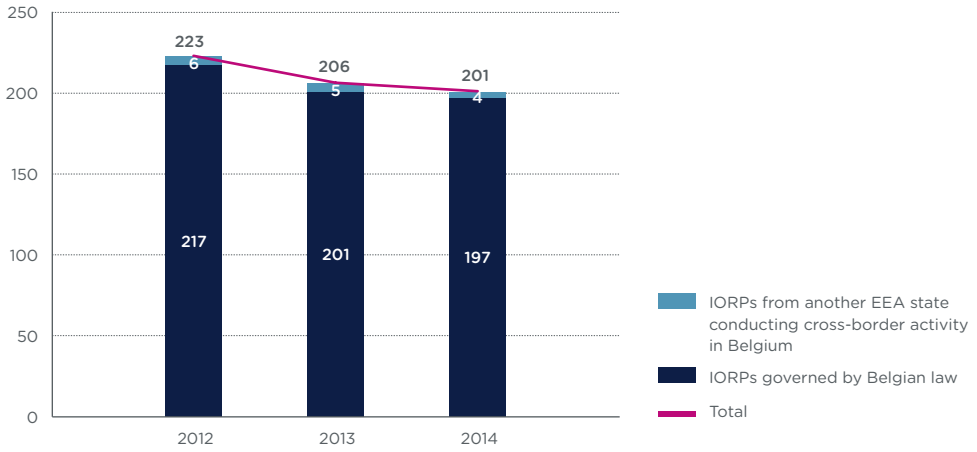


Graph 11: Asset value (in EUR million)

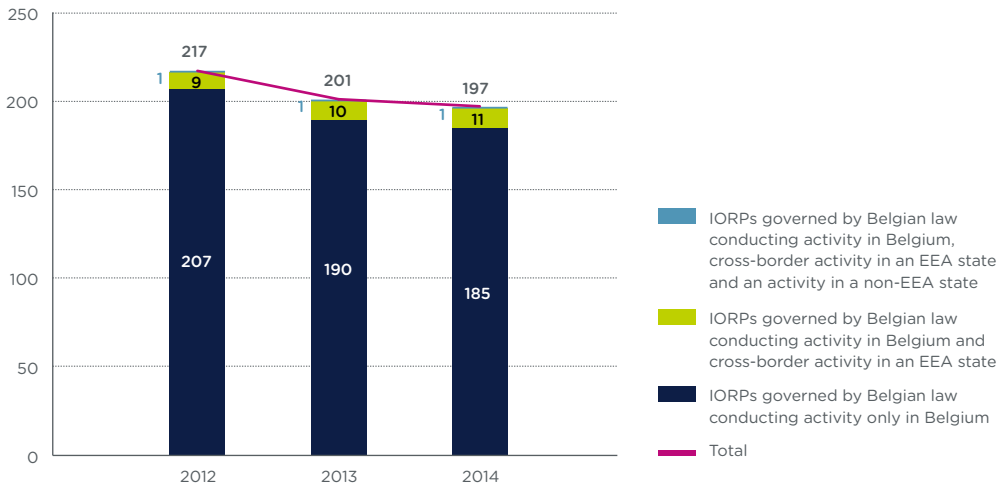


Institutions for occupational retirement provision (IORPs)

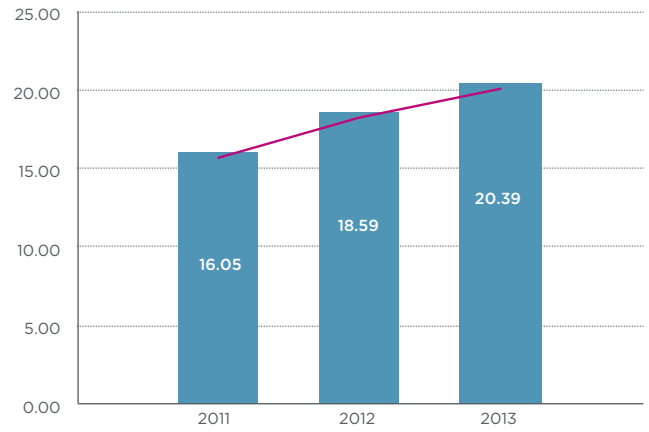
Graph 12: Number of IORPs



Graph 13: IORPs governed by Belgian law

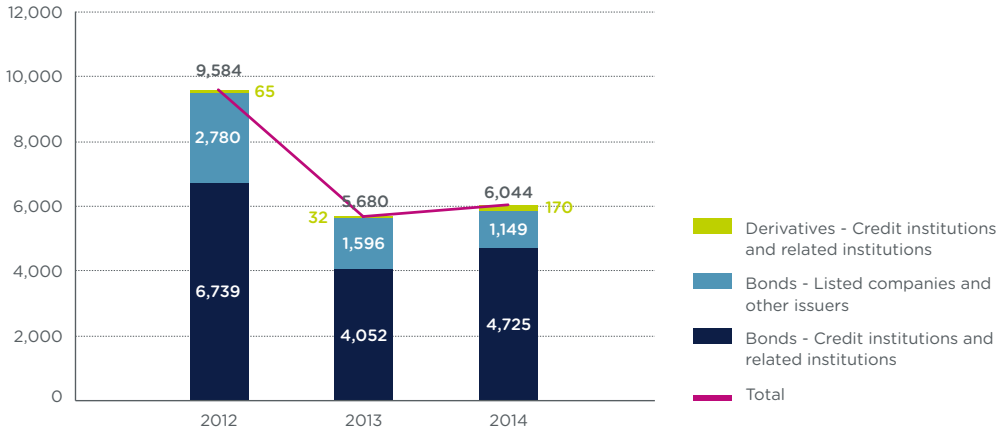


Graph 14: Balance sheet total of IORPs (in EUR billion)

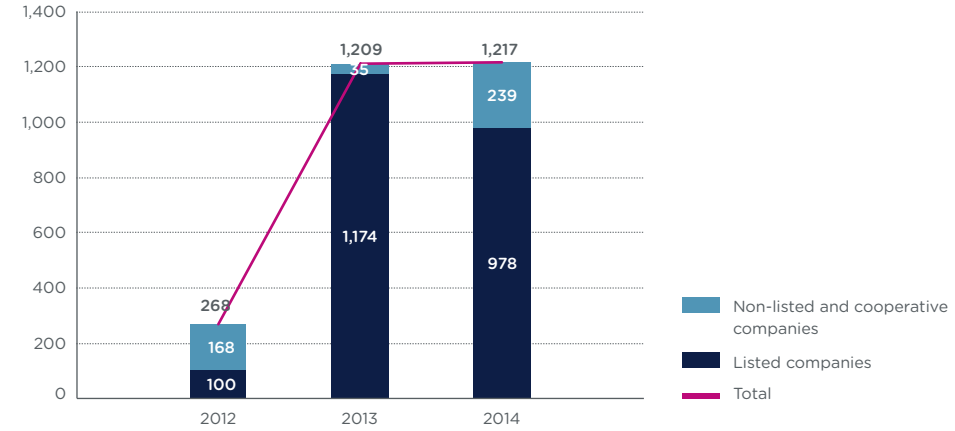


Public offers in Belgium

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 company information and of financial markets

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

2.2.1.1. Supervision of information disseminated by companies

2.2.1.1.1. Supervision of listed companies

2.2.1.1.1.1. Supervision of financial transactions

In the reporting period, Ontex launched an initial public offering. Via a reverse takeover of Thenergo, the ABO Group Environment also entered the stock market, after the FSMA had approved an information document equivalent to a prospectus. Moreover, six listed companies, of which two are regulated real estate companies, raised additional capital from the public on the basis of an issue and admission prospectus.

The number of public offers of classic, listed corporate bonds fell significantly. While in 2013 the FSMA had processed eight such dossiers, in 2014 only one issuer, a regulated real estate company, issued corporate bonds. In addition, the FSMA handled three base prospectuses which dealt with a public offering (and admission to trading) of debt instruments. Such base prospectuses, which are allowed only for debt instruments, are generally drawn up independently of a specific transaction. As long as the base prospectus is valid, the issuer can make use of it if it wishes effectively to make a public offer and/or be admitted to trading on the market. In that case, the final conditions of the specific transaction must be disclosed.

The FSMA also approved 15 prospectuses for the admission of investment instruments to trading on Euronext Brussels. In three cases, the prospectuses were for the listing of privately placed shares in listed companies. The 12 other admission procedures involved seven cases of privately placed debt instruments, of which two were regulated real estate companies, and 5 base prospectuses.

Finally, the FSMA handled a wide range of takeover dossiers for listed companies. In three of these, one of which was on the Vrije Markt/Marché Libre, the offerors exceeded the threshold of 30 per cent of the voting shares therefore of a share acquisition, and as a result were required to make a takeover bid. In each case, the mandatory bid was followed by a squeeze-out bid using the simplified procedure.

Two listed companies launched a voluntary bid for their own bonds, in one case in exchange for newly issued bonds. The FSMA also handled two rather unusual dossiers, namely a takeover bid to buy back the company's own shares and a squeeze-out bid without a prior takeover bid. In the case of such a squeeze-out bid, specific guarantees must be taken into account regarding the protection of the interests of minority shareholders.

2.2.1.1.1.2. Supervision of disclosure of financial information

Table 1: Issuers under supervision

	01/01/2013	01/01/2014	01/01/2015
Belgian issuers	**177**	**192**	**185**
Euronext	163	172	164
Alternext	11	15	16
Foreign markets	3	5	5
Foreign issuers	**7**	**7**	**8**
Euronext	6	6	6
Alternext	1	1	2
Total	**184**	**199**	**193**

Table 1 shows the changes in the number of issuers under supervision. The total number fell slightly in 2014. The fall in the number of issuers of shares was compensated for by a rise in the number of issuers of which only bonds are listed. The decrease in the total number of issuers under supervision is chiefly the result of the withdrawal of seven real estate certificates listed on Euronext Brussels.

The organization of supervision of financial reporting

Supervision of financial information provision by listed companies is carried out in principel after the fact via a selection model based on risk and rotation. Depending on events on the market or in the companies themselves, the FSMA may adapt its original supervisory plan if necessary. Further explanations about this supervisory methodology can be found in the 2013 annual report of the FSMA[23].

As part of its supervision of listed companies, the FSMA has implemented the ESMA guidelines on enforcement of financial information, and has informed ESMA of this. The contents of these guidelines are discussed in Chapter II of this report[24].

In 2014, the FSMA worked on improving the internal reporting tool for the supervision of listed companies. This will in turn simplify external reporting, including to ESMA. The supervision of the IFRS standards was also adjusted to the new and revised standards. In the process, account was taken of the specific priority points for attention set out below.

23 FSMA Annual Report 2013, p. 37.
24 See this report, p. 93 (available in French and Dutch only).

Priorities in 2014 for the supervision of financial reporting

The priorities on which the FSMA focused in 2014 in exercising its supervision of financial information issued in 2013 were in line with the ESMA priorities[25]. Information about specific decisions to which this exercise led can be found in other parts of this report. The FSMA priorities were:

Measurement and disclosure of post-employment benefits

Following on from the 2013 study of the reporting by listed companies on post-employment benefits in the 2012 annual financial statements, the FSMA paid particular attention in 2014 to the reporting on Belgian defined-contribution pension plans with return guaranteed by law. It held a consultation within the sector, examined financial statements in this regard and requested auditors' reports. This led to the publication at the beginning of 2015 of a study on 'Disclosures relating to Belgian "defined contribution" plans with return guaranteed by law'. This study is discussed further in this report[26].

Under this priority area, the FSMA focused on the discount rates and the actuarial assumptions used for reporting on defined benefit plans, the associated sensitivity analysis and the explanations about these plans.

Special impairments of non-financial assets

In earlier reporting years, the FSMA paid considerable attention to special impairment tests of goodwill and the disclosure of information on this matter. It has also published studies on the subject.

In 2014, specific attention was paid to the reasonableness of the assumptions on which cash-flow projections are based. To this end, the FSMA sought the causes of the differences between past cash-flow projections and the actual cash flows and examined whether the companies had ensured consistency, where necessary, between current cash-flow projections and the actual results from the past.

Furthermore, attention was paid to the specificity of the information disclosed about the most important assumptions used for determining the value in use and to the sensitivity analysis.

Determining information disclosure about fair value

In its examination of this priority area, the FSMA enquired whether fair value was in fact established in a manner compliant with the new IFRS 13 standard (Fair Value Measurement) and whether sufficiently clear information was provided to enable readers to understand the techniques used to measure value and to assess the inputs as well as the effect of fair value on the financial statements. In this regard, attention was also paid to debit valuation and credit valuation adjustments and to information disclosure on this matter.

25 http://www.esma.europa.eu/system/files/2013-1634_esma_public_statement_-_european_common_enforcement_priorities_for_2013_financial_statements_1.pdf
26 See this report, p. 109 (available in French and Dutch only).

Information disclosure about significant foundations for financial reporting; assessment and sources of estimation uncertainty

Regarding this matter, the FSMA devoted particular attention in 2014 among other things to improving the quality of the information disclosed, to the need for company-specific information and to avoiding writing in clichés.

Valuation of financial instruments and information disclosure about the risks related to these instruments that are particular relevant to financial institutions

In addition to the appropriate valuation of financial instruments, the liquidity risk and the accounting treatment of loans that had been adjusted as a result of the borrower's financial difficulties received particular attention.

Providing true, accurate and genuine information

The FSMA ensures that the information which issuers provide to the public is true, accurate and genuine, and enables securities holders and the public to assess the effect of the information on the issuer's position, business and results.

In this respect, in one case the FSMA saw to it that a company which had in the past made errors in the accounting treatment of its operations communicated appropriately about the accounting error, and its correction, that had had a material negative impact on its own funds and its results.

In another dossier, the FSMA's action ensured that a given company had to use the market rate of a security as the fair value instead of a conventional value that it wished initially to use. An intervention by the FSMA also ensured that a company had to use the market rate on the takeover date, in accordance with IFRS, to determine the takeover price instead of using a much lower market rate on an earlier date[27].

In 2014, IFRS 10 (Consolidated Financial Statements) entered into force. On this occasion, the FSMA examined various companies with a significant holding (but less than 50 per cent of voting rights) in another listed company, to determine whether power was being exercised without a majority of the voting rights (de facto control). If there is de facto control, the subsidiary in question must be consolidated. In a few cases, the FSMA also examined whether a company is an investment entity and thus must measure its subsidiaries by fair value in its consolidated financial statements.

Lastly, in the course of ensuring that correct and accurate information is provided to the public, the Management Committee of the FSMA referred a dossier to the investigations officer because of serious evidence of a practice that was liable to give rise to an administrative sanction.

Priorities for the supervision of financial reporting in 2015

In determining its priorities for the supervision of annual financial statements for 2014, the FSMA took into account the common enforcement priorities defined by ESMA[28]. It should be noted that certain priority areas from previous years remain relevant in certain cases and that the FSMA will continue to look at those during its inspections. In its supervision, the FSMA

27 See also Chapter II, p. 107ff (available in French and Dutch only).
28 http://www.esma.europa.eu/system/files/2014_1309_esma_public_statement_-_2014_european_common_enforcement_priorities.pdf

will also examine which areas are specifically relevant for a given company, and will thus devote attention not only to the general priorities set out for the 2014 financial statements, but will also look at points that are specific to the given company. The FSMA selected the following points as its priorities:

- The consistency, transparency and understandability of the information. The FSMA wishes to emphasize in this regard that non-company specific and irrelevant information or clichés do not contribute to transparency, but often the opposite is true.
- The drawing up and presentation of the consolidated financial statements and the information disclosure about them, in light of the entry into force of IFRS 10 and 12.
- Reporting by the entities with joint operations or a joint venture, and information disclosure about these (IFRS 11).
- The recognition and valuation of deferred tax assets.

Other priority areas are:

- Information disclosure about related party disclosures
- Follow-up of the new 'study on 'Disclosures relating to Belgian "defined contribution" plans with return guaranteed by law'.

Disclosure of periodic and occasional information

All regulated information published since 2011 by companies listed on Euronext Brussels and Alternext is available for consultation on STORI. STORI stands for Storage of Regulated Information. It is a database created and managed by the FSMA that can be accessed by everyone via the website[29]. It makes it possible to conduct online searches using different search criteria. The database now contains more than 9000 documents.

In May 2014, a Royal Decree entered into force abolishing the quarterly reporting and extending the deadline for publishing the half-yearly financial statements by a month. This Royal Decree is discussed in Chapter II of this report[30].

The reason for extending the deadline was, among other things, to achieve a better spread of publications over time. This should benefit small and medium-sized enterprises in particular; more attention will be paid to their financial statements if they do not publish on the same day as larger firms.

The FSMA has observed that a considerable number of companies that were required to publish their half-yearly financial statements at the latest by 30 September 2014 published around the same date as in 2013.

Approximately 80 per cent of the companies published their half-yearly information for 2014 before the end of August. A limited number of companies (6 per cent) published the information in the first half of September, and a good 13 per cent in the second half of September. Only six issuers published on the last day.

29 Stori.fsma.be
30 See this report, p. 91 (available in French and Dutch only).

There is thus a better spread over time: the number of publications during the period between 28 and 31 August fell by one-third. Since most companies did not publish their information much later than before, the right of investors to receive timely information remained unaffected.

The FSMA also noted that many issuers voluntarily continue to publish quarterly information. It has ensured that this voluntary dissemination of information can be entered in STORI.

Disclosure of shareholding structure

In order to increase the transparency of the markets and to meet a demand by market participants, the FSMA has since September 2014 been making an overview of the current shareholding structure of listed companies available to the public. This information can be consulted on the FSMA's website[31]. The published information comes from the transparency notifications that must be submitted to the FSMA in accordance with the Law of 2 May 2007.

In 2014, the FSMA received 343 such transparency notifications (as compared to 281 in 2013). These are notifications regarding upward or downward crossing of certain statutory or regulatory thresholds with regard to the shareholding of a listed company.

Implementation

Compliance with deadlines

The FSMA strictly supervises compliance with the deadlines established by law for disclosure of periodic information. In practice, the FSMA takes two sorts of measures if issuers do not comply with the deadlines. Very soon after the deadline for disclosure has lapsed, a warning is published. Such a warning mentions the names of the issuers that have not observed the statutory deadline. If issuers are unable to publish their information shortly after the deadline, the FSMA sets a new deadline. If they fail to observe those, the FSMA can decide to suspend the listing.

In 2014, both in May and in December a warning was published, in each case as a result of the failure to disclose the annual financial report in a timely manner. Two issuers had their listing suspended.

Compliance with the transparency obligations

The FSMA also devotes a lot of attention to compliance with shareholders' transparency obligations. In order to determine whether all those required to issue notifications have done so, the FSMA sometimes uses attendance lists of general meetings of shareholders. If these give rise to any concerns, it will ask the shareholders in question for clarification.

As part of this process, in 2014 the FSMA issued one shareholder of a listed company a formal order to provide it with information - on pain of a penalty - because he refused to answer the questions that had been put to him. After the formal order had been issued, the FSMA did receive the necessary answers and the person in question made the requisite transparency notifications. The Management Committee of the FSMA then referred the case to the investigations officer for further examination and the possible imposition of an administrative sanction. Another case, in which a shareholder had reported crossing a threshold, was likewise referred to the investigations officer.

31 See the FSMA website: http://www.fsma.be/en/Supervision/fm/gv/ah/AhActueel.aspx

Publication of studies

Disclosures relating to Belgian "defined contribution" plans with return guaranteed by law

In 2013 the FSMA had published a study[32] on the reporting by listed companies about post-employment benefits. Taking into account the shortcomings identified in that study, recent market trends and the fact that the IASB had not yet given any additional instructions about the treatment of such benefits, the FSMA has looked at this matter in greater detail.

A follow-up study[33] was therefore conducted on financial reporting on Belgian defined contribution pension plans with return guaranteed by the Law of 28 April 2003 on supplementary pensions (WAP/LPC). With the publication of this study, the FSMA seeks to improve financial reporting on those plans in the IFRS financial statements of Belgian listed entities.

Because the employer has to guarantee the statutory minimum return on these plans, not all actuarial and investment risks relating to these plans are transferred to the entity managing the plans. Therefore these plans do not meet the definition of defined contribution plans under IFRS and should by default be classified as defined benefit plans. However, accounting for these plans in the IFRS financial statements is not straightforward. Several publications by the IASB and IFRS IC confirm that in developing IAS 19, hybrid pension plans which combine features of both defined contribution and defined benefit plans were not taken into account, and that the accounting for these plans in accordance with IAS 19 is problematic.

In practice, there appear to be two methods used to estimate the pension liabilities for the Belgian pension plans of the entities in question. The first is based on the IAS 19 methodology (15 per cent of the sample) and the second based on the intrinsic value (85 per cent of the sample). The first method calculates the liability as the difference between the present value of the defined benefit liability and the fair value of plan assets, while the second method measures the liability at intrinsic value.

Although financial reporting on Belgian defined contribution plans has improved, there is still room for improvement. The FSMA expects entities to provide at least the following information on their material Belgian defined contribution plans with a statutory minimum return in their notes to the financial statements:

32 See the FSMA Annual Report 2013, p. 40.
33 Study 44 on 'Disclosures relating to Belgian defined contribution plans with return guaranteed by law' is available on the FSMA's website.

- a clear description of the specific characteristics of Belgian defined contribution plans, indicating the risks borne by the entity in relation to these plans;
- a clear disclosure and justification of accounting policies adopted in order to measure the liability to be recognized;
- a description of all relevant assumptions and estimates used to calculate this liability;
- quantitative disclosures on the measurement of the liability;
- information about the amount, timing and uncertainty of future cash flows.

Information disclosure about related party relationships and transactions

The FSMA has also devoted a study[34] to information disclosure concerning related parties (such as shareholders, directors, managers and group entities) in the annual financial reporting of Belgian listed companies. These companies are required, under IAS 24, to provide information in their explanatory notes to the annual financial statements about both relationships and transactions with related parties[35]. Transparency in this regard is important, given that related parties can use such transactions in their own favour, to the detriment of minority shareholders.

This study offers insights not only as regards transparency, but also estimates the importance of related party transactions and of the potential impact of the transposition of a proposal for a European Directive[36] into Belgian law.

The FSMA noted that the majority of the companies provide extensive information about related party relationships and transactions. The study shows, however, that it is not always easy for the reader of an annual financial statement to gain a clear and complete picture of all related party relationships and transactions, and of their impact. Often, information (which is often insufficiently structured) from various places have to be combined to make this possible. Related party transactions nevertheless constitute an important piece of information in the case of many companies, both in terms of the quantity and of the value. In conclusion, the FSMA estimated that the provisions in the proposal for a European Directive which require transparency and the approval of certain related party transactions could have a significant impact if the proposal were to be approved unchanged.

Given the importance of the information about related party relationships and transactions, the FSMA asks the companies to devote greater attention to the connection of information about related party relationships and transactions and to take into account the specific points requiring attention that are described in the study.

34 Study 45 'Considerations regarding the information about relations and transactions with related parties' can be consulted on the FSMA's website (in French and Dutch only).
35 In addition to the IFRS, transparency obligations are also laid down by the Companies Code and by the Law of 2 May 2007 on disclosure of major holdings.
36 Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement.

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

In 2014, the FSMA approved 23 prospectuses by non-listed companies. These involved, more specifically, nine share issues by cooperative companies, four prospectuses by tax shelters for investment in audiovisual productions, six issues of debt instruments by non-listed companies and four prospectuses for employee share ownership plans from issuers outside the EU.

During the reporting period, the existing prospectus exemption for cooperative companies was relaxed, and a new exemption was introduced in order to facilitate crowdfunding. As will be discussed further in this report, the FSMA published a communication on its website to clarify these exemptions[37]. In addition, FSMA employees responded to several invitations to explain the regulatory framework for tax shelters, cooperative companies and crowdfunding.

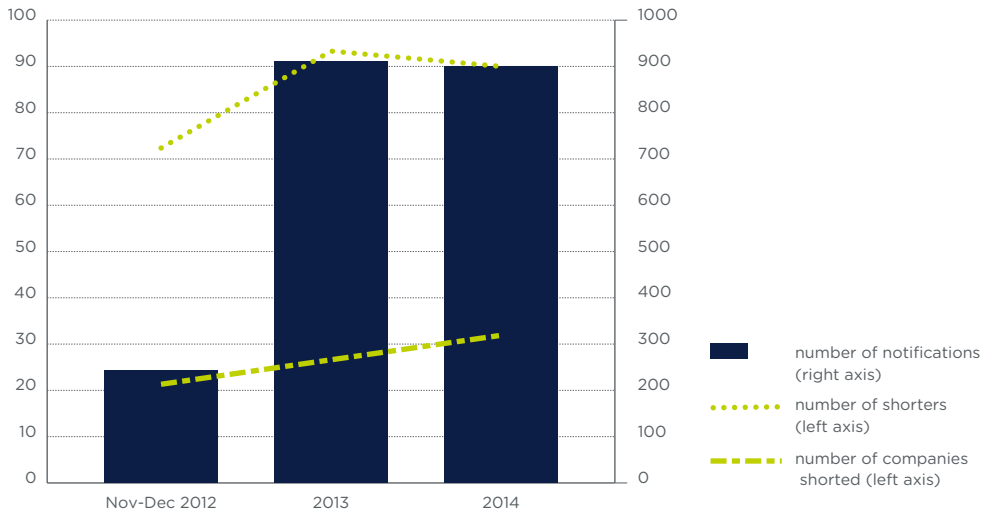
2.2.1.2. Supervision of financial markets

Short selling

The European Regulation on short selling entered into force on 1 November 2012. Since then, the FSMA has been publishing on its website the information it receives on net short positions amounting to 0.50% or more of the share capital. The financial media regularly report on this subject, and market participants now appear to be well acquainted with the transparency requirements for short positions. Given the interest on the part of the market and the relatively high number of disclosures it receives, the FSMA has made the publication on its website more easily accessible by using a file that can be downloaded and used by anyone wishing to conduct his or her own analyses.

Graph 17 comprises an overview per year of the number of companies shorted, the number of different shorters and the number of disclosures made. The number of disclosures of positions between 0.20 and 0.50% of the share capital include both those that were and those that were not made public.

Graph 17: Short selling



37 See also Chapter II, p. 90 (available in French and Dutch only).

Analyses

The FSMA is responsible for examining indications of potential market abuse. To this end, its market room uses both its own investigative resources and information reported to it by financial institutions, market operators or other supervisory authorities.

In 2014, 22 preliminary analyses were started. Before 30 April 2014 and the changes to Article 70, § 1 of the Law of 2 August 2002, three analyses were submitted directly to the investigations officer. Since 1 May, the Management Committee has submitted 10 investigations of market abuse to the investigations officer.

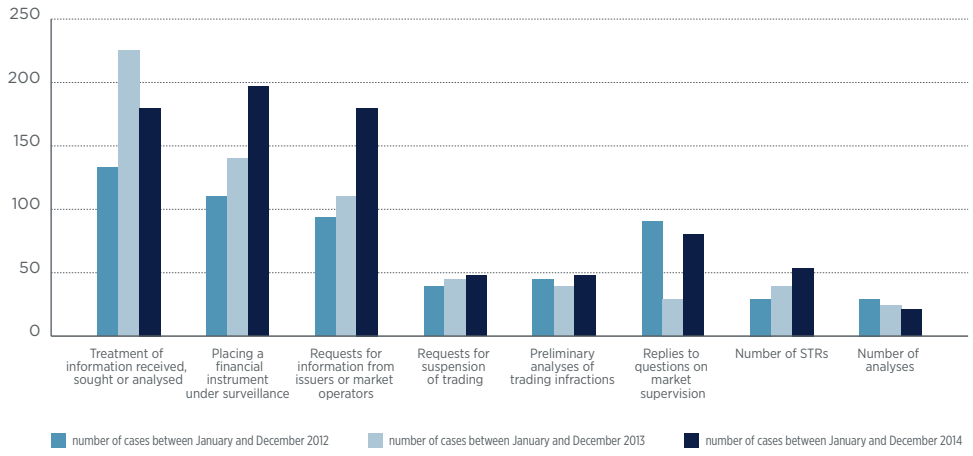
The FSMA launched various preliminary analyses relating to a takeover dossier by a listed company. In accordance with Article 74 of the Law of 2 August 2002, it decided to inform the judicial authorities of the findings of these preliminary analyses, insofar as these contained indications of possible criminal offences, namely:

- possible abuse of inside information on the part of a shareholder;
- possible market manipulation, namely, the dissemination by a shareholder of information that could give false or misleading signals about the shares of a listed company;
- possible market manipulation on the part of the listed company.

The preliminary analyses in question were also submitted to the FSMA's investigations officer.

Monitoring market transparency

Graph 18: Market surveillance 2012-2014



The activities of the market surveillance unit shown on the above graph reflect the high level of activity on the markets in 2014.

With a view to the ongoing improvement of its tools, the FSMA signed a memorandum of agreement with the Autorité des Marchés Financiers (AMF) of France regarding the instruments for its ex-post supervision of transactions. Thanks to this agreement, the FSMA will be able to use the AMF tool for investigating market abuse and will contribute to the further development of that tool.

Transaction reporting

ESMA launched an initial consultation phase during the summer of 2014 on transaction reporting under MiFID II, the final texts of which were published on 12 June 2014. ESMA is required to submit to the European Commission technical standards for transaction reporting by July 2015.

Under the new legislation, the reporting format will be harmonized by all EEA countries. Taking into account the extension of the scope of the transaction reporting to other markets and instruments, and the additional information that has to be obtained, it is expected that the new reporting format will comprise around 80 fields, as compared to around 30 in the current Belgian reporting format.

During the first consultation phase, ESMA received numerous responses. Based on these, a consultation document was drawn up and a second consultation phase launched. One of the most important recommendations made in the consultation document is to simplify the reporting by identifying the buyer and seller directly. This approach is more intuitive and more in line with the reporting logic of the market and that of the EMIR reporting. The definition of transactions that must be reported, in particular the events relating to the life cycle of derivative instruments, was also reviewed. This was done with a view to simplifying the detection of possible market abuse, which is the primary goal of the reporting. The final technical standards will be drawn up on the basis of the reactions received in the second phase of the consultation.

2.2.2. Supervision of financial products

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

2.2.2.1. Transversal aspects of product supervision

2.2.2.1.1. Moratorium

Since 2011, a moratorium on the distribution of particularly complex structured products to retail investors has been in place. A structured product is considered particularly complex if it does not meet the four criteria laid down in the moratorium drawn up 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. Since 1 August 2011, financial institutions can sign on voluntarily to the moratorium. Nearly all providers of structured products have signed on to the moratorium.

If it is unclear whether a structured product should be considered particularly complex, the product is analysed in detail. In 2014, this was done for 118 products with new characteristics, such as a new underlying asset or a new mechanism for calculating the yield. Of those products, 46 were deemed to be particularly complex, and were thus not launched on the retail market. In addition, six questions of principle as regards the application of the moratorium

were investigated. The standpoints of the FSMA regarding these questions are set out in detail in Chapter II of this report[38].

Number and type of products

Table 2: Structured products distributed since the launch of the moratorium (1 August 2011 - 31 December 2014)

	Number of products issued	Issue volume (in EUR million)[39]
Class 23	**286**	**12,091.67**
Under the moratorium	285	12,091.67
Opt-out	1	N.A.
Note	**590**	**8,028.08**
Under the moratorium	583	8,028.08
Opt-out [40]	7	N.A.
Term deposit	**12**	**171.13**
Under the moratorium	12	171.13
UCI	**212**	**7,811.96**
Under the moratorium	208	7,811.96
Opt-out	4	N.A.
Private Note	**1,095**	**N.A.**
Under the moratorium	89	N.A.
Opt-out	1,006	N.A.
Total	**2,195**	**28,102.83**

Since the entry into force of the moratorium, the FSMA has been keeping a record of the structured products distributed in Belgium by distributors who have signed on to the moratorium. The record shows (see Table 2) that since the entry into force of the moratorium, 2,195 products have been launched, of which 1,018 within the opt-out regime and 89 as private notes. The remaining 1,088 products represent an issue volume of EUR 28,102.83 million. Almost half of this issue volume was in the form of Class 23 products. The relative weight of the Notes increased in 2014.

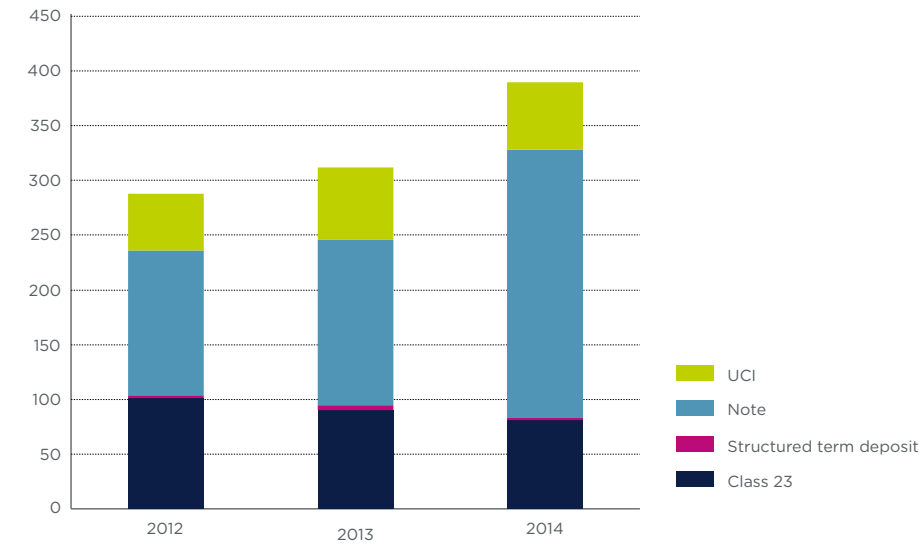
The distribution of particularly complex structured products under the opt-out regime took place chiefly via private notes[41] (98.8%).

38 See this report, p. 131ff (available in French and Dutch only).
39 The FSMA has no data on the issue volume of the 89 Private Notes or of the products that are distributed under the opt-out regime.
40 The opt-out regime offers distributors the option not to apply the moratorium to clients who hold deposits and financial instruments with the distributor with a value at the time of distribution of more than EUR 500,000 in movable assets. The opt-out applies only to the portion of the assets that exceeds EUR 500,000.
41 Private notes are debt instruments issued in the context of an offering that is not public within the meaning of Article 3, § 2 of the Prospectus Law.

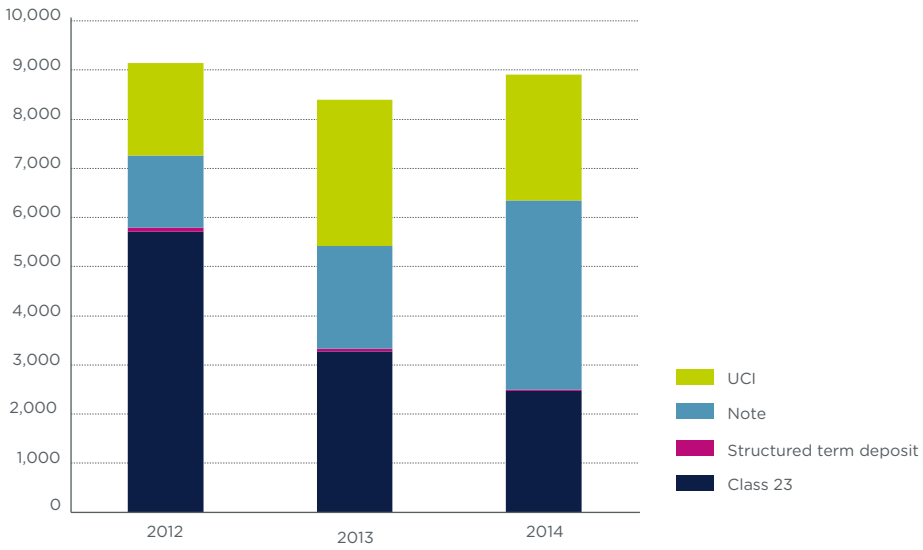
Changes since the launch of the moratorium

The number of not particularly complex structured products covered by the moratorium that are distributed each year increased between 2013 and 2014. As regards the total issue volume, it also increased slightly in 2014.

Graph 19: Changes in the number of structured products distributed (per year)



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



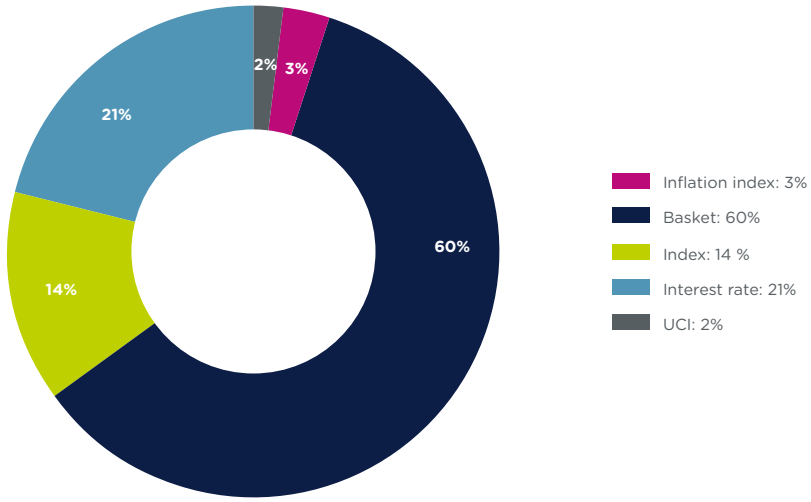
Analysis since the launch of the moratorium

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

Since the launch of the moratorium, the yield of the majority of structured products depends on the performance of a basket of shares. Many products have an interest rate or inflation rate as their underlying.

In 2014, investments increased in products with a customized index as an underlying. The majority of customized indices were centred on the notion of sustainability. This means that the selection of shares included in the particular customized index is made on the basis of criteria related to sustainability.

Graph 21: Underlying value of structured products distributed since the start of the moratorium



75.62% of the sums invested were in structured products with a guaranteed repayment of the invested capital at maturity, in some cases less any entry fees and taxes.

The offer of capital protection is under pressure as a result of the low interest rates.

Thus, the number of products distributed in the course of 2014 that do not confer a right to 100% repayment of the capital at maturity increased in comparison to previous years. This trend can be explained by the current environment of low interest rates. The majority of products confer a right to 90% repayment of the capital at maturity.

Table 3: Maturity of the structured products issued between 1 August 2011 and 31 December 2014 (excluding opt-outs and private notes)

	Less than 2 years	Between 2 and 5 years	Between 5 and 8 years	More than 8 years	Total
Number of products	1	77	655	356	1,089
Total Issue (in EUR million)	5.16	957.59	18,112.56	9,027.52	28,102.83

In the current low interest rate environment we can see that in terms of issue volume, distributors are offering proportionately fewer and fewer products with maturities under five years, with a clear preference for products with long maturities. Since the launch of the moratorium, products have become less complex as regards the number of mechanisms used. More than half of the products comprise at least two mechanisms.

The increase in 2014 in the number of products distributed that do not confer a right to 100% repayment of the capital at maturity has meant more investment in products that comprise three mechanisms. If one does not count the potential loss of capital as an additional mechanism, only 32% of structured products (in terms of total issue) used three mechanisms.

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 2014, the FSMA opened 1,466 new dossiers relating to advertising for UCIs. Such a dossier can include several advertising documents.

Regulated savings accounts remain the most important savings product on the Belgian market. They are offered by 36 credit institutions. In 2014, the FSMA approved 199 documents with key savers' information and gave its approval to 210 advertising dossiers. These documents were drawn up in conjunction with the launch of a new regulated savings account or the modification of the conditions for an existing account.

During the reporting period, the FSMA handled 315 dossiers for advertising of public notes, as compared to 249 dossiers in 2013. The FSMA also gave its approval to 157 thematic citizens' loans.

A point that continues to be under scrutiny in the supervision of advertising for structured products is the question of whether advertisements make the usefulness of the product concerned clear to the investor. The FSMA also ensures that the advertising indicates the parameters which allow the investor to assess the circumstances in which a product will return a yield.

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

	2012	2013	2014
Issues of debt instruments without market risk on the capital, by:	**217**	**243**	**297**
listed companies and other issuers	14	11	9
credit institutions and related	203	232	288
Issues of debt instruments with market risk on the capital, by:	**14**	**9**	**27**
credit institutions and related	14	9	27

Table 4 indicates that in 2014 a total of 324 transactions in debt instruments took place. This represents an increase of more than 28 per cent as compared to the year before, when 252 such transactions were made. In 2014 there was an increase in issues of debt instruments both without market risk on the capital and with market risk on the capital. The number of transactions without market risk on the capital increased by more than 22 per cent. The number of issues of debt instruments in which the capital is subject to market risk increased fourfold.

The issues of banking debt securities also included covered bonds, for which four prospectuses were submitted to the FSMA for approval.

CFDs

The FSMA approved three prospectuses in 2014 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.

When evaluating prospectuses for CFDs, the FSMA devotes particular attention to the illustration of how these products work, and how the risks and the costs attached to CFDs are explained. A warning must be included on the first page of the prospectus informing the investor that the investment may generate a loss greater than the initial outlay. A similar warning must be included in the advertising materials for CFDs.

In past years, the distribution of non-mainstream products - such as CFDs - to retail clients has increased. Such products are generally sold via the internet. These are products that usually have a short maturity and are often risky, but are often presented to clients as simple products with which money can be earned quickly. These include CFDs and so-called binary options, among others.

The FSMA therefore published a communication informing firms that distribute such products in Belgium of the obligations incumbent upon them. In particular, there are obligations under the legislation regulating public offers, the MiFID conduct of business rules, rules for the protection of consumers and regulations on the information that must be offered to retail clients when distributing financial products.

Foreign transactions

Moreover, there are also products distributed in Belgium based on a prospectus approved by a foreign supervisory authority. Table 5 shows how many foreign (base) prospectuses were used in 2014 in connection with an offer programme in Belgium. These came to a total of 176 (base) prospectuses. A distinction was made according to the type of financial instrument to which the (base) prospectus refers.

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

	Shares	Debt instruments with/without capital risk	Warrants	Total
Base prospectus	0	134	2	136
Prospectus	14	26	0	40
Total	**14**	**160**	**2**	**176**

Table 6: Number of incoming approval declarations per supervisory authority

	Base prospectus	Prospectus	Total
AFM (Netherlands)	19	5	24
AMF (France)	14	11	25
BAFIN (Germany)	11	1	12
CSSF (Luxembourg)	54	21	75
FCA (United Kingdom)	16	1	17
FMA (Liechtenstein)	1	0	1
Central Bank of Ireland (Ireland)	22	0	22
Total	**137**	**39**	**176**

Table 6 shows how many notifications the FSMA received from foreign supervisory authorities of (base) prospectuses approved by them. The Luxembourg supervisory authority, the CSSF, made by far the most notifications of (base) prospectuses approved by them (75). The French supervisor, the AMF (25), and the Dutch supervisor, the AFM (24) were in second and third place respectively.

In 2014 the FSMA granted a passport at the issuer's request to nine transactions for which it approved the passport. These passports were for 26 countries, including the United Kingdom for four transactions and Germany, France, the Netherlands and the Grand-Duchy of Luxembourg for three transactions each.

2.2.2.2.2. Regulated savings accounts

36 credit institutions in Belgium offer regulated savings accounts. Together these institutions offer 135 different regulated savings accounts, with a total of more than EUR 250 million on deposit. In the past few years, the rules for these savings accounts were amended via two royal decrees[42] and on the basis of an agreement in principle reached by the Minister of the Economy, the Minister of Finance, the FSMA and Febelfin.

2.2.2.2.3. Thematic citizens' lending

The FSMA checks whether products offered under the thematic citizens' lending regime[43] comply with all legal requirements. These conditions include the product term, the minimum outlay, deposit protection, accessibility of the products for retail clients and the use of an interest rate in line with market standards.

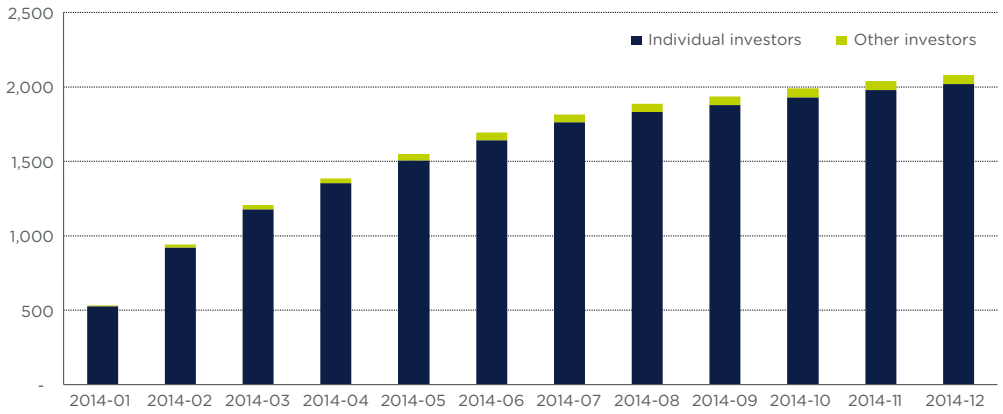
In addition, the FSMA also verifies in advance all advertising material for certificates of deposit and term deposits offered in the form of thematic citizens' lending. In the process, the FSMA looks at whether the documents contain the statements required by law. The FSMA approves for publication the documents that contain the requisite statements.

42 The Royal Decree of 18 June 2013 laying down certain information obligations in respect of the distribution of regulated savings accounts, and 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 referred to in Article 21, 5°, of the 1992 Income Tax Code and the conditions for offering rates on the latter.

43 Law of 26 December 2013 laying down miscellaneous provisions on thematic citizens' lending.

In accordance with the information provided to the FSMA, over the course of 2014 a total of EUR 2,080,269.86 was raised by 13 credit institutions from both individual investors and legal entities.

Graph 22: Thematic citizens lending: amounts invested (cumulative – in EUR million)



2.2.2.2.4. Undertakings for collective investment

Table 7: Changes (in number) of Belgian undertakings for collective investment[44]

	2012	2013	2014[45]
Belgian open-ended investment companies (bevek/sicav)	93	91	89
Number of sub-funds at end of period	*1,618*	*1,511*	*1,375*
of which money sub-funds	*13*	*9*	*7*
Joint investment funds[46]	35	23	23
Number of sub-funds at end of period	*1*	*23*	*46*
Pension savings funds[47]	16	16	16
Number of sub-funds at end of period	0	0	18
Total	**144**	**130**	**128**
Closed-ended real estate investment companies (vastgoedbevak/sicafi)[48]	20	23	1
of which institutional closed-ended real estate investment companies[49]	5	7	0
Undertakings for investment in debt securities[50]	2	2	2
Number of sub-funds at end of period	0	0	0
Belgian private equity closed-ended investment companies (privak/pricaf)[51]	1	1	1
Grand total	**167**	**156**	**132**
Number of sub-funds at end of period	*1,619*	*1,534*	*1,439*

44 As at 31 December of each year.
45 If a UCI/AIF has no sub-funds, one sub-fund is nonetheless indicated in the table.
46 Excluding pension savings funds.
47 Pension savings funds recognized under Article 145/16 of the 1992 Income Tax Code.
48 Investment companies investing in real estate and regulated by the Royal Decree of 7 December 2010.
49 Institutional investment companies investing in real estate and regulated by the Royal Decree of 7 December 2010.
50 Undertakings for investment in debt securities and regulated by the Royal Decree of 29 November 1993.
51 Investment companies investing in non-listed companies and in growth businesses and regulated by the Royal Decree of 18 April 1997.

Table 8: Changes in capital (Belgian open-ended UCIs - in EUR million)[52]

	2012	2013	2014
Belgian open-ended investment companies (bevek/sicav)	61,142	62,496	72,665
Joint investment funds	8,316	11,682	17,384
Pension savings funds	12,651	14,334	15,596
Total	**82,109**	**88,512**	**105,645**
of which money sub-funds	*968*	*1,015*	*777*

In 2014, the number of Belgian UCIs/AIFs fell significantly from the number in 2013. This decrease can be attributed almost entirely to the fact that 22 real estate investment companies opted to change their status to that of regulated real estate company, and as such were no longer considered an AIF. If one sets aside this specific decrease, then the number of Belgian UCIs/AIFs has remained more or less constant since 2013.

As regards the net asset value of the Belgian UCIs/AIFs, an increase of EUR 17 billion was noted in 2014. After a multi-year trend in which outstanding net assets fell steadily, the outstanding net assets of Belgian UCIs/AIFs once again exceeded EUR 100 billion. This increase corresponds to the substantial increase in subscriptions for units in Belgian open-ended investment companies and joint investment funds and to the rising capital gains on assets in the portfolio.

2.2.2.2.5. Insurance

The Insurance Law

In 2014, the new Insurance Law entered into force. This Law is discussed in greater detail in Chapter II of this report[53]. This Law includes various rules regarding information to be provided when offering and concluding an insurance contract and during the lifetime of that contract. In addition, the Law introduces new information obligations regarding profit-sharing. Profit-sharing may be mentioned in advertisements and other documents, provided that the profit-sharing is non-discretionary. The insurer must in that case draw up a profit-sharing plan that falls within the framework required by the Law.

Sectoral enquiries

Life insurance

In 2014 the FSMA conducted a sectoral enquiry into financial reporting to clients about Class 23 life insurance policies. The insurance companies must prepare half-yearly and annual reports for each investment fund that is distributed to individuals via Class 23 life insurance products[54]. These reports must at the very least contain the information required under the Law and are intended to inform the policyholder of the state of his or her investment during the entire term of his or her insurance contract.

52 As at 31 December of each year.
53 See this report, p. 116ff (available in French and Dutch only).
54 Based on Article 73 of the Royal Decree of 14 November 2003 on life insurance activity.

The FSMA's enquiry showed that the sector attached too little importance to these reports. The financial reports were often lacking or of poor quality. Thus, some reports for example contained no information about the composition of the investment fund's portfolio or about transactions in derivative products and foreign currency. The description of the fund's investment policy and the associated risks also frequently seemed inadequate.

Based on the observations made during this enquiry, the FSMA asked the insurers in question to remedy these shortcomings. As a result, the quality of the financial reports improved considerably. Based on these observations, the FSMA will inform the sector of its expectations as regards financial reporting to clients about Class 23 life insurance policies.

Non-life insurance

In 2014, the FSMA also completed its investigation of certain theft and 'warranty' insurance policies and into a number of trip cancellation policies. In the course of its enquiry, the FSMA looked into whether the documents used when distributing these insurance products complied with the legal provisions. The enquiry revealed a number of shortcomings.

As regards theft and warranty insurance, the shortcomings had primarily to do with the modalities for cancellation, the term and the price disclosure of the insurance contracts. The FSMA has called upon all insurance companies where such shortcomings were identified to adjust their contracts and bring them in line with the legal requirements. The insurance companies in question have either adjusted their insurance products or decided no longer to offer them. The FSMA will follow up potential problems regarding theft and warranty insurance contracts, including via contacts with the Insurance Ombudsman.

As regards trip cancellation insurance, shortcomings were identified among other things regarding termination periods and the description of exclusions. The FSMA asked insurance companies to remedy these shortcomings. As a result of this request, the insurers eliminated the shortcomings that had been observed.

2.2.3. Supervision of compliance with conduct of business rules

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

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

The FSMA conducts inspections in order to assess compliance with the rules of conduct by regulated undertakings[55]. These inspections enable it to gain an overview of the application of the conduct of business rules within one institution and across the sector as a whole.

To this end, a specific supervisory methodology has been developed around 14 MiFID themes. The inspections are organized by theme, across all themes, or as part of a special mission. The choice of theme and the setting of priorities in selecting regulated undertakings to inspect are based on a risk assessment developed specifically in order to evaluate the rules of conduct. The list of regulated undertakings to be inspected, as well as the theme chosen, are then validated by the Management Committee of the FSMA.

In 2014, the FSMA conducted inspections on the theme of the 'general duty of care' in all types of credit institutions. Inspections on that theme and their follow-up will remain a focus of attention in 2015 as well. In 2015, the FSMA will also undertake inspections on the theme of best execution.

Inspections - duty of care

Duty of care means among other things that firms which offer complex financial instruments[56] must first collect information about their clients' knowledge of and experience with the proposed transactions. If the transaction is recommended by the firm in the course of providing investment advice or if the firm manages the client's portfolio on a discretionary basis, the firm must also determine whether the transaction is suitable for the client in question. In the process, account must be taken of the client's individual investment objectives and financial capacity.

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

The emphasis in the inspections was placed on the protection of retail clients. By means of these inspections, the FSMA has covered 87 per cent of the sector, measured in terms of the number of retail clients. In the course of these inspections, the FSMA had at the time of writing this report identified 179 shortcomings, of which 90 resulted in the issuing of an order. Where the FSMA issues an order, the firm in question must prepare an action plan for remedying the shortcomings within the period laid down by the FSMA. The FSMA carefully monitors the implementation of such action plans.

55 The FSMA is competent for supervising the conduct of business rules in the following regulated undertakings, insofar as they offer investment services.
- credit institutions governed by Belgian law
- branches in Belgium of credit institutions governed by the law of non-EEA countries
- investment firms governed by Belgian law
- branches in Belgium of investment firms governed by the law of non-EEA countries
- management companies of undertakings for collective investment governed by Belgian law
- branches in Belgium of management companies of undertakings for collective investment governed by the law of non-EEA countries

The FSMA has limited competence in respect of supervising the conduct of business rules at branches in Belgium governed by the law of an EEA country.

56 As defined in Article 18 of the Royal Decree of 3 June 2007.

The observations and recommendations made by the FSMA following its inspections on the theme of duty of care are discussed in a general memorandum that was sent to the sector. The memorandum is available on the website of the FSMA. The principal themes, observations and recommendations discussed in the memo are discussed below.

Content of the information

The FSMA observed that the information which the firms obtain from their clients is often too limited. Clients are invited via a questionnaire to talk about their knowledge of and experience with a broad category of financial products whose features and complexity vary significantly among each other. Clients are often given 'yes' or 'no' questions, which allow for little or no nuance. The FSMA requested that the questionnaires be predicated on a sufficiently diverse range of financial products and not be limited to questions where the client is asked to answer with a simple 'yes' or 'no'.

The FSMA also reminded the sector that responsibility for collecting information lies with the regulated firm and cannot be shifted to the client. This means that firms may rely on the information that their clients provide, unless they are aware or ought to be aware that the information is outdated, inaccurate or incomplete. This is the case, notably, where the answers which the regulated firms have received to the questions they asked are mutually contradictory. Regulated firms must therefore ascertain that the answers provided by the client are consistent.

Where the regulated firms offer their services via the internet, so that there is no personal contact with the client, it is more difficult to obtain comprehensive and consistent information from the client. The automated questionnaires used on-line must therefore take account of this difficulty.

The use of standardized investor profiles

The FSMA has determined that where a client's relationship with a regulated firm is based on investment advice or portfolio management, it is often the case that a limited number of standardized investor profiles is used. These range from 'defensive' to 'dynamic'. Based on the answers given by the client on the questionnaire, he or she is assigned one of the standardized profiles. The use of such standardized investment profiles makes it possible to give advice not only about an individual transaction, but also about the composition and build-up of the investment portfolio as a whole.

During the inspections, however, the FSMA observed that certain regulated firms test the suitability of their clients' transactions only on the basis of this standardized investor profile, and not on the basis of individual information which the client has provided to the regulated firm via the questionnaire.

In sum, the FSMA finds the use of standardized investor profiles a good practice, with the proviso that the regulated firm must be able to demonstrate, per transaction, that the latter is suited to the client. This means that the client has the requisite knowledge and experience, that the transaction fits within his or her objectives and takes into account his or her financial capacity.

Sales advice and advice to clients in their home

During the inspections, it emerged that regulated firms often limit their testing of the suitability of a given product only to the purchasing transactions of their clients. But regulated firms also advise their clients about selling a given investment product, in some cases with a view to buying another investment product in its place. The FSMA stressed therefore that firms must develop appropriate procedures to ensure that sales transactions are also tested to determine whether they are suitable for the client.

Another sensitive area has to do with advice given to clients in their homes. This practice often responds to a request for service and is not contrary to the rules of conduct. But such transactions often take place outside of the regular procedures for client protection that firms have designed for clients who carry out their transactions via the usual channels. The FSMA emphasizes that advice given to clients in their homes needs to be better regulated.

The business model of certain regulated firms

The rules governing duty of care place considerably more responsibility on a regulated firm in situations where investment advice is provided, that is, where a transaction is based on a personalized recommendation to the client. Some firms opt not to provide their clients with personalized investment advice but limit themselves to offering factual information about the investment products when the client requests it. In such situations, a firm's obligation is limited to verifying that the client has appropriate knowledge and experience solely in the event that the latter wishes to buy a complex financial instrument.

During the inspections, the FSMA noted in a few cases that the regulated firm in question considered that it was not giving its clients any investment advice, whereas the observations of the FSMA suggested that it was. The firms in question were required to adjust their business model. The FSMA also reminded regulated firms that as soon they provide a personalized recommendation to their clients, this in fact involves investment advice and that in that case the firms must always determine whether the transaction is suitable for the clients in question.

Inspections – Best execution

Within the framework of its 2015 action plan, the FSMA will begin a cycle of inspections relating to best execution. The strategy and planning of the inspections will be based on a risk assessment and a specific evaluation of the sector.

As regards this theme, regulated firms must draw up and implement policies and procedures that allow them to take all reasonable measures to obtain the best possible result for their clients when executing their orders. In so doing, account must be taken of the price, costs, speed, likelihood of execution and settlement, the size and nature of the order and all other aspects relevant for the execution. The order execution policy must also mention, on the one hand, the different venues where client orders may be executed that make it possible regularly to obtain the best possible result and, on the other hand, the factors influencing the choice of the execution venue. Appropriate information on the order execution policy must be provided to clients. Clients must give their prior consent to the order execution policy.

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

Since 30 April 2014, certain conduct of business rules that stem from the transposition into Belgian law of the MiFID Directive via the Twin Peaks II Law apply to the insurance sector[57]. This means that insurance companies and insurance intermediaries are subject to more specific rules of conduct than before. By extending the MiFID conduct of business rules to the insurance sector, service providers in that sector must follow certain rules regarding, for example, the management of conflicts of interest, duty of care and information to clients.

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

In order to take account of the distinctiveness of the insurance sector, three royal decrees were enacted to clarify the application of the MiFID rules of conduct to the insurance sector. These are:

- the Royal Decree of 21 February 2014 amending the Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance;
- the Royal Decree of 21 February 2014 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 of 21 February 2014 on the legally mandated rules of conduct and rules governing the management of conflicts of interest as applicable to the insurance sector.

These royal decrees introduce various new obligations, which have been in effect since 30 April 2014.

The FSMA has drawn up a circular, in consultation with the sector, to provide support for the introduction of the MiFID rules. The circular explains the most important consequences of the extension of the MiFID conduct of business rules. It specifies the measures taken to apply the various rules that are extended to the insurance sector and with which the FSMA supervises compliance. In 2015 the FSMA will launch a number of initiatives to clarify certain aspects of these rules of conduct. The framework within which these clarifications will be made is still the subject of consultation at the time of writing this report.

The FSMA also conducted an awareness campaign with the sector's professional associations in order to ensure that the service providers concerned are informed of the content and impact of the new rules.

For the conduct of its inspections, the FSMA has developed a specific methodology organized around five themes. The choice of theme and the setting of priorities in selecting the service providers to inspect will be based on a risk assessment developed specifically for the insurance sector.

57 See this report, p. 143ff.

2.2.3.3. Methodology

Over the past few years, the FSMA has developed a specific methodology for supervising compliance with the conduct of business rules. This methodology was extended in 2014 to all on-site inspections that may be conducted under the FSMA's exercise of its powers, such as the prudential supervision of UCI management companies, of UCIs, of portfolio management and investment advice companies, as well as of IORPs.

In 2014, the FSMA undertook a further refinement of this methodology, refining among other things the supervisory techniques used for the revision of client dossiers.

2.2.3.4. Mystery shopping

The Belgian legislators have entrusted the FSMA with the power to engage in mystery shopping[58]. Mystery shopping enables FSMA employees or external contractors authorized by the FSMA for the purpose to go to regulated undertakings without revealing that they are acting under the FSMA's authority. The exercise can be used as part of the FSMA's supervision of compliance with the rules of conduct and under the FSMA's task of protecting financial consumers against the illegal offer or provision of financial products or services or credit.

The FSMA has opted to use mystery shopping to supplement the existing inspections. Concretely, this means that during mystery shopping visits, infringements of the legal framework are noted, and the FSMA will further investigate these before imposing any measures or sanctions.

As part of a multi-year plan, the FSMA decided to launch a European public tendering procedure to select a specialized external partner to plan, carry out and process a series of mystery shopping visits (campaign). In 2014, the FSMA developed an action plan for the implementation of the mystery shopping campaign in relation to supervision of the rules of conduct.

2.2.3.5. Financing SMEs

With the Law containing various provisions on SME financing[59] , Parliament introduced the duty of care with regard to the process of lending to SMEs. As a result, the FSMA has the power to oversee the specific rules in this regard. The FSMA has raised the awareness of the sector in this regard, and has drawn up a work programme to organize supervision in this area as efficiently as possible. On-site inspections of compliance with this Law are planned for 2015.

2.2.3.6. Interest rate derivatives

The FSMA took part in the consultations organized in 2014 by the ministers of the Economy, Finance and SMEs regarding the issue of interest rate swaps by SMEs. The FSMA proposed to conduct an analysis of the problem of SMEs who own such interest rate derivative contracts. Based on this analysis, the situation can be assessed and a decision taken as to how to deal with this issue in future.

58 Article 87*quinquies* of the Law of 2 August 2002.
59 See this report, p. 145.

The FSMA began work on this analysis at the end of 2014 by asking for information from the banks that distributed interest rate derivative contracts to SMEs. Work on this analysis will continue in 2015.

2.2.4. Supervision of market operators, lenders and intermediaries

2.2.4.1. Supervision of market operators

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

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

Table 9: Changes in the number of firms

	31/12/2012	31/12/2013	31/12/2014
Portfolio management and investment advice companies	21	20	19
Branches established in Belgium of investment firms governed by the law of another EEA country and falling under FSMA supervision	9	12	11
Investment firms governed by the law of another EEA country and that do business in Belgium under the free provision of services	2,606	2,783	2,882
Investment firms governed by the law of a country that is not a member of the EEA, which have notified their intention to provide investment services in Belgium under the free provision of services	79	83	84
UCI management companies governed by Belgian law	7	7	7
Alternative investment fund managers governed by Belgian law	N/A	N/A	4
Branches established in Belgium of UCI management companies that are governed by the law of a non-EEA country	5	6	8
UCI management companies governed by the law of another EEA country and operating in Belgium under the free provision of services	56	74	91
Real estate investment companies/Regulated real estate companies	20	23	23
Bureaux de change authorized in Belgium	13	12	12

In terms of the change in the number of firms, the trend of recent years is continuing. This translates into a slight net decrease in the number of Belgian portfolio management and investment advice companies and a gradual but steady increase in the number of foreign investment firms that offer investment services in Belgium, both via a branch and under the free provision of services. Even if there the figures seem on a net basis not to have changed substantially, there are several changes hidden below the surface. Thus, in 2004 there were more than six registrations and withdrawals among Belgian registered branches.

Portfolio management and investment advice companies

In the course of 2014, the FSMA handled new applications for an authorization as a portfolio management and investment advice company. These applications are at various stages. A few dossiers are still in preparation by the applicants; others are still being analyzed by the FSMA, and, finally, two dossiers were withdrawn by the applicant.

If the FSMA determines that:

- an investment firm is not working in accordance with the provisions of the law and the implementing decrees and regulations;
- the management or the financial position of an investment firm risks jeopardizing the due fulfilment of its 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 shows serious shortcomings,

it may set a deadline[60] by which the company in question must remedy the shortcoming identified.

As mentioned in the 2013 annual report[61], the FSMA made use of this option once in 2013. When the FSMA noted, after the deadline had lapsed in 2014, that the company in question had not remedied the situation, it decided to withdraw its authorization as a portfolio management and investment advice company. In taking this decision, the FSMA carefully took into consideration all the other options provided for in Article 104 of the Law of 6 April 1995. The company in question did not appeal the decision of the FSMA.

Management companies of undertakings for collective investment

By the transposition into Belgian law of the AIFM Directive[62] on 19 April 2014, the FSMA received eight applications for authorization as alternative investment fund manager. Six of these companies already held an authorization as a management company of undertakings for collective investment and were requesting registration as an AIF manager because they also managed funds that qualified as AIFs. One company applied only for an authorization as AIF manager. Four companies received their authorization as AIFM in 2014. The remaining applications will be completed in 2015.

60 In accordance with Article 104 of the Law of 6 April 1995.
61 See the FSMA Annual Report 2013, p. 63.
62 Law of 19 April 2014 on alternative investment funds and their managers (Belgian Official Gazette, 17 June 2014).

When processing applications for authorization as an AIF manager, the FSMA examines whether all the legal requirements[63] are met. Thus the following aspects, among others, are examined, which are extremely important for this new status: governance, audit and remuneration committee, conflicts of interest, delegation, risk management, depositary, own funds and professional liability insurance.

In addition, 24 small-scale managers of AIFs governed by Belgian law were registered. Such managers may manage AIFs in Belgium if they are registered on a list maintained by the FSMA. In order to be registered on that list, managers must fulfil a number of conditions laid down in the AIFM Law, namely:

- either managing AIFs of which the total assets under management, including assets acquired by means of leverage, does not exceed the threshold of EUR 100 million;
- or managing AIFs of which the total assets under management do not exceed the threshold of EUR 500 million, where the AIFs in question do not work with leverage and where no reimbursement rights may be exercised for a period of five years from the date of the original investment in each institution.

Inspections

On-site inspections have long constituted an important element in the supervision of portfolio management and investment advice companies, UCI management companies and bureaux de change.

In 2014, the inspections focused on the topic of governance, with particular attention to the companies' management structure and the organization of the key functions of compliance officer and internal auditor. The approach of the companies under supervision was also examined as regards prevention of the use of the financial system the purpose of money laundering and terrorist financing.

Regulated real estate companies

In 2014, the new status of regulated real estate company was introduced by the Law of 12 May 2014. This law is discussed in greater detail in chapter II of this report[64]. After the entry into force of this legislation, all real estate investment companies submitted an application and obtained authorization to change their status to that of a regulated real estate company (SIR/GVV). The FSMA granted all 16 of the companies the status of regulated real estate company (SIR/GVV).

The Law provides for an automatic transfer from the status of institutional real estate investment company to that of institutional regulated real estate company where the controlling real estate investment company is granted the status of a regulated real estate company. As a result, the seven institutional real estate investment trusts were transformed into regulated real estate companies.

In processing the applications for the status of regulated real estate company, the FSMA checks whether the companies meet the legal requirements. Among other things, it looks at the composition and the diversification of the portfolio, the governance structure, the organization, staff and internal control functions (compliance, risk management, audit). A

63 These are the requirements provided for in Directive 2011/61/EU, the Commission Delegated Regulation 231/2013 and the Belgian AIFM Law.
64 See this report, p. 165 (available in French and Dutch only).

particular focus of attention is the operational structure of the regulated real estate company. Some applicant companies have had to adjust their way of operating in the process, in order to fulfil the legal requirements for obtaining the status of regulated real estate company.

Independent financial planners

On 1 November 2014, the new legislation governing financial planning entered into force. The legislation lays down the new status and supervision of independent financial planners and also establishes rules of conduct for giving advice about financial planning by regulated companies. The new law is discussed in greater detail in Chapter II of this report[65].

Pursuant to the entry into force of the new legislation, the FSMA has provided information to the sector and other interested parties. The FSMA has also published on its website a memorandum and the documents necessary for obtaining authorization as an independent financial planner.

The 'Memorandum for obtaining authorization as an independent financial planner under Belgian law' provides guidance in putting together an application file. The memorandum does not provide detailed explanation of the legislation in question, which the applicants are presumed to know and be able to implement. Nor does the memorandum detract from the possibility that the FSMA may ask the applicants in question for additional information in the course of examining their application.

The FSMA received the first applications for the status of independent financial planner at the end of 2014.

Consultation with the NBB

The legal framework for introducing the Twin Peaks reform provides for mandatory consultation of the FSMA when assessing the fitness and propriety of persons nominated to participate for the first time in the governance of a financial undertaking under the supervision of the NBB. Since mid 2013, the scope of this legislation *ratione personae* has been extended to those responsible for the independent control functions at a financial undertaking under the supervision of the NBB. The FSMA provides the NBB with its advice regarding fitness and propriety within one week after receiving the request for advice. In 2014, the FSMA provided advice of this nature to the NBB for 323 persons.

Circular

The FSMA amended the circular on "statutory auditors' duty of cooperation". The circular, dated 19 December 2014, addresses the duty of accredited auditors of AIF managers or UCI management companies governed by Belgian law, branches in Belgium of such companies governed by foreign law, and regulated real estate companies to cooperate with the FSMA's prudential supervision.

65 See this report, p. 167 (available in French and Dutch only).

The circular describes the scope of accredited auditors' duty of cooperation:

- activities and reporting of half-yearly and annual financial statements and reports;
- assessment of the internal control measures and of the reporting about them;
- reporting to the FSMA, including the reporting layout and the special report; and
- exchange of information between the accredited auditors and the FSMA, including the signalling function.

Preventing the use of the financial system for the purpose of money-laundering and terrorist financing is an ongoing matter of concern to the FSMA. This came to the fore in 2014 in its cooperation with the evaluation by the FATF.

European Market Infrastructure Regulation (EMIR)

The FSMA contributes to implementing the supervision of obligations arising from the entry into force of the EMIR Regulation[66]. Given that a large number of non-financial counterparties were, until recently, not subject to the FSMA's supervision, and that EMIR does not require registration of these entities with the FSMA, specific campaigns were organized to raise awareness of the EMIR Regulation.

The EU published a joint communication[67] on the subject with the Federation of Enterprises in Belgium (FEB-VBO) and Febelfin. The communication informed non-financial companies that enter into derivative contracts of the obligation to report their derivative transactions and of the various risk-mitigation techniques that EMIR requires them to adopt. In addition, the communication is intended to encourage non-financial counterparties that are clients of Febelfin members or belong to sectoral federations that belong to the FEB to take all the measures needed to fully comply with their obligations under EMIR.

The FSMA also participates in the international consultation regarding EMIR. Thus the FSMA sits on the Post-Trading Standing Committee of ESMA, the forum where supervisors can discuss the EMIR obligations. The FSMA also sits on supervisory colleges, either as the authority tasked with the supervision of the trading platform to which the central counterparty provides services or as the competent authority that supervises the central securities depositories with which the central counterparty is connected. In all, 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.

66 Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.
67 The 'Communication about the application of the EMIR Regulation to non-financial companies that enter into derivative contracts' can be consulted on the FSMA's website.

Central Securities Depositories (CSD)

At the end of 2013, an agreement in principle was reached at the European level regarding a draft regulation intended to introduce an EU-wide regulatory framework for central securities depositories. The CSD Regulation is intended among other things to harmonize national legislation and contains measures to minimize the number of settlement fails. The draft Regulation also provides for a shorter settlement period[68] and lays down more stringent organizational, prudential and conduct of business requirements.

The FSMA participates in the ESMA task force responsible for developing technical standards for the implementation of the CSD provisions. In March 2014, a discussion paper was published in view of obtaining feedback from the sector. Based on that document, ESMA launched three consultations about different aspects of the implementing measures. At the beginning of 2015, ESMA held a hearing on the activities relating to the CSD Regulation.

2.2.4.2. Supervision of mortgage companies

The FSMA's mandate in respect of mortgage companies involves essentially a supervision of mortgage lending by companies to natural persons for non-professional purposes, and the management thereof.

The aforesaid supervision considers the way in which mortgage lenders comply with the provisions of the Law of 4 August 1992 on mortgage credit, both in the offer (including the precontractual phase) and in the drawing up of the contracts, with a view to protecting the borrower. In the case of companies not under the supervision of the National Bank of Belgium, this supervision also includes the prevention of money laundering.

Supervision involves first of all ensuring that the documents that are given to consumers are first checked for their compliance with the law.

These include application forms, prospectuses, credit offers and agreements. The documents are approved by the FSMA before they are made available to the public.

Complaints handling is also a valuable source of information, as it allows the FSMA to become aware of cases in which the Law of 4 August 1992 is not implemented correctly.

Finally, on-site inspections are an important supervisory instrument, which the FSMA can use to determine whether the law is being complied with. Such inspections focus specifically on the correct implementation of legal rules in calculating the reinvestment cost in the case of early repayment, the variability of the interest rates, and the way in which cases of dispute are handled.

68 For transactions on a trading platform, the draft Regulation provides for a settlement period of maximum two days (T+2) after the transaction date, while the standard settlement period in Belgium at the moment is three days (T+3).

Table 10: Changes in the number of registered and enrolled firms

	31/12/2013(*)	31/12/2014(**)
Insurance companies and IORPs	28	27
Credit institutions	28	29
Public institutions	3	3
Other institutions	111	98
Total	**170**	**157**
Registered companies	26	21
Grand total	**196**	**178**

* Published in the Belgian Official Gazette (Belgisch Staatsblad/Moniteur belge) on 30 January 2014

** Published in the Belgian Official Gazette (Belgisch Staatsblad/Moniteur belge) on 29 January 2015

In a few cases, certain shortcomings were observed such as the use of the wrong reference index in applying the statutory formula for interest rate changes or the failure to respect the mandatory deadline for sending a registered notification in the case of non-payment.

The companies in question were asked to adjust their operating procedures so that the statutory requirements on the matter are complied with. Where a borrower has been disadvantaged, the lender is asked to regularize the situation and to inform the FSMA of what has been done in this regard.

In 2014, compliance with the money laundering legislation by mortgage companies that are not a credit institution or insurance company were one of the focal points of the inspections.

The mortgage companies must use all the required means to prevent acts of money laundering and terrorist financing, and must report any suspicious transactions to the CFI.

2.2.4.3. Supervision of intermediaries

The FSMA's role with regard to intermediaries[69] essentially involves overseeing access to the profession of banking or insurance intermediary. This mainly consists of handling applications for inclusion on the registers of insurance and reinsurance intermediaries and of intermediaries in banking and investment services, and of maintaining those registers. The FSMA also supervise compliance with the legal conditions for retaining such registration.

Table 11: Registrations

Insurance intermediaries	31/12/2013	31/12/2014
Collectively registered	**6,200**	**4,822**
Agent	1,086	888
Sub-agent	5,114	3,934

69 Supervision of intermediaries is regulated by the Law of 4 April 2014 on insurance and the Law of 22 March 2006 on intermediation in banking and investment services and on the distribution of financial instruments.

Individually registered	**10,338**	**9,931**
Broker	7,997	7,721
Agent	1,817	1,655
Sub-agent	524	555
Total	**16,538**	**14,753**

Reinsurance intermediaries	31/12/2013	31/12/2014
Individually registered	**14**	**14**
Broker	12	12
Agent	2	2

Intermediaries in banking and investment services	31/12/2013	31/12/2014
Collectively registered	**2,973**	**2,920**
Agent	2,973	2,920
Individually registered	**738**	**678**
Broker	15	16
Agent	723	662
Total	**3,711**	**3,598**

Changes in the lists

In 2014, 1370 new insurance intermediaries were entered in the register of insurance and reinsurance intermediaries, of which 943 were registered via a system of collective application. The latter process is one where the application dossier is submitted to the FSMA by a central institution that is responsible for the first-line supervision of the conditions for registration. The register of intermediaries in banking and investment services saw 187 new registrations, of which 179 were made via a collective application.

The majority of deregistrations related to intermediaries with whom the central institution had terminated its collaboration or to intermediaries whose registration was deleted at their own request.

Where the FSMA determines that an intermediary does not comply with the registration conditions, it sets a deadline by which the intermediary must remedy the shortcoming. If this is not done, the FSMA proceeds to strike the intermediary in question from the register, or the registration lapses automatically.

Thus in 2014 the FSMA struck 73 insurance intermediaries off the register for not complying with the registration conditions. Examples of these are failing to insure themselves against professional liability risks, not replying to questions posed by the Insurance Ombudsman or having had a judgment handed down against them.

In addition to these cases, the FSMA temporarily suspended or definitively struck off the registration of 24 insurance intermediaries because their fitness and/or professional integrity had been called into question. Assessment of the fitness and professional integrity requirements falls within the FSMA's area of competence. Examples of cases in which the professional integrity of an intermediary may be called into question include the failure to pay insur-

ance premiums, embezzling client funds, preparing valuations of investment insurance that do not match reality, producing false insurance policies and issuing uninsured 'green cards'.

Where a registration is terminated, the intermediary in question may no longer engage in any further intermediation. Regulated undertakings may not, for their part, call upon the services of intermediaries that are not (or no longer) included in the register. To gain a better overview of the cases in which the FSMA has proceeded to strike an intermediary from a register or has taken note of the automatic lapse thereof, a separate heading has been created on the FSMA's website[70].

In 2014 the FSMA also struck nine intermediaries in banking and investment services from the register because the bank agency agreement between the agent and the principal was terminated. Of the nine insurance intermediaries and one intermediary in banking and investment services, the registration lapsed automatically because they were declared bankrupt.

The number of registrations of insurance intermediaries fell in 2014. On 31 December 2014, there were 1785 fewer insurance intermediaries registered than on 31 December of the previous year. This downward trend began a few years ago. When the Law of 27 March 1995 entered into force, there were around 28,000 insurance intermediaries. The fall in the number of intermediaries in banking and investment services (-113) is less significant.

On-site inspections

In 2014 the FSMA conducted 18 on-site inspections with a view to verifying the registration dossiers of insurance intermediaries. Eleven of these took place at the central institutions responsible for collective registrations. During the on-site inspections at central institutions, the manner in which these institutions are organized to exercise first-line monitoring of the registration conditions is scrutinized. The completeness and accuracy of the dossiers kept by these central institutions are also verified.

In addition, sixteen inspections were carried out in 2014 at training providers with an accreditation to offer legally mandatory continuing education courses for intermediaries. Inspections were held both at training providers accredited by the accrediting commissions as well as at those accredited by the FSMA. The inspections were used as an opportunity to remind the training providers of the method used for assigning continuing education units. Thus the content of the training given is one of the criteria used for assigning continuing education units, according to a procedure set out in greater detail in the conduct of business rules for continuing education which the training providers signed when they received their accreditation. In addition, the number of continuing education units assigned must be proportionate to the duration of the training covering insurance and/or banking and investment services.

The accreditation commissions are also subject to on-site inspections. In the process, they are reminded of the task entrusted to them of see to it that the training providers who have received an accreditation continue to comply with the accreditation conditions.

70 See in this regard Communication FSMA_2015_03 of 2 February 2015.

European passports

In accordance with European Directive 2002/92/EC, insurance intermediaries included in the register of another EEA country may also carry on insurance and reinsurance intermediation in Belgium via the free provision of services or via a branch. In 2014, 529 insurance intermediaries registered in another EEA country stated that they wished to carry on insurance intermediation activities in the Belgian market. 182 cased their operations.

Applications were submitted by 41 Belgian insurance intermediaries in 2014 to be able to carry on insurance intermediation in one or more other EEA countries. 16 Belgian insurance intermediaries that had previously been active under the free provision of services applied to extend their activities to additional EEA countries.

2.2.5. Supervision of supplementary pensions

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

2.2.5.1. Prudential supervision of IORPs

The IORP sector has seen a further increase in the number of participants in 2013[71]. After a 57 per cent increase in 2012 as a consequence of the entry into the market of two new sectoral funds with a large membership, the number further increased by 6 per cent over the course of 2013. This brought the total number of members at the end of 2013 to 1.48 million. The balance sheet total for the IORP sector grew in the same period by 10 per cent to a total of EUR 20.39 billion, largely thanks to solid financial results. For the first time, the balance sheet total passed the EUR 20 billion mark. IORPs invest mainly in share and bond UCIs, with a slight shift from bonds to shares during the year 2013.

Monitoring recovery and reorganization measures

Funding gaps that IORPs have incurred as a result of the financial crisis have been gradually filled, and many of the recovery measures taken are now coming to an end. At the end of 2013, 20 IORPs still had a funding gap. Of those 20, 15 had already adopted recovery measures in order to make up the shortfall. The recovery or reorganization measures often consist in additional funding by the sponsoring undertaking(s). Five IORPs identified a new funding gap at the end of 2013. These additional gaps resulted mainly from the fact that these IORPs use stricter, and hence safer, hypotheses to calculate their pension commitments.

71 The statistics for the end of 2014 were not yet available at the time of writing.

The aggregate funded ratios[72] rose for the whole sector. At the end of 2013, the aggregate funded ratio for short-term liabilities amounted to 150%, compared with 145.63% at the end of 2012; at the end of 2013, the aggregate funded ratio for long-term liabilities stood at 126%, compared with 122% at the end of 2012.

Cross-border activity

At the end of 2014, there were 12 Belgian IORPs carrying on cross-border activities. In the year under review, two new Belgian IORPs were created with a view to developing cross-border activities over the short term. The aim of these new projects is to manage centrally the pension plans of companies that are active in several European countries.

The FSMA was in 2014 once again faced with the transfer of management of a pension scheme from a country in which there is the option to reduce pension rights in certain circumstances and that allows for a conditional indexation that depends on the funded ratio. In consultation with the supervisory authority of the host Member State, we ensured that the members of the IORP in question were informed in a transparent and comprehensible manner of the impact of the application of Belgian prudential standards. Further information about this approach can be found in the 2013 annual report of the FSMA[73].

A peer review was conducted by EIOPA into supervisory practices relating to the authorization and registration of IORPs and the notification of cross-border activities. This resulted in a draft final report in which a number of good practices were identified. These practices are in full agreement with the existing supervisory practice of the FSMA.

These good practices are:

- the publication of an updated list of authorized IORPs that are available for consultation on the website of the supervisory authority;
- the publication of easily accessible information about the authorization process in the case of cross-border activities and the information that must be submitted as part of that process;
- a proactive approach to cross-border projects, favouring informal contacts prior to submitting a formal dossier.

The proposed revision of Directive 2003/41/EC currently under consideration may have an impact on the supervision of cross-border activities (see below).

IORP II

In March 2014, the European Commission published a proposal for a revised Directive on the activities and supervision of institutions for occupational retirement provision. This proposal (IORP II) is in line with the European Commission's planned measures to support the further development of an important type of long-term investor in the EU.

In the proposal for the revised Directive, the European Commission has set itself four objectives:

- removing prudential barriers for cross-border activities of institutions for occupational retirement provision;

72 The aggregate funded ratio is the degree to which the sum of the assets of all Belgian IORPs taken together is able to fund the commitments of the entire sector.
73 FSMA Annual Report 2013, p. 72.

- ensuring good governance and risk management;
- providing clear and relevant information to members and beneficiaries;
- ensuring that supervisors have the necessary tools to carry out their tasks.

The FSMA represented Belgium at the discussions of the proposal in an expert working group of the European Council. These discussions resulted in a compromise text[74] by the European Council. In a subsequent phase, the European Parliament will determine its position regarding the proposal of the European Commission, and efforts will be made to see whether agreement can be reached with the stance taken by the European Council.

The compromise text comprises a number of important amendments to the original proposal by the European Commission, as a result of which the amended proposal is much closer to the Belgian legislation and practice in the matter of governance and information provision.

The revision of the Directive may well make it more difficult in future to carry out a cross-border activity, insofar as it relates to the management of the transferred reserves. The transfer will in this proposal be subject to the approval of the supervisory authority of both the transferring institution and the receiving institution.

Reporting by IORPs

The Belgian legislators have entrusted prudential supervision of IORPs to the FSMA. This brought a change to the practice of IORPs reporting to the FSMA via the National Bank of Belgium's reporting channel. Starting in 2015, IORPs will report directly to the FSMA via the latter's own reporting tool. This approach is intended to serve as a user-friendly tool both for the reporting IORPs and for the FSMA's services that use the data for supervisory purposes.

In the course of the work done on reporting, the IORPs' governance reports were also reviewed, including in the context of discussions about the accredited statutory auditor's assessment of the IORP's internal control. Based on these discussions, the FSMA drew up a questionnaire that can be used as an annual governance report by the senior management of an IORP. The questionnaire is intended to be as user friendly as possible and can be used as a tool for developing a sound governance.

The FSMA also carried out a comprehensive screening of reporting requirements in order to determine whether any data may be lacking or may be superfluous. Thus it looked into whether the information requested needs systematically to be made available for purposes of prudential supervision, whether the information is available in other documents, or whether it is needed in order to obtain a true and fair view of the financial position, the rights and the obligations of an IORP, and whether the FSMA needs the information for its own reporting obligations at international level. Based on this exercise, the reporting requirements for IORPs were modified.

74 Compromise text attached to the press release of the European Council dated 10 December 2014 *Occupational pension funds: Council agrees its stance on updated rules.*

One of the changes in reporting concerns the breakdown of the covering assets and other assets. The new reporting on this matter must ensure that:

- the FSMA obtains better insight into the investments of IORPs and the associated risks;
- a number of ambiguities are eliminated in view of a more uniform and more easily comparable report;
- the FSMA is in a better position to respond to requests for information by bodies such as EIOPA and the OECD.

The FSMA further examines the extent to which the data available to it in the SIGeDIS database can be used to supplement prudential reporting by the IORPs. Lastly, changes to the reporting requirements should help remedy late reporting by a number of IORPs.

Inspections

In 2014, the FSMA began more systematic on-site inspections at IORPs. These inspections serve to complement existing supervisory methods. The FSMA has developed an inspection methodology for the purpose which is rooted in the overall methodology used by the FSMA for all its on-site inspections. The methodology has been adapted to the specificities of the IORP sector. The inspections are thematic in nature, and follow a fixed pattern based on a pre-determined work programme for each theme.

After an inspection, a report is drawn up describing any shortcomings observed. The IORP is asked to take the necessary measures within a specified period or to propose an action plan for resolving the difficulties observed. If the sponsoring undertaking encounters problems, the FSMA will ask either the undertaking itself or the IORP to address the difficulties as well.

In its follow-up on inspections, the FSMA directly monitors any clear breaches of the law or serious shortcomings in the organization of the IORP. Regarding the follow-up of the remaining measures, the IORP and its internal auditor report extensively to the FSMA so that if necessary the latter can still take action if needed.

After a round of inspections, the most important observations are summarized in a memo to the sector that sets out the strong and weak points in general terms.

The first series of inspections focused on data management. This round looked in particular at the management of data about members of the pension schemes managed by the IORP, such as career information.

The inspections are aimed at gaining insight into the way that the IORP collects and processes data, the way data processing is monitored, and the securing of the database. In addition, the data contained in the annual pension information sheet were also checked. The following governance principles were thus also examined as regards data management: internal control, business continuity, outsourcing, internal information disclosure and external information.

The IORPs chosen for the inspection were selected based on criteria relevant to data management, such as major changes in the number of members following transfers and restructurings. Given that many IORPs outsource their data management, account is also taken during the selection of the major service providers in the administration of pension commitments on the Belgian market. Eight IORPs were chosen, of which six were inspected in 2014. The other two will have their turn in 2015.

Circulars

In 2014, the FSMA worked on three circulars relating to IORPs. Two of these three have since been published.

The first text is the circular on the financial statements of IORPs[75]. This circular is an update of the circular published in 2008 in order to provide greater clarity regarding the Royal Decree on the financial statements of IORPs[76]. Based on the experience of the past seven years, it appeared that certain items in the annual financial statements continue to raise questions or can give rise to different interpretations and errors in reporting. For this reason, the 2008 circular was amended with the addition of specifics about a number of points. The content of the circular is further discussed in Chapter II of this report[77].

In 2014 the FSMA also finished a circular on its expectations of accredited statutory auditors at IORPs[78]. In practice, it appears that the quality of the auditors' reports is variable. The FSMA thus considered that it was advisable to develop guidelines via a circular clarifying its expectations of auditors as regards their mandate to collaborate in the task of supervision. The auditors had likewise been asking for such a clarification. More information about the content of this circular is provided in Chapter II of this report[79].

Lastly, the FSMA prepared a draft circular on the mandate of the designated actuary at IORPs. The main purpose of the draft circular is to stress the importance of an independent and objective designated actuary and to help raise the quality of the latter's advice and reports. The draft circular is based on a screening of a series of actuarial reports over the past few years. The study shows that there is great diversity as regards the quality and content of the work done by designated actuaries and that improvement is possible on many points. The draft circular also lays down the minimum content of the advice and reports of the designated actuary, trying thereby to raise the quality of all to the same level and to promote their comparability and usefulness for supervisory purposes. There will be further consultations with the sector in 2015 regarding the contents of the draft circular.

Stress testing

In 2014, EIOPA began the first phase of developing a stress test for the IORP sector, in order to assess its resilience. To prepare for this stress test, a working group was set up in which the FSMA took part.

75 Circular FSMA_2014_14 on the financial statements of institutions for occupational retirement provision.
76 The Royal Decree of 5 June 2007 on the financial statements of institutions for occupational retirement provision.
77 See this report, p. 177ff (available in French and Dutch only).
78 See Circular FMSA_2015_05 of 5 February 2015.
79 See this report, p. 177ff (available in French and Dutch only).

The first phase of the work consisted of a preparatory study that examined whether systemic risk could arise within the IORP sector, what spill-over effects there could be from other financial sectors and what methodologies can be developed for conducting meaningful stress tests.

The preparatory study ultimately led to a consultation with a few major IORPs by the national supervisors. In Belgium, nine IORPs took part in the consultation. The questions related to the IORPs' investment policy in the period between 2004 and 2013, and the performance of their investments during that period, with particular attention to investment behaviour during and after the financial crisis of 2008. EIOPA is currently analysing the data submitted by the national supervisors.

The EIOPA working group is working on the technical specifications for the implementation of the actual stress tests. The tests are planned for 2015.

The FSMA has always insisted on careful preparation of such tests, so that they can be adapted to the scale and activity profile of the IORPs. This is important in order that the results of the stress tests may provide information that is useful to supervisors.

The stress tests will be accompanied by a second quantitative impact study[80]. This study aims to further test the line of thinking that EIOPA is developing, at the request of the European Commission, for a potential alternative solvency framework for IORPs[81].

The statutory guaranteed return for supplementary pensions

Pursuant to Article 24 of the Law of 28 April 2003 on supplementary pensions (WAP/LPC), the sponsoring undertaking of a pension scheme must, upon exit, retirement or cancellation of the pension commitment, guarantee a minimum return. This guaranteed return is 3.75% on the nominal employee's contribution for all types of pension schemes, or 3.25% on the employer's contributions after deducting expenses limited to a maximum of 5% for defined contribution and cash balance pension plans. The guarantee only applies to the actual pension contributions, and not the portion of the contributions used for hedging risks.

The statutory guaranteed return is a social guarantee intended to offer a (supplementary) guaranteed replacement income by limiting members' investment risk. It amounts to a long-term guarantee that only comes due at retirement or, in the event of a transfer of reserves, after exit. It is therefore a cumulative guarantee and not an annual guarantee. The guaranteed return on the employer's contributions does not have to be financed at all times; where applicable, the sponsoring undertaking must make up the shortfall at retirement or transfer of reserves.

The statutory scheme comprises numerous moderation mechanisms that make the real level of guaranteed return much lower than its normal level. The most important moderating mechanisms can be summed up as follows.

80 Quantitative Impact Study 2 (QIS 2).
81 For more information on this potential new solvency framework and the concept of the holistic balance sheet, see the FSMA 2013 Annual Report, p. 74.

First, if someone exits the scheme during the first five years, then the guaranteed return applicable to the employer's contributions is an inflation guarantee only in the event that the latter is below 3.25%.

In addition, the guarantee applies to contributions made after the entry into force of the legislation, that is, 1996 for the employee's contributions and 2004 for the employer's contributions. Compensation with reserves that date from before the entry into force of the legislation is thus possible.

Finally, the guaranteed return is in effect only until the time of exit. If the employee exits the plan, the amount of the guarantee is definitively frozen. In such cases, this is referred to as a 0% guarantee.

To hedge against the risk associated with the statutory guaranteed return, many sponsoring undertakings entrusted the running of the supplementary pension commitment to an insurance company, taking out a class 21 group insurance contract for which the guaranteed rate is that of the statutory guaranteed return. Historically, the statutory guaranteed return coincides with the maximum reference rate for long-term insurance transactions. Given the current low interest rate, however, insurance companies consider that it is no longer possible to insure the maximum reference rate that coincides with the statutory guaranteed return for new contributions.

The institutions for occupational retirement provision (IORPs) to which sponsoring undertakings have entrusted their defined contribution supplementary pension commitments in order to cover the guaranteed return have made it known via their professional association that the continuing low interest rate presents a challenge to certain IORPs to realize the statutory guaranteed return.

The federal government agreement of 9 October 2014 stipulated that there must be a fair proportion between the statutory guaranteed return and the real returns, and hence it is essential that new supplementary pension commitments be once again insurable.

Against this background, the Minister of Pensions asked the national labour council (Nationale Arbeidsraad/Conseil national du Travail) to offer advice on a possible modification of the guaranteed return.

In the light of its competence in the area of supplementary pensions, the FSMA will be pleased to contribute its expertise, if requested, to help reflect on a potential reform of the statutory guaranteed return.

2.2.5.2. Social supervision

DB2P database

The Supplementary Pensions Database (abbreviated DB2P) records a number of crucial features of supplementary pension schemes and their financing; it also contains the individualized acquired pension rights for employees and self-employed persons.

Although the database was set up in the first instance in order to facilitate social and fiscal supervision of supplementary pensions (see below), it also has an important role to play with regard to providing information to citizens. The legislators have set this out in concrete terms in the Law of 15 May 2014 containing various provisions. At the latest by 31 December 2016, citizens must have access to the information about the build-up of their supplemen-

tary pension. In addition to establishing the deadline, the legislators have also specified the information that citizens may consult and the structure within which that is to happen.

This legislative activity was intended to revise the instructions for the reporting pension institutions on certain points. The legislators have also made substantive amendments to the legislation governing supplementary pensions, which in turn required various adjustments to the reporting instructions. The FSMA contributed actively within the technical working group on "reporting instructions" to the revision and expansion of the reporting instructions. This work will continue in the course of 2015, given that certain problems have still to be dealt with in the working group in question (for instance, the adequate registration of multi-employer pension schemes, reporting of the payments of supplementary pension benefits, etc.).

Opening a database up to citizens must go hand in hand with clarification of the sometimes complex topic of supplementary pensions. This has led to the establishment of another working group to examine this specific question. Together with representatives of database manager SIGeDIS, the social partners and pension institutions, the FSMA is part of this working group studying the structure and development of communications to citizens that are as clear as possible.

During 2014, the first results were achieved as regards the exploitation of DB2P with a view to the social supervision of supplementary pensions. Thus, in the second half of 2014, pension schemes could be searched in the database via a search engine. It is important that this allows the FSMA as well to take note of the pension regulation that the pension institution has uploaded for the pension scheme in question. In the course of 2015, the search engine will be further developed with the ultimate goal of allowing searches of the detailed information about individual pension accruals.

DB2P is thus a crucial instrument in the development of systematic social supervision, which will begin in 2015 (see below).

Towards a systematic social supervision

Until now, supervision of compliance with social legislation (Law on Supplementary Pensions and Law on Supplementary Pensions for the Self-Employed) was mainly reactive and intermittent in nature. The FSMA intervened usually in response to complaints, reports or special occurrences, or within the context of a prudential supervisory process such as an application for the authorization of an IORP. The reason for this approach was largely the lack of systematic reporting. Apart from that required for prudential supervision of IORPs, there was no other periodic reporting with a view to supervision of compliance with social legislation.

This situation is undergoing substantial change now that the information in DB2P can be used by the FSMA. This information provides the FSMA for the first time with a complete overview of the second-pillar pension schemes and of the pension rights being built up in those schemes. Although the use of the DB2P is still in its infancy and the possibilities for using it in the coming years increase considerably, the FSMA has taken the opportunity of the launch of DB2P into operation to redirect its social supervision of supplementary pensions towards systematic supervision.

In 2014, the broad lines of a systematic social supervision were delineated and everything was set in motion to be ready for effective implementation in 2015. Social supervision will be articulated around four spearheads: information, supervision, regulation and complaint handling.

Information

As regards the information component, the FSMA strives to make clear and accessible information available via various channels to citizens, pension consumers and persons under supervision. The FSMA aims to set the standard in terms of reliable, understandable and usable information about supplementary pensions.

A distinction is to be made here between the various levels of information that have been tailored to different target groups. A first level of information is addressed to the general public and aims to provide easily understandable basic information on supplementary pensions. This target group will be addressed via the Wikifin.be website. A second level of information has to do with the consumers of supplementary pensions. This is addressed to members and beneficiaries of a supplementary pension scheme, as well as to employers, for example, who need more information about their pension schemes. This target group will be addressed via a specific tab on the consumer page of the FSMA website. The aim is for pension consumers to find answers there to specific questions they may have regarding supplementary pensions. A final level of information is directed at institutions under supervision and at pension professionals. They will receive information via a tab dealing with legal doctrine on the supervisory section of the website (see below).

Supervision

From 2015 on, the FSMA will focus mainly on a proactive and systematic social supervision. This means that social supervision will be conducted on the basis of periodic supervisory programmes, with the initiative coming from the FSMA rather than the supervisory actions depending on external reports or events. In developing the supervisory plans, the emphasis is placed on horizontal thematic inspections. DB2P will be a priority starting point for these.

Since DB2P contains information about both the pension schemes managed by IORPs and those managed by insurance companies, its use will put an end to the lack of representation of insured pension schemes within social supervision.

Regulation

Actions by the FSMA have, over the years, given rise to the development of an extensive body of doctrine: guidelines that the FSMA uses as a starting point for conducting its supervision. To date, this body of doctrine has been published only to a limited extent, for example via circulars, communications or annual reports.

Starting in 2015, the FSMA's doctrine regarding supplementary pensions will be made known systematically, under a specific heading on the supervisory section of its website. There, for the first time, all new standpoints taken by the FSMA regarding the legislation on supplementary pensions will be published. Subsequently, the existing doctrine will also be gradually set out per theme via that same channel.

In this way, the aim is to contribute to a correct and unambiguous implementation of the legislation on supplementary pensions. The FSMA also aims in this way to enhance its transparency about its expectations as a supervisor and so to increase the predictability of its action.

Complaints handling

The FSMA will continue to serve as complaints handler for supplementary pensions.

Complaints and questions

In 2014 the FSMA received 157 question or complaint dossiers, of which the majority could be dealt with in the course of the year. Two thirds of the dossiers handled concerned the pension legislation for employees (Law on supplementary pensions for employees, or WAP/LPC). The remaining dossiers had to do with other areas - principally the legislation on IORPs and to a lesser extent the Law on supplementary pensions for the self-employed or various other matters.

As regards the Law on supplementary pensions for employees, the most frequently occurring topics were information obligations (with a growing number of questions about 'lost pension rights'), the rules governing the payment of pensions and the rules on discrimination.

Advisory services

The FSMA offered its technical expertise to the staff of the Minister of Pensions with regard to texts that came into force in the Law of 15 May 2015 containing various provisions.

2.2.6. Information and protection of consumers of financial services

The FSMA answers questions from consumers about financial matters. In 2014 it received and handled 1692 written questions. Almost a third of these questions were about savings and investments, a quarter had to do with warnings or authorizations, and 15% were about insurance. The FSMA answers these questions itself if the subject falls within its areas of competence. If not, the FSMA refers the consumers to the competent institution, such as the NBB, the Federal Public Service Economy or the various mediation/ombudsman services. The FSMA also receives numerous questions by phone.

During the period under review, the FSMA opened 270 enquiries into offers of financial services that may be illegal. In 2013, 204 dossiers of this nature were opened. These enquiries were initiated on the basis of evidence provided by third parties, of complaints and of observations made by the FSMA itself.

Such enquiries can lead to the publication of a warning intended to alert the public of the dangers of an illegal offer. In 2014, the FSMA published 59 warnings, after the judicial authorities had been duly informed. In 2013, there had been 22 warnings. This increase is due in large part to the significant number of warnings concerning the offer of binary options and forex products. 35 of the warnings published by the FMSA during 2014 were about providers of such products[82].

82 See this report, pp. 183.

The FSMA publishes not only its own warnings but also those issued by its European counterparts. The latter are forwarded to it via ESMA. In 2014, the FSMA published 314 warnings of this type. The FSMA also published on its website, via a hyperlink, the warnings issued by foreign supervisory authorities that belong to IOSCO.

Besides publishing warnings, the FSMA may, if it detects an offer of illegal financial services, avail itself of the powers provided under Article 86*bis* of the Law of 2 August 2002. These powers include, notably, the issuing of an injunction to stop the activity or to comply with certain provisions[83]. The issuing of an injunction may, where appropriate, be accompanied by a penalty.

During 2014, the FSMA used this faculty in two cases that showed evidence of an activity of insurance intermediation by two persons who had been removed from the register.

In these two cases, the FSMA allowed the persons in question to present their comments, then formally enjoined them to cease all insurance intermediation activity immediately. Failure to respect these injunctions was accompanied by the imposition of a penalty for each day that the infringement was observed. The activity was also reported to the judicial authorities.

2.3. Financial education

The Belgian legislators have tasked the FSMA with making a contribution to financial education. By way of implementing this legal task, the FSMA launched a financial education programme under the name 'Wikifin'. This programme is intended to develop initiatives to improve the population's financial literacy. The programme comprises three pillars: the actions of the past year for each of those pillars are described below.

Schools

In 2014, the first concrete steps were taken in financial education in the schools. At the beginning of the 2014-2015 school year, in collaboration with the King Baudouin Foundation and the educational service of BELvue, pilot projects were launched in both the Flemish and the French-language secondary schools. In the course of these pilot projects, educational materials developed by the FSMA were made available to teachers taking part in the programme. The material includes background information for the teachers, lesson plans for use in class, short films and interactive materials.

The pilot projects served to improve the educational materials, identify best practices and detect additional needs. Regular meetings are held with the teachers involved and the pedagogical guides for the pilot groups. During these meetings and via communication platforms, teachers share their experiences in using the educational materials in class. Based on these exchanges, the material has been adjusted, improved and expanded.

83 Article 86*bis*, § 2, of the Law of 2 August 2002.

In the Flemish vocational secondary schools, the pilot project was implemented with teachers in 'General Subjects Project' (PAV) and 'Social Training' (MAVO). In the French-language schools, the pilot project was carried out in regular secondary schools[84]. In all, 15 Dutch-language and 10 French-language schools took part. The schools were of diverse types and spread across various provinces.

As a result of these pilot projects, at the beginning of the 2015-2016 school year Wikifin will make available high quality and useful educational materials to all teachers of general subjects and social training in the Flemish school system and to all teachers in French-language general secondary schools. Via these projects, the FSMA has also been gaining experience in working with schools and about the needs of teachers. Based on the experience gained, and in cooperation with the schools (department, central contact points, etc.), financial education will be rolled out in other types of educational establishment.

Lastly, during the 2014-2015 school year the Wikifin thesis prize on financial literacy and consumer protection was launched. All Master's theses by students at a Belgian university or higher education institute that address financial literacy, financial education or consumer protection in a financial context are eligible for the Wikifin thesis prize. The aim is to foster new studies and analyses in the area of financial literacy, and to generate greater interest in the programme. The first awards will be handed out in early 2016.

Campaigns

Several campaigns were carried out under the aegis of the Wikifin programme. The aim of these campaigns is to contribute to greater consumer awareness and knowledge about specific financial topics. The campaigns include publicity via the internet and on the radio, communication to the media and attendance at various events.

The first campaign was devoted to the theme of 'Housing'. The campaign included an online survey that enabled the public to ask housing-related questions via the Wikifin.be website. Based on the survey, a brochure was produced in which experts give answers to the ten most frequently asked questions. An IMMO simulator was also developed and made available on the Wikifin website. The simulator allows users to calculate quickly and easily the total cost of buying or building a home. During the 'Housing' campaign, Wikifin also took part in Batibouw, distributing more than 8600 of the brochures devoted to the topic. The presence of Wikifin at the Batibouw show accounted for almost 100,000 additional visits to the Wikifin.be website.

Wikifin also took part in the festivities held in the Royal Park of Brussels on the Belgian national holiday (21 July). 5000 balloons were distributed and passers-by could take part in a mini-quiz to test their knowledge about 'young people and their bank account'.

Lastly, Wikifin also attended the Zenith salon. During the salon, the attention of the public was drawn to the topic of 'Inheritance'. Information about that life stage was put together in close collaboration with the Royal Federation of Belgian Notaries. During the Zenith salon, 2000 flyers were distributed with the top 10 tips for optimal ways of dealing with inheritance.

84 *Transitional general and technical education.*

Wikifin.be

The www.wikifin.be portal was launched in January 2013. Since that time, the website has been further developed. In 2014, the life stage of "Inheritance" was added, with interactive materials and videos. A platform was developed that provides educational materials for the French-language schools. Since its launch, the Wikifin website has had 1.7 million visits. Popular pages on the site include the savings simulator (381,000 visits), the pension quiz (105,000 visits) and the IMMO simulator (79,000 visits). A Wikifin newsletter is sent out every month to more than 11,000 subscribers.

The portal is addressed in the first instance to a broad audience. Along with organizations active in the field, Wikifin wishes to continue working on the needs of specific population groups.

Collaboration and exchange of good practices

In addition to its activities via the Wikifin website, campaigns and schools, the FSMA also strives to promote collaboration in the area of financial education. Gatherings are organized to this end for interested stakeholders.

In 2014, focus groups were set up with experts and parties involved in financial education. Some 50 organizations took part in this important exercise in reflection. Debates were held on the objectives, target groups and content of financial education. At the focus groups, input was gathered for a national measurement of financial literacy.

In close cooperation with the OECD, a measurement of financial literacy was prepared for Belgium. The innovative OECD questionnaire measures not only financial knowledge but also financial behaviour and attitudes. Belgium is the first country to work with this innovative questionnaire. In early 2016, once the other countries will have the results of their measurements, an international comparative study will carried out.

The results of the measurement were presented at the second national conference on financial education on 11 March 2015 in the presence of Her Majesty the Queen. This measurement suggests that there is no connection between financial knowledge, behaviour and attitudes. A high score on one of the dimensions does not automatically lead to a high score on the other dimensions. We can thus conclude that financial training must continue to focus at once on knowledge, behaviour and attitudes, and do so among the various age and social groups. Financial education must therefore be provided on a lifelong and sustainable basis for everyone.

Almost 200 participants attended the conference on 11 March 2015, representing all facets of society: federal government services, experts and researchers, health insurance providers, interest groups, sectoral federations, NGOs, consumer organizations, educational staff and politicians, etc. The conference was organized within the framework of the *European Money Week* and the *Global Money Week*. In the afternoon workshops, representatives of 68 different organizations were able to engage in debate about future actions and priorities for financial literacy, including for specific groups. The FSMA gave the participants an undertaking to further streamline these activities in order, where necessary, to take concrete actions. The FSMA plans to assume this coordinating role in future and to involve as many actors as possible.

2.4. Administrative sanctions

2.4.1. Amendments to the procedure for imposing administrative fines

The procedure whereby the FSMA imposes administrative fines (Articles 70ff of the Law of 2 August 2002) has been amended by the Law of 25 April 2014, effective 1 May 2014.

Under the amended procedure, if the Management Committee notes serious evidence of a practice that is liable to give rise to the imposition of an administrative fine, it entrusts the investigations officer with investigating the case[85]. This decision is taken based on evidence provided by the FSMA's supervisory services, pursuant to a complaint, or based on evidence provided by a foreign supervisory authority pursuant to a request for cooperation made by that authority to the FSMA. In the latter case, the Management Committee also entrusts the investigations officer with conducting the necessary investigation to be able to respond to the request by the authority in question.

2.4.2. Decisions to open an investigation

In 2014, 19 dossiers were submitted for investigation based on the FSMA's own enquiries or on complaints received, either upon the decision of the investigations officer (until 30 April 2014) or based on a decision by the Management Committee (as from 1 May 2014). This figure does not include the dossiers submitted for investigation in response to requests for cooperation made to the FSMA by foreign supervisory authorities[86].

An investigation (dossier) refers to a decision to investigate a certain amount of evidence liable to give rise to an administrative fine, in accordance with Article 70, § 1, of the Law of 2 August 2002. This decision may be based on serious evidence of infringements of one or more legal provisions committed by one or more persons. The estimate of the number of persons concerned in the dossiers is indicative only: the investigation itself is of the facts, and it may be that the examination of the facts in question prompts a reconsideration of the number of persons concerned. This notion corresponds to the notion of an investigation (dossier), as used under the procedure in force until 30 April 2014 and in the previous annual reports.

2.4.3. Summary of dossiers handled

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

85 Art. 70, § 1, of the Law of 2 August 2002.
86 With regard to these requests, see this report, p. 84.

Proposal for an agreed settlement

The provisions organizing the procedure with a view to imposing administrative fines make it possible to close a dossier by entering into an agreed settlement[87].

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

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

These proposals concerned, in all, three natural persons and five legal persons, in cases of evidence of market abuse, of infringements of the regulations on advertising for regulated savings accounts and evidence of failure to fulfil the obligation to publish inside information immediately.

The agreed settlements approved by the Management Committee in these cases are commented on in this report in the section devoted to its decisions[88].

Conclusions submitted to the Management Committee

At the end of the investigation, the investigations officer prepares a report. The report indicates whether the facts discovered are liable to constitute an offence giving rise to the imposition of an administrative fine, as well as whether they may constitute a criminal offence[89].

The investigations officer submits the definitive report to the Management Committee. The Management Committee decides, based on the report, on how to proceed with the case[90].

During the period under review, the investigations officer submitted 11 investigation reports to the Management Committee. These reports concern 22 natural or legal persons in all.

* * *

Between 2011, the year when the new procedure laid down in the Twin Peaks Law[91] entered into force, and 31 December 2014, a decision to initiate an investigation was taken in respect of 37 dossiers involving one or more practices liable to give rise to the imposition of an administrative fine on one or more persons.

During the same period, the total number of agreed settlements proposed and of reports closed by the investigations officer was 63.

The agreed settlements or reports made it possible to definitively close 31 cases. With the exception of one case, all the cases closed in 2014 involved dossiers in which the investigation was initiated after the entry into force of the procedure provided for under the Twin Peaks Law.

87 Article 71, § 3, of the Law of 2 August 2002.
88 See this report, pp. 110, 112 and 140.
89 Article 70, § 2, of the Law of 2 August 2002.
90 Article 71 of the Law of 2 August 2002.
91 See FSMA Annual Report 2011, p. 42.

The investigation dossiers initiated since 15 July 2011 involve serious evidence of infringements of one or more of the following legislative texts[92]:

Table 12: legislation referred to in the cases handled by the investigations officer since 15 July 2011[93]

	From 15 July 2011 to 31 December 2014
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	20
2. Market manipulation and failure to inform the market	10
Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market	4
Royal Decree of 5 March 2006 on market abuse	4
Law of 16 June 2006 on public offers of securities	4
Law of 2 May 2007 on the reporting of significant interests in issuers whose shares are admitted to trading in a regulated market and containing miscellaneous provisions	2
Royal Decree of 27 April 2007 on takeover bids	1
Royal Decree of 18 June 2013 laying down certain information obligations in respect of the distribution of regulated savings accounts	2

2.4.4. International cooperation

The number of requests for international cooperation on cases relating to potential market abuse, as well as regarding the illicit offer of financial services, has increased considerably in 2014 as compared to the previous year.

The FSMA received 42 requests for cooperation from foreign competent authorities, as compared to 29 in 2013. A wide range of requests were handled in an average of 34 days, the turnaround time being determined by the nature and scale of the tasks to be completed.

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

During the same period, the FSMA in turn addressed 45 requests for cooperation to foreign competent authorities, as compared to 32 in 2013. These requests mostly ask for the beneficiary of a transaction to be identified. Like the requests received from foreign competent authorities, those made by the FSMA relate to obtaining a range of information from an issuer or another person.

92 Several of the cases handled by the investigations officer involved possible infringements of more than one of the laws cited in this table. As a result, the cumulative list of legislation concerned is greater than the number of cases.

93 A list of legislation referred to in the cases handled by the investigations officer before 15 July 2011 is found in the FSMA Annual Report of 2012, p. 50.

Pages 86 – 185 and footnotes 94 – 334 are not translated into English, but are available in French and Dutch on the FSMA website.

III.
THE ORGANIZATION OF THE FSMA

1. Organization

1.1. Structure

The Law of 25 April 2014 containing various provisions introduced a number of changes of an institutional nature to the Law of 2 August 2002 on the supervision of the financial sector and on financial services. These amendments include, among other things, the abolition of the position of secretary general[335]. The tasks of the secretary general were redistributed among members of the Management Committee. The new organization chart, which takes account of these adjustments, entered into force on 2 May 2014.

335 As regards the impact of these changes on the Supervisory Board, the Audit Committee and the Sanctions Committee, please see the sections of this report devoted to those bodies on pp. 192, 194 and 196 respectively.

1.1.1. Governing bodies

Management Committee

Jean-Paul Servais,
Chairman

Wim Coumans,
Deputy Chairman[336]

Annemie Rombouts,
Deputy Chairman[337]

Henk Becquaert,
Member

Gregory Demal,
Member

Albert Niesten,
Secretary General[338]

336 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 relieved of his function of member of the Management Committee and Deputy Chairman of the FSMA. Mr Wim Coumans is authorized to use the honorary title of his position of Deputy Chairman and member of the Management Committee of the FSMA.

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

338 By the Royal Decree of 25 April 2014 (Belgian Official Gazette, 7 May 2014) which entered into force on 2 May 2014, Mr Albert Niesten was relieved of his function of Secretary General of the FSMA. Mr Albert Niesten is authorized to use the honorary title of his position of Secretary General of the FSMA.

1.1.2. Organization chart of the departments and services[339]

339 Hein Lannoy has since 20 October 2014 been seconded to the office of Minister Kris Peeters as director of the 'Consumer protection and economic regulation' policy unit.

1.1.3. Supervisory Board

1.1.3.1. Composition

Dirk **Van Gerven**, Chairman

Jean-François **Cats**

Jean **Eylenbosch**

Robert **Geurts**

Hilde **Laga** [340]

Didier **Matray**

Pierre **Nicaise**

Reinhard **Steennot**

Marnix **Van Damme**

Marieke **Wyckaert**

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

In 2014, the Supervisory Board of the FSMA met nine times and used the written procedure four times. As determined by the new Article 48, § 3, second paragraph, of the Law of 2 August 2002, the members of the Management Committee attend the meetings of the Supervisory Board, unless the chair of the Supervisory Board should decide otherwise in respect of a particular agenda item. They do not, however, take part in the Board's deliberations. In practice, the Board always holds an initial discussion at which the members of the Management Committee are not present, prior to the meetings of the Board. During these initial discussions, the items are determined that are to be discussed without the presence

340 Ms Hilde Laga stepped down on 1 May 2014 and no longer participates in the meetings.

of the Management Committee members. The attendance record of the members of the Supervisory Board at the meetings themselves is 90 per cent[341].

The Board wishes to thank the Management Committee and the staff of the FSMA for their cooperation in the fulfilment of the Board's tasks. The Board is also grateful to the secretary general, whose mandate came to an end during the reporting period, for his contribution to the organization and operation of the CBFA and the FSMA. The members wish particularly to extend their thanks the staff member who serves as coordinator of the activities of the Board.

New legal provisions relating to the Supervisory Board

The Law of 25 April 2014 containing various provisions[342] has changed the governance of the FSMA on a number of points, and has also defined more closely the tasks of the Supervisory Board and of the Audit Committee[343]. As far as the Supervisory Board is concerned, the new Article 48, § 1, 7°, of the Law of 2 August 2002 specifies that the Supervisory Board conducts general supervision of the honest, legally compliant, goal-oriented and effective operation of the FSMA. Notwithstanding the other specific mandates and tasks that the law entrusts to the Board, it stipulates in general terms that the Board can provide the Management Committee with any useful recommendation as regards the matters set out in the aforementioned Article 48, § 1, 7°, where applicable at the recommendation of the Audit Committee (Article 48, § 1*quater* of the Law of 2 August 2002). The Management Committee reports to the Board on its response to these recommendations.

The Board henceforth also deliberates on the supervisory plan that the Management Committee draws up each year in application of Article 49, § 2, of the same Law.

In line with the statutory amendments to the operation of the FSMA's governing bodies, on 17 October 2014 the Supervisory Board approved, upon the recommendation of the Management Committee, a revised internal regulation for the FSMA. This regulation, published on the website of the FSMA, replaces the earlier regulation of 17 November 2011. The Board ensured that when this regulation was drawn up, a provision was included that specified that the Management Committee makes available to the Supervisory Board and the Audit Committee the resources necessary for the accomplishment of its tasks.

Initiatives of the FSMA in terms of regulation

The Supervisory Board has devoted a great deal of attention during the reporting period to a number of important regulatory initiatives by the FSMA in the area of protection of users of financial services.

On the basis of its statutory tasks laid down in Article 49, § 3, of the Law of 2 August 2002, the Supervisory Board advised the Management Committee on the FSMA's Regulation of 3 April 2014 on the technical requirements of the risk label, approved by the Royal Decree of 25 April 2014. At the recommendation of the Board, the proposed risk label was tested among a group of consumers. The test indicated that the consumers questioned had a good understanding of the purpose of the scale of risks.

341 This does not take account of the fact that Ms Laga, who is an outgoing member since 1 May 2014, no longer attends the meetings.
342 Belgian Official Gazette, 7 May 2014, second edition.
343 See also this report, p. 194 for an explanation of the new rules governing the Audit Committee.

The Board also exchanged views about the FSMA Regulation banning the distribution of certain products to retail clients, and provided the Management Committee with an opinion in this regard[344]. The Board recommended that the FSMA evaluate the Regulation periodically, taking into account the experience gained, market developments and the new European legislation. The Board also expressed its support for an explanatory note accompanying that Regulation.

Other regulatory developments

The Supervisory Board was kept informed of new regulatory developments that affect the tasks of the FSMA. Thus the Board heard explanations of the regulatory texts applying the relevant MiFID conduct of business rules to the insurance sector. The members were also informed of the main lines of the new insurance law and of the Code of Economic Law (Book VI, Market practices and consumer protection), as regards the aspects that fall within the FSMA's area of competence.

The Board also heard explanations of the transposition of the AIFMD and about the status of regulated real estate companies.

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 Regulation introducing the Law of 26 June 2013 with various provisions relating to thematic citizens' lending.

Implementation of the FSMA's tasks

Based on the presentations of the Management Committee, the Supervisory Board discussed the action plans prepared by the various services of the FSMA as well as the implementation of those plans.

The Board paid particular attention to the findings on the supervision of compliance with MiFID. The members welcomed the strengthening of supervision of the rules of conduct on the ground.

They also received repeated opportunities to exchange views about the various initiatives taken by the FSMA in the area of financial education, in particular within the schools.

At its meeting of 19 December 2014, the Board deliberated, under the terms of the new Article 48, § 1, 2°, of the Law of 2 August 2002, on the action plan for the FSMA prepared by the Management Committee for 2015, which gave priority to operational supervision. This plan, as well as the evaluation of its implementation, is in the eyes of the Board members an important instrument for achieving the goal of effective and efficient operation by the FSMA. In this regard, the members also heard about a number of significant market developments and vulnerabilities, as well as the potential risks that could be associated with them.

344 FSMA Regulation of 3 April 2014 banning the distribution of certain financial products to retail clients, approved by the Royal Decree of 24 April 2014.

Appointments of top management

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

At the competent ministers' request, the Board also gave its advice on the remuneration of the chairman and members of the Management Committee. In this regard, the members also suggested to the competent ministers that they consider providing in law for an advisory role for the Supervisory Board in determining the remuneration of the mandataries of the FSMA at the time of their appointment.

Internal organization and functioning of the FSMA

The Board also exchanged views about a number of subjects to do with the organization and internal functioning of the FSMA. Thus the Board discussed the new organization chart of the FSMA's services proposed by the Management Committee, which reflected a considerable number of revisions to the structure and the creation of a new position of strategy and development. The members also learned about the procedures for organizing the meetings of the Management Committee, which were defined more closely in the light of the aforementioned legal changes of 25 April 2014.

The members also gave advice on the main lines of the new royal decree on the financing of the FSMA, which takes account of the expansion of the competencies of the FSMA under the new legislation[345]. The members received further explanations in this regard about the planned recruitment of additional staff and about the FSMA's HR report. The Board members support the importance that the FSMA attaches to gender equality within its staff.

Within the scope of its statutory tasks, the Board approved the FSMA's budget for 2014 on 20 December 2013 and the budget for 2015 on 19 December 2014.

The Board approved the 2013 annual report on 30 April 2014 and the annual accounts for 2014 on 30 April 2015.

The 2013 annual report was approved on 30 April 2014, and the section of the present report concerning the powers of the Supervisory Board was approved on 30 April 2015.

In application of Article 62 of the Law of 2 August 2002, the Supervisory Board approved on 11 September 2014 the FSMA's new ethical code. Lastly, on 23 March 2014 the members appointed Ms Wyckaert and Messrs Van Gerven, Nicaise and Geurts members of the Audit Committee.

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. The role of the Audit Committee and the interaction of that body with internal audit were further specified by the provisions of the Law of 25 April 2014[346]. According to the parliamentary

345 See the Royal Decree of 28 March 2014.
346 Law containing various provisions (Belgian Official Gazette, 7 May 2014).

preparations of this Law, the aim is for the Audit Committee to have more instruments at its disposal for creating added value for the institution as regards its concrete operations, and in particular with regard to supervision and management of risks.

Since the entry into force of the aforementioned Law, the Audit Committee consisted of four rather than three members. On 23 May 2014, the Supervisory Board renewed the mandates of Ms Marieke Wyckaert and Messrs Dirk Van Gerven and Pierre Nicaise as members of the Audit Committee, and appointed Mr Robert Geurts as the fourth member. The members elected Mr Van Gerven as chair of the Audit Committee. During this reporting period, the Audit Committee met six times, in each case with all members present.

Tasks relating to the budget, accounts and report

In application of Article 48 of the Law of 2 August 2002, 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 2014, the Audit Committee, in the presence of the statutory auditor, examined the FSMA's accounts for 2013. It also looked at the FSMA's budget for 2015, which serves as the basis for the pre-financing of the FSMA's operating expenses in accordance with the rules laid down in the Royal Decree on the financing of the FSMA. In application of the aforementioned Article 48, the Audit Committee advised the Supervisory Board on the accounts drawn up by the Management Committee as well as the budget, by approving a number of clarifications. The Audit Committee also deliberated on the part of the 2013 Annual Report that concerns the powers of the Supervisory Board, and advised that the Board approve the annual report prepared by the Management Committee.

The Audit Committee also took note of the FSMA's half-yearly accounts as at 30 June 2014.

Relationship with the FSMA's internal audit

The new legal provisions that entered into force with the aforementioned Law of 25 April 2014 have strengthened the relationship between internal audit and the Audit Committee. Among the chief amendments is guaranteeing the Audit Committee direct access to the internal audit service and vice versa.

Pursuant to the new Article 48, § 1*ter*, first paragraph, 1°, of the Law of 2 August 2002, the Audit Committee approved the reappointment of the head of the internal audit service. The Audit Committee also took part in the evaluation of the head of internal audit for 2014 and was involved in determining the profile and choice of the staff member who would come to assist the head of internal audit in the course of 2015.

Pursuant to Article 48, § 1*ter*, first paragraph, 3°, of the Law of 2 August 2002, the Audit Committee, after explanations by the head of internal audit, discussed two internal audit reports. The reports addressed the following topics:

- An audit of the FSMA's supervision of compliance with the MiFID conduct of business rules by regulated undertakings;
- An audit of the supervision conducted by the 'Supervision of listed companies' and the 'Supervision of financial product compliancy' services of listed companies and issue operations.

The Audit Committee will continue to monitor the way in which the Management Committee follows up on these reports. The committee likewise took note of the state of affairs in the implementation of previous audit reports, such as the audit of the regime under the moratorium on the distribution of particularly complex structured products.

The Audit Committee also discussed internal audit's activity plan for 2015 and approved it under the terms of the new Article 48, § 1*ter*, first paragraph, 2°, of the Law of 2 August 2002.

Relationship with the Management Committee and the Supervisory Board

The Management Committee provided the Audit Committee with explanations of its HR report. The Audit Committee paid particular attention in this regard to the resources required by the FSMA in order to fulfil its new statutory tasks.

As required by law, the Audit Committee submitted the annual report on its activities to the Supervisory Board.

1.1.4. Statutory auditor

André Kilesse[347]
In accordance with Article 57, second paragraph, of the Law of 2 August 2002, the FSMA's accounts are audited by one or more statutory auditors. They are appointed by the Supervisory Board for a renewable term of three years, on condition that they not be included on the list of auditors accredited by the FSMA and not hold any office at a company subject to the FSMA's supervision. The auditors verify and certify every element specified by the legislation on the financing of the FSMA's operating expenses, as set out in Article 56 of this Law.

1.1.5. Sanctions Committee

1.1.5.1. Composition

During the period under review, two royal decrees on the composition of the Sanctions Committee were adopted.

Pursuant to the Royal Decree of 9 March 2014[348], Mr Claude Parmentier's term of office ended, at his request, and Ms Christine Matray was appointed member of the Sanctions Committee in her capacity as emeritus judge of the Belgian Supreme Court (*Cour de Cassation/Hof van Cassatie*), upon the recommendation of the first president of the Supreme Court.

By the Royal Decree of 1 December 2014[349], the appointments of Messrs Huybrechts, Quertainmont, Rozie, Keutgen and Steennot as members of the Sanctions Committee were renewed for a period of six years, their mandates taking effect on 3 February 2015, the date of the first meeting of the Sanctions Committee in its new composition.

The composition of the Sanctions Committee is thus as follows:

347 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.
348 Belgian Official Gazette, 19 March 2014. See also the FSMA Annual Report 2013, p. 176 (in French and Dutch only).
349 Belgian Official Gazette, 12 December 2014.

Michel **Rozie, Chairman**

Chamber president of the Court of Appeal of Antwerp, member of the Sanctions Committee in the capacity of magistrate who is not a counsellor at the Supreme Court nor at the Brussels Court of Appeal. (end of term of office: 2 February 2021)

Luc **Huybrechts**[350]

emeritus section president at the Supreme Court, member of the Sanctions Committee at the recommendation of the first president of the Supreme Court. (end of term of office: 2 February 2021)

Guy **Keutgen**

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

Christine **Matray**

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

Pierre **Nicaise**

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

Philippe **Quertainmont**

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

Hamida **Reghif**[351]

judge at the French-language court of first instance of Brussels, member of the Sanctions Committee in the capacity of magistrate who is not a counsellor at the Supreme Court nor at the Brussels Court of Appeal. (end of term of office: 14 October 2017)

Reinhard **Steennot**

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

Marnix **Van Damme**

chamber president at the Council of State, member of the Sanctions Committee at the recommendation of the first president of the Supreme Court (end of term of office: 14 October 2017)

Dirk **Van Gerven**

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

350 Mr Luc Huybrechts died on 24 March 2015.
351 Ms H. Reghif is an outgoing member and will no longer participate in the meetings of the Sanctions Committee from 31 March 2015, date when her oath of office as judge at the Court of Appeal of Brussels comes to an end (Royal Decree of 23 February 2015 published in the Belgian Official Gazette on 4 March 2015).

1.1.5.2. 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[352].

In the course of the period under review, the procedure for imposing administrative penalties underwent several adjustments.

The first adjustment was made by the Law of 25 April 2014 containing various provisions[353]. It consisted of rendering explicit in the Law the faculty of the Sanctions Committee to request an additional investigation[354]. Article 72, § 2*bis*, of the Law of 2 August 2002 introduced by the aforementioned Law provides the following in this regard: "Where it deems it necessary, in view of the right to a fair trial, the Sanctions Committee may ask the Management Committee to have supplementary investigations carried out".

Following on from this new provision, Article 34, § 3 of the internal regulation of the FSMA of 17 October 2014 provides that where the Sanctions Committee, pursuant to Article 72, § 2*bis*, of the Law of 2 August 2002 requests that the Management Committee have additional investigations carried out, the Management Committee will, save for exceptional circumstances, entrust the investigations officer or the deputy investigations officer with this task. When it does so, the Management Committee also delegates all necessary powers for the purpose.

The internal regulation of the Sanctions Committee dated 21 November 2011 was, in turn, amended on 13 June 2014[355] in order to reflect the aforementioned amendment.

Other changes were also made on that occasion to the aforementioned regulation in order to bring its provisions in line with the new rules governing the notification and publication of decisions to impose sanctions, as these were introduced into the Law of 2 August 2002 by the Law of 25 April 2014[356]. As a result of these new rules, moreover, contrary to past practice, a sanction decision is published with the name being mentioned, even in cases where the decision is appealed. The publication takes place immediately after the notification of the decision to the persons in question, even if the deadline for lodging an appeal has not yet expired. The provisions of the internal regulation of the Sanctions Committee were emended to reflect this.

On the occasion of the aforementioned amendments to its internal regulation, the Sanctions Committee also decided to revise the deadlines for the parties to respond to the written statement that the Management Committee can file after the hearing. Henceforth, the chairman of the Sanctions Committee can extend, at the request of the parties, the 20-day deadline for a response which the latter are given, by adding a maximum of a further 20 days.

352 For a description of the mandate and the operation of the Sanctions Committee, please see the FSMA Annual Report 2011 pp. 99-101.
353 Belgian Official Gazette, 7 May 2014, 2nd edition.
354 The power of the Sanctions Committee to request an additional investigation was already conferred by the internal regulation of the Sanctions Committee dated 21 November 2011. Under Articles 26 and 27 of that regulation, the Sanctions Committee could, at the request of the parties or at its own initiative, on the occasion of a hearing or at a later stage entrust the investigations officer with replying to its questions or carrying out an additional investigation within a period determined by the Committee.
355 This amendment was approved by Royal Decree of 4 September 2014, Belgian Official Gazette, 15 September 2014 and erratum, Belgian Official Gazette, 30 October 2014.
356 Law of 25 April 2014 on the legal status and supervision of independent financial planners and on the provision of planning advice by regulated undertakings and amending the Companies Code and the Law of 2 August 2002 on the supervision of the financial sector and on financial services, Belgian Official Gazette, 27 May 2014, entered into force on 6 June 2014.

The aforementioned amendments as a whole have given rise to a number of adjustments to the protocol between the Management Committee and the Sanctions Committee for the purpose of agreeing a set of rules governing those aspects that concern both bodies. The protocol was signed on 3 February 2015.

Lastly, it should be noted that the new provisions of the Law of 25 April 2014 expanded the professional incompatibilities regime for senior managers, among others, of credit institutions or other authorized financial institutions[357].

Pursuant to the new Law, not only certain criminal sanctions but also the administrative penalties imposed by the FSMA for certain offences will henceforth give rise to an automatic prohibition of the persons in question to exercise a function as senior manager of an authorized financial institution for a period of 10 years. In particular, an administrative fine imposed by the Sanctions Committee of the FSMA for market abuse will automatically give rise to such a prohibition. This rule applies only in the case of definitive administrative penalties which are not subject to appeal.

1.1.5.3. Decisions by the Sanctions Committee

Sanction decisions with regard to insider dealing

During the financial year under review, the Sanctions Committee imposed an administrative fine in two separate cases of insider dealing. In one of these cases, the Sanctions Committee applied the method whereby 'a body of convergent of evidence' is invoked to demonstrate that an infringement has taken place.

Decision issued on 3 July 2014

In the first case, the Sanctions Committee sanctioned a senior manager[358] of a Belgian listed company listed on NYSE Euronext Brussels, who had placed several sale orders in succession for securities in that company. However, before carrying out these transactions, the person in question had received information, on the occasion of a meeting of the board of directors and of the Audit Committee, regarding the results of the previous financial year, which were lower than expected, and on the budget for the year under way. This budget was still based on a profit forecast higher than the previous evaluations, so that it seemed too ambitious in light of the economic situation.

The Sanctions Committee deemed that this information constituted inside information within the meaning of Article 2, 14°, of the Law of 2 August 2002. The information in question had not been made public, directly concerned the listed company, was precise and was likely, if made public, to have a significant effect on the price of the company's share. This information did not, as it turned out, match the expectations of analysts insofar as the company had previously communicated optimistic forecasts to the market as regards the state of its financial results.

The Sanctions Committee also deemed that the person in question knew that this information was of a privileged nature. In this instance, it was clear from the person's conversations with the bank's trader that he understood fully the negative information to which he had

357 Law on the legal status and supervision of credit institutions, Belgian Official Gazette, 7 May 2014.
358 At the time of the action in question, the person was a non-executive director and a member of the company's audit, remuneration and nomination committees. The person was also a long-standing shareholder of the company.

been privy, and that he was perfectly aware of the impact the information would have on the share price once it was published.

In his defence, the person in question invoked the absence of an intent to harm. The Sanctions Committee recalled, however, that no intentional element is required for the determination that the administrative offence of 'market abuse' has taken place. The Court of Justice of the European Union has clearly indicated, moreover, that the constituent elements of insider dealing referred to in Article 2, § 1, of the Market Abuse Directive makes it possible to assume an intention on the part of the author of the transaction and that no subjective conditions in relation to the intent behind the material actions are set out. Article 2 of the Directive does not stipulate that the primary insider must have been driven by a speculative intention, must have had a fraudulent intention or must have acted either deliberately or negligently[359].

The person in question also argued that account should be taken of whether anyone suffered any prejudice as a result of the said transaction. Once again, the Sanctions Committee observed that the existence of prejudice is not a constitutive element of the administrative offence of market abuse. It noted, however, that there had in fact been prejudice to the investors to whom the person sold the securities, at a time when that person knew that the forecast was negative while the buyers did not. The circumstance that these inventors are not identified and cannot be identified does not change the fact that they had been harmed by the transaction, for they would not have bought the shares at that price if they had had the same information available as the person in question.

In this case, the Sanctions Committee also noted that none of the disputed transactions had been the subject of a notification to the FSMA in application of Article 25*bis*, § 2, of the Law of 2 August 2002. The person in question acknowledged having been negligent in this regard, but claimed that the infringement was due to ignorance and a justifiable lack of attention, once again without any intent to harm. The Sanctions Committee nevertheless deemed that an infringement of Article 25*bis*, § 2, of the Law of 2 August 2002 is subject to administrative sanction without any special damage having to be demonstrated, and that the ignorance of the person in question did not exonerate him.

As a result, bearing in mind the importance of the aggravating circumstances, on the one hand, and the absence of prior offences, on the other, the Sanctions Committee imposed on the person who committed the infringement a fine of EUR 110,000 in total, that is, EUR 85,000 for infringement of Article 25, § 1, first paragraph, 1°, a) of the Law of 2 August 2002 (equivalent to three times the estimated material gain) and EUR 25,000 for infringement of Article 25*bis*, § 2, of the Law of 2 August 2002, given the repeated nature of this infringement (37 infringements in one year).

Decision issued on 2 October 2014

In the second case, the Sanctions Committee sanctioned a former employee of a Belgian listed company listed on NYSE Euronext Brussels, who had placed several buy orders in succession for securities in that company. Before carrying out these transactions, the person had had several contacts[360] with the Chief Strategy Officer of the company, who was at the

359 CJEU 23 December 2009 (Spector), C-45/08, points 31, 32 and 38.
360 A private dinner and several telephone contacts.

time engaged in negotiations with a potential strategic partner for the company. The latter was then informed that a letter of intent had been signed with a candidate partner, and was also made aware of the contents of the letter. He was similarly informed that the company's management recommended going forward with the operation, which was intended to favour a rise in the share price.

The Sanctions Committee determined that the information received was not public, that it concerned the company directly, that it had a specific character and was likely to have a significant effect on the share price of the company if it were made public, so that the information should be considered inside information.

The Sanctions Committee then determined that there was a body of convergent evidence, such that the buy orders placed by the person in question could only be explained by the inside information about the negotiations under way that had been communicated to that person. More specifically, it was noted that the person in question had had contacts with the company's Chief Strategy Officer, on the occasion of which the inside information could be communicated, and this was not contested. Moreover, the disputed transactions had been initiated soon after those contacts. Whereas the person in question generally placed a single buy or sell order per security, in this case he placed several buy orders in succession over three consecutive days. Lastly, the dossier showed that the person in question had suddenly begun to buy a large number of shares in the company although he had just liquidated his entire portfolio a month before then, and in spite of the fact that his investment behaviour attested to a general scepticism about the markets. At the time, the person was turning to safe investments such as gold, and had also purchased a turbo short certificate, indicating he was counting on a fall in price. The Sanctions Committee noted that the information bulletin of which the person claimed to have followed the model portfolio did certainly suggest that the price of the share would rise if certain contracts were concluded. The Sanctions Committee did not, however, find it credible that the recommendations appearing in that bulletin could have served as the motive to begin the disputed orders, insofar as the timing of the transactions carried out did not correspond to the publication of the bulletin or to the signing of the contracts in question. Moreover, the bulletin recommended holding, not buying, the share.

Lastly, the Sanctions Committee deemed that in light of his education, professional experience and sound knowledge of the markets, and of his profile as a knowledgeable investor, the person in question knew, or at least should have known, that the aforementioned information was inside information.

As a result, the Sanctions Committee imposed a fine of EUR 30,000, the equivalent of twice (rounded) the estimated material gain.

Allegations of procedural irregularities

In both of these cases, several defects in form and content were invoked. The Sanctions Committee held that these allegations were not justified.

In each case, the person in question accused the investigations officer of not having heard both the charges and the defence in their case. The Sanctions Committee recalled in this regard that Article 70 of the Law of 2 August 2002 in the version in force during these two proceedings did not require the investigations officer to hear both the charges and the defence. It goes without saying, however, that to prepare his report, the investigations officer must take into account any evidence in defence of the person under investigation, insofar as he must carry out his duties in an objective and impartial manner, and with respect for the right to a defence. The Sanctions Committee judged that this had been the case.

In the first case, the person in question also accused the investigations officer of having infringed Article 22 of the Constitution and the Law of 8 December 1992 on the protection of privacy in relation to the processing of personal data, by asking various telephone operators for the person's telephone numbers, and by asking for the phone data to be identified. The Sanctions Committee deemed that the investigations officer had provided the information and justifications required under Article 81 of the Law of 2 August 2002 when he asked the telecommunication network operators to identify the phone numbers of the person in question. The Sanctions Committee further held that the investigations officer had duly provided the information and justifications required by Articles 82 and 84 of the Law of 2 August 2002 when he asked the investigating judge for prior authorization to identify the incoming and outgoing calls for the purpose of verifying if there had been any telephone contacts with a person who had access to inside information about the company. The investigating judge hearing the request had, moreover, authorized the investigations officer to request the information in question from the telephone operators. The Sanctions Committee considered that the fact that the investigative measures had not revealed any charges against the person did not in any way mean that they provided evidence in the person's defence.

Lastly, in the second case, the person in question invoked the fact that the Crown Prosecutor had announced his intention to dismiss the case. The Sanctions Committee recalled in this regard that under the *non bis in idem* principle, no one can be prosecuted or charged for an offence for which he or she has already been acquitted or convicted in a definitive judgment. However, this principle applies only once a definitive judgment has been handed down. Only a decision that has the status of decided law can prevent prosecution for the same acts. This presumes a decision by a judge ruling on the substance of the charges, so that a decision to dismiss a case taken by the Public Prosecutor's Office could not be subject to the *non bis in idem* principle. The Sanctions Committee therefore judged that it could rule on this case, notwithstanding the Prosecutor's decision to dismiss the case.

Publication of decisions naming the defendant

In both of these cases, the Sanctions Committee decided to publish the decision naming the defendant, given that the publication did not risk disrupting the financial markets or to cause the persons in question disproportionate disadvantage. However, the Sanctions Committee limited the duration of the publication of the name to one year.

Given that the publication of the decisions by name constitutes an additional sanction on the defendant, and having regard to the punitive nature of the sanctions it imposes, the Sanctions Committee deemed that the applicable law should be determined by reference to the principle of legality of the infringements and the associated fines. Under that principle, the new law could not in principle be applied retroactively unless it is a less severe law. The Sanctions Committee therefore decided to apply, as regards the publication of the two decisions, the law which applied at the time of the acts in question. At that time, Article 72, § 3, paragraph 4 of the Law of 2 August 2002 provided that in the case of appeal against the sanction decision, the latter must be published in anonymized form while awaiting the outcome of the judicial proceedings[361]. As a result, the two decisions were not published with the defendants' names immediately after they were handed down, while awaiting possible appeal.

An appeal was lodged against the second decision, but not against the first.

361 This provision was subsequently changed so that an appeal against a decision of the Sanctions Committee no longer prevents the immediate publication of the decision naming the defendant (Article 46 of the Law of 25 April 2014 on the legal status and supervision of independent financial planners, on the provision of financial planning advice by regulated undertakings and amending the Companies Code and the Law of 2 August 2002 on the supervision of the financial sector and on financial services, which entered into force on 6 June 2014). Henceforth, if an appeal is lodged, this is mentioned in the decision.

A decision not to impose a sanction in a case of insider dealing

On 12 March 2014 the Sanctions Committee decided a case involving an employee of a credit institution who had sold part of his portfolio of shares in the listed company that is the group's parent company[362]. The Sanctions Committee deemed that it had not been demonstrated that this person had, when carrying out the disputed transaction, information which he knew or should have known to be inside information. The Sanctions Committee therefore concluded that there was no infringement of Article 25, § 1, first paragraph, 1°, a) of the Law of 2 August 2002.

It should be noted in this regard that the person investigated in this case initially argued that Article 25, § 1, first paragraph, 1°, a) of the Law of 2 August 2002 ignored the presumption of innocence insofar as it created a presumption of the use of such inside information. The person also claimed that this provision was discriminatory and, moreover, violated Articles 10 and 11 of the Constitution. The Sanctions Committee, basing itself on the case law of the Court of Justice of the European Union[363], recalled that there was certainly a presumption of the use of inside information on the part of persons who held such information, but that this presumption could be overturned in cases where it was ruled out that the knowledge of the inside information could have influenced the decision to invest or divest. The Sanctions Committee considered that interpreted in this way in the light of the case law of the Court of Justice, Article 25, § 1, first paragraph, 1°, a) of the Law of 2 August 2002 did not ignore the presumption of innocence. Lastly, the Sanctions Committee noted that the person investigated did not present any evidence that could justify considering Article 25 of the Law of 2 August 2002 to be contrary to Articles 10 and 11 of the Constitution, nor of what the consequences thereof would be for the proceedings.

It should be noted that at the time of the actions in question, Article 72, § 4 of the Law of 2 August 2002 did not require the publication of decisions not to impose a sanction. However, in the version in force at the time the decision was handed down, Article 72, § 3, fourth paragraph of the Law of 2 August 2002 required the publication of decisions that found no evidence of an illicit practice and of decisions not to impose a penalty. The Sanctions Committee deemed that this new provision constituted a more severe publication rule than what had been in force at the time of the actions in question. As a result, it decided not to publish the decision.

1.1.5.4. Decision to impose a sanction that had been the subject of a judgment at appeal

As indicated in the 2013 Annual Report, the Sanctions Committee decided on 19 February 2013, in a case of insider dealing, to impose an administrative fine on a legal person and to issue a simple statement of guilt in respect of two natural persons. The parties appealed the decision. On 3 December 2014, the Court of Appeal of Brussels found the appeal to be well founded and overturned the sanction decision by the FSMA.

362 The person had sold 369 shares of the 1369 shares he had available for sale. The sale in question enabled him to avoid a loss, the size of which had been valued by the auditor at EUR 1309.95.
363 CJEU 23 December 2009 (Spector), C-45/08, point 62.

1.2. The organizational structure in practice

1.2.1. The internal audit function at the FSMA

With the Law of 25 April 2014[364], the Belgian legislators have, among other things, amended the governance structure of the FMSA. The Supervisory Board's general task of oversight of the work done by the FSMA has been defined more precisely: the Board is responsible for the "overall supervision... of the FSMA's work to ensure its integrity, compliance with the law and effectiveness"[365].

The Law further specifies the relations among the Audit Committee, the Management Committee, and internal audit. The Audit Committee has received a number of specific powers in the area of internal audit[366]:

- the committee approves the job profile, selection, appointment, changes in job description and dismissal of the head of the internal audit service and takes part in the job interviews with the candidates;
- it makes recommendations to the Management Committee regarding the role and functioning of the internal audit service, approves the internal audit charter and the service's audit plan;
- it discusses the internal audit service's reports on the audits performed, the follow-up on its recommendations and the service's activity reports;
- it takes part in the annual evaluation of the internal auditors;
- it ensures that there is a direct reporting line from the internal audit service to the Management Committee.

It is further stipulated that the head of internal audit has direct access to the chair of the Audit Committee and that the internal auditor reports directly and simultaneously to the Management Committee and to the chair of the Audit Committee[367]. Since the entry into force of the aforesaid Law, the internal audit service operates under this new governance arrangement.

The task of internal audit is to contribute to achieving the objectives of the FSMA, in particular by supporting the institution's risk management. In 2014, internal audit carried out a number of audits with a view to assessing the operations of the departments and services. Among these, the service examined the reasonable guarantees provided regarding the achievement of the objectives of the audited entities and activities.

In 2014, amendments were made to the royal decree that determines the calculation, establishment and collection of the contributions to the FSMA's operating expenses borne by the institutions or transactions subject to its supervision. On the occasion of this amendment, the FSMA decided to carry out a review and modernization of its internal procedures for handling this matter. Given the importance of these procedures, internal audit verified, by means of a marginal testing, the sound management of the risks involved in the transitional phase of this operation. Internal audit will examine these procedures in greater depth during 2015.

364 The Law of 25 April 2014 on the legal status and supervision of independent financial planners and on the provision of advice on financial planning by regulated entities and amending the Companies' Code and the Law of 2 August 2002.
365 Article 47, § 1, 7° of the Law of 2 August 2002.
366 Article 48, § 1*ter*, 7° of the Law of 2 August 2002.
367 Article 54, § 2, second paragraph of the Law of 2 August 2002.

As regards the development of new procedures, internal audit has also served as an internal consultant, contributing to the analysis of the transversal aspects.

The internal audit service further took a close look at the FSMA's central data management. The work of the institution relies to a large extent on information submitted by the institutions or persons subject to its supervision or relating to transactions for which the FSMA must give authorization. Internal audit reviewed the organization of data collection for these purposes, with particular attention to the guarantees as regards quality and timeliness. The architecture of data storage and processing was analysed in terms of efficiency and effectiveness. Lastly, particular attention was devoted to measures that may contribute to modernizing and extending the potential uses of information gathered.

A new content management application, which the FSMA has for some time been introducing service by service, was also examined. The purpose of this application is to enable the institution to further enhance its operations and increase its efficiency. The application combines a modern storage system for its documents (already/yet to be processed) with a high degree of automation of the processing systems. Internal audit also looked carefully at the internal control environment before the scheduled migration of the remaining services.

The head of internal audit submitted the audit reports for discussion to the Management Committee. At the invitation of the Audit Committee, he provided explanations of the audit reports and reported on the operations of his service. The Audit Committee approved the service's audit plan for the 2015 operational year.

1.2.2. Ethics

Both the members of the FSMA's staff and the members of the Management Committee have to comply with a code of ethics approved by the Supervisory Board.

The Law of 25 April 2014, effective 1 May 2014, led to a number of changes in the structure and the composition of the bodies of the FSMA, including the abolition of the function of Secretary General who was, among other things, responsible for monitoring the application of the code of ethics. This task was assigned to the member of the Management Committee responsible for directing the human resources department. The code of ethics was adapted accordingly. All other provisions of the code continue to apply.

The main objectives of the code of ethics are to prohibit trading in shares of companies subject to the permanent supervision of the FSMA, unless these transactions are of a defensive character, and to avoid any situation liable to give rise to a conflict of interest.

During the past year the Management Committee did not have to settle any conflicts of interest. There were hardly any questions of interpretation of the code nor applications for authorisation to carry out defensive transactions. There were a few requests for authorisation to exercise complementary functions in relation to the FSMA's competences, one of which was refused.

1.2.3. Developments in IT

In 2014 the FSMA realised, with a relatively limited team, a significant number of projects. In order to be able to carry out these developments, several new employees were recruited and were assisted, where necessary, by consultants. The latter worked in specific areas of knowledge, mainly on projects requiring a temporary strengthening of the development capacity. The most significant efforts were devoted to the application for internal file management, to providing the specific tools necessary to support new legal obligations, and to the migration of the IT equipment to more recent versions of certain environments (Windows - Office - SQL server, etc.).

Moreover the FSMA launched an important programme in 2014 for the professionalization of the IT department. This programme includes the development of more project-based approaches, the streamlining of the way needs are formulated and prioritized, the standardization of the development of software, and the implementation of several internal tools for the support of these elements. In addition to the professionalization of the IT department, another point to which particular attention was paid is improving the cooperation between the IT department and the other departments of the FSMA as regards the analysis of needs, the development of software and system components, and the testing and putting into production of applications.

During the fourth quarter a new programme was launched in the area of Information Management. Its development will continue in 2015. This programme is intended to further strengthen the cooperation between the IT department and the other departments by focussing on data management itself.

1.2.4. Human Resources Management

Recruitment and integration

Since its establishment, the FSMA has been continually in search of talented staff in order to attract new colleagues to replace those retiring and to be able to meet the challenges posed by its new powers.

Human Resources launched various recruitment initiatives in order to reach the appropriate target groups. The result in terms of hiring was 30 new colleagues.

A great deal of attention is also devoted to integrating the new staff into the various services. The FSMA prefers to allow the inflow of new employees to take place gradually, in order to be able to pay sufficient attention to their integration. Young staff need to be given the opportunity to immerse themselves more deeply in the topic and to become thoroughly familiar with the supervisory culture. Learning on the job is essential in order to continue to guarantee the quality of supervision.

Nevertheless, the search for employees with relevant education and valuable experience will certainly continue in the coming years.

Table 13: The staff complement in figures

	31/12/2014
Number of staff members according to the staff register (in units)	317
Number of staff according to the staff register (FTEs)	**300.13**
Operational staff complement (FTEs)	293.54
Maximum staff by the end of 2014[368] (FTEs)	302

Qualifications of the new staff

One of the consequences of the expansion of powers by the FSMA is that ever greater diversity of expertise is required.

The FSMA principally recruits new staff with a legal or economic background and a specialization in one of several domains such as insurance law, pension law, consumer and mortgage credit, compliance, audit, IFRS, etc. The mandate of the FSMA to contribute to better financial education of savers and investors means that candidates with a degree in communication or web management are also eligible for certain job posts.

The FSMA primarily hires staff with a Master's degree, but there are also openings for holders of academic or vocational Bachelors' degrees in legal practice, insurance, programming or as management assistants.

Bringing together this diversity of expertise and the resulting cross-fertilization makes it possible for the FSMA to meet the challenges before it today and in the future.

New recruitment initiatives

In addition to the aiming for maximum rationalization in the organization of the various services and the publication of vacancies in a selection of press outlets, attention was also paid in 2014 to launching an employee referral recruitment programme and to building a full-fledged job website in order to meet the FSMA's recruitment needs.

Launch of the first referral campaign under the name 'B-Ring a friend@FSMA'

Many companies draw upon their own staff to recommend eligible candidates for vacancies from among their circle of friends and acquaintances. For some, this is an important recruitment channel. In the jargon this is referred to as 'employee referral recruitment'.

This type of referral campaign is used by companies to promote their ambassadorship and involvement in the company: recommending someone is considered a sign of pride in and responsibility towards one's own workplace.

368 The Royal Decree of 17 May 2012 on the coverage of the FSMA's operating expenses as amended by the Royal Decree of 28 March 2014.

The FSMA decided in 2014 to launch its first referral campaign under the name B-Ring a friend@FSMA'.

In order to give a boost to this campaign, a pamphlet was designed giving a brief explanation of the values of the FSMA, the vacancies to be filled as well as the terms of employment. 1500 of the pamphlets were printed in each language, to be distributed to all employees who wish to hand them out to friends and acquaintances, or to leave copies for final year students or at seminars.

The referral campaign began in the second half of 2014. By the end of 2014, eight interesting applications had come in via this initiative.

Launch of a full-fledged job site

For most companies, the prime channel for recruitment remains their website. This is true for the FSMA as well. In order to promote the profile of the FSMA as an employer, a new job site was launched at the beginning of 2015.

The new site is fully part of the general FSMA website, but has its own URL: jobs.fsma.be.

In addition to providing an overview of vacancies, the terms of employment and the application procedure, a series of testimonials - both video and in writing - by a number of enthusiastic employees serves as the golden thread through the new job site. Each in his or her own way gives insight into what the FSMA as an employer stands for.

1.2.5. Consultation on social matters

Together with the NBB, the National Delcredere/Ducroire Office, the Participation Fund, the Federal Participation and Investment Corporation, the National Lottery and Credibe, the FSMA is part of Joint Committee 325. Within this Committee, a sectoral agreement for 2013-2014 was concluded on 30 January 2014; as in previous years, job security, purchasing power via the issuing of ecocheques, and employment skills, via the right to training, among other things, were central.

At the enterprise level, the agenda for consultation on social matters was devoted largely to negotiating a new status for employees who are university graduates. In addition, the evaluation system was reviewed.

On 20 November 2014, an organization-level Collective Labour Agreement was signed by all the trade unions represented at the FSMA. This CLA modernizes the career and remuneration policy for university graduates who were hired as from 1 January 2015.

Specifically, this means that employees' progress through the ranks and in salary will depend to a greater extent on their performance. The system of annual salary increases is in part replaced by a bonus system through which the assessment during the evaluation will have a more tangible effect than before. Because of the rise in retirement age and the resulting lengthening of the career, the minimum seniority between each career step was also extended.

In addition, absences will have a quicker impact on the career path. There is also an explicit provision for demotion. The possibility that was already available to the Management Committee to speed up or slow down the promotion rate for employees who differ from the norm, in a positive or a negative sense, remains unchanged.

Another new feature, lastly, is that more experienced employees can be hired at a later stage in their career provided their experience is sufficiently relevant for the FSMA.

As regards the evaluation system, at the request of the employee representatives, no more changes were made to the evaluation form but instead, the focus was on a consistent application across the entire institution. With that goal in mind, meetings were held to promote consistency, at which all line managers compared the criteria which they take into consideration when assigning certain employees an exceptional or, on the contrary, a (very) unsatisfactory score. A similar exercise was carried out for employees eligible for a promotion.

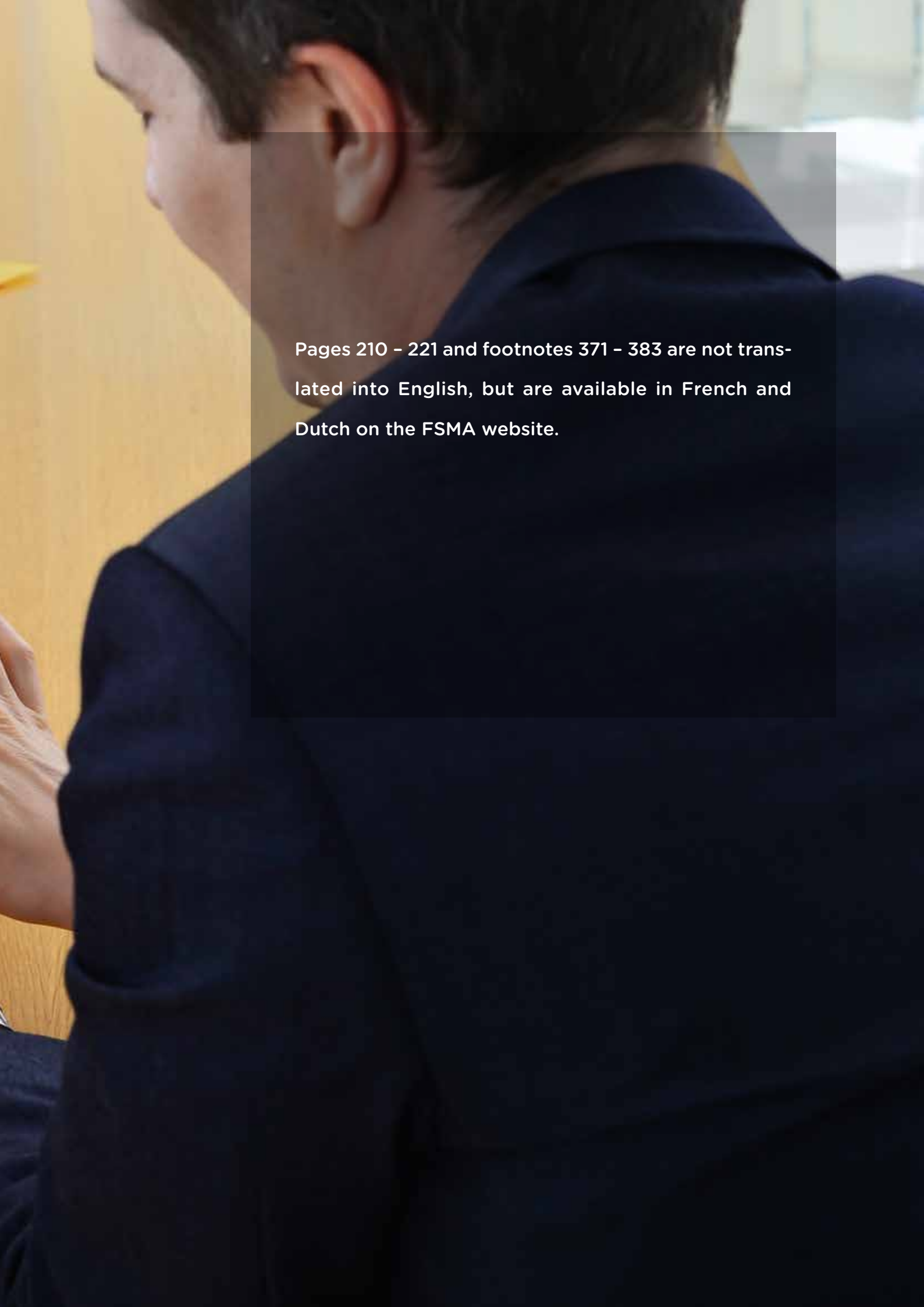
1.2.6. Financing the FSMA's operating expenses

The FSMA's operating expenses are, pursuant to its organic law[369], borne by the companies and persons subject to its supervision or whose transactions or products are subject to its supervision, within the limits and according to the specific rules determined by the King.

The FSMA's powers have been expanded considerably as a result of the Twin Peaks II laws and of other legislative initiatives taken in view of protecting the consumer. As a function of the expansion of its powers, the modalities for covering the operating expenses of the FSMA were likewise adjusted. This was done by means of the Royal Decree of 28 March 2014[370]. The report to the King that precedes the Royal Decree provides a detailed explanation of the above-mentioned expansion of those powers, and of the options regarding the financing of the operating expenses.

369 Article 56 of the Law of 2 August 2002.
370 Royal Decree of 28 March 2014 amending the Royal Decree of 17 May 2012 on the financing of the FSMA's operating expenses implementing Article 56 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services (Belgian Official Gazette (*Belgisch Staatsblad/Moniteur belge*), 13 May 2014).


FSMA



Pages 210 – 221 and footnotes 371 – 383 are not translated into English, but are available in French and Dutch on the FSMA website.

ABBREVIATIONS

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

ABIP/BVPI	Belgian association of pension institutions
AIF	Alternative Investment Fund
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
AIFM Law	Law of 19 April 2014 on alternative investment funds and their managers
Assuralia	Professional association of insurance companies
Banking Law	Law of 25 April 2014 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
CRD IV Directive	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
ECB	European Central Bank
ELC	Economic Law Code
EMIR Regulation	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivative products, central counterparties and transaction registers
FIPU	Belgian Financial Intelligence Processing Unit (CTIF-CIF)
EBA	European Banking Authority
EECS	European Enforcers Coordination Sessions
EEA	European Economic Area
EFRAG	European Financial Reporting Advisory Group
EIOPA	European Insurance and Occupational Pensions Authority
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
Former Banking law	Law of 22 March 1993 on the legal status and supervision of credit institutions
FSMA	Financial Services and Markets Authority
FPS	Federal Public Service
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 Law	Law of 4 April 2014 on insurance
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 Organization of Securities Commissions
ISA	Insurance Supervisory Authority (before its merger with the Banking and Finance Commission, CBF)
KIID	Key Investor Information Document
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
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
Law of 2 August 2002	Law of 2 August 2002 on the supervision of the financial sector and on financial services
Law of 22 March 2006	Law of 22 March 2006 on intermediation in banking and investment services and on the distribution of 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
LCAT/WLVO	Law of 25 June 1992 on the non-marine insurance contract
Life Insurance Decree	Royal Decree of 14 November 2003 on life insurance
LIRP	Law of 27 October 2006 on the supervision of institutions for occupational retirement provisions
LPC/WAP Decree	Royal Decree of 14 November 2003 implementing the Law of 28 April 2003 on supplementary pensions and their tax regime and on certain additional social security benefits
LPC/WAP Law	Law of 28 April 2003 on supplementary pensions and their tax regime and on certain additional social security benefits
LPCI/WAPZ Law	Title II, Chapter 1, Section 4 of the Programme Law (I) of 24 December 2002 (legislation on supplementary pensions for the self-employed)
Market Abuse Decree	Royal Decree of 5 March 2006 on market abuse
Market Abuse Directive	Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation
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	Commission Regulation (EC) No 809/2004 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

Real Estate Investment Company Decree	Royal Decree of 7 December 2010 on real estate investment companies (vastgoedbevaks/sicafi)
Regulated Real Estate Companies Law	Law of 12 May 2014 on regulated real estate companies
Reinsurance Supervision Law	Law of 16 February 2009 on reinsurance
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
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 on Regulated Savings Accounts	Royal Decree of 18 June 2013 imposing certain obligations when distributing regulated savings accounts
SIR/GVV	Regulated Real Estate Company (SIR/GVV)
SME Financing Law	Law of 21 December 2013 on various provisions on the financing of small and medium-sized enterprises
Solvency II Directive	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance
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
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
Transversal Royal Decree	Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients
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
Twin Peaks II Law	Law of 30 July 2013 on strengthening the protection of consumers of financial products and services and the powers of the Financial Services, and Markets Authority and containing various provisions (I)
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
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)

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