

# ANNUAL REPORT 2020

FSMA

FINANCIAL  
SERVICES  
AND  
MARKETS  
AUTHORITY

10  
YEARS  
2011-2021



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# FOREWORD

Dear readers,

This annual report is not only being published in unusual times; it also concerns an unusual year. An unusual year because, of course, 2020 was the year of the COVID-19 pandemic. As you will read in this report, this pandemic had an impact not only on the markets and sectors we supervise, but also on our approach and way of working. The time of publication of this report is also a special one because on 1 April 2021, the FSMA celebrated its ten years of existence. In this foreword, I will talk about the lessons learned from the crisis, but also reflect on the FSMA and its prospects after ten years.

## The COVID-19 crisis leads to stricter monitoring

From spring 2020, the coronavirus crisis had an enormous impact on many levels. Many of our citizens were themselves affected by the virus or saw their relatives and people around them fall victim to COVID-19. The pandemic was a difficult challenge not only for our healthcare system. The measures necessary to combat the further spread of the pandemic also had a great impact on our day-to-day lives and our way of working. The crisis also caused great turbulence on the financial markets, which led to substantial falls in the value of many assets.

The portfolios of Belgian investment funds and pension funds were not spared from this turbulence either. The total net assets of Belgian public open-ended UCIs fell by almost 22 billion euros, a fall of more than 13 per cent as compared to the end of 2019. A considerable proportion of this fall, however, was quickly reversed thanks to the recovery of the financial markets. Equally, thanks to a high volume of net subscriptions, the net assets for the sector at the end of 2020 ultimately came out at seven billion euros, which is four per cent higher than the year before.

Belgian pension funds performed similarly. By mid-March, the joint balance sheet total of pension funds was 18 per cent lower than at the end of 2019. The sector's coverage ratio fell to 101 per cent in comparison with 121 per cent at the end of 2019. Despite the significant contraction, the pension fund sector showed, on average, a slightly positive return in 2020. The joint balance sheet total rose from 40.2 billion euros at the end of 2019 to 42.5 billion euros at the end of 2020. This is an increase of over five per cent.

This turbulence and its impact on funds have convinced the FSMA even more of the need to follow more closely the sectors under its supervision, and certainly in times of crisis. As soon as the impact of the pandemic on the markets became clear, the FSMA started to closely monitor investment funds. The data-driven approach and the information collected in this way enabled the FSMA to assess the consequences of the crisis on a daily basis and evaluate the liquidity risk for every fund and for the sector as a whole.

The crisis therefore became an opportunity to develop tools that enable us to monitor the sector even better and respond even faster. The crisis was also an opportunity for the FSMA to encourage funds for which it was useful, to introduce liquidity management tools (LMTs). These tools lessen the risk of forced sales of the less liquid assets. This protects not only investors, but also the financial system.

#### **A new generation of investors is entering the stock markets**

A second lesson from the crisis is the new generation of investors we have seen emerge. This was especially noticeable in the United States, where the GameStop phenomenon grew to proportions as yet unseen in Belgium and Europe. Nevertheless, we could see that many new, younger, and less frequent investors found their way (or way back) to the Brussels stock market during this coronavirus crisis.

As you will read in this report, the FSMA conducted a quantitative study of the behaviour of Belgian retail investors during the crisis, based on transaction reporting. It examined whether retail investors bought and sold fewer or more BEL 20 shares during the crisis. It also analysed whether investor behaviour differed according to their age and the frequency of their investments. This revealed that in March and April 2020, up to five times more shares were traded than in the previous period. It also showed that young and occasional investors were much more active.

In essence, we can only be pleased about this increased interest in the stock markets, which strengthens Belgians' direct financing of the development of our businesses. In that respect, we hope that this interest remains over the long term, and we have to monitor this evolution closely from the perspective of proper information and education for investors. For this reason, the FSMA will continue to scrutinize developments in trading through exhaustive data analysis, based on which a follow-up study will be conducted. The FSMA will also pursue its supervision of accurate and timely information for investors and focus on efforts for financial education specifically targeted to this group.

#### **Lessons for a continuously evolving organization**

In March 2020, almost all staff members of the FSMA switched to full-time teleworking. Except during a short period of time between the first and second wave of the pandemic, during which staff returned to the office for one or two days a week, that remained the case throughout 2020 and the first half of 2021. Partly thanks to a speedy rollout of online communication tools, this switch to teleworking went smoothly and the continuity of the FSMA's operations was safeguarded at all times.

The introduction of teleworking across the board was an opportunity to simplify a number of processes through digitization, and to adjust our way of working in a number of ways. This meant that some inspection work could be efficiently conducted remotely. During lockdown, we led a campaign through Facebook and Google against online investment fraud, which enabled consumers to get in touch with us more easily during this period. A number of internal processes were also fully digitized.

These examples illustrate that we were able to turn the restrictions ensuing from the crisis into opportunities. It is also clear that a lot of these changes will remain even after the pandemic. The gains in efficiency that we have seen by communicating more effectively, reducing paperwork and travelling less should not go to waste.

The teleworking policy will also be examined in this light. Most staff embrace a combination of office and remote work. This should ensure a better work-family balance, whilst maintaining an equilibrium between good communication and contact with colleagues and the opportunity to work individually under optimal conditions. The organization of the FSMA's work will evolve depending on the measures that the government takes to combat the coronavirus pandemic, and will result from a top-down/bottom-up approach.

### Ten years of the FSMA: added value for consumer protection

As noted at the beginning of this foreword, the FSMA has now been in existence for ten years. I would like to look back on these ten years based on three aspects: fulfilling our core mission, financial education and the FSMA's position at home and abroad.

The FSMA's core mission is to protect financial consumers. All our initiatives and interventions over the past ten years have taken place against this backdrop and have given rise to changes in the field.

For example, ten years ago, when the FSMA launched the moratorium on particularly complex products and started on-site inspections, the number of complaints about investment advice saw a spectacular drop. We kept a number of products off the Belgian market that were unsuitable for ordinary investors. To guarantee trustworthy advertising for consumers, the FSMA screens more than 2,000 advertisements for investment products every year, and imposes sanctions where necessary. Increasing numbers of consumers come to the FSMA with questions and complaints, allowing us, for example, to prevent them falling victim to online investment fraud.

Our action has helped create a growing awareness in the sector of the importance of complying with rules of conduct that put the interests of the consumer first. The inspections, which have in the meantime become a fixture, play an important role in this regard. Equally, sanctioning infringements has given a clear signal to the sector.

To protect consumers, the FSMA has continued to make use of the powers entrusted to it by the legislature for the supervision of insurance. The FSMA ensured that a number of deficiencies that were disadvantageous to consumers were eliminated from mobile phone insurance policies. In the wake of the coronavirus crisis, the FSMA acted to safeguard the rights of insureds with respect to cancellation insurance.

The FSMA also verifies that the reserves in our pension funds are sufficient to safeguard the supplementary pensions of Belgians. In the interest of pensioners and future pensioners, it also ensures that the organizers of supplementary pensions and pension institutions comply with the social legislation on the subject.

In our supervision of the stock markets and listed companies, the common thread that runs through the FSMA's action has always been to strive for all shareholders to always get the information necessary to be able to exercise their rights. If it identifies an asymmetry in the information, the FSMA orders that it be put right, it publishes warnings, or starts a sanctions procedure.

As regards investment funds, the FSMA checks that there is sufficient liquidity available for investors to be able to realize their investment when they wish. Problems with repayments, as we have seen with some foreign funds, have not occurred in Belgium.

All of these examples attest to the fact that in its first ten years, the FSMA has added value by seeking to ensure that the financial system merits the trust of its users. When we make comparisons within Europe, the FSMA is always one of the best performers in terms of consumer protection, as regards inspections, stress tests on pension funds, imposing administrative sanctions and more. We are steadfast in our goal of fulfilling our role proactively, including by addressing changes in the sector.

### **Financial education is here**

Complementary to our core mission of consumer protection is our task of contributing to financial education. When the legislature conferred this task on the FSMA ten years ago, there was little in the way of financial education.

For this reason, the FSMA launched its Wikifin programme. First, a website was created with neutral, reliable and practical information on day-to-day money matters. The website met with great success and has had more than 14.5 million visits since its launch. The new version of Wikifin.be was developed in 2020 and launched at the beginning of 2021. It has been updated and brought into line with the latest developments in website use. In addition, the FSMA has organized a range of campaigns and taken part in events as part of the Wikifin programme in order to raise awareness and inform the public of all the tools available on Wikifin.be.

In addition to the first pillar of its educational responsibilities, that of informing the general public, the FSMA has also built up widespread collaboration with schools, where financial education is increasingly gaining attention. This second pillar is crucial because it is best to begin financial education at an early age. The FSMA provides educational materials for teachers. There have now been more than 90,000 downloads of these. In the context of Money Week, the FSMA conducted online video classes for the first time in 2021, imparted by the Prime Minister and an array of ministers from the federal government. In these, pupils could also address their questions directly to the ministers.

On 8 September 2020, the Wikifin programme embarked on a third pillar with the opening of the Wikifin Lab in the presence of Her Majesty Queen Mathilde and several ministers and political representatives. The Wikifin Lab is an interactive and digital centre for financial education, where visitors can experiment with different day-to-day financial situations. The Wikifin Lab offers visitors a fun and educational experience. This encourages them to hone their critical mind and confronts them with their personal choices and those they make as a citizen. It also helps visitors improve their knowledge and better understand certain basic financial mechanisms. Since its opening, the Wikifin Lab has been consistently fully booked.

The Wikifin Lab makes the FSMA the only financial supervisory authority in the world that offers this kind of interactive and digital centre. It has also received international acclaim for this.

### High-level role, here and abroad

That acclaim is not limited to financial education alone. Over the past ten years, the FSMA has gained an excellent reputation in the international arena, as is evident from the role it plays worldwide. As the supervisory authority of a small jurisdiction, the FSMA has for a number of years been Vice Chair of IOSCO, the International Organization of Securities Commissions, and is also Chair of the European Regional Committee of IOSCO.

The FSMA has also earned an excellent reputation within Belgium. This is demonstrated by the number of new powers the government has conferred on the FSMA since its founding. This includes supervision of crowdfunding platforms, financial planners, SME loans, lenders and credit intermediaries, the broadening of insurance supervision, the role of the FSMA in the supervision of company auditors, etc.

On the occasion of our tenth birthday, I also want to thank everyone who has contributed to the FSMA's success. These include all the policymakers who have put their confidence in the FSMA, and given it the necessary resources to fulfil its mandate to the full. But of course, this also includes all FSMA staff who – even under difficult circumstances – have over the past year continued to give of their best, and I know they will continue to do so going forward.

### Towards data-driven supervision

A modern supervisory authority has to evolve continuously, just like the sector and the world in which it operates. We live in a world where data is being processed ever more rapidly. If we want to maintain our added value in the future, we have to be able to exploit the data we have quickly and optimally. This is why the FSMA is on a clear path towards more data-driven supervision.

One of the concrete and visible results of our approach to data analytics was the study of investor behaviour on the Brussels stock exchange during the coronavirus crisis. This study was based on a sample of more than three million transactions, for a total trading volume of more than 10 billion euros, made by close to 323,000 different people. In only a few weeks, our data analytics team distilled from these data an entire study on investor behaviour in pandemic times.

Data analysis techniques are increasingly being applied in our various supervisory activities. For example, in order to trace managers of listed companies who fail to report their transactions to the FSMA. Or to identify investment offers that have passed their deadline and are still ongoing. At the moment, we are working hard on other applications to be able to make use of the data we have even more quickly and efficiently, because we are convinced that this is an essential tool for the supervisory authority of the future.

## Rapid response to the latest developments

When we talk about the future, it is only natural to think about the latest developments in the financial sector, to which we have to be able to respond rapidly. Many of these developments relate to technological advances. One example is the use of artificial intelligence in fund management. The FSMA has looked into this use and identified that at the moment, artificial intelligence is barely being used at all in fund management, but of course it is closely monitoring developments in this area. The same applies to other developments such as the emergence of non-bank financial intermediation. We keep our finger on the pulse of these developments by conducting yearly monitoring to be able to identify potential risks.

The global advent of crypto-assets is also a major trend. Taking into account the cross-border nature of crypto-assets, the European Commission is currently working on legislation to introduce prudential supervision of such assets. While awaiting passage of this legislation, it is important for financial supervisors to raise awareness of the risks associated with these assets and to warn against fraudsters who try to take advantage of this hype. As part of the anti-money laundering legislation, the Belgian legislature has conferred upon the FSMA the additional task of registering virtual currency service providers. The FSMA is set to begin this as soon as the legislation enters into force.

Another concrete example of recent developments is the emergence of Special Purpose Acquisition Companies (SPACs). This phenomenon was particularly marked in the United States, as well as in several European countries.

The FSMA has analysed the emergence of SPACs and their distinctive methods. These structures provide a number of advantages, but there are also disadvantages and risks associated with SPACs, which are often complex in their make-up. For these reasons, the FSMA has developed a framework for launching SPACs on the Brussels stock exchange.

This framework was put out to the sector for consultation and suggests a number of measures that SPACs wishing to be listed on the Brussels stock exchange have to incorporate in order to limit the disadvantages and risks they entail. The FSMA thereby wishes to contribute to protecting retail investors, who might enter into a SPAC without understanding their underlying mechanisms. The consultation will be complete in the first half of 2021.

It is not only new technologies or products that make for a changing environment. Supervision itself is also evolving. The role of the European supervisory authorities ESMA, EIOPA and the EBA has been reinforced. This move strives to create greater convergence in supervision, including via “peer reviews” that test the quality and comprehensiveness of national supervision. In 2020, the European authorities also set out the first strategic supervisory priorities for the EU. The FSMA plays an active role in these European activities and has integrated the EU priorities into its own work programmes as well. IOSCO has also emerged from the crisis stronger than ever, given that it has fulfilled a strong coordinating role for supervisors’ worldwide response to the fund market and market infrastructures.

### **Priority given to international work on sustainable finance**

The COVID-19 pandemic also prompted people to think about a more sustainable economic recovery. Everyone agrees that the energy transition and the environment must be front and centre of our attention, and that the financial world plays a key role in this transformation.

Work on sustainable finance occurs primarily within international institutions, and the FSMA takes its role therein very seriously, including within its work in IOSCO. This work aims to improve reporting by listed companies on sustainability aspects, as well as to protect investors from greenwashing.

As regards non-financial reporting, IOSCO works with the IFRS Foundation, which proposes to take a leading role in the development of international standards on sustainability reporting by companies. As Vice Chair of IOSCO and Chair of the IFRS Monitoring Board, as well as Co-Chair of the Monitoring Group, I am closely involved in this initiative and intent on contributing to the success of international efforts regarding sustainable finance.

More information about these topics is, of course, available in this report. I wish you pleasant reading.

Jean-Paul SERVAIS  
Chairman



# MISSION AND VISION

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

The FSMA puts the interests of consumers first. This is why it is constantly on the lookout for trends and risks and devotes itself fully to its supervisory tasks. It also engages in efforts to increase financial literacy. In this way, it wishes to develop in consumers a discerning confidence in the financial sector.

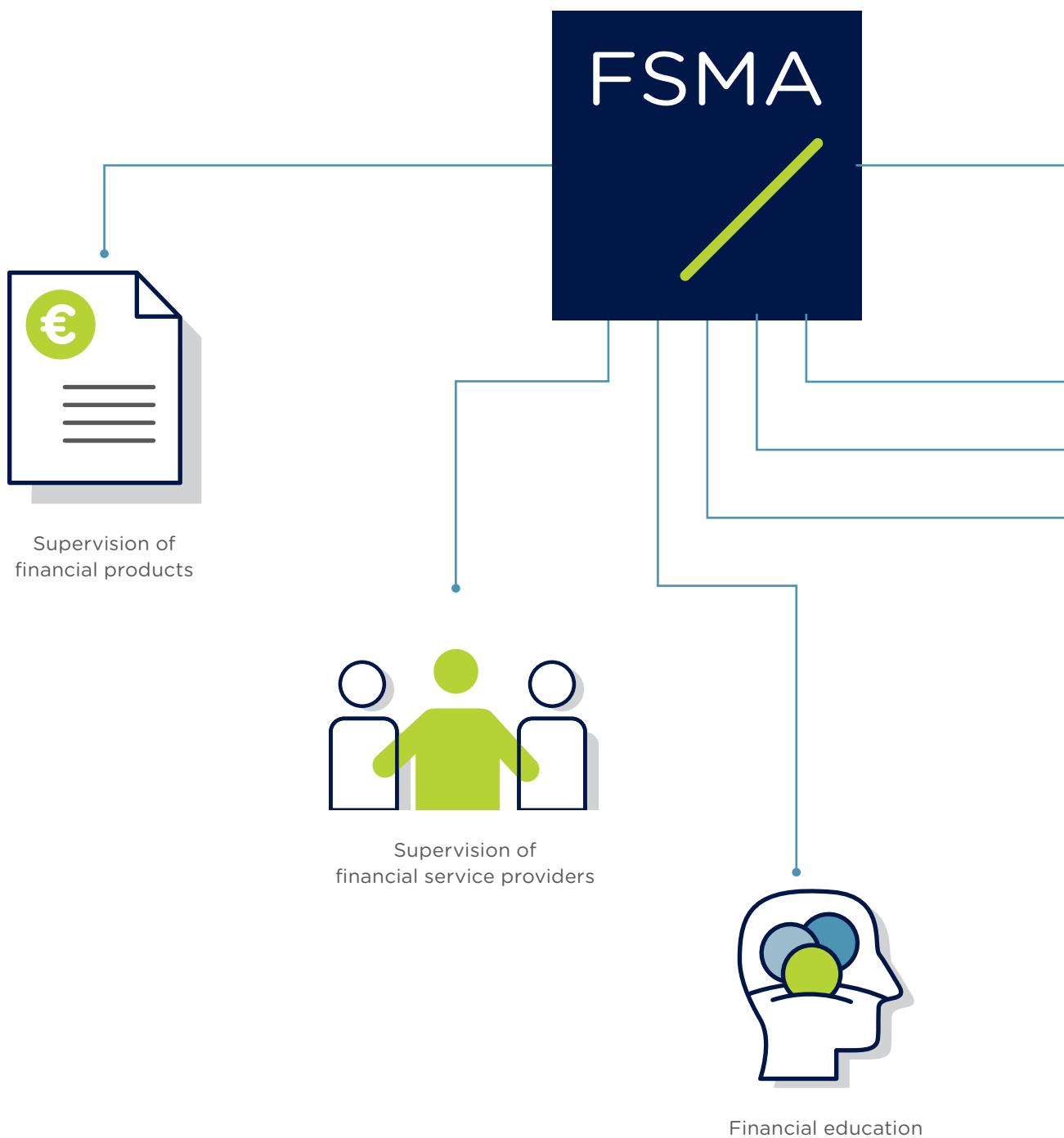
The FSMA also works to support those under its supervision with transparent and timely information and thereby to offer added value for their smooth functioning.

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

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

Every year, the FSMA draws up an action plan delineating how to put these organizational priorities into play. The action plan is approved by the Supervisory Board and determines the focus for the upcoming year. The FSMA reports on its activities in its annual report.

# THE POWERS OF THE FSMA

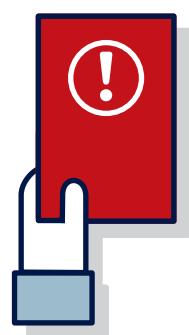




Supervision of the financial markets  
and of company information



Supervision of conduct  
of business rules



Action against  
unlawful activity



Supervision of  
supplementary pensions

# THE FSMA IN 2020

## Supervision

111

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

197

listed companies

22,059

registered intermediaries

179

pension funds

3.95  
million

employees and self-employed persons  
with a Belgian pension plan

# Financial landscape

**€ 702.8**  
billion



**deposits with credit institutions**  
governed by Belgian law<sup>1</sup>

**€ 172**  
billion



**assets under management** by funds  
governed by Belgian law

**€ 1,130.8**  
billion



**credit institution** balance sheet total<sup>2</sup>

**€ 42.5**  
billion



**pension fund** balance sheet total

**€ 409.8**  
billion



market value of **Euronext Brussels**

**€ 29.2**  
billion



**premium income** on the Belgian  
insurance market<sup>3</sup>

1 September 2020.

2 September 2020.

3 31 December 2019.

## The FSMA in 2020

# A few key dates

### 29 January 2020

The FSMA gives an important **press conference** in its offices, together with the Federal Public Prosecutor's Office, to provide information on the **various types of investment fraud**.

### 31 January 2020

**The United Kingdom leaves the European Union.** The FSMA takes measures to protect consumers and safeguard companies under its supervision.

### 2 March 2020

**Jean-Paul Servais**, the Chairman of the FSMA, is re-elected for two years as **Chair of the European Regional Committee**. That body represents the European countries within IOSCO, the International Organization of Securities Commissions.

### 11 March 2020

The management committee of the FSMA decides to switch to **teleworking** with immediate effect following the rapid spread of coronavirus transmissions.

### 15 April 2020

The FSMA opens a **call centre**. Consumers, the self-employed and companies can use it to ask questions about the coronavirus measures taken by the government and by the banking and insurance sector.

### 26 March 2020

The FSMA publishes a **press release** on the impact of the coronavirus crisis on listed companies. This is followed in April and June by **FAQs** on the special company-law measures and the publication of the half-yearly **financial report**. The FSMA wishes thereby to help listed companies continue to comply with their obligations in a difficult and unprecedented context.

### 18 March 2020

The **FSMA temporarily bans short selling** on Euronext Brussels to avoid substantial price fluctuations during the coronavirus crisis. On 19 May 2020, it lifts this measure.

**27 May 2020**

The FSMA publishes the results of an **extensive study on trading on the Brussels stock exchange** during the **coronavirus crisis**. The considerable increase in the volume of Bel20 shares traded by Belgian investors is striking. It is particularly young and infrequent investors that seem to be more active during the pandemic.

**12 June 2020**

The Board of IOSCO re-elects **Jean-Paul Servais**, Chairman of the FSMA, for a term of two years as **Vice Chair of the International Organization of Securities Commissions**. He has held that post since 2016.

**19 June 2020**

The FSMA launches a **widespread digital campaign** against online investment fraud, with the slogan "**An offer that sounds too good to be true? Start by saying no.**" The campaign runs on Facebook and Google. It is rolled out in various stages, targeted to pensioners, young investors and more experienced investors.

**9 October 2020**

The FSMA publishes a **study** drawing attention to the growing interest in **crowdfunding**. The study is based on the information notes received by the FSMA from crowdfunding platforms that conduct campaigns on the Belgian market to fund projects.

**8 September 2020**

The **Wikifin Lab**, the FSMA's digital centre for financial education, **opens its doors** in the presence of Her Majesty Queen Mathilde and prominent politicians. The Wikifin Lab is an innovative centre for financial education where young people can experiment with different day-to-day financial situations.

**29 July 2020**

The FSMA reaches an **€ 800,000 agreed settlement** with a credit institution. This is the largest agreed settlement ever for a single company. It ensued from various non-conformities in the sale of investment products.

## The FSMA in 2020

# A brief overview in figures

The FSMA subjected **38 structured products with novel features** to a thorough examination. The FSMA deemed 12 products to be particularly complex.



These products were, as a result, not sold on the retail market. 5,756 structured products have been marketed in Belgium since the introduction of the moratorium in 2011.



The FSMA launched **71 preliminary or full analyses** of potential market abuse. It suspended trading in a share 37 times.



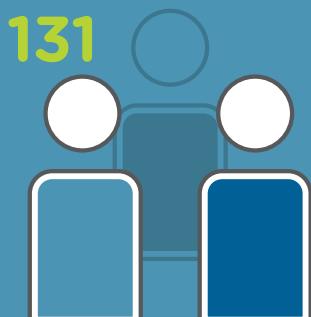
Thanks to the FSMA's warnings, the public prosecutor's office was able to block access to **84 fraudulent websites** containing illegal investment offers.



The FSMA received **1,445 notifications** of managers' transactions.



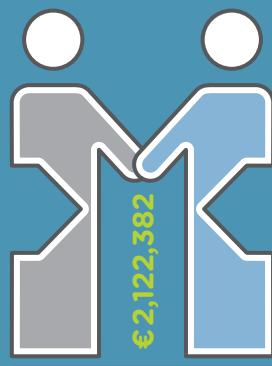
The FSMA published **143 warnings**. These publications warn the public of the dangers of (potentially) unlawful offers.



The FSMA struck **131 intermediaries** from the register.



The FSMA received **2,974 messages** from consumers on a wide range of financial subjects. More than half of these messages were about fraud and unlawful offers of financial products and services. One in eight messages were on the subject of pensions. Almost one in ten concerned investments.



The FSMA approved **15 agreed settlements** in administrative sanction procedures. These settlements entail the payment of a fine and a publication, with names, on the FSMA's website. These agreed settlements brought in a total of **2,122,382 euros** for the Treasury.



The advertisement dossiers for funds, regulated savings accounts and insurance products related to a total of **3,023 advertisements**.



In 2020, the number of visits to [www.wikifin.be](http://www.wikifin.be), the FSMA's portal for financial education, was estimated at **3.5 million**.

Since its launch in 2013, the website has been visited more than 14.5 million times.



**3,158,099**

This is the number of **transactions on Euronext Brussels** that the FSMA analysed for its study on investor behaviour in pandemic times.



# FINANCIAL PRODUCTS THAT ARE EASY TO UNDERSTAND AND TRUSTWORTHY

The FSMA oversees financial products in order to ensure that consumers do not have to struggle to understand financial products and consequently be unaware of the financial risks they are taking. It takes initiatives to prevent problems and to boost consumer confidence in financial products. The FSMA's supervision is intended to help ensure that the products offered are easy to understand, safe, useful and cost-transparent.

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# Supervision of advertising

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

The FSMA supervises the marketing of financial products. Given that consumers usually receive their initial information on financial products through advertisements, that supervision is of great importance. Consumers must, after all, be able to assess financial products in an informed way. That is why advertising material needs to be accurate and readable.

Advertisements for financial products must comply with the requirements laid down in Belgian legislation. The information must be accurate and easy to understand, and be clear as to the risks and costs associated with the product. The advertisement must point out both the advantages and the disadvantages of a product, and show them in a balanced way. Misleading information is prohibited.

Advertisements for certain financial products undergo prior screening by the FSMA. That is the case for advertisements for public investment funds, regulated savings accounts and certain investment instruments. Those checks allow the FSMA to intervene at the right time, i.e. before investors sign up on the basis of inaccurate, incomplete or misleading information or advertisements. That way, the FSMA can avoid losses.

In 2020, the FSMA screened 3,023 advertisements for funds, regulated savings accounts and insurance products. An advertisement is any form of provision of information of a promotional nature for a financial service or a financial product. The FSMA sent 1,819 emails with remarks on advertisements for funds, regulated savings accounts and insurance products. Mostly, these remarks refer to the obligatory minimum content of advertisements and the presentation of historic returns. In 2020, the FSMA handled 1,161 advertisement dossiers for funds, regulated savings accounts, insurance products, and structured debt instruments and derivatives. The majority of the marketing material, i.e. 727 dossiers, related to funds.

In spite of the coronavirus crisis, the number of checks and approvals of advertising materials was 19 per cent higher in 2020 than in 2019. This rise was due principally to the 25 per cent increase in advertisements for funds. The FSMA has noted that insurers and insurance intermediaries increasingly tend to submit their advertisements proactively prior to publication. In 2020 as well, many advertisement dossiers for insurance products were submitted for prior checks on a voluntary basis.

**Table 1:** Supervision of advertising in 2020

	Number of dossiers	Website dossiers	Number of advertising messages	Number of emails from the FSMA
Funds	727	195	2,553	1,483
Regulated savings accounts	48	35	107	62
Insurance products	149	62	363	274
Structured debt instruments and derivatives	237	N/A	N/A	N/A
<b>Total</b>	<b>1,161</b>	<b>292</b>	<b>3,023</b>	<b>1,819</b>

# Supervision of investment products

## The moratorium results in less complex products

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

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

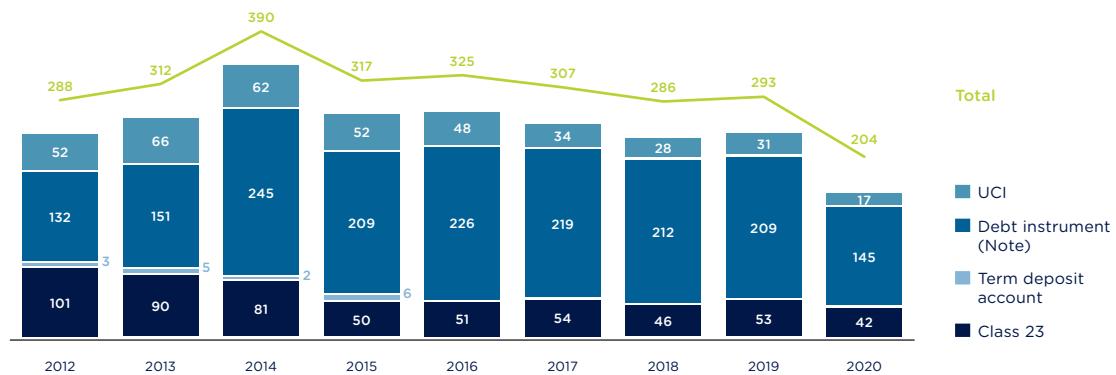
In Belgium, nearly all providers of structured products have signed on to the moratorium. In doing so, they have committed not to distribute to retail investors products that are considered particularly complex under the criteria of the moratorium. The FSMA continuously scours the market to see whether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

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

In 2020, such a detailed analysis was conducted on 38 products which contained new characteristics, the calculation formula for which was mostly based on a customized index.<sup>4</sup> Twelve of these products were ultimately deemed to be particularly complex. These products were, as a result, not brought to the retail market. As part of this analysis, the accessibility of 28 new customized indexes was examined.

Since the launch of the moratorium in 2011, 5,756 structured products have been distributed in Belgium (see Table 2). A little over half of these (2,990 structured products) fall under the moratorium. The other 2,766 structured products fall under the opt-out regime<sup>5</sup>.

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



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



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

<sup>5</sup> The opt-out regime offers issuers the option not to apply the moratorium to clients who hold deposits and financial instruments with the issuer with a value at the time of distribution of more than 500,000 euros in movable assets. The opt-out applies only to the portion of the assets that exceeds the threshold of 500,000 euros.

**Table 2:** Structured products distributed since the launch of the moratorium (1 August 2011-31 December 2020)

	Number of products issued since the launch of the moratorium	Issue volume (in EUR million) with the exception of private notes and products under the opt-out regime
<b>Class 23</b>	<b>582</b>	<b>19,691.20</b>
Under the moratorium	581	19,691.20
Opt-out	1	N/A
<b>Debt instrument (Note)</b>	<b>1,889</b>	<b>21,358.23</b>
Under the moratorium	1,803	21,358.23
Opt-out	86	N/A
<b>Term deposit account</b>	<b>18</b>	<b>245.48</b>
Under the moratorium	18	245.48
<b>UCI</b>	<b>431</b>	<b>13,920.85</b>
Under the moratorium	418	13,920.85
Opt-out	13	N/A
<b>Private Note</b>	<b>2,836</b>	<b>N/A</b>
Under the moratorium	170	N/A
Opt-out	2,666	N/A
<b>Total</b>	<b>5,756</b>	<b>55,215.76</b>

The amount invested by Belgian investors in structured products, especially structured UCIs, fell considerably in 2020<sup>6</sup>.

Despite the widespread market uncertainty in 2020, the trend persisted of launching products with a right to repayment of at least 90 per cent of the capital (both in terms of the number of products and issue amount). In the second half of 2020, the issued amounts of structured products with a right to repayment of at least 90 per cent of the capital lay higher than the issued amounts for structured products with a right to full repayment of the capital. There were also more products distributed that do not offer capital protection.

Because of the high volatility of the stock markets in 2020, manufacturers of structured products selected customized indexes as an underlying asset, often with mechanisms<sup>7</sup> to minimize their volatility. There has been a trend of distributing more structured products with a customized index as an underlying asset since 2013 (except in 2018 and 2019). In 2020, this trend was even more apparent. As regards the issue amount, almost half of structured products had a customized index as an underlying asset in the fourth quarter of 2020.

Because of the still very low interest rates and market volatility, less than 10 per cent of structured products in 2020 had an interest rate as an underlying asset, both in terms of the issue amount and the number of products. This was also apparent in terms of the number of products. In 2018 and 2019, more products appear to have been issued in US dollars. This shift continued in 2020: of the amounts issued by structured UCIs, almost three-quarters appear to have been issued in US dollars. This trend was not observed in debt instruments or Class 23 products.

<sup>6</sup> See also this report, p. 26.

<sup>7</sup> The preference in these customized indexes, in terms of the selection and/or the weighting, is often for shares with a historically low volatility.

Despite the continued low-interest-rate environment, the FSMA did not identify any longer maturities in the structured products distributed. The maturity dates of most structured products launched were between five and eight years in 2020.

## Impact of the pandemic on the structured products market

The COVID-19 pandemic had an impact on the financial markets, including sizeable sales of financial assets, highly increased volatility and a reduction and suspension of dividend payouts.

At the beginning of April 2020, the FSMA conducted a market survey on the impact of the pandemic on the structured products market in Belgium. The main findings to come out of this research are:

- The structured products market continued to operate and the products could continue to be priced despite the often sharp increase in volatility.
- Some market players noticed a fall in retail investors' appetite and cancelled certain issuances or increased their offer period.
- The value of the components of structured products, according to some market players, experienced fluctuations. They initially announced a rise in the value of the savings component, as a result of the increased credit risk and requisite credit cost. Subsequently, there was a fall in the value of the savings component, presumably because of the action undertaken by the European Central Bank. Conversely, the derivatives component often became pricier. That was partly due to a combination of increased volatility and a reduction or elimination of dividends.
- Several market players identified a substantial fall in purchases on the secondary market. According to them, this was down to a decrease in value on the secondary market because of the evolution of market parameters, including the increased credit cost. The fact that for the large majority of structured products in Belgium there is a commitment from the issuer to repay the capital outlay in whole or in part, may have played a role. After all, this commitment only comes into play on maturity date and not in the interim.

Continuous monitoring of the structured product market is crucial so that this market segment can contribute to the proper functioning of the market and support investor confidence. The FSMA believes that the moratorium has proven its value in these market circumstances. One of the consequences of participating in the moratorium is, after all, to ensure that distributors avoid offering structured products with conditions or barriers that could expose investors to substantial losses in very volatile markets. The large majority of structured products on the Belgian market include full or 90 per cent repayment of the outlay at maturity. That way, investors know that they are protected from such market movements.

### More transparency in structured product fees

The FSMA verifies advertisements for structured products distributed in Belgium<sup>8</sup>. A few times, fairly high fees appeared to be added to such products, which were also not transparent enough.

The FSMA spoke to the institutions concerned about this. It explained that the advertisements have to be fully transparent as to the total cost. Then it looked into how these institutions justified the added fees based on their product governance procedures.

Structured products offered on the Belgian market have to be developed in the interest of the customer. The fees must therefore be acceptable for the target audience and may not jeopardize the expected return. Producers and distributors of financial products must also document the stages of development of these products. They have to be able to justify the choices made, for example in terms of fees.

The FSMA looked into the governance process that these institutions had developed for the products

concerned. It noted that there was room for improvement in the governance of structured products, including in terms of managing conflicts of interest, analysing the aforementioned fees, and the scenario analyses. In the end, the products in question were not sold.

Furthermore, the FSMA again drew the attention of all producers and distributors of structured products under its supervision to their product governance obligations. It published a communication on the subject on its website in October 2020<sup>9</sup>.

The FSMA's product governance supervision is ongoing. It will continue to check whether credit institutions and insurance companies develop and distribute products that put the interest of their customers first and address the needs, characteristics and objectives of the target audience. In 2021, the FSMA will contribute to the common supervisory action launched by ESMA. The aim thereof is to check compliance with the MiFID II product governance rules that apply<sup>10</sup>.

<sup>8</sup> Structured products can take the form of investment instruments or insurance products.

<sup>9</sup> See Communication FSMA\_2020\_14 of 20 October 2020 on the offer of structured products in Belgium: reminder of the product governance rules.

<sup>10</sup> See the ESMA press release: ESMA launches a common supervisory action with NCAs on MiFID II product governance rules, 1 February 2021.

## More than 1,300 information documents submitted

Offerors of Packaged Retail and Insurance-Based Investment Products (PRIIPs) have to provide a key information document to retail clients. The Key Information Document (KID) is a brief document that must contain the essential information about a PRIIP in language that is easy to understand. The content and form of a KID is standard. This allows consumers to compare the KIDs of different PRIIPs.

To be allowed to market a PRIIP in Belgium, the KID must be submitted in advance to the FSMA. In 2020, the FSMA received 254 submissions of KIDs for packaged retail investment products. The majority of these KIDs related to structured products (158). They came from Luxembourg (84), Belgium (64), Ireland (30), the United Kingdom (27), France (18), Germany (18), Switzerland (9), and the United States (4).

In 2020, the FSMA received 81 KIDs for new contracts for insurance products; 156 KIDs were submitted because of an update. In 2020, the FSMA also received 108 documents on new investment options and 736 documents in connection with an update to existing investment options. Apart from Belgian developers, there have also been developers' KIDs and documents submitted from Luxembourg, the Netherlands, Italy, Ireland, Germany, France, Great Britain and one from Cyprus.

### Irregularities in the documents used by an issuer

When verifying the consistency between the advertising documents for an issuance destined for use within Belgium and the KID for that issuance, the FSMA identified an irregularity coming from an issuer in another Member State. For the early resale of its products by retail investors, the issuer charged higher redemption fees than those stated in the advertising documents used for marketing these products within Belgium. The information in the marketing documents was thus not accurate.

An investigation unveiled that as a result of the inaccurate information, in 12 cases for five different issuances in which the products concerned were resold

early, too high a fee was unduly charged<sup>11</sup> (that is, they were higher than the maximum amount stated in the advertising documents). After talks between the FSMA and the issuer of the products concerned, the fees unduly charged were repaid in those 12 cases of early resale.

As part of the European cooperation between competent authorities<sup>12</sup>, the FSMA waived its professional secrecy and informed its colleague supervisory authority of the irregularities identified.

11 Between October 2016 (start date of the issuer's activity within Belgium) and September 2019 (date on which the note for the Management Committee was drawn up).

12 Article 20 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

In 2020, the FSMA conducted thematic supervision of a sample of KIDs. The supervision related to KIDs for different structured products and for several insurance-based investment products. The focus of the supervision was on the quality of the KIDs submitted to the FSMA for these products. The supervision unveiled shortcomings in the majority of KIDs submitted. In 2021, the FSMA will draw up a feedback statement to clarify the main shortcomings.

## Sharper focus on the sustainability of financial products

Just as in previous years, in 2020, the offer of financial products that refer to sustainability went up. This increase conceals a very varied offer in terms of sustainability. The majority of financial products that refer to sustainability do effectively wish to respond to investors' growing concern for sustainability. But assessing the requirements for a financial product to qualify as sustainable remains complex, as is comparing financial products with each other.

To simplify choices for investors, various labels have been developed. The European Sustainable Finance Disclosure Regulation<sup>13</sup> (the SFDR), which entered into force on 10 March 2021, aims to simplify choices for investors. This Regulation introduced harmonized rules for the transparency of information disclosures on sustainability. It makes a distinction between products that promote ESG characteristics<sup>14</sup> and sustainable investments<sup>15</sup>.

With its approach, the FSMA wishes to protect investors. It also wants to prevent the sustainability of a financial product being used merely as a marketing tool without the product genuinely aiming for a sustainable investment goal (greenwashing). Without waiting for the entry into force of the SFDR, the FSMA continued to supervise the accurate, clear, not misleading, adequate and transparent nature of the information in marketing materials for financial products with an investment or savings objective that refers to sustainability.

The FSMA applies the following approach when sustainability is used as a selling point in an advertisement.

It instructs Undertakings for Collective Investment (UCIs) to state the following information in its marketing material:

1. the method for selecting the sustainable investments;
2. the sustainability criteria applied;
3. the company responsible for assessing the sustainability selection criteria; and
4. a reference to the prospectus or website with more information about how the ESG criteria are taken into consideration in the investment objective.

The return on structured products may be linked to an underlying asset of the equity/bond type that meets sustainability criteria without the assets financing activity or companies that are selected based on sustainability criteria. In order to limit the risk of greenwashing, the FSMA orders that the following warning be added in such a case: "The money you transfer/lend to the issuer is not specifically invested in assets that meet sustainability criteria. It is only the return that is linked to an index that includes sustainability criteria". The FSMA also asks that the products not be presented as socially responsible investments/sustainable products. Most assets are, after all, not used to finance activity or companies that are selected based on sustainability criteria.

For structured products that invest in assets that specifically meet sustainability criteria, the FSMA instructs that the four aforementioned disclosures be made in the marketing material.

For regulated savings accounts and term deposit accounts, the requirements are the same, mutatis mutandis, as for UCIs.

<sup>13</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

<sup>14</sup> The products that promote ESG characteristics are products that, aside from other characteristics, promote environmental or social characteristics, or a combination thereof, and for which the investee companies follow good governance practices but do not strive to contribute to sustainability goals.

<sup>15</sup> A sustainable investment is defined as an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, the production of waste and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, provided that the investee companies follow good governance practices.

In that way, the FSMA wishes to ensure investor protection: by devoting attention to the accurate, clear, not misleading, adequate and transparent nature of the information in the marketing material.

## New FAQs clarify advertising rules for investment instruments

Advertisements for investment instruments that are offered to the public or that are sold to retail clients must meet the requirements set out at European level in the Prospectus Regulation<sup>16</sup>. The information in the advertisements may not be inaccurate or misleading. Nor may the advertisements be inconsistent with the information provided in the prospectus.

The FSMA has drawn up some FAQs. The FAQs present good practices that can contribute to proper compliance with these advertising rules. Through these FAQs, the FSMA makes its action predictable and contributes to creating a level playing field.

By complying with these good practices, the FSMA's prior approval of advertisements can run more smoothly. After all, they will prevent any discussions on compliance with the advertising rules. Compliance also strengthens the position of the person responsible for the advertisement if investors get upset about an advertisement and dispute it.

The FSMA held a public consultation on the FAQs before approving and publishing them<sup>17</sup>. The FAQs will be amended where necessary based on changes in the legislation and regulations, further clarifications from the European competent authorities or experience in practice.

## COVID-19 risk factors clearly stated in credit institution prospectuses

Credit institutions have continued to finance their activities through the issuance of covered bonds and structured debt instruments. The FSMA has focused its attention on accurate presentation of the risk factors in the prospectuses it had to approve for this purpose.

<sup>16</sup> Article 22 of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC. See also Article 22 of the Law of 11 July 2018 on public offers of investment instruments and the admission to trading of investment instruments on regulated markets and Article 9, § 3 of the Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients.

<sup>17</sup> See Communication FSMA\_2021\_09 of 1 April 2021 on advertisements for investment instruments.

Two aspects were given particular attention: the increase of the issue limit for covered bonds and the potential consequences of the pandemic for the financial situation of credit institutions.

The legislation on covered bonds<sup>18</sup> provides for the National Bank of Belgium (NBB) to be able to temporarily allow an individual issuance to exceed the eight per cent limit in the case of exceptional circumstances on the financial markets. This limit of eight per cent represents the proportion between the covering assets for covered bonds and the balance sheet total. The covering assets constitute a special asset that is no longer available to ordinary creditors. During the year under review, the NBB increased the threshold from 8 to 12.5 per cent until the end of May 2021.

The FSMA found it important that ordinary creditors were also informed of this increased threshold. The threshold was, after all, initially provided for to protect ordinary creditors and to prevent their collateral from being too severely jeopardized. The fact that the threshold can only be raised by the NBB under exceptional circumstances indicates that increasing it is a significant development. At the FSMA's request, the credit institutions concerned prepared an additional section to their prospectus or included this information as part of the annual update to the prospectus.

Particular attention was also focused on adequately describing the potential consequences of the coronavirus crisis for the financial situation of credit institutions. The FSMA ensured that wherever possible, the risk factors associated with the impact of the crisis were disclosed using figures from the most recent financial statements and that the risk factors relating to the issuing institution, including the risk factors involving the impact of the crisis, were categorized on the basis of a qualitative scale.

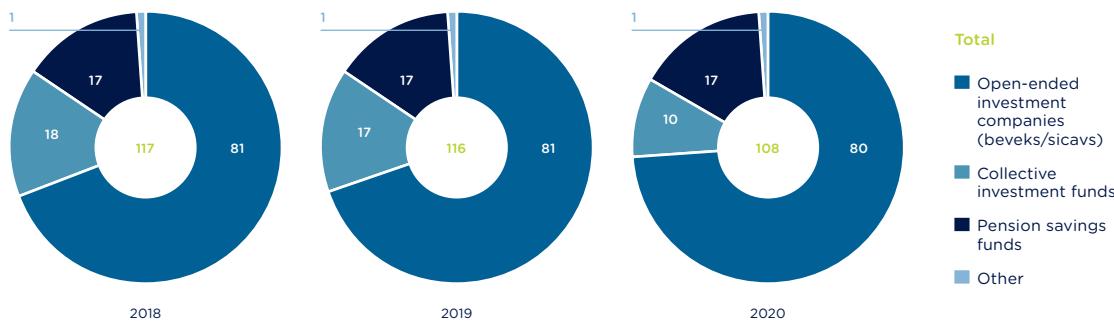
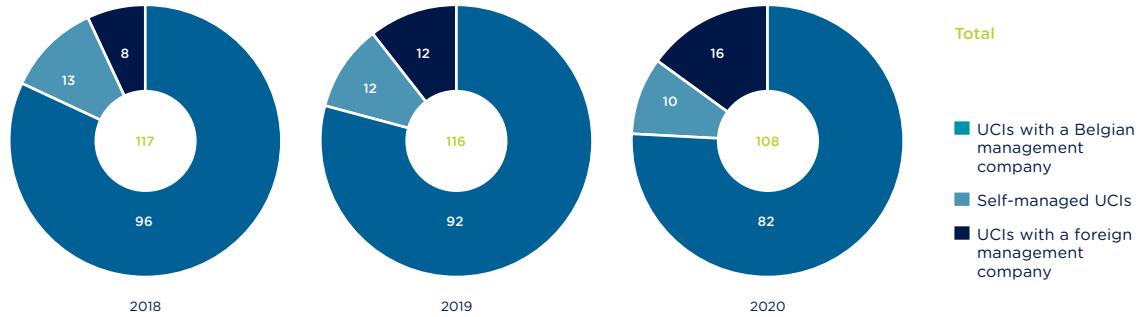
## Supervision of funds

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

Investment funds or UCIs are institutions that collect capital from investors and manage that money collectively following an established investment policy. The FSMA supervises public UCIs. They differ from institutional or private UCIs in that they entail a public offer. The majority of public UCIs target retail investors.

The FSMA supervises the quality of information that UCIs provide to investors when they make a public offer. This information entails, for example, the prospectus, key investor information, and advertising material. The FSMA's approval of the majority of this information is a prerequisite for the distribution of these UCIs. The organization and operation of Belgian public UCIs also fall under the FSMA's supervision.

<sup>18</sup> Article 10, § 1 of the Royal Decree of 11 October 2012 on the issuance of covered bonds by credit institutions governed by Belgian law.

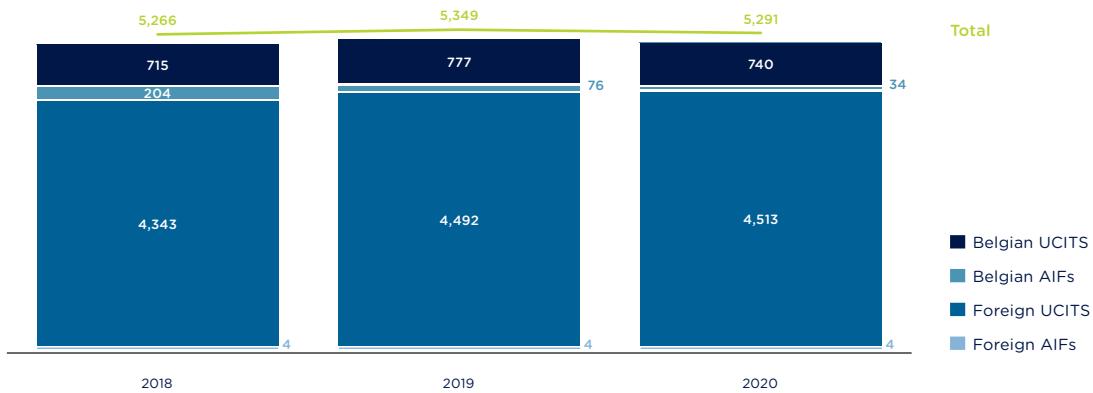
**Graph 3:** Evolution of the number of Belgian public undertakings for collective investment classified by legal form**Graph 4:** Evolution of the number of Belgian public undertakings for collective investment classified by type of management and nationality of the management company

Belgian public UCIs are almost all open-ended. That means that their capital increases or decreases as investors enter or exit. These UCIs are primarily in the form of collective investment funds and open-ended investment companies, which are also called beveks in Dutch and sicavs in French<sup>19</sup>.

Pension savings funds are a specific type of public collective investment fund. An individual or supplementary pension is accrued via a pension savings fund, which is known as the third pillar. Investments in pension savings funds enjoy certain tax advantages to encourage individual pension saving.

In 2020, several existing beveks/sicavs were liquidated and new ones were set up, meaning that the total number of beveks/sicavs remained relatively stable. There was a substantial fall in collective investment funds. As a result, the total number of UCIs went from 116 to 108.

<sup>19</sup> The statistics on UCIs may in the future be adjusted if the registration of a UCI or sub-fund of a UCI is withdrawn on a particular date, starting on the date of withdrawal if it happened on an earlier date, or if a UCI provides the FSMA with a correction to certain statistics at a later date.

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

### The number of UCIs with a Belgian management company decreases

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

Belgian UCIs can have either a Belgian or a foreign management company. The number of UCIs with a Belgian management company and the number of self-managed UCIs is falling (see Graph 4). Over the past few years there has been a clear upward trend in the number of UCIs with a foreign management company. In 2019 and 2020, eight UCIs with a foreign management company emerged. Five of these were newly set up.

### Belgian and foreign UCIs

#### The number of sub-funds of Belgian UCIs decreases

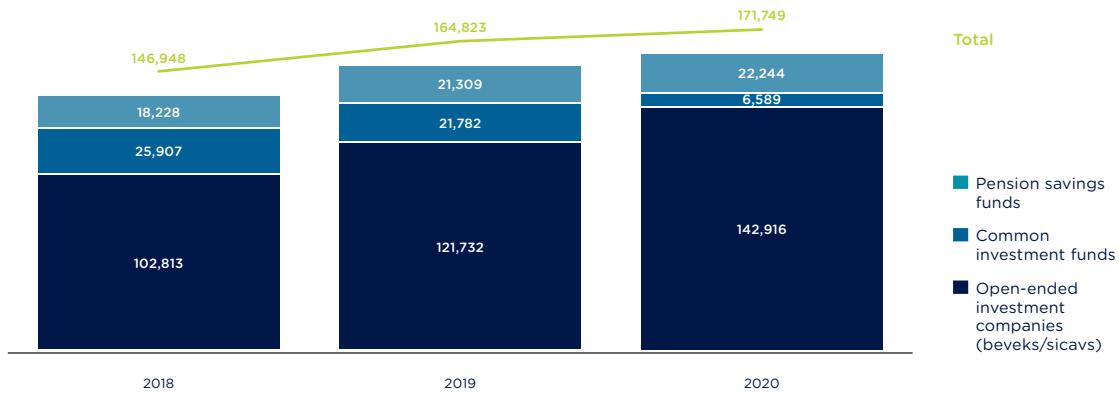
Most public UCIs are composed of several sub-funds. These are different funds within a UCI that have their own investment policy. The units in sub-funds are essentially “products” offered to investors<sup>20</sup>.

At the end of 2020, there were 5,291 sub-funds of public open-ended UCIs registered with the FSMA. Of these, 4,517 were sub-funds of foreign UCIs, and 774 were sub-funds of Belgian public UCIs<sup>21</sup> (see Graph 5).

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

<sup>21</sup> Some of these Belgian or foreign UCIs are not divided into sub-funds. For these UCIs, the UCI itself is considered a sub-fund for statistical purposes.

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



Almost all foreign sub-funds offered to the public in Belgium are sub-funds of UCIs that comply with the provisions of the UCITS Directive. They are also referred to as undertakings for collective investment in transferable securities (UCITS). These UCITS have a European passport allowing them to be traded freely within the EEA.

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

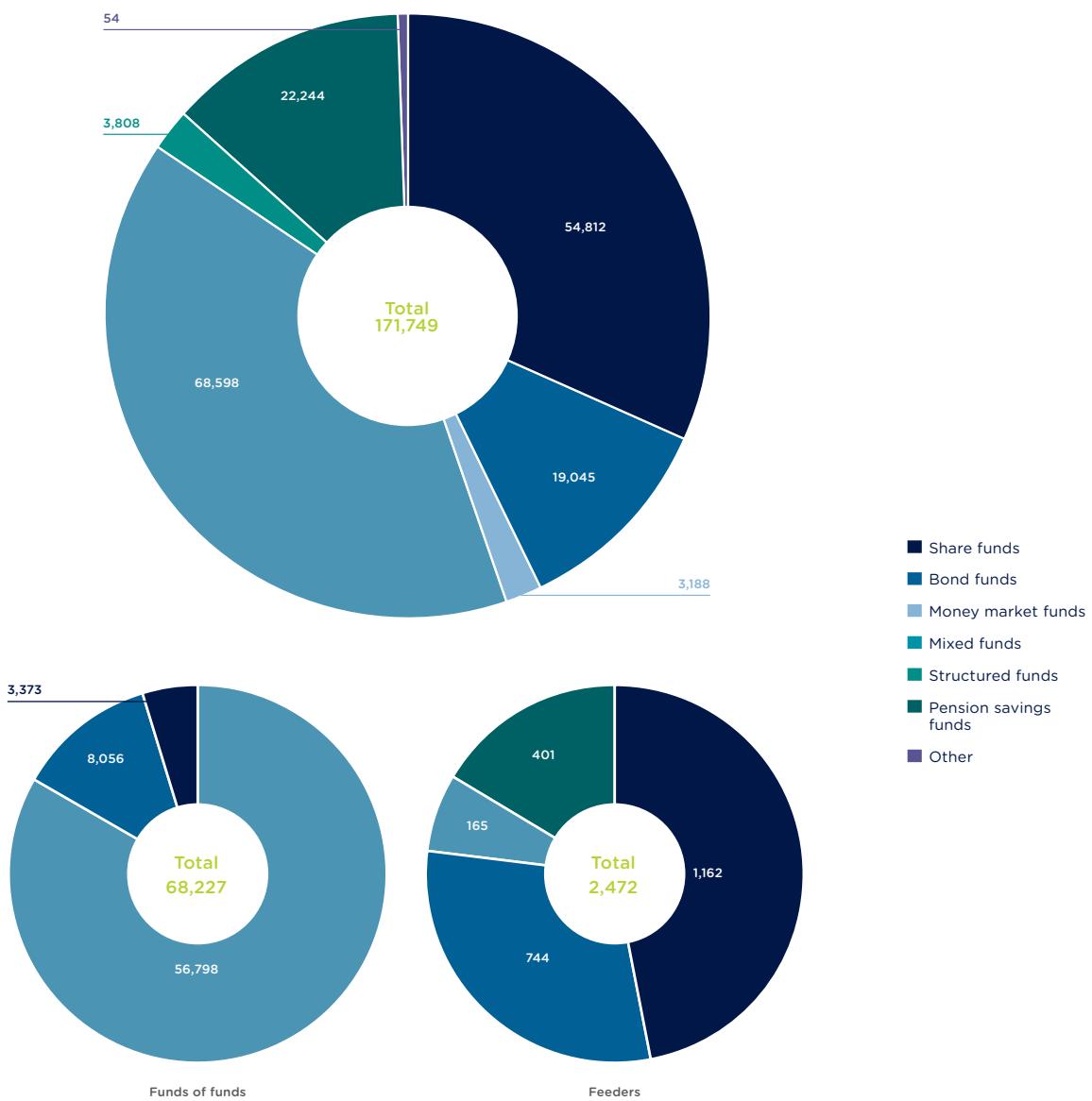
In 2020, the number of registered sub-funds of UCITS rose further to 4,513. The number of sub-funds of Belgian UCITS fell slightly to 740. The number of registered sub-funds of Belgian AIFs fell again, to 34 sub-funds. This evolution partly arises from the fact that over the past few years, various structured sub-funds came to maturity whilst in this period, considerably fewer sub-funds were sold.

## Belgian public UCIs

### Fund sector assets continue to rise

The total value of the net assets<sup>22</sup> of Belgian public open-ended UCIs grew in 2020 to 172 billion euros. This growth is attributable to the positive returns on the financial instruments that the UCIs had in portfolio, but also the net excess of inflows over outflows. At the end of 2019, there was a rise in total net assets compared to the previous year too (see Graph 6).

<sup>22</sup> The “total net assets” is the value of the UCI’s assets after deducting any debts.

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

### Mixed funds and share funds are still the largest categories

The investment policy determines the sort of assets in which the UCIs may invest and how they seek a return. The Belgian public fund sector is divided into seven different categories based on investment policy: share funds, bond funds, mixed funds, structured funds, money market funds, pension savings funds and other funds<sup>23</sup> (see Graph 7).

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

Mixed funds are by far the largest category in the Belgian public fund sector, representing 40 per cent of total net assets. Their relative importance has remained stable over the past few years. Mixed funds invest primarily in both shares and bonds. Pension savings funds are in reality mixed funds. Because of their specific investment policy and eligible assets, they are placed in a separate category. They constitute the third largest category, representing 13 per cent of the total net assets for the sector.

Share funds and bond funds are the second and fourth largest categories. They represent 32 per cent and 11 per cent respectively of total net assets for the sector. Together, the four largest categories represent 96 per cent of total net assets.

### Significance of money market funds and structured funds is limited

Money market funds represent 1.9 per cent of total net assets for the sector. Money market funds try to offer a return close to that of the money market and invest predominantly in money market instruments. Money market funds attract investors who attach importance to a relatively stable investment and to being able to exit any time.

Structured funds offer investors returns on pre-established dates, based on a formula relating to the evolution of certain underlying financial assets, indexes or reference portfolios. Funds that offer capital protection belong to this category. Both the number of structured funds and their net assets have fallen lately. This is because over this period, more structured funds matured than new funds were launched. At the end of 2020, structured funds still represented 2.2 per cent of total net assets for the sector.

### Funds of funds popular among mixed funds

UCIs or their sub-funds may opt to invest directly in certain assets. They can also do so indirectly by investing in other UCIs. UCIs or sub-funds of UCIs that opt to invest primarily in other UCIs are also known as “funds of funds”. At the end of 2020, Belgian funds of funds represented 40 per cent of total net assets for the sector and mainly belonged to the category of mixed funds (see Graph 7). Their relative importance has remained stable.

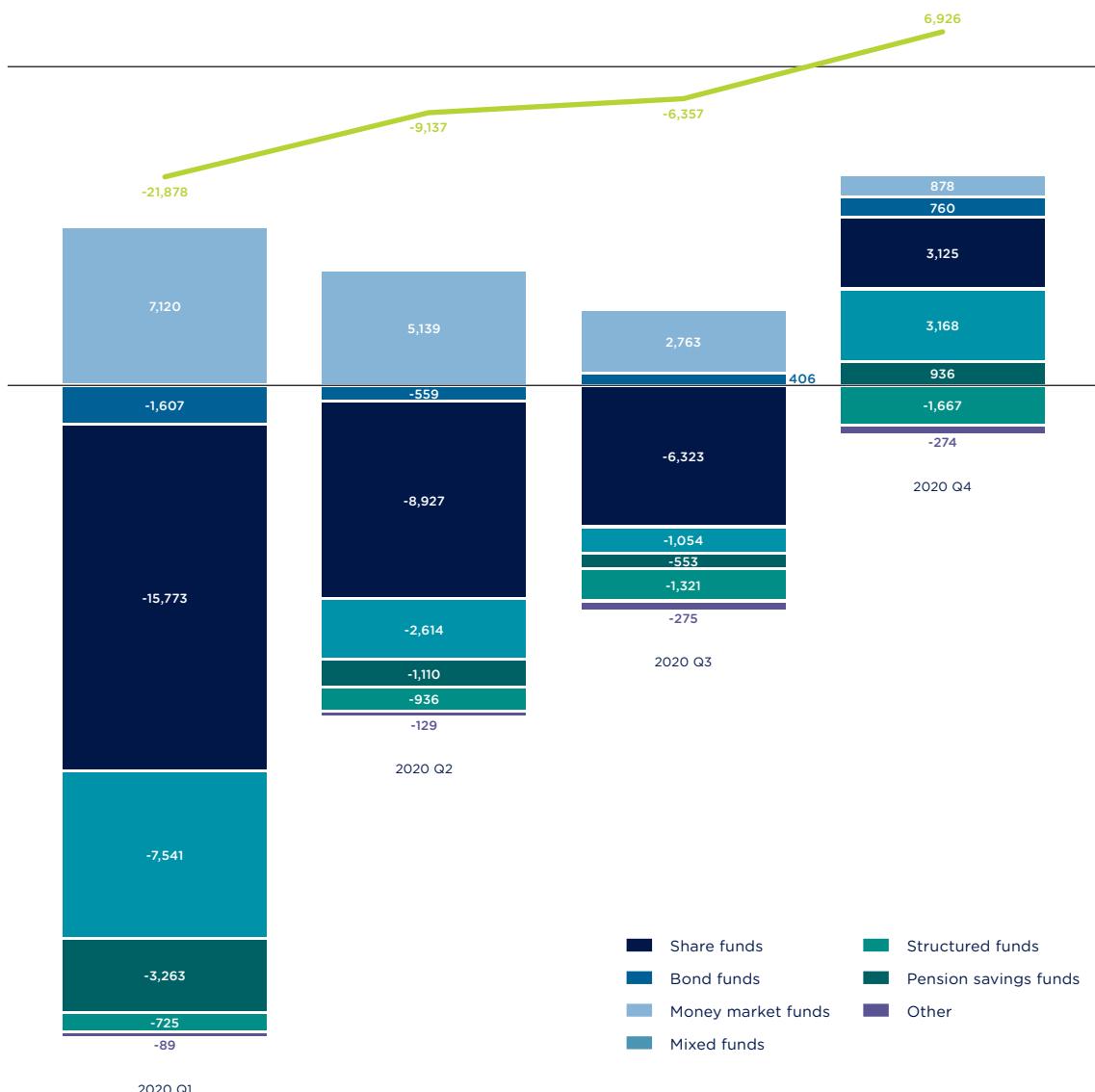
In addition, UCIs or their sub-funds may also set up what is called a master-feeder structure. Feeders are UCIs or sub-funds that invest at least 85 per cent of their assets in a master. A master is another UCI or a sub-fund thereof. In 2020, the net assets of the feeders grew to 2.5 billion euros (see Graph 7).

## ✳️ Impact and monitoring of the coronavirus crisis

### Initial fall in net assets followed by a steady recovery

In March 2020, the financial markets experienced a great deal of turbulence due to the coronavirus crisis. This market turbulence was paired with high volatility and a sharp decline on the financial markets. This led to huge drops in the valuation of most UCIs' investment portfolios, which translated into a negative impact on total net assets. At the end of March 2020, the total net assets of Belgian public open-ended UCIs had fallen by almost 22 billion euros, a decrease of more than 13 per cent compared to the end of 2019 (see Graph 8).

**Graph 8:** Evolution of the net assets of Belgian public open-ended undertakings for collective investment per investment policy as compared with the end of 2019 (in EUR million)



A considerable proportion of this fall, however, was quickly undone thanks to the recovery of the financial markets. At the end of the second quarter, the fall remained limited to nine billion euros, or six per cent as compared to the end of 2019. Thanks to the good performance of the financial markets, by mid-November net assets for the sector had once again reached 2019 year-end levels. Partly thanks to a considerable rise in net inflows, the net assets for the sector continued to grow, to – at the end of the fourth quarter – exceed 2019 levels by seven billion euros, representing a rise of four per cent (see Graph 8).

### Excess inflows for mixed funds and pension savings funds

As a consequence of the shock to the stock market in March 2020, at the end of the first quarter, the net assets of mixed funds and pension savings funds dipped 7.5 billion euros and three billion euros respectively as compared with the end of 2019, representing falls of -12 per cent and -15 per cent (see Graph 8). These falls were attributable to lower valuations of these funds' investment portfolios.

Pension savings funds saw no net outflows during this period of market turbulence. For mixed funds too, net outflows remained very limited during this period. From the end of March, net outflows once again gave way to net inflows.

Until the end of the year, both mixed funds and pension savings funds steadily recorded excess inflows. Towards the end of the fourth quarter, this, in combination with the overall positive returns of the financial instruments in their portfolios, culminated in a growth in net assets of three billion euros (or five per cent) for mixed funds and 0.9 billion euros (or four per cent) for pension savings funds (see Graph 8).

### Fluctuations in the value of share funds and bond funds

Share funds saw the greatest decline in net assets as a result of the market turbulence. At the end of the first quarter, the net assets from this category of funds declined by almost 16 billion euros as compared with the end of 2019 (see Graph 8). This 31-per-cent fall can be attributed to lower valuations of investment portfolios as well to as a considerable number of outflows.

Share fund investments usually entail a higher market risk, meaning that they are more vulnerable to fluctuations in value. Of all the categories, share funds were the hardest hit by the price decreases on the financial markets.

At the end of the first quarter, bond funds also saw a decline in net assets. This decline was due to the same factors as share funds. In comparison with share funds, outflows from bond funds were a bigger cause of the decline.

After the initial shock to the market, the net assets of share and bond funds steadily grew again, driven by the positive returns on the financial markets and by regular inflows. In the last quarter especially, share funds saw considerable inflows.

The strong price rises on the stock markets since the end of March led to the investment portfolios of share funds performing best out of all fund categories from the second to the fourth quarter.

Both price rises in the stock markets and excess inflows contributed to the growth in the net assets of share funds. Towards the end of the fourth quarter, their net assets grew by three billion euros, representing a rise of six per cent. The net assets of bond funds grew 0.8 billion euros over the same period, or four per cent (see Graph 8).

### Inflows and outflows for money market funds

In March 2020, investors signed up for a considerable amount in share certificates of money market funds. As a result, at the end of the first quarter, the net assets of money market funds more than tripled as compared to the end of 2019 (see Graph 8). In periods of increased volatility and declining financial markets, money market funds can attract certain investors who are looking for an investment with a value that remains relatively stable.

From the second to the fourth quarter, money market funds steadily saw more outflows than inflows, meaning that their net assets again gradually fell. In comparison with the end of 2019, net assets for money market funds were still 0.9 billion euros higher at the end of the fourth quarter, which represents a rise of 38 per cent (see Graph 8).

### Significance of structured funds in steady decline

The market turbulence had limited impact on structured funds. They saw no outflows during this period. Their net assets, however, had declined at the end of the first quarter by almost 0.7 billion euros, or 13 per cent, as compared with the end of 2019 (see Graph 8). This fall was both down to the overall negative returns from the financial instruments in their portfolios, and to repayments on maturity.

At the end of the fourth quarter, net assets for structured funds were down 1.7 billion euros compared to the end of 2019. This 30-per-cent decline can primarily be explained by the ongoing trend of more structured funds maturing than new funds being launched.

### Reinforced supervision during the coronavirus crisis

#### Strict monitoring of Belgian public UCIs

As soon as the impact of the COVID-19 pandemic on the markets began to be felt, the FSMA started to closely monitor Belgian public UCIs. The information collected enabled it to assess the consequences of the crisis and the liquidity risk for each UCI, as well as for the sector as a whole.

That monitoring was done through daily talks with the largest management companies and the sending of a certain amount of weekly quantitative information on Belgian public UCIs.

From March to July 2020, the FSMA talked daily with the six largest management companies, which manage approximately 90 per cent of the assets of Belgian public UCIs. The aim was to gather information on inflows and purchases of units of the largest Belgian public UCIs, potential liquidity problems of these UCIs, the composition and rotation of shares in the portfolios, the details regarding exposures to certain types of riskier assets, etc.

From August 2020, the talks with management companies took place every two weeks. From then on, the focus of the talks shifted to the liquidity risk of Belgian public UCIs and the perception by managers of the economic and financial situation and the consequences thereof for the portfolio management sector.

Since March 2020, the FSMA also gathers a number of details weekly on the evolution of assets and on the liquidity risk of Belgian public UCIs. Those details include the total net assets, the value of inflows and repayments, the use of liquidity instruments (swing pricing, anti-dilution levy or redemption gates), etc.

The information the FSMA collected in the daily talks, and the weekly information sent out, made it possible to continue the supervision of Belgian public UCIs during the crisis. Thanks to that information, the FSMA could also conduct specific risk analyses and accurately communicate on the risks associated with the sector.

Thanks to ongoing supervision, the causes of the evolution of net assets of each UCI could be determined on a week-by-week basis. The supervision also made it possible to evaluate the potential increase in liquidity risk and to observe the statistical distribution of changes in net assets and the inflows and subscriptions to units of UCIs, as well as to assess rapidly the development of trends within the sector.

By putting the information gathered alongside other data, the FSMA was also able to analyse the specific risks associated with the evolution of portfolio composition and compare purchases during the crisis with those during previous stress periods. It also analysed the evolution of net assets compared to that of other EU Member States, as well as the consequences of the COVID-19 crisis for certain categories of UCIs or certain managers.

Finally, the FSMA was able, thanks to the information gathered, to communicate accurately on risks associated with Belgian public UCIs to management companies, statutory auditors, representatives of the portfolio management sector, international organizations and national authorities.

During the coronavirus crisis, monitoring was organized of Belgian public self-managed beveks/sicavs. From 27 March 2020, weekly reporting was introduced for the senior managers of these beveks/sicavs. After October 2020, this reporting became monthly. Through this route, the FSMA examined whether the continuity of these beveks/sicavs could be assured.

### Extra focus on liquidity

Since 2018, Belgian legislation includes a rule for the use of mechanisms such as swing pricing, anti-dilution levy and redemption gates by public open-ended UCIs. These liquidity management tools (LMTs) can be very useful in stressed market conditions and potential liquidity problems on the financial markets.

At the start of the pandemic, it turned out that few UCIs had already put steps in place to be able to make effective use of these tools. For this reason, in April 2020, rules governing the use of LMTs were temporarily relaxed<sup>24</sup>. This meant that UCIs could adopt these tools without amending their legal documentation. The regulatory relaxation gave UCIs the opportunity to use LMTs quickly and with the necessary legal certainty. After the temporary relaxation of the rules ended on 31 July 2020, the normal rules once again applied.

The use of LMTs helps address the first-mover advantage, whereby investors may not have to bear the full costs that arise from the redemption of their units; a part of those costs is borne by the investors who remain in the UCI. Apart from protecting investors, the temporary use of LMTs also reduces the risk of forced sales of less liquid assets in periods of stress. This protects the financial system against the negative systemic consequences of fire sales.

The FSMA has strongly encouraged facilitating the use of LMTs, both under the temporary arrangement and afterwards, under the standard arrangement. It addressed a letter to all management companies of Belgian public UCIs and to all Belgian self-managed beveks/sicavs. Since then, in 95 per cent of all sub-funds for which the FSMA recommended the adoption of such tools, at least one liquidity management tool was adopted. This represents 98 per cent of the total net assets for this group of sub-funds.

At European level, there was extra focus on liquidity. As part of ESMA's Common Supervisory Action (CSA), the FSMA analysed how Belgian public UCITS were managing liquidity risk. This analysis was set up within an assessment framework laid down in conjunction with the other national competent authorities and ESMA and was applied in every EU Member State.

During the first phase of this analysis, quantitative information was gathered from all managers of Belgian public UCITS to gain an overall picture of the risks. During the second phase, the FSMA conducted more in-depth analyses among a sample of managers. Throughout 2020, the various national authorities shared their knowledge and experience via a forum organized by ESMA. A number of points to be improved came to light from this, which will now be followed up more closely.

<sup>24</sup> See Royal Decree of 22 April 2020 on special measures to protect public open-ended undertakings for collective investment from the consequences of the COVID-19 epidemic.

### Action against unauthorized investments

Over the course of 2020, the FSMA established that a UCI had invested in securities that were not authorized under Belgian legislation. More specifically, there were no reliable valuations available for these securities<sup>25</sup> and there was no regular and accurate reporting on the securities to the UCI<sup>26</sup>. The FSMA required the UCI as quickly as possible to bring its portfolio into line with the UCI legislation.

The UCI then entered into an agreement with its portfolio manager to sell these securities. The agreement also incorporated compensation to be paid to the UCI for losses it had incurred as a result of

these unauthorized investments. In the meantime, this agreement has been fulfilled and these unauthorized securities sold. The UCI paid compensation to the unit-holders who exited at a net asset value that was too low as a result of falls in the value of the unauthorized securities.

In the run-up to the AGM of the same Belgian UCI, the UCI's distributor and portfolio manager contacted a number of unit-holders individually. The distributor asked the unit-holders whether it could represent them with a special proxy at the general meeting. The information it communicated was misleading. After several interventions by the FSMA, the distributor sent a rectification to the unit-holders. The distributor also decided that, because of the conflicts of interest, it was not appropriate for it to represent the unit-holders of the UCI.

- 25 This constitutes an infringement of Article 53, §1, first paragraph, 3° of the UCITS Royal Decree.  
26 This constitutes an infringement of Article 53, §1, first paragraph, 4°, b) of the UCITS Royal Decree.

## Supervision of savings accounts

### Application of the prohibition of conditional offers of regulated savings accounts

With the reform of regulated savings accounts in 2013, the legislation and regulations affirmed the principle that conditional offers of regulated savings accounts were prohibited. When distributing regulated savings accounts, no conditions may thus be linked to the base rate or the interest rate of the loyalty premium. Nevertheless, the legislation does provide for a limited number of specific conditions that may be laid down, such as a minimum or maximum savings deposit, online management of the savings deposit or the age of the saver.

The aim of the legislation was to make savings accounts more transparent so that it may be easier to compare them with each other. With this prohibition, the legislation for example acts against offers reserved for new customers to whom the credit institution offers a more advantageous interest rate than to its existing customers. Another example is the advantageous interest rates that apply only for bringing in new capital, in other words for capital injections by other credit institutions or financial intermediaries.

In 2020, one credit institution appeared to be putting one and the same “condition” on opening regulated savings accounts and on other banking products and services: customers had to acquire the status of “regular customer” by paying a monthly contribution. The question arose as to whether this condition of becoming a “regular customer” through the payment of a monthly amount was in line with the principle of prohibiting the conditional offer of regulated savings accounts.

In the reform of regulated savings accounts in 2013, the decision was made to focus on the remuneration conditions associated with the offer of savings accounts, rather than more generally on conditional offers of savings accounts as such. The regulation aims for more transparency and a better ability to compare interest rates and loyalty premiums offered by the market. That aim should be kept in mind when applying the principle that prohibits conditional offers of regulated savings accounts.

In this case, the condition of becoming a “regular customer” by paying a monthly contribution is not a condition that relates specifically to the remuneration offered for the savings account. However, it is recommended that no indirect limitations be set on opening a regulated savings account, which comes to the same thing as setting different remuneration conditions. A change in the regulations to that effect could be necessary.

## Thorough investigation of unregulated savings products

Despite the low-interest-rate environment, credit institutions in Belgium continue to offer their customers regulated savings accounts<sup>27</sup>, often with a minimum remuneration: 0.01 per cent basic rate and 0.10 per cent loyalty premium. That minimum remuneration has not affected the success of these savings accounts among savers, who, at the end of 2020, had 292 billion euros saved in them.

However, in 2020 a credit institution for the first time stopped offering regulated savings accounts. From that time onward, it has distributed only unregulated savings accounts. Those accounts have no fixed term and offer zero interest or even negative interest over and above a certain amount. By contrast with regulated savings accounts, the conditions for how unregulated savings accounts work and are remunerated are laid down contractually. Consequently:

1. the remuneration does not have to consist of a base rate and a loyalty premium;
2. applying negative interest is not expressly prohibited by the regulations;
3. for natural persons, tax is withheld from the gross interest income.

For advertisements for the sale of unregulated savings accounts, there are other rules. So advertising materials for unregulated savings products do not need to be approved in advance pursuant to the law. Once the advertisement is published, however, the FSMA can check it.

<sup>27</sup> Savings accounts that meet the conditions of Article 2 of the Royal Decree implementing the Income Tax Code 1992 (Royal Decree/Income Tax Code 92).

In 2020, the FSMA identified 26 credit institutions<sup>28</sup> that offer unregulated savings products to retail investors in Belgium. All 26 credit institutions distribute term deposit accounts, eight of them distribute certificates of deposit as well, and eight others also offer unregulated savings accounts.

According to the NBB's figures, in 2020, more than 70 billion euros were invested in unregulated savings products with credit institutions in Belgium<sup>29</sup>. By way of comparison: in 2020, in those same institutions there were 292 billion euros on regulated savings accounts. For the past ten years, the amounts on deposit on regulated savings accounts rose by more than 30 per cent, whilst the amounts in unregulated savings products fell by more than 50 per cent.

In 2020, the FSMA looked into what was on offer from 18 of the 26 credit institutions that provide unregulated savings products in Belgium. It examined five offers of unregulated savings accounts, six offers of certificates of deposit and 18 offers of term deposit accounts. To this end, it analysed 39 websites and 25 other advertising materials (brochures, emails, articles etc.).

That analysis brought to light that the credit institutions, with a couple of exceptions, did not of their own accord present their advertisements for unregulated savings accounts to the FSMA after publication. However, there were institutions that did submit their advertisements for unregulated savings products to the FSMA to be checked prior to publication, either for a new unregulated savings product they were putting on the market or along with the submission of advertisements for regulated savings accounts.

The non-conformities found by the FSMA in its examination constitute breaches of the provisions of the Royal Decree on Advertisements. Mostly, it was a case of insufficient information, or information that was not phrased in a way that was easy to understand. These findings are in line with the observations during the oversight of advertisements for other financial products, such as insurance products, which are verified ex post.

## Supervision of insurance products

The FSMA sees to it that insurance products subject to Belgian law are in compliance with the law. This pertains to the product conditions as well as to the pre-contractual and contractual provision of information on these products. In addition, the FSMA strives to contribute to the protection of insureds by further clarifying certain themes or by warning against certain risks.

<sup>28</sup> Including a number of bank brands without a separate legal personality.

<sup>29</sup> Credit institutions governed by Belgian law and branches established in Belgium of credit institutions governed by foreign law.

The supervision of insurance products is risk-based and comprises two pillars. The first pillar is audits on a particular theme. The second pillar is reactive supervision triggered by a particular event or by a problem that has been detected. In 2020, specific audits took place in the context of the coronavirus crisis.

## Investigation into cancellation insurance in the context of the coronavirus crisis

Fairly early on in the COVID-19 pandemic, it seemed that some insurers tried to exclude claims relating to COVID-19 from being covered by cancellation insurance. For this reason, the FSMA launched an investigation into the information that insurance companies provided on the impact of COVID-19 on cancellation insurance. The FSMA also looked into whether there was any information published that breached the conditions of the policies and that would make the insureds wrongly believe that claims linked to COVID-19 would always be excluded.

This investigation quickly brought to light that several insurers' websites included incorrect or misleading statements as to the consequences of the COVID-19 pandemic for their insurance products. This mainly concerned the description of cover that cancellation insurance offers and the exceptions in the context of the COVID-19 pandemic.

There were also incorrect or misleading statements on the websites of intermediaries. Some intermediaries stated that when the government imposes a general travel ban, a clause mandatory by law applies to all cancellation insurance. That clause would determine that a cancellation pursuant to a government decision is not covered by the insurance. However, there are no minimum conditions as regards cancellation insurance that insurers have to comply with, and therefore no clauses mandatory by law.

The FSMA instructed all the insurers and insurance intermediaries concerned to correct the information on their website.

As part of the same investigation, the FSMA observed that several insurers had changed their terms and conditions, or wanted to do so. More specifically, cancelling a trip due to an epidemic or pandemic would no longer be covered. Such an amendment to the terms and conditions is in principle only allowed for new policies. Insurers that wished to change the terms and conditions of current insurance policies were informed by the FSMA that to change an existing policy, the policyholder's consent is in principle required.

One company had changed the terms and conditions of the existing policies without obtaining a valid agreement from the policyholders. This company informed all policyholders that their existing policy would continue to be in effect, unchanged, given that the existing policy had not been duly amended or cancelled.

The FSMA also received several questions and complaints from consumers confronted with a refusal of cover under cancellation insurance. Most policies provide an exhaustive list of the cases covered. If cancellation due to a travel ban, epidemic or pandemic or because of fear of the virus is not listed in the policy's terms and conditions of cover, the insurer cannot be obliged to provide cover. Even cancellation by the tour operator is mostly not covered in the cancellation

insurance because this insurance offers cover for incidents that occur to insureds or their family rather than for action by the tour operator.

Several insurers refused to refund premiums for cancellation insurance that became redundant because the tour operator had cancelled the trip that was covered by the insurance. The cover for such cancellation insurance usually runs from the time the travel contract is entered into until departure and also during the trip if there is trip interruption cover. If the tour operator cancels the trip during this period, the insurer must in principle refund the unused part of the premiums for the period in which cover for the trip's cancellation became redundant. In certain cases, the insurers' refusal to refund premiums was unjustified.

## Thematic audits

### Clear information needed on certain hospitalization insurance policies

Some insurers offer hospitalization and health insurance in which they reimburse differently depending on the hospital where the insured is admitted. The differences can be huge, depending on the hospital chosen. Transparent information is therefore essential.

The FSMA conducted a sector-wide study of whether the information provided by insurers on this arrangement was sufficiently clear and easy to understand for insureds.

Insurers maintain lists of hospitals for which they offer more substantial reimbursements. Some of these lists may be updated. From the examination of the information that insurers provided, it also came to light that this is often not stated, despite it having an impact on the scale of cover offered and therefore clearly needing to be communicated to the policyholders. Other insurers also fail to state how often they update the list of hospitals, and do not inform insureds that they have been updated. Finally, insurers did not always provide equally clear information on the criteria they use to put a hospital on the list.

The insurers included in this investigation were asked to improve certain points in their advertisements and contractual documentation to make them more transparent. Most insurers offering such products now provide more information that is also clearer and easier to understand.

## Insurer must prove grounds for exclusion

In September 2018, the FSMA published an opinion on the burden of proof in insurance policies.

This opinion came about because insurance policies sometimes contain clauses that force insureds/policyholders/beneficiaries to prove, after a claim, that a certain event that would lead to refusal of cover did not occur. These persons must therefore in principle provide proof that there is no reason for which they would have no right to the insurer's payout.

If an insurer wishes to invoke grounds for exclusion and therefore refuse cover, it is in fact the insurer that must prove the existence of grounds for exclusion. Terms and conditions may not contain clauses that lay the burden of proof of non-application of grounds for exclusion on the insureds/policyholders/beneficiaries.

In 2020, the FSMA conducted a supervisory action to determine whether insurers took this position into account and removed the problematic clauses from their terms and conditions. This action involved checking the general terms and conditions of a sample of Belgian insurers. Each insurer's general terms and conditions were checked by the FSMA for both Class 21 and Class 23 products.

The examination focused on the clauses that describe cover and exceptions to cover belonging to Class 21 and Class 23 such as death, invalidity, and illness. The FSMA investigated whether these clauses contained provisions that unlawfully reversed the burden of proof to the disadvantage of the consumer.

The majority of the insurers surveyed amended their general terms and conditions after the FSMA's intervention. The FSMA will continue to devote attention to this problem in its supervision.

## Follow-up examination of funeral service insurance

In 2018, the FSMA conducted an examination of beneficiary clauses included in the terms and conditions of funeral service insurance. At the time, it came to light that in certain cases, the terms and conditions provided that in the event of the death of the insured, payment would be made to an undertaker. The insureds could therefore not themselves choose to whom the payment would be made.

However, insureds have the absolute right to specify one or more beneficiaries of the insurance<sup>30</sup>. The insurer may therefore not oblige the insured to specify a particular beneficiary. Clauses that oblige the insured to, for example, accept the undertaker as a beneficiary, are therefore in breach of the legislation.

The FSMA asked the insurers concerned to adjust the conditions of their funeral service insurance and also brought the problem to the attention of Assuralia, the industry federation.

<sup>30</sup> In accordance with Article 169, § 1 of the Law of 4 April 2014 on insurance.

In 2020, the FSMA conducted a follow-up examination among a number of insurers that were not included in the 2018 study. There was also a follow-up check among insurers from the 2018 study. It was established that all the insurers except one had documents that adhered to the law. The one insurer that was still in breach was asked to amend its terms and conditions and its marketing material.

## Problem-based supervision

### Changes to legal protection insurance

The Law of 22 April 2019 on making legal protection insurance more accessible (the “Geens” Law), stipulates that a tax reduction may be obtained for premiums paid for legal protection insurance that meet a number of conditions as regards risks covered, minimum cover, guarantees and waiting periods.

Certain insurers have made use of the entry into force of this law to propose a change in policy to their existing customers to meet the conditions of the Geens law. The manner in which this occurred seemed in certain cases not to meet the applicable rules.

One insurer had amended the conditions of legal protection insurance and almost immediately applied these amendments to the current policies, irrespective of the expiry date. The considerable increases to premiums that were paired with these amendments, applied to the following annual expiry date of the contract. The insureds did not get the opportunity to keep their current agreement and the insurer had also not terminated the existing agreements by the expiry date. The communication to the insureds stated only that the existing contracts were automatically converted to the new product unless the insureds expressly objected. In the latter case, they could choose another product or terminate their policy themselves.

Presenting the insureds with a fait accompli and telling them that they themselves had to terminate their policy if they did not agree with the amendments made is contrary to the legislation and regulations. In this process, breaches of the Royal Decree on Advertisements were also identified<sup>31</sup>.

After the FSMA had called upon the insurer to rectify the situation, the insurer did give the policyholders who might opt to keep their existing policy the right to do so, although with a considerable increase to the policyholders’ premiums. The premiums almost tripled.

Because of this increase in premiums, it made no sense for these policyholders to refuse the conversion to the new product. In the new product, they got broader cover for an almost identical premium as in the old product, and the premium for the new product was partially tax deductible, whilst this tax deduction did not apply to the old product. This raised the question as to the setting of the premium for the new product. The premiums for the old and new product had, after all, become almost identical, but in the new product there was more cover than in the old product.

<sup>31</sup> Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients.

When asked, the insurer confirmed that there was a high likelihood that the premium for the new product would have to be increased in the near future because it was possible that the premium was set too low. This information, which was essential for the insureds, was, however, not communicated to them.

The insurer should not only have given the insureds concerned additional information on the legal possibility for them to opt for keeping their existing product without a tax advantage. It also should have given them more information on the substantial increase in premiums in that existing contract and on the fact that the insureds who opted for the new product ran the risk that the current price would be increased in the near future if it turned out that the premium was not sufficient to cover the costs of claims for the portfolio as a whole.

The FSMA's powers in this case rested primarily on the information provided by the insurer to the insureds. In this respect, the FSMA ensured that the policyholders had the required information to be able to make a fully informed decision as to whether to agree to the changes proposed by the insurer.

### Duration of a non-life insurance policy is limited

The duration of a non-life insurance policy may not be longer than one year. Unless one of the parties opposes this at least three months prior to the expiry date of the policy, it is tacitly renewed for consecutive periods of one year<sup>32</sup>. Several insurers do not correctly comply with these rules.

Some insurers specified that the insurance policy ends ipso jure after a term stated in the policy. Nevertheless, this term was more than one year. An automatic termination after a previously established term that exceeds the maximum term of one year<sup>33</sup>, however, means that the insurer is not complying with the methods of termination<sup>34</sup> and is therefore in breach of the legislation.

Other insurers also asked insureds to pay a premium in line with the premium for several years. This means that the maximum duration of one year laid down by the law is in fact not complied with.

These provisions of the law are mandatory, meaning that it is not possible to contractually derogate from them. The non-life insurance policies concerned consequently had to be amended to be brought in line with the legislation.

<sup>32</sup> There are several exceptions to these rules.

<sup>33</sup> As laid down in Article 85 of the Law of 4 April 2014.

<sup>34</sup> As laid down in Article 84 of the Law of 4 April 2014.

# Monitoring the use of artificial intelligence

Companies in the financial sector make increasing use of artificial intelligence techniques (AI). This can entail advantages, both for the companies and for investors, but can also create or amplify certain risks.

The use of these techniques also attracts the attention of supervisory authorities. To support its members with assessing risks associated with development, testing and use of AI and machine learning (ML), IOSCO published a consultation report<sup>35</sup>. This consultation report contains guidelines for setting up an appropriate framework for the supervision of asset managers and others who make use of AI and ML.

In 2020, the FSMA set up a team to monitor the use of AI in Belgian management companies. It sent a questionnaire to all Belgian asset managers under its supervision to gain a better insight into the use of this technology in portfolio management.

The questionnaire examined the motives for the use of AI and the barriers for asset managers who did not yet use AI. It also collected information on the checks and verifications used to gather high-quality data, the extent of human intervention and responsibility, as well as the implementation and maintenance of software for AI.

The questionnaire revealed that the majority of Belgian management companies barely used AI at all and had no interest in implementing the technology in the future. The main reasons for this were: not possessing high-quality data, not having a business case, no demand from clients and the excessive costs of implementing the technology.

<sup>35</sup> *The use of artificial intelligence and machine learning by market intermediaries and asset managers* (CRO2/2020), 25 June 2020, IOSCO.

For the management companies who did use the technology or who expected to do so in the future, the FSMA decided to thoroughly analyse the use of AI directly with these companies with a view to protecting consumers, controlling risks and complying with IOSCO standards.

The FSMA also applied these standards in a case in which AI techniques would be used for managing a sub-fund of a UCI yet to be set up. The FSMA tried to gain good insight into the AI techniques used, their role in the investment process as a whole and the framework within which the techniques are applied. It paid particular attention in this respect to the role of human supervision, including the possibilities for human intervention, the use of techniques to better explain the AI model outcomes (explainability) and whether the services of external parties would be called on.

The FSMA sees to it that the prospectus and the key investor information clearly describe the role of AI. If other techniques and processes or human intervention play an important role in the investment process, the role of AI has to be interpreted in this light. If AI has an impact on the composition of the portfolio or the risks, this impact must be explained in a way that is easy to understand.

The FSMA sees to it that in the advertisement the emphasis is not placed on the use of AI techniques if this is a characteristic that has little or no relevance to a proper understanding of the nature and risks of the UCI.



# RULES OF CONDUCT PROTECT CONSUMERS

Companies under the FSMA's supervision must treat consumers honestly, fairly and professionally. They should have an appropriate organization and follow certain procedures to guarantee that consumers are treated with due care and attention when providing financial services. One of the things the FSMA does is to conduct inspections to check that the companies under its supervision comply with these conduct of business rules.

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# Compliance with rules of conduct

Rules of conduct protect consumers by preventing them from buying financial products that do not fit their risk profile or investment objectives and by preventing financial companies' interests prevailing over those of consumers.

Rules of conduct do not exist only to protect consumers. Certain rules of conduct also apply to companies' professional clients.

There are different rules of conduct depending on the type of activity. For banks and investment firms, there are the conduct of business rules under the Markets in Financial Instruments Directive (MiFID). For the insurance sector, there are the rules of conduct under the Insurance Distribution Directive (IDD). Other rules of conduct apply for crowdfunding, financial planning and lending to small and medium-sized enterprises.

For every application for authorization or additional authorization, the FSMA checks whether companies have an appropriate organization and clear policies to guarantee compliance with the rules of conduct.

The FSMA also conducts inspections to check whether companies comply with the rules of conduct that apply to them. In these inspections, it also checks whether the companies are appropriately organized to comply with these rules. If the FSMA identifies breaches of the rules of conduct, it addresses them to make sure that shortcomings in the companies' organization are eradicated.

Despite the COVID pandemic, the FSMA continued to carefully supervise whether companies complied with the MiFID and IDD rules of conduct in 2020.

It examined the applications for authorization or extensions thereto, and for authorizations for partnerships between regulated undertakings, whether they could have an impact on compliance with the rules of conduct.

The FSMA also worked towards greater convergence in the interpretation of the rules of conduct. It held talks at European and Belgian level on the interpretation of some provisions of MiFID II and the IDD. It took part in common supervisory actions of the European agency ESMA<sup>36</sup>. It published a communication on the statement on suitability that companies have to send to retail clients who receive investment advice.

In 2020, the FSMA also supervised compliance with the law on financing SMEs. It ascertained whether the amendments to the law at the end of 2017 were properly complied with. It provided its evaluation of the law to the Minister for Middle Classes, the Self-Employed and SMEs and to the FPS Economy.

<sup>36</sup> Common Supervisory Actions aim to achieve more convergence in financial supervision in the European Union.

## Rules of conduct in the banking sector: applying certain MiFID rules remains complicated in practice

In 2020, the FSMA completed an inspection as part of a common action at ESMA's initiative. The aim was to check whether companies that execute orders or that receive orders and transfer them for execution to a third party complied with their obligations as regards checking the appropriateness of transactions in complex financial instruments. The FSMA set up its sample in such a way that it encompassed 62 per cent of the segment of the Belgian market concerned. In 2020, it gave detailed feedback to the supervised companies on the actions that they had to take to comply with their obligations. The FSMA closely monitored the fulfilment of these measures.

In 2020, the FSMA also started a new common action on the suitability assessment for investment advice. The FSMA looked into whether the companies gathered the right information from their clients on their knowledge and experience, financial situation and investment objectives. It also looked into whether the companies had an appropriate organization, procedures and checks in place to be able to give suitable advice to their clients. There was an additional focus on a number of new aspects under MiFID II: the statement on suitability, the costs and charges analysis for arbitrage and the taking into account of cost and complexity in the evaluation of comparable financial instruments. With its sample, the FSMA covered 64 per cent of companies in the Belgian market segment concerned.

Based on this common action, the FSMA again identified a number of good practices as well as points for improvement, which it explained in a sectoral report. The FSMA also worked towards greater clarification and interpretation of the existing MiFID II rules.

In the second half of 2020, the FSMA conducted a broad market study on mandatory reporting on order execution<sup>37</sup>. In this report, the companies had to communicate, among other things, where they execute orders, and draw up a top five on this subject. They also have to explain how they guarantee the quality of the execution. The FSMA looked into whether the companies had published this mandatory report on their website. For a selection of companies, it checked their policy and procedures for order fulfilment. In 2021, it published a sectoral report.

<sup>37</sup> This mandatory reporting was based on the rules of Regulatory Technical Standard 28.

On the whole, the findings relating to the rules of conduct remain nuanced: more than ten years after the adoption of the MiFID conduct of business rules, the banking sector has made great progress. The sector has become aware of the importance and relevance of rules of conduct. However, certain problems continue to occur in some companies. They relate to the suitability and appropriateness of the transactions in light of their clients' profiles, as well as to other rules of conduct such as record-keeping by the companies or the organization of control functions.

Moreover, the common action in 2020 uncovered that certain companies still had problems complying with certain provisions three years after the entry into force of MiFID II. Those include the mandatory costs and charges analysis for arbitrage, the statement on suitability and taking into account the cost and complexity in the analysis of comparable financial instruments.

## Rules of conduct in the insurance sector: launch of supervisory action after the transposition of the IDD

In the insurance sector, the FSMA continued its inspections in 2020 on compliance with the legislation ensuing from the transposition of the Insurance Distribution Directive into Belgian law.

Due diligence is a key aspect of the rules of conduct in the insurance sector, as it is in the banking sector. In 2020, the FSMA continued the inspections it had already started on that theme. It verified whether the suitability test was correctly conducted when offering advice on savings or investment insurance policies.

It also conducted targeted actions among companies that offer their clients non-life insurance products without previously checking whether they are in line with their wishes and needs.

With respect to the distribution of non-life insurance, the FSMA found that certain companies do formally conduct that test, whilst other companies do not at all.

In 2020, it also provided the NBB with advice on several applications for authorization or extensions of authorization as an insurance company. In such applications, the FSMA has to rule on the appropriate nature of the organization of the company from the point-of-view of the rules of conduct.

## Accredited compliance officers fulfil a key role in the application of the rules of conduct

Compliance officers at regulated undertakings fulfil a key role. After all, they enable certain guarantees to be offered with respect to compliance with rules of conduct. In that way, they contribute to consumer protection.

Compliance officers are the FSMA's preferential contacts in regulated undertakings. Usually, they are the contact during inspections. The FSMA is fully aware of their crucial role. As a result, based on a risk-based approach, it organizes meetings with compliance officers that exercise their role in a company. During these meetings, the compliance officers can take stock of their experience.

The FSMA accredits compliance officers. In 2020, 20 candidates were accredited. The FSMA also collaborates with the follow-up of compliance officer examinations. It ensures that the exam questions are regularly updated. The FSMA also, on the NBB's advice, accredits the training centres that take care of continuing education for compliance officers.



### Coronavirus crisis: the FSMA sees to the protection of the investors' interests

The coronavirus crisis has caused shifts in society and the economy that can put a lot of pressure on investors' financial situation. Their investment objectives and appetite for risk can therefore change considerably. The number of vulnerable clients could potentially rise steeply as a result of the crisis. This means that there is an even greater need to protect those clients.

In light of this, the FSMA asked companies in the banking, investment and insurance sector to update their client information when they give ongoing portfolio management or investment advice services or distribute insurance with an investment component. In that way, the FSMA wished to guarantee that the companies had updated information to be able to offer their clients appropriate services.

The coronavirus crisis also obliged the financial sector to offer certain services remotely. As a result, the FSMA focused attention on a number of principles from the MiFID and IDD rules of conduct and from Book VI of the Economic Law Code. It pointed out in this respect, among other things, that in view of the health crisis, and in the context of non-face-to-face sales, it is essential to:

- provide clear and complete information to clients when they purchase financial products over the telephone;
- protect clients who do not have access to the internet, for example certain clients because of their age;
- safeguard the company's cybersecurity and pay attention to any potential internet fraud;
- protect clients' interests in times of turmoil on the financial markets.

The FSMA also pointed out the fact that certain rules of conduct may require special interpretation when financial undertakings offer remote services. Specific conflicts of interest may occur in this respect. For example, the financial undertaking may be able to lead clients to products that are more advantageous to it by giving them a more prominent position in a digital process. The financial undertaking could also make it easy for clients to buy certain products through a customer-friendly remote process and make access to that process more difficult when they wish to sell the product again. The FSMA has clarified certain expectations in that respect in a communication on its website<sup>38</sup>.

## FOCUS 2021

Achieving greater convergence in the interpretation of the rules of conduct at a Belgian and European level is one of the FSMA's priorities for 2021 too. This is achieved through its contributions to European working groups and through the publication of new communications and sectoral reports on the rules of conduct.

It takes part in new European initiatives to carry out inspections on the subject of rules of conduct, especially the product acceptance process.

The FSMA is actively engaged in creating an efficient administrative sanctions policy for the most serious cases of non-compliance with the rules of conduct, both from a dissuasive and a punitive angle.

It examines the law on financing of small and medium-sized enterprises<sup>39</sup> to verify whether it is correctly applied in the context of the COVID-19 crisis.

In summer 2020, the FSMA also informally got in touch with a number of compliance officers to find out about potential problems regarding the exercise of their function, in the context of the health crisis. The findings were, on the whole, reassuring. The compliance officers questioned said that they had been able to adapt to working remotely without too much difficulty, including for their audits.

<sup>38</sup> Law of 21 December 2013 on various provisions for financing for small and medium enterprises.

# Inspections in 2020

The Central Inspection Team takes care of all inspections in the FSMA's areas of supervision on behalf of the Belgian Audit Oversight Board<sup>40</sup>. In 2020, it carried out inspections on compliance with the MiFID and IDD rules of conduct. It also carried out inspections on compliance with prudential rules, including by Institutions for Occupational Retirement Provision, and on auditors' quality control.

The FSMA usually uses a risk-based approach when selecting the companies at which it conducts inspections. It takes into account various factors, such as the impact of the company's activity in terms of the number of retail or professional clients, the type of products and services it offers, its market share and the likelihood of a risk.

The inspections aim, *inter alia*, to assess whether the activity of these companies could cause damage to consumers or have a negative impact on trust in the financial system. In most cases, the FSMA also tries to guarantee the broadest possible market coverage when selecting companies under its supervision for an inspection.

**Table 3:** Number of inspections per theme

Theme		Number of inspections	Number of companies concerned
<b>MiFID</b>	Duty of care - suitability test	6	6
	Best execution	1	89
<b>IDD</b>	Duty of care	2	2
<b>Institutions for occupational retirement provision</b>	Investment process	2	2
	Multi-employers	2	2
	Actuarial function	1	13
<b>Currency exchange offices</b>	Anti-money laundering legislation (AML)	1	1
<b>Market abuse</b>		1	1
<b>SME legislation</b>		3	3
<b>Audit firms</b>	AML and communication with the audit committee	3	3

40 For more information on the Belgian Audit Oversight Board, see: [www.ctr-csr.be](http://www.ctr-csr.be).



# ACTION AGAINST UNLAWFUL ACTIVITY

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

<b>Unlawful activity</b>	<b>62</b>
Cooperation with judicial authorities and publication of warnings	62
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Use of social media by fraudsters	63
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# Unlawful activity

## Cooperation with judicial authorities and publication of warnings

### Cooperation with judicial authorities and blocking access to fraudulent websites

If the FSMA suspects that financial products or services are unlawful, it may decide to commence an investigation. If during this investigation criminal offences come to light, it forwards the dossier to the judicial authorities. If a criminal investigation effectively leads to prosecution by a criminal court, that court may, unlike the FSMA, also rule on civil claims and grant compensation to the victims who have put themselves forward as parties to civil proceedings.

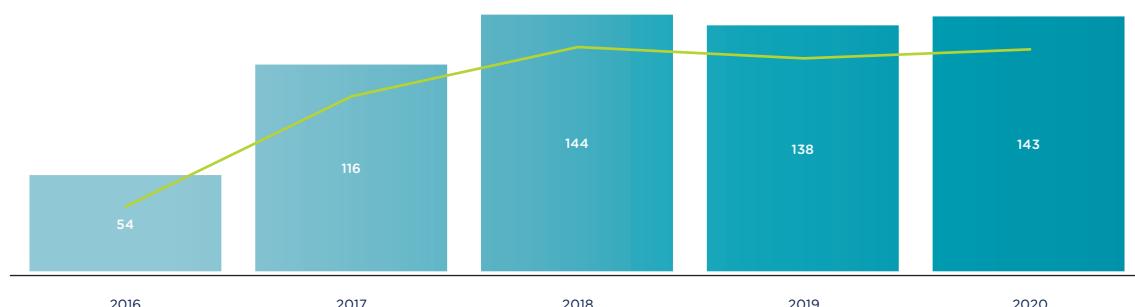
Often this concerns indications of investment fraud, mostly in an international context. For this, extensive investigative measures are required, which should preferably lead to criminal prosecution. When the FSMA forwards such a case to the judicial authorities, it always proposes blocking access to the fraudulent websites. Thanks to the cases forwarded by the FSMA to the public prosecutor's office in 2020, access was able to be blocked from Belgium to 84 fraudulent websites.

### 143 warnings on the FSMA website

Alongside its cooperation with judicial authorities, the FSMA publishes warnings itself on its website to alert the public to the dangers of certain offers. In 2020, it published 143 warnings.

In addition, the FSMA publishes the warnings of its European counterparts. It receives them via the European authority (ESMA). In 2020, there were 1,134 of these. The FSMA equally places hyperlinks on its website to warnings of supervisory authorities outside the European Union that are members of the International Organization of Securities Commissions (IOSCO).

Graph 9: Warnings



### The dangers of fraudulent online trading platforms

Last year, the FSMA received numerous complaints from consumers on fraudulent online trading platforms operating on the Belgian market. This was a 61 per cent rise as compared with 2019. The FSMA estimates that fraudulent online trading platforms tricked their victims out of at least 18.5 million euros between May 2019 and December 2020.

These platforms almost always follow the same modus operandi. First, they ignite the interest of potential victims through social media, such as Facebook, with fake advertisements in which a famous person testifies, albeit without their knowledge, as to how quickly you can become rich. Victims who click on the advertisement and fill in their contact details are usually quickly called up by the swindlers and given a specific investment proposal. That can entail an investment in shares, alternative investment products, virtual currencies or other types of product. They pull the wool over their unsuspecting victims' eyes as these platforms do not make any

investments. All they do is swindle victims out of their money.

These platforms work in a particularly aggressive way. Some even convince their victims to have their computer controlled remotely to be able to make bank transfers. They convince their victims to keep investing greater and greater sums.

Investors who enter into such offers usually do not succeed in recovering their outlay, and once they have paid the money, they never hear from the platform again.

To put a stop to such practices, the FSMA primarily works to prevent them by regularly publishing warnings. There is also a range of other practical preventive measures to avoid innocent consumers falling into the trap. Access to certain websites is blocked by the judicial authorities at the FSMA's recommendation. Equally, the FSMA regularly provides the judicial authorities with information on these trading platforms. The FSMA continues to closely monitor the activity of these platforms, where necessary in conjunction with other authorities.

## Use of social media by fraudsters

Social media is filled with false investment offers, especially for cryptocurrencies, binary options and forex/CFD products, wine investments, false offers of portfolio management and illegal credit offers.

After all, fraudsters often use social media to spread their fraudulent investment offers: sponsored ads on Facebook and Instagram, Facebook posts, false press articles or chats with unsuspecting victims.

Recently, the FSMA has identified two new tactics used by cybercriminals to spread their fraudulent offers on social media: hacking Facebook accounts and misusing dating sites and apps.

Fraudsters use Facebook accounts they have hacked to promote investment or credit offers. For example, they place a post on a friend of their victim's Facebook account with a top tip for an investment. That is of course a trap that only aims to cheat the victim out of money. Extra vigilance is called for when several people are tagged in a post.

Dating sites and apps are also popular places to look for victims for false investments. Apps such as Tinder were already the perfect place for "friend fraud", in which fraudsters con people by manipulating their feelings, but now they are also used for false investments. The victims are mainly men. Whilst looking for a date, they come into contact with a woman, often claiming to be of Asian origin. First, there is a game of seduction, with chats occurring in English. Afterwards, the charming woman often suggests shifting the chat to WhatsApp. Then, she shares her secret

to make a lot of money quickly: investing! She suggests to her victim that he try it too and sends him a link to a fraudulent online trading platform, usually in English and Chinese. Naive victims who send over their money never see it again. If the victim expresses any kind of doubt as to the offer, the dream woman disappears, never to answer a single message again.

The FSMA recommends more than ever exercising extreme caution with social media.

## Online campaign against investment fraud

To combat online fraud, it is important to have a presence where fraudsters prey on their victims. For that reason, in 2020, the FSMA conducted a large-scale campaign against investment fraud on Facebook and Google. The aim was to alert the public to the dangers and have them adopt the right reflexes. The slogan for this campaign was: "An offer that sounds too good to be true? Start by saying no."

This digital campaign met with great success. The message was shared often, meaning that the warning the FSMA wanted to convey was spread widely.

The first wave of the campaign specifically targeted pensioners. The various posts on Facebook and Google were viewed close to eight million times. The second wave aimed to reach both young and experienced investors. This clocked up more than 7.7 million views. The second wave was also used to remind the pensioners of the message via Facebook to raise their awareness.

For the campaign, the anti-fraud section on the FSMA website was updated. The FSMA has developed a new tool with which visitors get an indication of the risk that an offer is fraudulent. It is in the form of a test in which, by answering a few simple questions, they can quickly ascertain whether they are potentially being conned.

## Identity theft of authorized companies

The FSMA has noted that increasing numbers of companies that have an authorization are becoming the victim of identity theft (cloned firms). This is a form of investment fraud. Fraudsters assume the identity of an authorized company to lead consumers to believe they have the right to offer investment services, when nothing could be further from the truth. Their offer is pure fraud.

To convince consumers to enter into their investment offer, the fraudsters make them believe they work for a company that has the required authorization to offer such services, and that is registered with the FSMA or another authority. They misuse the name and other legal details of the authorized company and mislead consumers, for example, by referring them to the official website of the FSMA where they can see for themselves that there is indeed an authorization granted to that company to offer such services. Consumers are under the impression that they are dealing with an authorized company, when in reality, they are fraudsters who have stolen that company's identity.

Identity theft occurs in all forms of investment fraud. This fraudulent practice may, moreover, be difficult to detect and avoid. As a result, the FSMA recommends always checking whether the contact person is indeed who they claim to be. That can be done by verifying that the contact details for the company are the same on its website as on the FSMA website. Often, fraudsters also use the postal address of the authorized company. The fact that the correct postal address is used by the company that has contacted you is therefore not enough to confirm its identity! Consumers are advised to search for this online and if they have the slightest doubt as to the contact person's identity, to contact the FSMA.

In 2020, the FSMA observed, for example, several cases of identity theft of Belgian brokers by English-speaking fraudsters. They misused the registrations of brokers in the FSMA's registers to make their clients believe that they are authorized by the FSMA. The FSMA contacted the Belgian brokers concerned to inform them of the identity theft and to ask them to take a few specific measures to combat this fraud. It also published a warning to alert the public to the danger of such practices and sent the information it had to the judicial authorities.

The FSMA closely monitors this and urges brokers who are faced with this issue to contact it and make a complaint with the judicial authorities.

## Press conference with the federal public prosecutor's office

On 29 January 2020, the FSMA gave an important press conference in its offices, along with the Federal Public Prosecutor's Office, to provide information on the various types of investment fraud.

During the briefing, the Federal Prosecutor's Office explained the joint legal investigation by the Belgian and French authorities that led to the arrest of several people in a substantial case relating to investment fraud with cryptocurrencies.

With this press conference, which received a lot of attention from the media, the FSMA put the general issue of investment fraud in the spotlight. It provided detailed information on the methods fraudsters use in their attempts to cheat investors out of money. The FSMA underlined the importance of close cooperation between the financial supervisory authorities and the judicial authorities. It also emphasized its preventive and punitive role in combating investment fraud and reiterated the precautionary measures that investors can take to ensure they do not fall into the trap. It recalled its role as a point of contact, always available for consumers to help them avoid such fraud.

## Fraudsters capitalize on the coronavirus crisis

Shady characters often jump on the bandwagon of current situations to commit fraud. The coronavirus crisis is no exception. Rogue organizations exploit this crisis to attract new victims.

Due to lockdown, consumers are more exposed than ever to being recruited by con artists through emails, unsolicited phone calls or advertisements on the internet and social media. Moreover, some consumers are now experiencing financial difficulties because of temporary unemployment or lack of business. This makes them easier to be lured in by fraudsters to amazing investments offers.

In 2020, consumers used the internet more intensively, making them more exposed to cold calling. The FSMA has noticed that fraudsters are employing news about the coronavirus in their phishing techniques. For example, they spread false messages on the internet or via sms in which they offer face masks, set up false money collection campaigns for victims of COVID-19, place links online to false information websites and even offer vaccines.

Despite this, the FSMA, which has the competence for investment fraud, has not seen a remarkable rise in the number of reports of investment fraud directly linked to the coronavirus crisis.

However, the FSMA did see that certain fraudsters were asking their victims for additional fees (a coronavirus fee) before they could recover their initial outlay or receive their so-called profits. Some fraudsters even went so far as to claim that these fees were imposed on banks by the World Health Organization to collect money in order to combat the coronavirus crisis. To make their claim more credible, the swindlers even conjured up false documents with the World Health Organization's logo.

Because of the greater presence of consumers on the internet, it was easier for fraudsters to more widely spread their false offers, such as false offers for cryptocurrencies, binary options or forex products/CFDs, worthless 'wine investments', false offers of loans or portfolio management arrangements.

In 2020, the FSMA published several specific warnings to focus the public's attention on these fraudulent practices that misuse the pandemic. It called on consumers to be extra vigilant to avoid being misled by cold calling, false emails from an allegedly trustworthy person or institution (bank, authority, energy supplier, etc.) and also advertising banners on social media where the reader can click through to a form to be filled in. The FSMA asked consumers to be more vigilant than ever to fraud in which malicious people invoke the coronavirus.

As a supervisory authority tasked with the protection of financial consumers, the FSMA opened a call centre<sup>41</sup> where its members of staff can answer any questions on the measures that the government, banking and insurance sectors have taken to combat the coronavirus.

<sup>41</sup> See this report, p. 72.

### The FSMA's tips on avoiding fraud

- Know who you're dealing with;
- Be wary if you are contacted through an unsolicited phone call (cold calling);
- Never take up an investment proposal or loan offer by telephone or email;
- Ask for more information on what you are being offered;
- Never make hasty investment decisions, even if you are pressured;
- Never take up an offer that sounds too good to be true;
- Check your contact person's email address;
- Be alert if your contact is established abroad or asks you to pay money into a foreign bank account;
- Never give out your private details, such as your bank account number, your credit card details or your date of birth;
- If you have the slightest doubt, contact the FSMA.

### FOCUS 2021

The FSMA has seen that increasing numbers of companies in Belgium sell trading and training software destined mainly to trading in forex products, CFDs and cryptocurrencies. This software is often sold via a pyramid-scheme structure. The basis of this is the MLM (multi-level marketing) model, where consumers are encouraged to bring in new members. In exchange, they receive remuneration in the form of a commission or a discount on the price of the software package or membership. An MLM network is often proposed as a way in which to earn a passive income. Clearly, such pyramid schemes primarily appeal to consumers who find themselves in a precarious financial situation and are looking for a way to earn extra income.

The FSMA has observed that MLM networks are mainly active on social media through private groups with the sole aim of promoting a particular MLM and attracting new members. Precisely because of the structure of an MLM, many consumers enter one through people in their friendship group. The target group is mainly young people. They get to see all sorts of photos on social media of other youngsters who allegedly lead a life of luxury thanks to an MLM. The message transmitted is that such a lifestyle is within anyone's reach, simply by bringing in new members to the software being sold. Fairly quickly, fraudsters manage to convince a large group (for example pupils from the same school or youngsters in the same sports club) to join in.

The FSMA will continue to closely monitor this issue in 2021. It underlines that there is generally no supervision on investments that are accessed through these types of software (such as alternative investments in precious metals or virtual currencies), and that a number of those products may not be sold in Belgium to retail investors (for example certain derivative instruments such as forex products, CFDs and binary options).

# Handling whistleblower alerts

The FSMA has a whistleblowers' point of contact for alerting of potential or actual breaches of the financial legislation. These alerts help it detect potential deficiencies and address them in the right way.

A whistleblower is someone who alerts the FSMA to a breach of the financial legislation supervised by the FSMA. Usually, whistleblowers work in the financial sector. If they report a breach in good faith, they receive protection from any retaliatory measures on the part of their employer.

On 28 September 2017, the FSMA put its 'whistleblowers' point of contact' online.

The point of contact analyses all alerts. Whistleblowers have four different channels through which to alert to wrongdoing: via the form on the FSMA website, a letter, a personal meeting or by telephone. The statistics below show that most alerts occur through digital means and to a lesser degree by letter.

Graph 11: Overview of whistleblower alerts per communication channel (from September 2017 to September 2020)

	 Letter	 Website	 Telephone	 Personal meeting	Total
Year 1	17	54	1	1	73
Year 2	16	55	0	0	71
Year 3	20	76	3	1	100

The number of alerts has clearly increased in this third year since the whistleblowers' point of contact was set up, especially from September 2019 to September 2020: there were 100 alerts, compared to 73 in the first year and 71 in the second year. There is no clear-cut reason for that rise. Incidents of wrongdoing related to different subjects. This rise does, however, fit in with the other alerts from consumers to the FSMA, where a considerable increase can also be seen<sup>42</sup>.

Just like last year, the number of anonymous and named alerts remained balanced.

**Graph 12:** Proportion of anonymous and named whistleblower alerts per communication channel (from September 2017 to September 2020)



	Letter	Website	Telephone	Personal meeting	Total
Anonymous year 1	7	21	1	0	29
Named year 1	10	33	0	1	44
Anonymous year 2	8	28	0	0	36
Named year 2	8	27	0	0	35
Anonymous year 3	8	38	3	0	49
Named year 3	12	38	0	1	51

Because of professional secrecy, the FSMA cannot give any individual feedback on the investigations it commences or on any measures it takes following an alert.

# Consumer messages

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

## More messages mainly about fraud and irregular offers

In the period under review, the FSMA received 2,974 messages from consumers on various financial subjects. That is 21 per cent more than in 2019. In that year, the FSMA recorded 2,456 questions and complaints.

More than half of these messages were about fraud and unlawful offers of financial products and services. In total the FSMA received 1,620 messages in this category, over 30 per cent more than the previous year.

Most of the messages in this category were about fraudulent online trading platforms, false loan offers, pyramid fraud and fraudulent offers of portfolio management and alternative investments. This category also includes messages about other forms of fraud such as phishing.

It is above all messages about fraudulent online trading platforms for investments in binary options, forex, contracts for difference and cryptocurrencies, and about false loan offers, that were on the rise in 2020.

More and more consumers contacted the FSMA when in doubt about an offer that may be fraudulent. They got in touch even before investing their money. These questions contributed to the sharp rise in the number of messages about fraud and irregular offers.

377 messages were sent by consumers on the subject of pensions. They called on the FSMA's expertise as supervisory authority of supplementary pensions. Consumers primarily had questions and complaints about the payout of the supplementary pension on retirement and about their pension details that they can consult on the website [mypension.be](#).

The FSMA received 278 messages on investments. They related to questions and complaints about securities, investment funds, investment insurance, portfolio management and the application of the MiFID and IDD legislation to protect investors.

More and more consumers turned to the FSMA and relied on its expertise. Since 2016, the number of messages has almost doubled. It was especially messages about fraud and unlawful offers that increased. The FSMA used this information to act against fraudsters in conjunction with the judicial authorities.

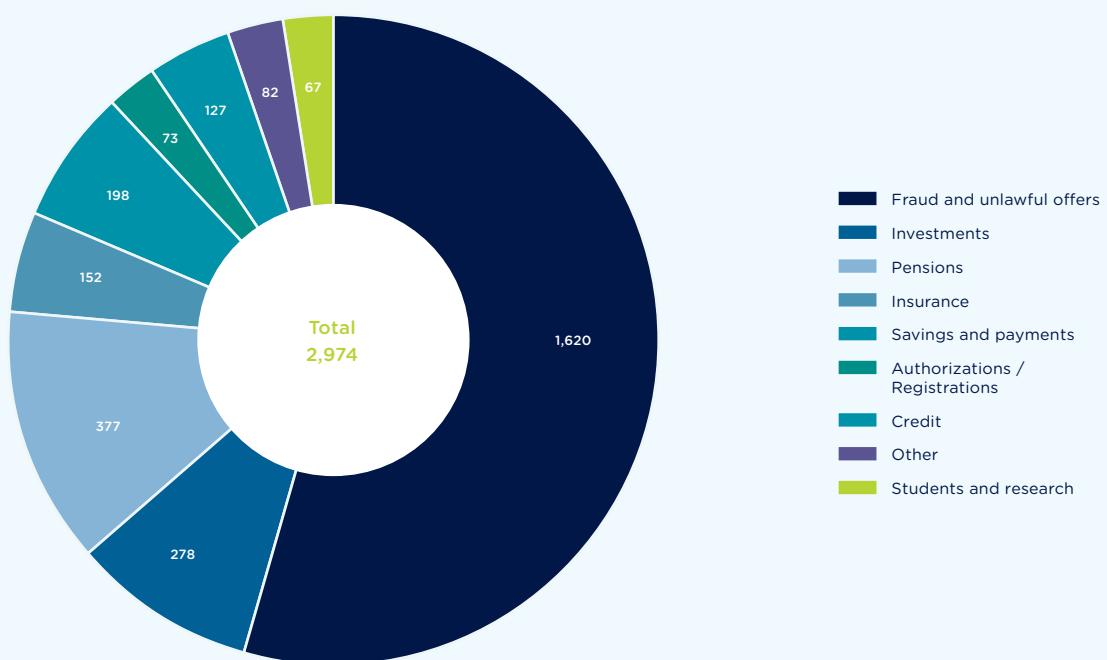
### Messages are important, but the FSMA cannot mediate

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

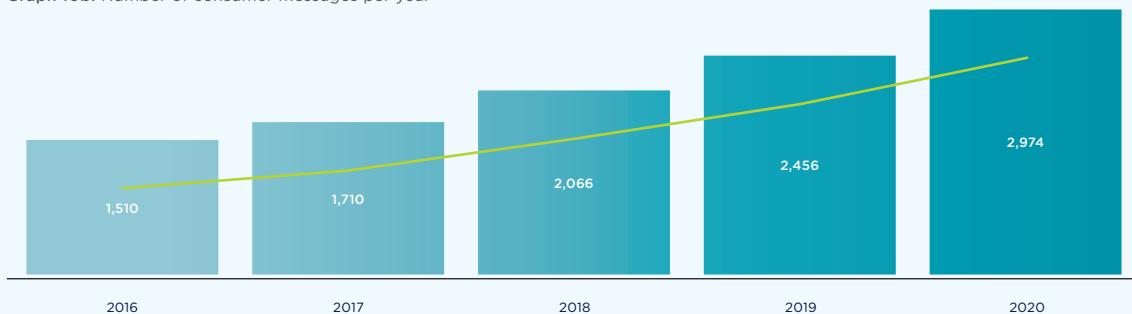
The FSMA is not allowed to mediate if a consumer has a complaint about a financial product or financial institution. Mediation is the task of the Ombudsman for financial disputes and the Insurance Ombudsman.

Some messages are on subjects that fall outside the FSMA's competence, for example about insurer authorizations, tax matters or payment transactions. In such a case, the FSMA refers consumers to the competent institution, such as the National Bank of Belgium, the FPS Finances and the FPS Economy. The FSMA is a partner of the FPS Economy Contact Point for Fraud.

Graph 10a: Number of consumer messages by category



Graph 10b: Number of consumer messages per year





### The FSMA call centre helps consumers and companies with objective information on coronavirus measures

The FSMA set up a call centre on 15 April 2020 for questions on the government's and financial sector's support measures ensuing from the pandemic.

Consumers, the self-employed and companies got accurate and neutral information from the call centre on the various support measures and the impact of COVID-19 on their financial situation. They could ask their questions by telephone to FSMA members of staff, or through a contact form on the FSMA's website. Where necessary, the FSMA would refer them to the competent bodies.

Setting up the call centre tied in with the FSMA's consumer protection focus. The call centre provided a great added value. Everyone who had been affected by the coronavirus crisis was able to gather objective information.

The government and the bank and insurance sector took various measures over the course of 2020 to help absorb the impact of the coronavirus crisis on consumers, the self-employed, and companies.

The support measures offered people the possibility, for example, to take a payment holiday on their mortgage and loan payments. Companies and the self-employed had the opportunity to apply for a payment holiday for investment loans. They could use the federal government's guarantee scheme for new loans and lines of credit. Special guarantees were also set up for employees who were temporarily unemployed to address their supplementary pensions and the associated life cover.

For as long as the health crisis required and there were questions about the support measures, consumers, the self-employed and businesses were able to put them to the FSMA through its website.





# TRANSPARENCY OF FINANCIAL MARKETS

Investors need accurate information on companies to be able to make well-informed investment decisions. The FSMA sees to it that the information from listed companies is complete, true, and fair and is made available to the public on time and in the correct way. The FSMA supervises the correct and transparent operation of the markets on which these companies are listed. Additionally, the FSMA checks the information from unlisted companies at the time of a public issue of securities with the purpose of collecting money from investors.

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# Supervision of transactions of listed companies

In the case of public offers of investment instruments and admissions of investment instruments to trading on regulated markets, listed companies must in principle publish a prospectus approved by the FSMA. The information in that prospectus must be thorough, easy to understand and consistent.

## Issuances and initial public offerings

### Four initial public offerings on the Brussels stock exchange

With four initial public offerings (IPOs) on the Brussels stock exchange, 2020 was an exceptional year. These IPOs were for Nyxoah, a MedTech company, Unifiedpost, a FinTech company, Hyloris, a pharmaceutical company, and Inclusio, a public regulated real estate company with a social purpose.

There were also two offers of listed companies to the public, four listing prospectuses for private placements, three public issues of bonds for which listing was also asked, three EMTN programmes, as well as four Registration Documents and seven Universal Registration Documents.

In the FSMA's supervision of prospectuses, it focused, among other things, on the risk factors stated in the prospectuses in accordance with the ESMA Guidelines on risk factors under the Prospectus Regulation. The idea of these guidelines is to encourage an appropriate, focused and more streamlined disclosure of risk factors in a form that is easy to analyse, concise and easy to understand. That occurs by assisting competent authorities in the review of the specificity and materiality of the risk factors and in presenting them across categories. The FSMA has incorporated these guidelines in its supervision and takes them into consideration when verifying a prospectus<sup>43</sup>.

## Numerous dossiers concerning takeover bids

In 2020, two takeover bids were launched in Belgium following the acquisition of more than 30 per cent of securities of a listed company by a third party. The first bid related to SABCA, a company in the aerospace sector. After the offeror acquired 96.85 per cent of SABCA shares, it launched a mandatory takeover bid, followed by a simplified squeeze-out bid. The second bid related to Genkyotex, a French company listed both on Euronext Paris and Euronext Brussels. The prospectus relating to this bid was approved by the French supervisory authority AMF. Since

<sup>43</sup> See also the 2019 FSMA annual report, p. 68 and 69.

the bid was also launched in Belgium, the offeror asked the FSMA, in accordance with Article 20 of the takeover law, to approve the prospectus.

During the last two months of 2020, the controlling shareholders of three Belgian listed companies informed the FSMA of their intention to launch a voluntary takeover, each time of the company already controlled by them. All three intended to proceed with delisting after the bid. These intended bids related to Sioen Industries, Zenitel and Orange Belgium.

## Supervision of regulated information from listed companies

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

### 197 issuers

At the end of 2020, there were 197 listed issuers with regulated information falling under the supervision of the FSMA, a slight rise from the 190 issuers in 2019.

For 142 issuers, the FSMA at the same time regularly conducted ongoing supervision of the information. For 55 issuers, it only supervised certain ongoing information.

Specifically, these were 190 Belgian issuers and seven foreign issuers. For 155 of them, the securities were listed on Euronext Brussels, 33 on Euronext Growth and nine on other European regulated markets. There were 126 issuers of shares and 71 issuers of other securities.

The complete list of issuers is available on the FSMA website.

## What supervision is conducted of listed companies?

Listed companies are companies that are financed through a public offering on the market, and the securities of which are traded daily on the stock exchange. The value of these companies varies based on the current state of affairs. Investors also run the risk of losing all or part of their investment. However, the flipside of the risk is the hope that they can achieve higher returns than with an investment considered risk-free. To mitigate that risk, it is essential for investors to spread their investment portfolio among different securities.

Although it is normal that an investment in shares entails a significant risk, it is still of great importance that the market possesses all the information, and that it be disclosed without delay. This means that market participants can always make informed investment decisions, (whether to buy or sell their shares or keep them in their portfolio). There are legal provisions that control the regular and ad-hoc disclosure obligations of listed issuers. They define the information that must be published, how often it should be published and the timescales within which this needs to occur. The disclosure obligations that apply to listed companies neither imply an absolute right for shareholders to information, nor direct access to information that is not mandatory to disclose.

An investment in shares inevitably entails the risk of loss of value if the listed company does not perform well. That loss of value could also be the result of a shift in value, to the advantage or disadvantage of shareholders or other stakeholders. To be able to avoid such a situation, the Code on Companies and Associations provides for a range of measures to guarantee that the necessary checks and balances are in place in the listed company. These entail protection mechanisms such as the presence of independent directors, the role of the statutory auditor and audit committee, the mandatory use of independent experts in certain situations, the preparation of special reports, the qualified majorities for important decisions, etc. The aim of these provisions is to achieve a decision-making process in the listed company that takes into account the interests of shareholders.

The main role the FSMA has in this respect is to supervise that the listed companies comply with their disclosure obligations. This means that they give the public the necessary information in order to ensure the transparency, integrity and proper operation of the market. This information has to give a fair view and be accurate and honest so that the public may form an opinion on the influence of the information on the position, business and results of the company. Moreover, the information to shareholders must enable them to exercise their rights on the basis of that information, including during the general meeting. Finally, the information must, where applicable, enable a shareholder who feels wronged to file legal proceedings with the competent legal authority.

The legislature decided that the FSMA would mainly exercise its supervision in this respect ex post. The FSMA fulfils its role based on a supervisory plan. It does not, however, hesitate to act proactively in more complex cases, for example by entering into dialogue with independent directors and informing them as to their responsibility in matters that entail conflicts of interest, by asking for clarification from statutory auditors who also have a duty to signal certain points to the FSMA, or by investigating information that independent directors provide in the context of transactions, including those that entail a conflict of interest.

### The FSMA's action in the FNG case

FNG NV, the parent company of the fashion group of the same name, has been under the supervision of the FSMA since summer 2018. Because the company transferred its headquarters from the Netherlands to Belgium, the FSMA became competent for the supervision of FNG NV's disclosure of information as a listed company, and its shareholders' compliance with transparency legislation. The FSMA also became competent for sanctioning market abuse, because the company had been admitted to trading its shares on Euronext Brussels, when up until then they had only been admitted to trading on Euronext Amsterdam.

For the supervision on disclosure of information by listed companies, the FSMA selects the companies to be included in its supervisory plan every year based on a risk model. The information coming from these companies is then subjected to ex post investigation. FNG NV's annual financial statements for 2018 were included in the selection for 2019. Those annual financial statements included, inter alia, the consolidated annual financial statements for 2018 for which the company's statutory auditor had given an unqualified opinion.

This type of ex post investigation is an iterative process. After analysing the information, questions are put to company management, which are then responded to. After further analysis, additional questions are asked, to which the company again provides answers, etc. It is therefore normal for there to be several rounds of questions and answers. In this case, the FSMA also noted that the management of FNG NV often answered the questions evasively or not at all, and that there were difficulties encountered in the audit process. Nevertheless, it became clear to the FSMA that in the past, a number of complex international transactions had been set up with an unclear economic rationale or for which the underlying records were missing or incomplete. It also became clear that the group profit reported for 2018 was not generated through the sale of clothing and shoes, but rather through these complex transactions. However, the group's communications gave the impression that the group's profit had in fact been generated from the sale of clothing and shoes.

As a result of these findings, the FSMA addressed a preliminary warning to the company in April 2020. If the FSMA finds that the financial information provided to the public by a listed company does not comply with the current legal requirements, it may

publish a warning to make its position clear. Before proceeding with the actual publication though, the company must, of course, be given an opportunity to respond to the FSMA's intention. In the case of FNG, the company's Supervisory Board took a number of initiatives in the days following the preliminary warning, such as management reshuffles and the appointment of an external party to clarify the international transactions and structures. Thanks to these initiatives, the FSMA decided against its intention to publish the warning at that time. However, it did, at the request of the Board of Directors, suspend trading of the share on 11 May 2020, to avoid continued trading in the share, pending clarity on the impact of the transactions concerned on the position, business and results of the company.

The FSMA also referred the case to its investigations officer. If a company does not give any information on the origin and scale of its sources of income and, on the contrary, gives the impression that the company is doing well, whilst that is not the case, this could be deemed potential market manipulation. This can potentially entail the spreading of information that does or could abnormally or artificially price a financial instrument.

The admission of FNG NV's shares to trading on Euronext Brussels was paired with a public capital increase. In that context, the FSMA already started an investigation in 2018 into certain circumstances and potential market manipulation by those who had been involved in the capital increase. It also referred this case to its investigations officer.

The transparency legislation obliges certain shareholders of listed companies to disclose how many shares they have in the listed company. In that respect, the FSMA found that certain shareholders of FNG NV had potentially made false statements and that several shareholders potentially made their disclosures late. With respect to that aspect of its tasks, it also referred cases to its investigations officer.

All in all, over the course of 2019 and 2020, the FSMA sent through several cases, arising from different fields of competence, for further investigation by its investigations officer. All these cases were also passed on to the judicial authorities in 2020. Many breaches that are liable for sanctions for administrative offences are also liable for criminal sanctions after all. There are also criminal penalties provided for in the law for those who hamper the FSMA's investigations or who knowingly provide the FSMA with inaccurate or incomplete information.

## Specific supervisory interventions in 2020

As already stated, the FSMA's supervision of regulated information from listed companies is essentially ex post supervision. The FSMA's interventions in that respect are very diverse. It can ask for additional information to be provided, for changes or corrections to be made in regulated information that is yet to be published, or for information or corrections to be published immediately. It can publish a warning or transfer serious indications of an infringement to the FSMA's investigations officer. The latter action can give rise to administrative sanctions. The FNG case explained above clearly illustrates the various means of intervention the FSMA has at its disposal as part of its supervision.

Where the FSMA has information during the exercise of its task that is of significant importance and relevance for the Belgian Audit Oversight Board's supervision, it shares this information with the Board on its own initiative. The Board analyses that information and decides, where applicable, to open a case.

As part of its supervision of financial information, the FSMA investigated specific themes that form part of ESMA's Common Enforcement Priorities, in particular leasing, financial instruments and income tax in application of IFRS. The priorities also encompass non-financial information and alternative performance measures. The FSMA actively took part in the European Enforcers Coordination Sessions (EECS). This included providing that group with six emerging issues on Belgian listed companies.

### **Publication of an opinion on communications from listed biotech companies**

Belgium has one of the world's top biotech ecosystems. A considerable number of biotech companies are also listed on Euronext Brussels. Equally, due to the COVID-19 pandemic, additional media attention was given to clinical developments. This media attention can lead to further increases in interest in this sector, even from minor investors.

Investing in biotech entails specific risks, given that clinical developments are not always successful. This is why it is clear that investors should sufficiently inform themselves prior to investing. Everyone involved should also take responsibility to provide investors with information that is complete, honest, accurate, on time and easy to understand, thereby safeguarding confidence in the market.

It is crucial for companies to communicate in this way. However, determining what to communicate and when constitutes a special challenge for biotech companies due to the nature of their activity. Clinical

developments are step-by-step processes in which inside information can arise at different times. To prepare communication that is accessible and easy to understand, companies also have to take account of the fact that investors have diverse levels of scientific knowledge and experience.

For this reason, the FSMA published an opinion, in which it gave concrete guidance to biotech companies on publishing inside information. This was mainly aimed at newly listed companies that potentially have little experience with publishing inside information. The FSMA also presented the opinion to a group of experts.

The opinion should help biotech companies analyse what kind of information must be disclosed to the public and when. The opinion makes a number of observations and identifies good practices as regards assessing whether information constitutes inside information. It also explains the timing for publication of inside information and the content of communications.

Furthermore, the FSMA added the finishing touches to the implementation of the financial reporting following the new European Single Electronic Format (ESEF). Listed companies can upload their annual financial reports in ESEF format on the FSMA platform. In the wake of the COVID-19 crisis, the European Parliament and the Council decided to allow Member States to postpone the application of the ESEF requirements as regards annual financial reports of listed companies by one year. Of course, companies that were ready to publish their annual financial statements in the ESEF reporting format may do so from the 2020 financial year.

## Supervision of transactions of unlisted companies

### 12 issue prospectuses in 2020

The FSMA is tasked with supervision of prospectuses of unlisted issuers too. It approved 12 of these prospectuses in 2020, two of which for the issue of shares by cooperatives and ten for tax shelters.

### Information notes

The Prospectus Law of 11 July 2018 provides for the preparation of an information note for offers to the public with a total consideration that is less than or equal to five million euros or eight million euros, depending on the case, as well as for admission to Euronext Growth and Euronext Access.

Information notes do not have to be previously approved by the FSMA. However, the FSMA is responsible for checking the content of the information note ex post and for taking administrative measures or imposing administrative sanctions if the information note does not meet the requirements set by law or is unlawful or fraudulent.

Between 1 and 31 December 2020, 237 information notes and 60 supplements were submitted to the FSMA.

Ex post checks, or in other words, a verification after a document has been distributed among the public and after likely subscriptions to the investment instrument, entails a completely different way of thinking and approach than the FSMA's ex ante supervision. Its supervision and action needs to tie in with the underlying philosophy and basic principles (both on a Belgian and European level) based on which an ex post check of the documents is opted for. With its ex post supervision, the FSMA aims to fulfil two objectives: tracing unlawful parameters or unlawful or fraudulent offers, and improving the information provided to potential investors.

The FSMA can furthermore make use of the investigation and sanctioning powers it possesses, including by virtue of Articles 29 and 30 of the Prospectus Law<sup>44</sup>. One of its powers is to suspend the public offer until it follows the rules (where possible).

## Supervision of financial markets

The FSMA has tools to track correct application of the provisions of the Market Abuse Regulation (MAR). Over the past few years, the FSMA has been reaping the rewards of improved transaction reporting. Now, the identity of the originators of orders is also given and transactions executed on the market are examined more efficiently, including transactions in derivatives or equivalent products.

With the help of its data analysis specialists, the FSMA has developed tracking tools to allow it to verify the databases of managers' transactions against the transactions executed on the market, and against the press releases containing financial results and inside information. In this way, it can verify compliance with the following:

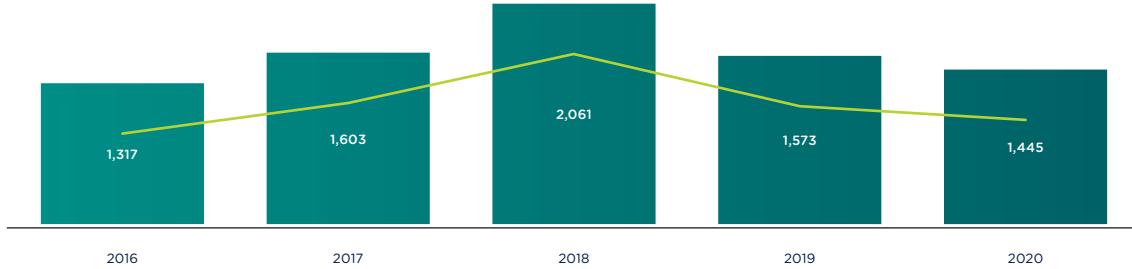
- obligations as regards reporting of managers' transactions;
- the closed periods prior to the publication of the half-yearly results and annual results;
- the prohibitions of transactions between the occurrence and publication of inside information.

A tool was also developed to calculate profit gained or loss avoided by market participants. With this tool, unusual situations in that information can be traced.

**Graph 13:** Real-time supervision and detecting market abuse



<sup>44</sup> Law of 11 July 2018 on public offers of investment instruments and the admission to trading of investment instruments on regulated markets.

**Graph 14:** Transactions by managers

### Managers' disclosure obligations

Managers of listed companies and people closely connected to them are obliged to disclose their transactions in financial instruments associated with that company.

The number of disclosures from managers and people closely connected to them fell slightly in 2020. These disclosures are published on the FSMA's website.



#### **The FSMA provides listed companies with clear information on the consequences of the coronavirus crisis**

From the beginning of the coronavirus crisis, the FSMA, which is in continuous dialogue with the issuers under its supervision, could see that the crisis was making them face serious challenges. For this reason, over the course of 2020, it published several documents to help listed companies gain a better insight into the impact of the crisis on their various obligations and their organization.



#### **Publication of inside information**

In a press release dated 26 March 2020<sup>45</sup>, the FSMA shared its findings on the many questions it received on publication of information by listed companies during the pandemic.

It asked issuers, if they found out about an event, decision or information that could constitute inside information that directly affected them, to publish it as soon as possible.



#### **Publication of periodic information and organization of general meetings**

On 9 April 2020, a Royal Decree<sup>46</sup> was published that includes several specific measures on the publication of periodic information by listed companies and the organization of general meetings by these companies.

<sup>45</sup> FSMA press release of 26 March 2020, titled 'COVID-19: impact on listed companies'.

<sup>46</sup> Royal Decree No. 4 of 9 April 2020 containing various provisions on co-ownership and company and association law in the context of the fight against the COVID-19 pandemic.

The FSMA published a series of FAQs<sup>47</sup> on these measures on its website.

The first part of these FAQs dealt with communication by these listed companies about the consequences of COVID-19. This included clarification as to when listed companies have to provide information on the consequences of the crisis for their business, and how they have to do so.

The second part of the FAQs more specifically covered compliance with the obligation to provide periodic information and the possibility to postpone the publication of the 2020 annual financial statements by a maximum of ten weeks. It was also clarified how this potential postponement of publication had to be communicated.

The third and final part of the FAQs covered the temporary introduction, by Royal Decree, of a number of flexible choices to allow companies to validly organize a general meeting without infringing the mandatory rules to fight the COVID-19 pandemic. The Royal Decree sets out specific methods for organizing online general meetings.

The FSMA also specifies some points to bear in mind on the subject, for example in connection with the possibility for shareholders to ask questions, the various possibilities for shareholders to exercise their voting rights, and the formalities shareholders had to fulfil.



### Publication of the half-yearly financial report

On 22 June 2020, the FSMA published a new series of FAQs<sup>48</sup> on the publication of the half-yearly financial report in COVID-19 times. Like ESMA<sup>49</sup> and IOSCO<sup>50</sup>, the FSMA wished to formulate a series of points to bear in mind. Primarily, it wished to appeal to listed companies to pay enough attention when preparing their half-yearly results to accurate reporting on the impact of the pandemic. It considered that in times of increased uncertainty, a timely, complete and honest communication was very important to maintain investor confidence in the financial market, and to ensure proper pricing.

The common goal of these various publications was to help listed companies better meet their various obligations in a difficult and unprecedented context.



### Information about the impact of COVID-19

In the fourth quarter of 2020, the FSMA conducted a small study of the information that listed companies included in their 2020 half-yearly financial statements on the impact of COVID-19. That investigation clearly related to the period previous to the second lockdown.

47 FAQs of 29 April 2020: "Obligations of listed companies: impact of COVID-19".

48 FAQs of 22 June 2020: 'Obligations of listed companies: publication of the half-yearly financial report during the covid-19 period'.

49 See the ESMA Public Statement of 20 May 2020, titled 'ESMA calls for transparency on COVID-19 effects in half-yearly financial reports'.

50 See the IOSCO Public Statement of 20 May 2020, titled 'IOSCO encourages issuers' fair disclosure about COVID-19 related impacts'.

### Application of temporary limits to short selling

Because of the exceptional market conditions during the pandemic, the FSMA announced an initial temporary ban on short selling on 17 March 2020. That ban only applied to shares that had, on 16 March 2020, lost more than 10 per cent of their value compared with their closing price the previous day. The measure affected some ten shares and was taken on the basis of Article 23 of European Regulation 236/2012<sup>51</sup>. That Article provides for temporary measures if a considerable price drop is identified in any single trading day.

On 18 March 2020, the FSMA put in place a second ban on short selling based on Article 20 of the same European Regulation. That measure lasted for a month and banned taking or increasing net short positions in shares traded on trading venues established in Belgium. This was with regard to entering into a transaction which creates, or relates to, a financial instrument which confers an advantage on a natural or legal person in the event of a decrease in the price or value of another financial instrument. This measure was again extended for one month until 18 May 2020.

The FSMA took this exceptional measure after it identified major price fluctuations on the market. That high market volatility was an indication that the market found it difficult to accurately assess the impact of the COVID-19 crisis on listed companies. The situation was very unclear at that time and the consequences thereof were difficult to estimate. The measure aimed to prevent the situation from worsening and having a potentially detrimental impact on the companies concerned and on market confidence on the whole.

This measure ended on 18 May 2020 at 23:59. In consultation with ESMA and the various national authorities involved, and in light of the market-specific and general findings on that day, the FSMA opted not to extend that measure again. It considered that many listed companies had a better appreciation at that time of the impact of the COVID-19 crisis on their business and had informed the market thereof, and that the market volatility had greatly

subsided since mid-March to reach pre-COVID-19 levels. It also found that market participants had properly monitored the measure: the number of net short positions appeared to have gradually reduced since the introduction of the measure. It also noted that the market had already largely recouped the losses it had seen during this period, and that the number of infections and patients in intensive care was continuing to go down. Moreover, the government's lockdown measures were at the time being systematically lifted.

The FSMA consequently concluded that the market situation had stabilized. As a result, it could not see any reason to extend the ban again.

After this ban ended, the FSMA remained vigilant and continued to closely monitor the markets. That meant it could intervene quickly if changing market circumstances so required. Later on in 2020, the FSMA conducted a quantitative analysis on the impact of that temporary ban on short selling on the liquidity, volatility and return from Belgian listed companies. In that analysis, it compared Belgian listed companies with German and Dutch listed companies with similar businesses and a similar market capitalization. That analysis showed that the temporary ban on short selling had caused a slight loss of liquidity, albeit only for the smallest companies. In terms of volatility and returns, it found no relevant difference whatsoever between the Belgian companies to which the temporary ban on short selling applied and similar companies abroad.

In parallel with the aforementioned temporary ban on short selling, ESMA decided on 16 March 2020 to temporarily reduce the threshold for net short positions in shares traded on a European Union market from 0.2 per cent to 0.1 per cent of the share capital issued after the entry into force of the decision. That reduction of the threshold was a precautionary measure to enable better supervision during the crisis period of the financial markets in the European Union and to guarantee financial stability and investor protection. The measure, which applied initially for a three-month period, was extended twice afterwards. It was lifted on 19 March 2021.

51 Regulation (EC) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.

From a sample of approximately 100 companies, a little under 60 per cent reported experiencing little or no effect, and a little over 40 per cent that they had experienced a significant impact.

Divided up into sectors, the majority of companies in the retail, technology, consumer goods and holdings sectors reported experiencing a significant impact. Of the companies in the financial services, other services and industry sectors, approximately half reported a significant impact. In regulated real estate companies and other companies in the real estate business, those in the retail segment reported experiencing a significant impact. For biotech companies, it was a mixed bag: they reported finding it more difficult to find patients and delays in studies, but few really experienced major limitations. Healthcare, telecom and agricultural companies said that they had not suffered a significant impact.

Of the companies that were affected, the majority gave a quantitative estimate of the impact, mainly as regards turnover, net profits or both. A minority only gave a qualitative estimate.

### FOCUS 2021

For listed companies, the focus in 2021 will, once again, lie on the handling of IPOs, other dossiers for public offers of securities and takeover bids. The focus in the periodic supervision will be on ESMA's enforcement priorities and on the new disclosure obligations that arise from the Belgian law transposing the second Shareholder Rights Directive, among others. European developments will also be followed up, including non-financial information, corporate governance, the European Single Access Point (ESAP), and the consequences that will occur as regards legislation and regulations following the Wirecard scandal. With regard to unlisted issuances, the FSMA will examine the impact of the crowdfunding directive on offers in crowdfunding platforms.

### Publication of a study on stock market transactions during the coronavirus crisis

The coronavirus crisis made for major stock price fluctuations. As a result, the FSMA conducted a quantitative study on the behaviour of Belgian retail investors. It examined whether retail investors bought and sold fewer or more Bel20 shares during the crisis. It also analysed whether the behaviour of investors differed based on their age and the frequency of their investments.

To conduct that study, the FSMA used the transaction reporting it receives based on the European regulations on market transactions. That reporting includes all transactions that Belgian banks or investment firms execute, all transactions executed on a Belgian regulated market, and all transactions relating to a financial instrument for which the FSMA is the competent authority, so therefore including shares listed on Euronext Brussels.

The study is based on a sample of more than three million transactions, for a total trading volume of more than ten billion euros, made by close to 323,000 different people. The main conclusions of the study are listed below.

- During the crisis period, the buying and selling of shares considerably increased: between 24 February and 30 April 2020, up to five times more shares were traded than in the period before;
- Many more shares were bought than sold: retail investors bought over 634 million euros more in Bel20 shares in the crisis period than they sold;
- Young investors (between 18 and 35) were much more active during the crisis: in the third week of February 2020, they collectively bought shares for a value of two million euros. In the final week of March 2020, this went up to 21 million euros;
- Occasional investors, who had executed a maximum of five transactions during the two years before the crisis period, bought many more Bel20 shares: in the week before the crisis they only purchased for a value of three million euros. In the second week of March 2020, this went up to 30 million euros.

This study covered the period between 24 February and 30 April 2020. The full results of the study are published on the FSMA website. The FSMA continued to analyse the data on transactions in Euronext Brussels throughout the year. The idea is to publish a similar study for the remainder of 2020 as soon as all the information is analysed.



# SUPERVISION OF FINANCIAL SERVICE PROVIDERS

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

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# Who are financial service providers?

## Management companies

These service providers' main business resides in managing investment funds. They may also offer investment services to individual clients. There are two types of authorization for management companies, depending on the type of investment fund under management: undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs). Most management companies have both authorizations. There is also a separate status for small-scale managers of AIFs.

## Portfolio management and investment advice companies

While management companies' main activity consists of managing investment funds, these service providers are primarily involved in providing investment services to individual clients. For this activity, they require an authorization.

## Lenders

To be able to provide mortgages and consumer credit, lenders have to have an authorization from the FSMA. There are three different types of lenders:

- lenders that already have an authorization from the National Bank of Belgium, such as credit institutions or insurance companies;
- social lenders: these are public or private institutions from Flanders, Brussels, or Wallonia that provide credit agreements either at an interest rate lower than the market rate or with no interest, or with more advantageous conditions than market terms and conditions;
- other lenders who do not belong to either of these categories, such as small independent lenders and specialized branches of car dealerships, banks and insurers.

## Independent financial planners<sup>52</sup>

These service providers give their clients advice on optimizing their assets, taking into account their specific needs and objectives. For this activity, they need an authorization from the FSMA. To safeguard their independence, they are not allowed to provide investment services or give advice on individual financial products.

<sup>52</sup> Apart from these specific authorized firms, certain other regulated undertakings may ipso jure conduct these activities without needing an additional authorization.

## Crowdfunding platforms<sup>53</sup>

Financial service providers who sell, through a website or other digital means, investment instruments of another firm, need an authorization as an alternative finance platform.

## Benchmark administrators

These service providers offer, at a minimum, a benchmark that can be used to establish the value of financial instruments or contracts or to measure the performance of investment funds. They, too, need an authorization from the FSMA.

## Intermediaries

The FSMA supervises a large group of intermediaries. They must be registered with the FSMA. These include the following statuses:

- brokers: bring regulated undertakings and consumers in contact with each other. A broker has no obligation whatsoever to place business or some business with a particular lender, insurance/reinsurance company or other regulated undertaking.
- insurance or reinsurance agents: act as an intermediary in the name and on behalf of one or more insurance or reinsurance companies. Insurance agents must communicate to the FSMA whether or not they are tied agents of one or more insurance companies.
- agents in banking and investment services: act in the name and on behalf of a single authorized company.
- tied agents in credit or insurance: act as an intermediary on behalf of and under full and unconditional responsibility of one lender or insurance company or of a group of lenders or insurance companies.
- subagents: act under the responsibility of a broker or agent.
- agents in an ancillary function: they sell goods and services of a non-financial nature and, as an ancillary activity, act as an intermediary in consumer credit on behalf of one or more lenders.
- ancillary insurance intermediaries: sell goods as their core business and provide services of a non-financial nature such as holidays, telephones, bicycles and cars. They offer certain insurance products as a supplement to these goods and services<sup>54</sup>.
- mandated underwriters: insurance intermediaries who enter into and manage insurance policies in the name of and on behalf of insurance companies. They themselves do not insure any risks. The insurance company for which the mandated underwriter acts carries the risks.

## Currency exchange offices

These service providers are registered with the FSMA for buying and selling currencies.

53 See previous footnote.

54 Under certain conditions, an ancillary insurance intermediary can be exempted from the obligation to be registered with the FSMA.

# Financial service providers in figures

## Financial service providers with an FSMA authorization

**Table 4:** Authorized firms

	31/12/2018	31/12/2019	31/12/2020
UCITS management companies	8	9	<b>9</b>
AIF management companies	13	13	<b>14</b>
Portfolio management and investment advice companies	16	16	<b>17</b>
Independent financial planners	5	5	<b>6</b>
Mortgage lenders	114	115	<b>111</b>
Consumer credit providers	79	78	<b>79</b>
Crowdfunding platforms	6	7	<b>8</b>
Benchmark administrators		2	<b>2</b>

In 2020, the FSMA granted an authorization to a management company of a non-public AIF. In 2019, two firms submitted a request for authorization as a management company, one of which is a management company of UCITS and the other a management company of non-public AIFs. These dossiers were not yet finalized in the period under review.

In 2020, the FSMA granted an authorization to a portfolio management and investment advice company. Also in 2020, it received two applications for authorization as a portfolio management and investment advice company. These dossiers were not yet completed at the end of the period under review.

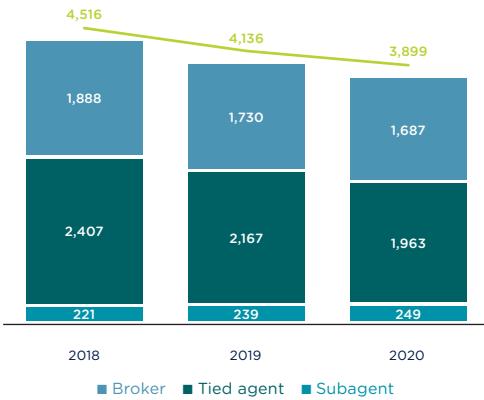
In 2020, the FSMA granted an authorization to one independent financial planner.

At the end of 2020, 190 lenders were authorized, 111 of which for mortgage lending and 79 for consumer credit.

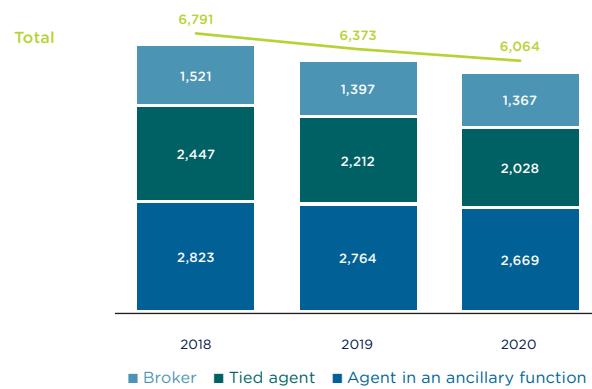
In 2020, the FSMA granted an authorization to one crowdfunding platform. Three firms submitted an application in 2020 for authorization as a crowdfunding platform. These dossiers were not yet completed at the end of the period under review.

## Financial service providers registered with the FSMA

Graph 15: Intermediaries in mortgage loans



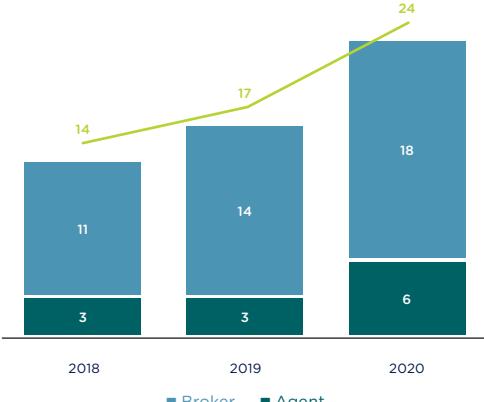
Graph 16: Intermediaries in consumer credit



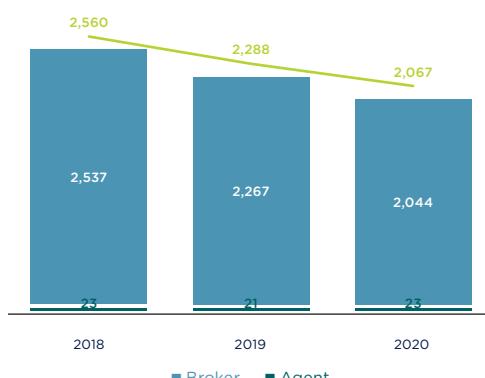
Graph 17: Insurance intermediaries



Graph 18: Reinsurance intermediaries



Graph 19: Intermediaries in banking and investment services



On 31 December 2020, 22,059 intermediaries were listed in the FSMA's registers.

There were 10,005 insurance intermediaries, the large majority of which was registered in the category of brokers (60.2 per cent). There were also 2,067 intermediaries in banking and investment services and 24 reinsurance intermediaries. In terms of credit intermediaries, the FSMA registered 3,899 mortgage lenders and 6,064 consumer credit intermediaries.

In terms of insurance intermediaries, the FSMA registered 39 in the new category of mandated underwriter. In the new category of ancillary insurance intermediary introduced pursuant to the IDD<sup>55</sup>, the FSMA counted 66 registrations at the end of the period under review.

With the exception of reinsurance intermediaries, the number of intermediaries fell in 2020. This amounted to a fall of 5.3 per cent across all statuses compared to 2019. This evolution is in line with figures from previous years. The greatest fall (-9.7 per cent) was in intermediaries in banking and investment services. Since 2017, their number has fallen by 31.7 per cent.

**Table 5:** Registered firms

	31/12/2018	31/12/2019	31/12/2020
Currency exchange offices	7	7	7 <sup>56</sup>
Small-scale managers	80	112	140

In 2020, the FSMA received two new applications for registration as a currency exchange office (bureau de change). These dossiers were not yet finalized in the period under review.

At the end of 2020, 140 small-scale managers of AIFs were registered with the FSMA (see below).

<sup>55</sup> The IDD was transposed into Belgian law by the Law of 6 December 2018. This law entered into force on 28 December 2018. The Law of 2 February 2021 extended the transitional period for ancillary insurance intermediaries who already conducted the activity of ancillary insurance intermediary on 28 December 2018 but who did not have to be registered before that date. They are temporarily authorized until 28 December 2021 to further conduct this activity with the proviso that they have submitted a full application for registration as an ancillary insurance intermediary to the FSMA by 28 December 2021.

<sup>56</sup> Payment institutions that offer currency exchange services are not included in this number. They are under the supervision of the National Bank of Belgium.

## Financial service providers with a European passport

**Table 6:** Firms with a branch in Belgium<sup>57</sup>

	31/12/2018	31/12/2019	31/12/2020
Investment firms	11	10	10
UCI management companies	12	15	16

These foreign companies have an authorization from another supervisory authority in the European Economic Area (EEA). As a result, they get a ‘European passport’ to establish a branch in Belgium. For these branches, the FSMA supervises the conduct of business rules as well as the combating of money laundering and terrorist financing. For the rest, these companies are supervised by the supervisory authority of their Member State of origin.

**Table 7:** Companies active in Belgium under the ‘free provision of services’<sup>58</sup>

	31/12/2018	31/12/2019	31/12/2020
EEA UCI management companies	127	154	148
EEA investment firms	3,158	3,171	976
Third-country investment firms	98	75 <sup>58</sup>	377

Foreign authorized companies established in the EEA get a second type of ‘European passport’. Through this, they may be active in Belgium without having established a branch. This system is called the ‘free provision of services’. These companies are supervised by the supervisory authority of their Member State of origin.

Investment firms from the United Kingdom represent the large majority of foreign EEA firms that were active in Belgium under the ‘free provision of services’. Since the United Kingdom’s exit from the European Union, they are considered third-country investment firms. This explains the sharp fall in the number of investment firms from the EEA active in Belgium under the ‘free provision of services’ and the great increase in the number of third-country investment firms.

<sup>57</sup> This table only shows branches under the FSMA’s supervision. Investment firms that provide services which are reserved to stockbroking firms in Belgium must register their branches with the National Bank of Belgium.

<sup>58</sup> A number of companies no longer active were struck from the list.

# What does the supervision of financial service providers entail?

The nature and scale of the FSMA's supervision of financial service providers varies based on the status. The rules for management companies, investment firms and lenders are more extensive than those for intermediaries, currency exchange offices, crowdfunding platforms, and independent financial planners. The scale and complexity of activities of each firm also plays a role.

Less complex firms may, pursuant to the proportionality principle, have a simpler organization. That does not mean that they do not need to comply with minimum standards. All firms must moreover be properly organized to prevent money laundering and terrorist financing<sup>59</sup>.

The FSMA ascertains whether each authorized company's management is fit and proper and sufficiently available. It screens all candidate lenders and examines the distribution of tasks between the managers and ascertains whether they are in a position to effectively mutually supervise each other.

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

Most companies are subject to rules of conduct adapted based on their activity. They must act honestly, fairly and professionally in the best interests of their clients. They must also provide their clients information that is accurate, clear and not misleading. The most extensive rules of conduct are the MiFID conduct of business rules<sup>60</sup>. They apply to firms that offer investment services. Apart from investment firms, these can also be management companies and crowdfunding platforms.

In their application for authorization, the firms submit a three-year financial plan. Independent financial planners and crowdfunding platforms must also submit a declaration showing that they have professional liability insurance.

59 See this report, p. 104.

60 See this report, p. 55.

Management companies and investment firms have to have sufficient initial capital and equity. Major shareholders are screened and must be financially sound enough to be able to provide additional capital should this be necessary. The FSMA regularly receives and looks into financial and other reporting from investment firms and management companies.

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

Apart from these authorized firms, the FSMA also supervises other statuses. This includes supervising access to the business of intermediaries in the financial sector. This comprises intermediaries in banking and investment services, insurance and reinsurance and mortgage loans and consumer credit.

## FOCUS 2021

In 2021, the FSMA will provide for the implementation and organization of the new European authorizations for crowdfunding service providers. It is organizing a registration process for certain crypto service providers. It is also reviewing its expectations vis-à-vis investment firms and UCITS and AIF management companies when outsourcing investment portfolios. Where necessary, it will update its expectations.

## The FSMA struck 131 intermediaries from the registers

In 2020, the FSMA struck 131 intermediaries from the registers because they no longer met the requirements for registration. The FSMA temporarily suspended registration of three intermediaries. Table 8 provides an overview of the reasons for these measures.

In most cases, the intermediaries themselves took the initiative to stop their registration. The FSMA may also decide to terminate intermediaries' registration by striking them from the registers. Withdrawing a registration is a serious administrative measures that entails intermediaries being prohibited from further conducting their intermediation activity.

The FSMA does not proceed with striking someone from the register immediately. Where the FSMA ascertains that an intermediary does not comply with the registration requirements, it first of all asks the intermediary to comply. If this does not happen, the FSMA will formally order the intermediary to do so and set a date by which the non-conformity must be remedied. If they do not respond, the FSMA has no other choice but to withdraw the registration.

If a candidate intermediary does not meet the registration requirements, the FSMA rejects the registration. In 2020, that occurred 23 times. In eight cases, the FSMA found that the candidate intermediary was not fit and proper as required.

**Table 8:** Withdrawals and suspensions in 2020

	Withdrawals	Suspensions
Registration dossier not in order	11	
Fitness and propriety not fulfilled	4	3
Professional liability insurance not in order	88	
Contribution to operating expenses not paid (for financial year 2019)	6	
Intermediary bankrupt	22	
<b>Total</b>	<b>131</b>	<b>3</b>

## Intermediaries must be fit & proper at all times

### FOCUS 2021

All intermediaries are individually responsible for their FSMA registration dossier. That was introduced by a change in the law that puts an end to collective registrations of intermediaries by central institutions. In 2021, the FSMA is converting all collective registrations to individual registrations. As soon as this conversion occurs, collectively registered intermediaries bear the responsibility for managing their registration dossier and therefore also any changes thereto. The concept of a central institution is now a thing of the past.

Intermediaries must have professional integrity and be suitable or have the appropriate expertise. These are the fit & proper conditions required to work in the financial sector. It is up to the FSMA to assess whether intermediaries meet these conditions. Intermediaries must meet the conditions for the entire time they are registered with the FSMA.

In its assessment, the FSMA takes into account all information it possesses and weighs it up. It determines how much certain shortcomings weigh in a decision. An administrative measure in the past such as an order or withdrawal can for example constitute a negative antecedent.

If an intermediary repeatedly falls short in complying with his/her legal obligations, this can lead to a negative assessment. An accumulation of shortcomings can indicate a certain pattern of conduct. In such a case, there is a structural problem with complying with the rules by the person in question. Even when each shortcoming, taken individually, is not weighty enough, a range of shortcomings can still lead to a negative assessment.

### Keeping the registration dossier always up-to-date

The FSMA has identified that intermediaries still do not automatically submit changes to their registration dossiers. This is despite all intermediaries being legally obliged to do so. The FSMA reiterates this message in its newsletters. Specifically, interme-

diaries must immediately submit changes to their registration dossier through the Cabrio application. The registration dossier must be up-to-date at all times. It is essential for the FSMA, as supervisory authority, to always be in possession of the most recent data.

## Fraudsters commit identity theft against Belgian brokers

In the ‘clone firm scam’<sup>61</sup>, fraudsters steal the name or other legal data of a regulated undertaking.

In 2020, a considerable number of Belgian intermediaries, especially insurance brokers, were the victims of identity theft. Fraudsters particularly targeted English speakers. This usually occurred by telephone or through a (false) website.

The FSMA received reports of identity theft from consumers and from regulated undertakings. It gathered additional information as part of its cooperation with other supervisors and police forces.

The FSMA immediately warned the intermediaries affected. It recommends regulated undertakings that become the victim of this type of fraud to file a complaint with the police or directly with an examining magistrate.

### FOCUS 2021

Newsletters are the main communication tool to reach a large population such as intermediaries and lenders. In 2020, the FSMA published 15 newsletters on changes in the legislation and regulations and the supervision thereof. In 2021, the FSMA will continue this and prioritize communication through newsletters. This means of communication is perfectly in line with the sector’s expectations and allows the FSMA to put a strong focus on its expectations.

The difficulties encountered by financial intermediaries because of the coronavirus crisis and the regulatory solutions that the FSMA found to help them were featured in a number of newsletters in 2020. Other newsletters delved deeper into current topics such as the new category of ancillary insurance intermediaries, reforms in the requirements of knowledge, and the anti-money laundering legislation. The FSMA also put the spotlight on communicating on the impact of Brexit, and the intermediary identity theft phenomenon.

At the end of 2020, the FSMA launched an animated film to raise awareness among insurance intermediaries of the anti-money laundering legislation. In 2021, the FSMA plans to launch five new animated films that delve deeper into shortcomings it has identified in its supervision in the area of anti-money laundering legislation<sup>62</sup>.

62 See this report, p. 104.

### Small-scale managers on the rise

Small-scale managers of AIFs constitute an outlier in the group of asset management companies. They may in principle only manage funds that are not publicly sold and the total managed assets of which do not exceed a particular legally established threshold. These companies only have a disclosure obligation. If they meet the legal requirements, the FSMA registers them.

Although there is a registration obligation, these companies are not under the FSMA's supervision, except as regards the rules on combating money laundering and terrorist financing. Small-scale managers are obliged to report annually and are legally required to keep their registration dossier up-to-date.

As soon as small-scale managers' total managed assets exceed the legal threshold, or as soon as they manage one or more public investment funds, they must apply for authorization. Small-scale managers may voluntarily opt to apply for authorization, for example because they expect a further rise in their assets under management or because they want to be eligible for a European passport. In that case, they must comply with all authorization requirements. One small-scale manager used this option and received authorization in 2020.

In 2020, the FSMA looked in more detail at the small-scale manager sector. The number of registrations of small-scale AIFMs has greatly risen over the past few years. In only five years, their number has almost tripled.

Of the 140 registered small-scale managers, there are 84 self-managed funds and 56 management companies that manage one or more funds.

The majority (83 managers) do not use leverage and do not provide for the right to repayment during a five-year period. These criteria are important for determining the statutory maximum threshold of managed assets and being able to work without an authorization.

The FSMA also looked at the geographical areas and sectors in which the small-scale managers concerned invested. Forty-nine managers said they focused on investments in Europe. Forty-four managers work only in Belgium. The others state that they focus on several regions and do not have any geographical limitations. When examining the sectors, those of "science" and "technology" stand out as popular sectors with 37 managers, and 'real-estate' with 24 managers.

**Table 9:** Registered firms

	31/12/2016	31/12/2017	31/12/2018	31/12/2019	31/12/2020
Small-scale AIFMs	53	63	80	112	140

## COVID-19 measures support intermediaries and lenders

In the period under review, the FSMA took several measures for intermediaries and lenders under its supervision to safeguard their continuity during the coronavirus crisis.

It published FAQs on its website to give them guidance that enabled them to continue to operate in the interest of consumers. The FSMA also took initiatives, regulatory<sup>63</sup> or otherwise, to limit the impact of the coronavirus crisis and the lockdown:

<sup>63</sup> Royal Decree of 8 June 2020 containing specific measures aimed at extending certain regulatory deadlines for the professional knowledge requirements of compliance officers and intermediaries in the financial and insurance sector, in order to address the consequences of the COVID-19 epidemic.

1. A four-month postponement of the entry into force of the new exam system for access to the profession of insurance intermediary.
2. Three months of extra time to take the old exams on insurance for candidates who were already enrolled for them before 31 December 2020. The FSMA allowed this postponement because a large proportion of the exam sessions in the insurance sector were suspended.
3. An extra four months to meet the mandatory continuing education requirement. The FSMA supported and encouraged initiatives focused on high-quality distance learning.
4. An additional term of four months in which the “trainee PCPs” could complete their training.

The FSMA informed the intermediaries and lenders on these developments in various newsletters.

It opened a call centre<sup>64</sup> for anyone who had questions on the measures the government and the bank and insurance sector took to limit the impact of the pandemic on consumers, the self-employed, and companies.

Despite the exceptional nature of the situation and the difficulties the entities under its supervision encountered, the intermediaries and lenders were obliged to strictly follow all legal and regulatory requirements that applied to them.

## Crowdfunding investments on the rise

In the period of July 2018 to June 2020, at least 69 million euros were invested in Belgium in new projects via crowdfunding. This figure points to a growing interest in this form of financing.

During the period under review, the FSMA conducted a study into investments that bring in funding or lend money to projects via crowdfunding. The FSMA oversees these two types of crowdfunding.

The study was based on the information notes received by the FSMA from eight crowdfunding platforms that conducted campaigns on the Belgian market to fund projects.

Crowdfunding platforms must submit information notes for certain projects to the FSMA. An information note contains useful information for interested investors on, for example, the offeror of the project, the amount to be raised, the investment instruments used, and the risk associated with an investment.

The FSMA collected that data from the information note using automated text analysis and added to it with other data it obtained through web scraping.

<sup>64</sup> See this report, p. 72.

The data indicates a growing number of investments in crowdfunding from mid-2018 to mid-2020. Both the number of projects and the total amounts collected grew. That finding was in line with a previous study by the FSMA on crowdfunding in the period January 2012 - December 2017.

The main findings of the study are as follows:

#### **At least 69 million euros invested through crowdfunding**

The eight platforms launched 234 campaigns with information notes. Information on the amount actually collected was available for 145 of these campaigns. At least 140 campaigns were successfully financed. In total, they raised 69.24 million euros. In 2019, the market at least doubled compared with 2017.

#### **Campaigns differ in scale**

There were major differences between the scale of the campaigns. The smallest campaign was trying to raise 30,000 euros. The largest campaign was aiming for an amount of five million euros. The minimum outlay required also greatly varied: between 50 euros and 5,000 euros.

#### **Returns vary**

Most campaigns raised money through debt-based campaigns. Both the term and expected return varied. The term of the financing came to an average of a little more than 5.5 years. The annual interest rate came to an average of 4.17 per cent. Several projects entailed a tax advantage. Eleven projects said that they used tax shelters and 74 information notes reported a win-win loan.

#### **Fewer information notes in the first half of 2020**

In the first six months of 2020, the number of information notes fell. It is unclear whether or not this fall was a result of the coronavirus crisis and whether this crisis had a lasting impact on the number of new campaigns.

## Financial service providers are properly equipped against cyber threats

Financial service providers are in general properly equipped to defend themselves from attacks on their digital systems. Efforts still need to be made for better protection against cyber threats though.

Six months after the publication of a guide<sup>65</sup> containing the basic principles for managing cyber security risks, the FSMA evaluated the resilience to cyber attacks of the institutions under its supervision.

In spring 2020, it sent service providers which, pursuant to their authorization, had to have an appropriate organization, a survey on this subject. The survey was conducted among the authorized management companies of UCITS and AIFs, portfolio management and investment advice companies and crowdfunding platforms. The aim was to determine the extent to which they applied the basic communication principles in managing cybersecurity risks.

The analysis of the responses to the survey unveiled that the level of preparation was on the whole good, but differed depending on the status. All respondents received a circular containing the main lessons taken away from the survey. This feedback helps raise their awareness of the aspects that made them most vulnerable to cybercrime. Using the information on the average level of protection established within each sector and the indications of potential deficiencies in the various sectors, each of them could determine where exactly they sit within their sector. They could also determine which measures, where necessary, they still needed to take to further increase their level of protection.

Through the information collected in this questionnaire, the FSMA could establish an overall cybersecurity score for each respondent. With this score, it bore in mind the general risk assessment of each institution, which it conducted at the end of 2020.

<sup>65</sup> See the joint communication from the FSMA and the Centre for Cyber security Belgium of 2 October 2019 titled 'Baseline Principles for Managing Cyber Security Risks'.

# Stricter approach to money laundering and terrorist financing

There are strict rules and obligations in terms of preventing money laundering and terrorist financing for financial service providers under the FSMA's supervision.

## Risk-based approach key to preventing money laundering

The legislature imposes strict obligations on financial service providers under the FSMA's supervision such as investment firms, lenders, financial planners and certain intermediaries with respect to combating money laundering and terrorist financing. They have to identify, assess and understand the risks to which they are exposed and then take the necessary measures to mitigate and manage these risks. These measures must be proportionate to those risks.

This risk-based approach is one of the main differences in the stricter legislation<sup>66</sup> that entered into force in 2017 and 2018. This approach affects the organization and procedures. To properly assess risks, financial service providers must, inter alia, take into account the characteristics of their customers, the products, services or transactions they offer them, the countries or geographical areas concerned and the distribution channels they use.

Only after this general evaluation of risks is complete, may they determine how they must organize themselves and how they must develop their policy, procedures and internal control measures. In that way, they can meet their obligations as regards due diligence and the individual risk assessment of their customers.

## The FSMA identifies shortcomings during inspections

In 2020, the FSMA conducted various inspections of intermediaries. It organized targeted inspections among 255 insurance intermediaries and one remote inspection of six intermediaries in banking and investment services.

In the targeted inspections of insurance intermediaries, it focused on specific themes of the anti-money laundering law. The aim was to verify the accuracy of the information the insurance intermediaries provided in their periodic questionnaires as well as compliance with certain legal obligations.

<sup>66</sup> Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash; and Regulation of the Financial Services and Markets Authority of 3 July 2018 on the prevention of money laundering and terrorist financing.

The remote inspections of intermediaries in banking and investment services were much broader. In these, the FSMA examined whether these intermediaries complied with certain requirements under the anti-money laundering law, the requirements regarding the conditions for registration and business operation and in particular the organizational obligations.

In these inspections, the following themes were looked at: the appointment of a highest-level senior manager and an anti-money laundering manager, the general risk assessment and the procedures regarding certain legal obligations arising from the aforementioned law.

In certain cases, the FSMA urged the supervised entities to remedy the shortcomings found, and to take the necessary measures to comply with the legal obligations the inspection related to.

#### **Sectoral report, newsletters and animated films clarify legislation**

In 2020, the FSMA published a sectoral report on the main findings from inspections it conducted in 2019 of a number of insurance intermediaries on compliance with the anti-money laundering legislation. The report indicates to insurance intermediaries what their legal obligations are and how they can comply with them. It includes a practical example of a risk-based approach and indicates to intermediaries how they can properly organize themselves to meet their obligations.

To accompany the sectoral report, the FSMA published newsletters on inspections they had conducted of other financial service providers under its supervision and clarified certain terms in the anti-money laundering legislation. More specifically, this related to countries with a high money laundering risk, countries with low or no taxes and countries and persons who are subject to a financial embargo and asset freezing. The FSMA had identified in earlier inspections that lenders and intermediaries, their anti-money laundering managers and other members of staff had insufficient knowledge of these subjects.

In 2020, the FSMA launched its first animated film on the anti-money laundering legislation. The aim of the film was to raise awareness among insurance intermediaries and educate them on the subject. In the first film, a number of unusual situations were presented. The intermediaries have to examine them properly and in certain cases ask clients for additional information. If there is a possible case of money laundering or terrorist financing, the FSMA points out in the film their obligation to report this to the CTIF-CFI.

#### **FOCUS 2021**

In 2021, the FSMA will launch five new animated films on the rules to combat money laundering and terrorist financing. These are aimed at insurance intermediaries and concern shortcomings the FSMA has identified during inspections.

The first film is about the risk-based approach laid down by the anti-money laundering legislation. The second film explains how the general risk assessment must be conducted. The third film delves deeper into the notion of 'politically exposed persons'.

The fourth film shows what financial sanctions are and what obligations arise from tracing a person or entity to which such sanctions apply. The fifth film underlines the importance of the obligation to report to the CTIF-CFI, the cornerstone of effectively combating money laundering and terrorist financing.

### The FSMA provides guidance on preparing the money laundering report

Financial service providers that fall under the anti-money laundering legislation are obliged to prepare an annual activity report. The anti-money laundering manager of each entity has to prepare this money laundering report. The report should enable the entity's senior management to ascertain the risks of money laundering to which the entity is exposed and to take appropriate measures.

The FSMA often found that the annual activity report only described policies, procedures and the organization of internal control in a general sense and lacked structure. To achieve a more qualitative and organized activity report, the FSMA provided guidance to help the anti-money laundering managers prepare their money laundering report. The guidance provides a structure and a number of concrete questions.

## Consequences of Brexit for the financial world

On 31 December 2020, the United Kingdom (and Gibraltar) finally withdrew from the European Union. 'Brexit' has major consequences on insurance companies, investment firms and management companies of UCIs and AIFs with a British authorization that were active in Belgium.

European legislation and regulations allow insurance and investment firms and management companies to work within the EU as soon as the firm has an authorization in one of the Member States. The UK's decision to withdraw from the EU means that the UK no longer forms part of the European single market. As regards the application of European legislation and regulations, the UK becomes a third country.

Due to Brexit, British insurance companies, investment firms and management companies no longer fall under the European legislation and regulations, and therefore no longer have such an authorization to pursue their activity in the EU.

Insurance policies entered into before Brexit by UK insurance companies remain in force even after Brexit. The British insurance companies concerned do, however, have to take the necessary measures to guarantee the continuity of their services and compliance with their contractual obligations.

Over the past few years, the FSMA has asked UK insurance companies to take measures before 31 December 2020 to limit the effect of Brexit on the contracts in their portfolio. The FSMA also encouraged them to inform Belgian policyholders as quickly and as clearly as possible on the consequences of Brexit.

In conjunction with EIOPA and other European supervisory authorities, the FSMA also published a consumer guide on its website to encourage Belgian insureds to contact their British insurance companies in connection with the further progress of their insurance policies.

In addition, the FSMA addressed a letter to all British investment firms and UCI/AIF management companies to inform them on the consequences of Brexit for their activity. It also published communications addressed to these investment firms and management companies.

In 2021, the FSMA will pay particular attention, in the context of Brexit, to British intermediaries who may temporarily continue their activity in Belgium based on a specific legal transitional arrangement.



# PROTECTION OF SUPPLEMENTARY PENSIONS

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

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# Social supervision

The social legislation regarding supplementary pensions establishes the rules for granting, acquiring and paying out supplementary pension rights. Protecting these rights is key to this legislation. This occurs in the first instance by obliging employers or the self-employed to grant the administration of the pension rights accrued to a pension institution. This can be a pension fund or an insurance company. The social supplementary pension legislation also aims to guarantee that members get accurate information on their accrued rights and in certain cases also have a say on their supplementary pension.

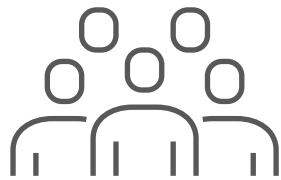
The FSMA is tasked with supervising compliance with this social legislation. This supervision targets both the organizers of the supplementary pension and the pension institutions. In social supervision, the emphasis lies on inspections, in which a specific theme is investigated for the whole sector. When determining its priorities and the theme to be investigated, the FSMA opts for a risk-based approach: the most major risks are dealt with first.

Inspections can lead to individual enforcement processes for the pension institutions or the organizers of supplementary pension plans that disregard the legislation. The organizers are in most cases the employers that provide a supplementary pension to their employees.

Inspections often lead to guidelines that offer pension institutions help with correctly complying with the legislation. That occurs using good practices established during an inspection. Inspections also sometimes lead to policy recommendations for the public authorities concerned.

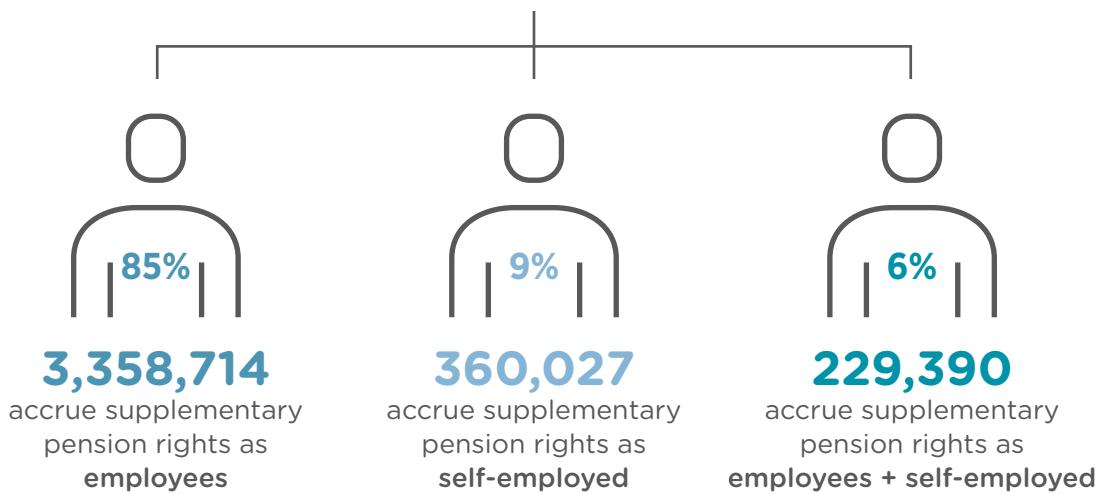
## Annual overview of second-pillar pensions

Every year, the FSMA publishes an overview of second-pillar supplementary pensions that employees and self-employed persons accrue. The overview includes a range of data from the DB2P pension database. These data provide an overview of the situation on 1 January 2020.

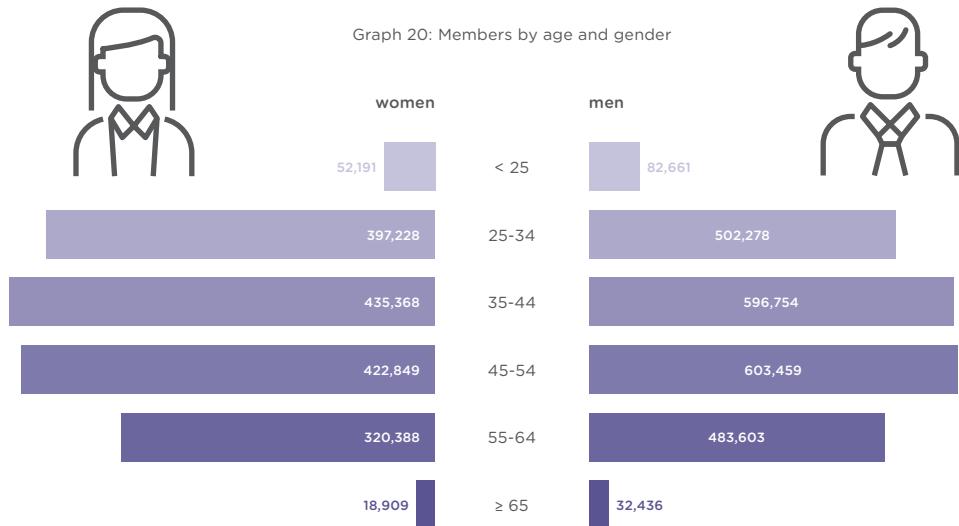


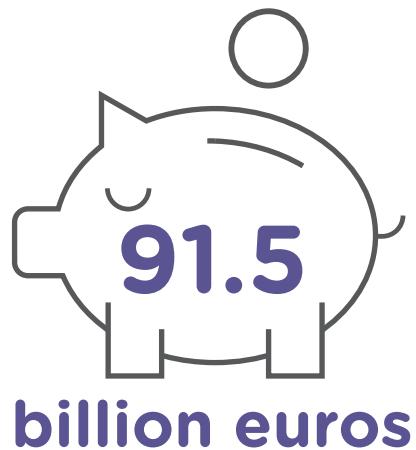
# 3,948,131

people are members of a **supplementary pension plan**



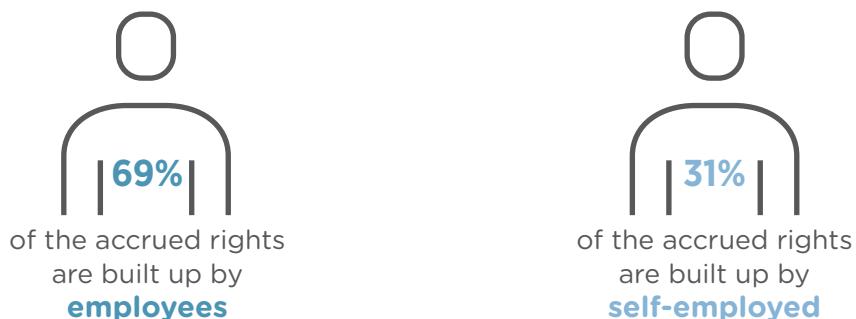
Graph 20: Members by age and gender





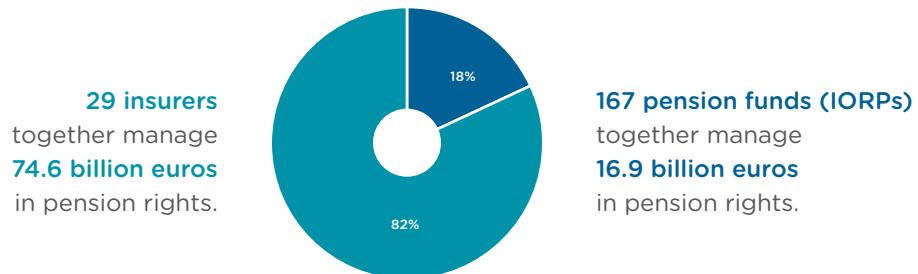
in accrued pension rights

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



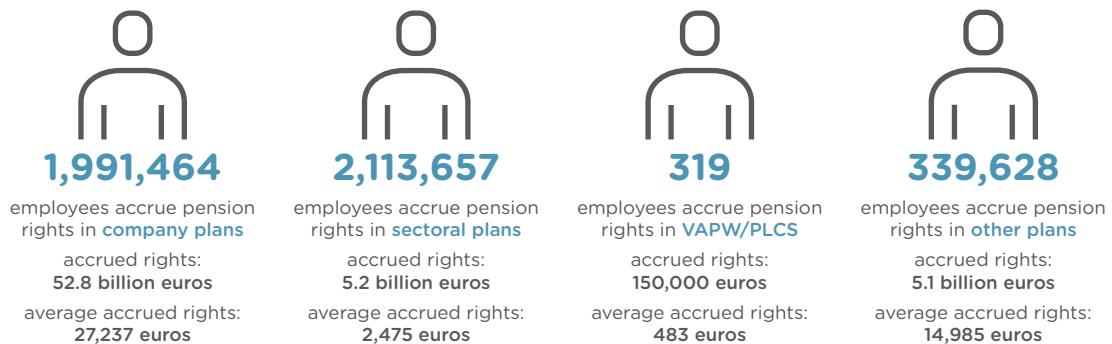
	Pension funds	
15.9		1.0
47.2	Group insurance	27.3
<b>63.1</b>	<b>Total</b>	<b>28.3</b>

Accrued rights (in EUR billion)



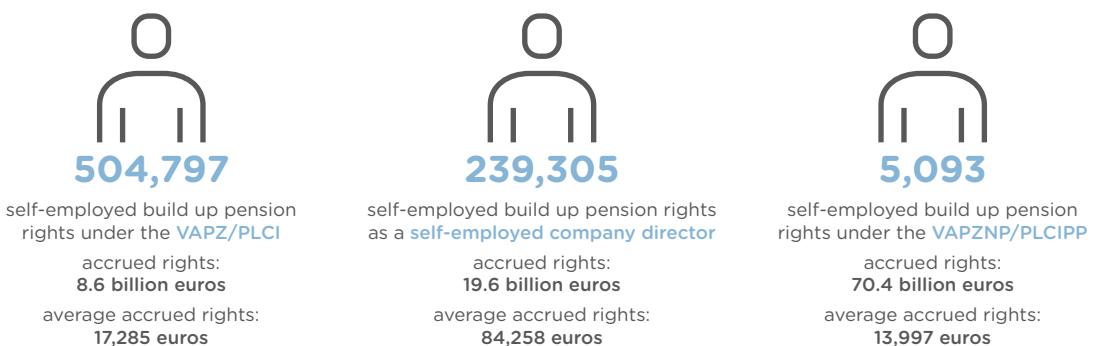
## Pension plans for employees<sup>67</sup>

The initiative for accruing a pension plan for employees is mainly that of the employer. Many employers have a pension plan for all or some of the employees in their company. That is a **company plan**. The initiative can also be that of a sector. In that case, the pension plan applies to all employees in the sector. This is a **sectoral plan**. Those who accrue a very low supplementary pension with their employer or sector can accrue a voluntary supplementary pension for employees (VAPW/PLCS). A range of **other plans** exists too, such as the pension transfer scheme for managing pension rights of employees who leave an employment and transfer their pension rights.



## Pension plans for the self-employed<sup>68</sup>

Someone who is self-employed may individually accrue a **supplementary pension via the voluntary supplementary pension for the self-employed scheme** (VAPZ/PLCI). If a self-employed person has the status of a self-employed director, for example as a board member or director of a company, the company can accrue a supplementary pension for him/her. Self-employed people who do not exercise their professional business in a company have the possibility of saving for a pension through the **supplementary pension for self-employed persons working as a natural person** (VAPZNP/PLCIPP).



<sup>67</sup> Employees may be members of several types of pension plans, for example, company plans and sectoral plans. These are counted several times in the figures.

<sup>68</sup> The self-employed may be members of several types of pension plans, for example under the supplementary pension for the self-employed scheme (VAPZ/PLCI) and as a self-employed director. These are counted several times in the figures.

### Great differences in supplementary pensions

The average accrued rights of those who build up a supplementary pension and are nearing retirement age (the category of 55- to 64-year olds) comes to 56,057 euros<sup>69</sup>. This global average figure conceals major disparities. The median reserve for 55- to 64-year olds is 9,118 euros.

For men, the average accrued rights for that age category is 71,171 euros. That is considerably higher than for women (33,210 euros).

Even in the professional social security statuses there are major disparities as regards accrued rights in the age category of 55- to 64-year olds. A self-employed director on average has a pension reserve of 142,933 euros, whilst an employee who is a member of a sectoral pension plan on average has a reserve of 4,715 euros.

The median figures point in the same direction. A self-employed director has a median reserve of 75,179 euros. An employee in a sector pension plan has a median reserve of 1,220 euros.

### Accurate DB2P declarations

Since the end of 2016, citizens have access to the database for supplementary pensions, DB2P, through the website mypension.be. This database collates data relating to supplementary pensions of employees and the self-employed and therefore constitutes a very important source of information. Citizens have to be able to rely on the database containing complete and reliable information. Over the past few years, the FSMA has placed a lot of importance on the quality of reporting by pension institutions, including pension institutions that manage Belgian supplementary pensions, and the timeliness of reports. The FSMA takes strict action against pension institutions that do not properly meet their reporting obligations. In 2020, it also verified pension institutions' reporting on DB2P. Although a noticeably positive change was noted between 2016 and 2020, reporting by pension institutions to the DB2P remains an important focal point for the FSMA.

### The FSMA asks group insurers to guarantee the payout of accrued benefits

After the wide-scale research in 2019 on the financing of defined benefit pension plans by group insurers, at the beginning of 2020, the FSMA published a feedback statement for the group insurance sector. In it, the FSMA provided an overview of its expectations on the legal obligations and identifies a number of good practices in the form of a recommendation.

<sup>69</sup> See the sectoral overview 2020 "the second-pillar pension in images", p. 12 and 13, available on the FSMA's website [in French and Dutch].

The legal obligations only relate to the financing of the accrued rights. Nevertheless, the FSMA also asks for guarantees as regards the financing of the accrued benefit. The accrued rights are the pension rights a member employee can transfer to another pension plan when he or she leaves an employer. The accrued benefit is the amount a member has a right to on retirement.

The FSMA is of the opinion that the financing of group insurance should be focused on offering a reasonable amount of certainty to members of the pension scheme on the payout of the accrued benefit. Even if the employer encounters financial/economic difficulties, the financing must be guaranteed.

The FSMA recommends that insurance companies be vigilant when developing and applying the underlying financing methods, as to the prudent nature of these methods. The FSMA asks them to refrain in particular from methods that only aim for the minimum required financing level.

The Supplementary Pensions Commission, an advisory body under the Law on Supplementary Pensions, shares the FSMA's concerns regarding the funding of defined benefit plans by group insurance<sup>70</sup>.

## The FSMA supervises pension products with no statutory guaranteed return

The distribution of pension products with no statutory guaranteed return largely occurs in the same way as for regulated life insurance products. The FSMA established this during a study.

The FSMA started a study in 2019 of how pension institutions manage the supplementary pension for self-employed directors (Law on Supplementary Pensions for the Self-employed), the voluntary supplementary pension for self-employed natural persons (Law on Supplementary Pensions for Self-Employed Natural Persons) and the voluntary supplementary pension for employees (Law on Supplementary Pensions for Employees).

The first phase of this study unveiled that pension institutions manage most of the reserves for these three pension products without a statutory guaranteed return through class 21 insurance. These are insurance products with a relatively low risk. Investments in riskier class 23 funds appear to a lesser extent.

In a second phase in 2020, the FSMA investigated the management of class 23 insurance. In this study, it looked at underlying investment funds. It looked into whether pension institutions, when selling and managing the three aforementioned pension products, abused their greater freedom in this respect. That greater freedom is the consequence of the lack of a statutory guaranteed return and the fact that a number of consumer protection rules as regards the products and their sale do not apply to supplementary pension products.

<sup>70</sup> Opinion of the Commission on Supplementary Pensions No. 40 of 17 December 2020 regarding the FSMA's research into the funding of defined benefit pension plans. This opinion can be consulted on the FSMA's website.

The FSMA did not identify any abuse in that study. There were no dubious investments. Pension institutions did not make use of investment funds that were not regulated or that were intended for institutional investors and therefore not suitable for sale to retail clients.

The study showed that most pension institutions handle the three pension products in the same way as other life insurance products, the sale of which is extensively regulated. This finding also came out of the fees charged and the guaranteed returns of class 21 insurance.

## The FSMA studies the annual pension information provided to the self-employed

The FSMA has conducted a study of the quality of the pension information sheets of VAPZ/PLCI policies. These pension information sheets contain annual information for the self-employed on their supplementary pension.

The FSMA looked into whether the pension institutions complied with all relevant legal provisions. It also tried to single out good and bad practices. None of the sheets examined were completely in order. However, the FSMA identified very few severe infringements of the legal obligations.

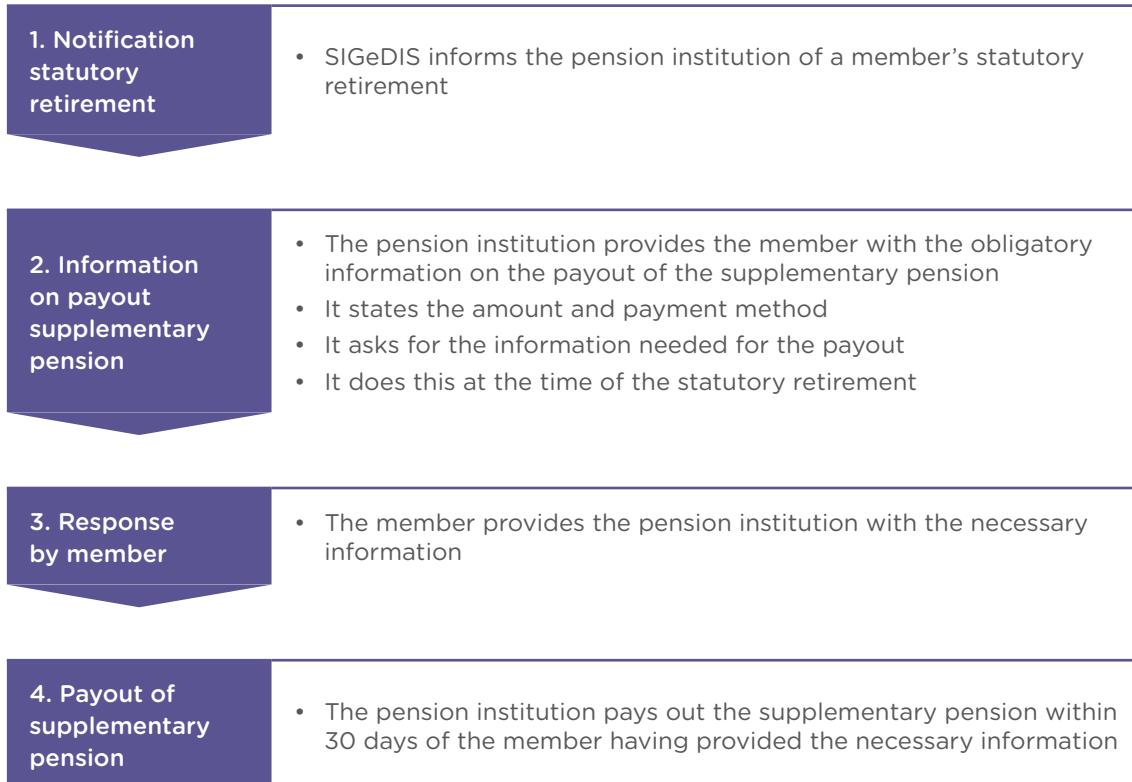
Only a handful of pension information sheets were really problematic. The most common deficiency was the lack of a clear overview of the guaranteed return if more than one guaranteed interest rate applied.

The FSMA provided feedback on the practices identified to the sector through a feedback statement.

## Pension institutions follow a new procedure when paying out the supplementary pension

Since 2016, pension institutions are legally obliged to pay out the supplementary pension when a member takes their statutory pension. After all, a supplementary pension is complementary to the statutory pension.

To comply with the new payment obligations, pension institutions have to find out when their members take their statutory pension. This legal obligation leads to an extensive review of their payout procedures. There are four phases in their payout process.



In the period under review, the FSMA investigated the extent to which pension institutions can guarantee smooth payout of the supplementary pension. The focus here lay on the phases within which the pension institution is responsible for the proper progress of the payout procedure, in particular the provision of information on the payout of the supplementary pension and the payout itself.

At the basis of this study was a statistic from SIGeDIS, the administrator of the DB2P database, on the retirement of employees and self-employed persons in 2019. From this statistic, the FSMA took a sample of pension files. Every pension file concerned one member for whom the pension institution responsible had to proceed with payout upon retirement. The study encompassed 1,076 pension files for which pension institutions reported a range of data.

The FSMA will publish the results of this enquiry in 2021.

## Organizers adapt their arrangements

Aside from linking the payout of the supplementary pension to the taking of the state pension, the supplementary pensions law<sup>71</sup> also introduced a number of other new rules. As a result, organizers of a supplementary pension are prohibited, since 2016, from applying beneficial anticipation rules as part of their pension commitment. As a result, the consequences of retiring prior to the

<sup>71</sup> The Law of 18 December 2015 to ensure the sustainability and social character of supplementary pensions and to strengthen the supplementary character with regard to retirement pensions.

statutory retirement age on the scale of the pension benefit cannot be removed or restricted and additional benefits equally may not be granted because of retirement. For new members, the retirement age also may never be lower than the statutory retirement age.

These changes obliged organizers to adjust their arrangements. They had the time to do so until the end of 2018. In an enquiry, the FSMA identified that most organizers had amended their pension schemes on time. Where this was not the case, it started an individual enquiry process.

## The FSMA investigates the granting of individual pension schemes

Employers may promise a specific employee a supplementary pension. In that case, this is considered an individual pension scheme.

One of the objectives of the supplementary pensions law is to make the supplementary pension accessible to as many employees as possible. That is why granting an individual pension scheme is subject to strict conditions. Employers are prohibited from granting an employee an individual pension scheme in the period of 36 months prior to his/her retirement.

In an enquiry into individual pension schemes for employees who took their state pension in 2018, the FSMA identified that employers did not always respect this rule. The FSMA's Management Committee entrusted the investigations officer with an investigation on the grounds of this serious indication of unlawful practices.

## Immediate membership in the pension plan

Until recently, many pension plans imposed a minimum age for membership by employees. The minimum age could not be higher than 25. Since 1 January 2019, a minimum membership age is no longer allowed and young employees who meet the conditions for membership in the pension plan could immediately join the pension plan upon employment.

### FOCUS 2021

Individual pension commitments for self-employed directors or employees must be outsourced. For previous director insurance and internal arrangements, specific transitional rules apply too. In 2021, the FSMA is verifying that organizers of individual pension commitments comply with the current outsourcing rules.

In 2021, the FSMA is also conducting a specific enquiry into the payout of pension benefits. Strict rules apply in this respect since 2016. After all, at the time it was formally decided that the supplementary pension constituted a supplement to the state pension and therefore had to, in principle, be paid out upon retirement. In the enquiry, any payouts made before the member retires, even though there is no exception or transitional provision to justify early payout, will be examined.

In 2020, the FSMA started an enquiry into the concrete application of the new rules as regards both the formal amendment of pension schemes and the membership procedures for newly recruited members of staff, and the communication to the pension institution. In 2021, the FSMA is continuing with this enquiry.

## The FSMA helps consumers gain an insight into pension data

Alongside its role as a supervisory authority, the FSMA also fulfils an important role in informing citizens on supplementary pensions. Wikifin, the FSMA's programme on financial education, publishes a lot of information on pensions on its website. In addition, the FSMA provides information on its website in the form of frequently asked questions (FAQs).

These FAQs are intended for employees and self-employed persons who need easy-to-understand and accessible explanations on often very complex pension subjects. The explanations should allow them to make properly informed decisions at crucial times, such as upon changing employer or retirement. More specifically, the FAQs help pension consumers understand the data on DB2P on mypension.be and their individual pension situation.

The FSMA continuously updates the FAQs. They thereby become more user-friendly. Amendments are also necessary because changes in the law and the update of the information provided so require.



### The FSMA publishes FAQs in the wake of the coronavirus crisis

In the wake of the coronavirus crisis, the FSMA published FAQs to inform employees, employers and self-employed persons on the consequences of the crisis for their supplementary pension. These FAQs were added to the COVID-19 section on the FSMA's website.

The government took specific measures<sup>72</sup> for the supplementary pensions of employees who became temporarily unemployed due to force majeure or economic reasons as a result of the pandemic. These measures are an exception to the general rules that apply to supplementary pensions.

As regards the supplementary pension for the self-employed, the provisions of their pension schemes or pension agreements remained fully applicable during the crisis. Given that a large number of self-employed persons accrue a supplementary pension under the VAPZ/PLCI, the FSMA also gathered a number of questions for them in an FAQ.

<sup>72</sup> Law of 7 May 2020 containing exceptional measures in the framework of the COVID-19 pandemic in relation to pensions, supplementary pensions and other supplementary benefits in relation to social security and Programme Law of 20 December 2020.

The FAQs for employees, employers and the self-employed contain links to the general FAQs on supplementary pensions on the FSMA's website or the Wikifin website. In this way, interested parties could search for more information on supplementary pensions. The FSMA also informed consumers who consulted the general FAQs on the existence of the specific COVID-19 FAQs.

Pension consumers could get in touch with the FSMA on the specific government measures during the coronavirus crisis through a special call centre set up for that purpose.

## Pension consumers turn to the FSMA

In the period under review, the FSMA received 416 messages on supplementary pensions. 87 per cent of these messages came from consumers. They continue to find their way to the FSMA more easily.

The number of questions and complaints from consumers rose to 363. That is 12 per cent more than in 2019 and 29 per cent more than in 2018. Most of the consumers' messages, as in previous years, related to the payout of their supplementary pension and the data on their supplementary pension in the DB2P database.

The messages on the payout of the supplementary pension upon retirement come from a range of perspectives. Consumers want to know when their supplementary pension will be paid out and who is responsible for this payment. They ask questions on the possibility of redeeming their supplementary pension contract. They want to know what information pension institutions responsible for the payout of their supplementary pension have to provide and when. They also have questions as to the tax rate that applies when their supplementary pension is paid out in a lump sum or annuities.

The rising number of messages from pension consumers is undoubtedly linked to the data in the DB2P database that can be consulted on the mypension.be website since a few years ago. That information provokes reflection and raises awareness among consumers as to the accrual of their supplementary pension rights.

95 per cent of questions or complaints regarded the supplementary pensions of employees. Only three per cent of questions and complaints regarded the supplementary pension of self-employed persons.

For professionals such as pension institutions, consultants and lawyers, the FSMA is a point of contact too. They mostly ask questions about the interpretation of legislation and ask the opinion of the FSMA on this subject. In 2020, the FSMA received 53 messages from professionals. Questions from professionals regularly lead to the publication of Opinions<sup>73</sup>.

<sup>73</sup> The FSMA's Opinions on supplementary pensions can be consulted on its website.

## What do consumers think about their supplementary pension?

The FSMA places a lot of importance on informing pension consumers. As part of this, the FSMA organized a consumer consultation.

The consumer consultation took the form of an online survey that the FSMA provided, in conjunction with SIGeDIS, via the mypension.be website. In that way, the FSMA could reach as large as possible a number of members of a supplementary pension plan.

The survey was aimed at employees who are not yet retired. It surveyed their satisfaction on the information on their supplementary pension.

More particularly, the FSMA wanted to know whether employees are interested in pension information, what they find important and whether they consider the information available sufficient. The FSMA's survey also focused on any problems that pension consumers encountered when contacting pension institutions.

The results of the survey are expected in 2021.

## Prudential supervision

The FSMA exercises prudential supervision on Institutions for Occupational Retirement Provision (IORPs), generally known as pension funds, that are active in Belgium. It protects the rights of members and pensioners and oversees the IORPs' sound organization, financial stability and solvency. Pension funds have to appropriately fund their pension liabilities. They value their pension liabilities carefully and ensure prudent and sufficiently diversified investments. They examine all the relevant risks. They take responsibility for their organization and are transparent on their policy vis-à-vis stakeholders.

## Small pension funds transfer activity to other funds

At the end of 2020, Belgium had 177 IORPs governed by Belgian law compared to 185 pension funds in 2019. The fall in the number of pension funds is the consequence of consolidation. Small pension funds decided to cease their activity in the period under review. They mainly transferred their activity to other pension funds, usually multi-employer funds. Some pension funds transferred their activity to group insurance schemes.

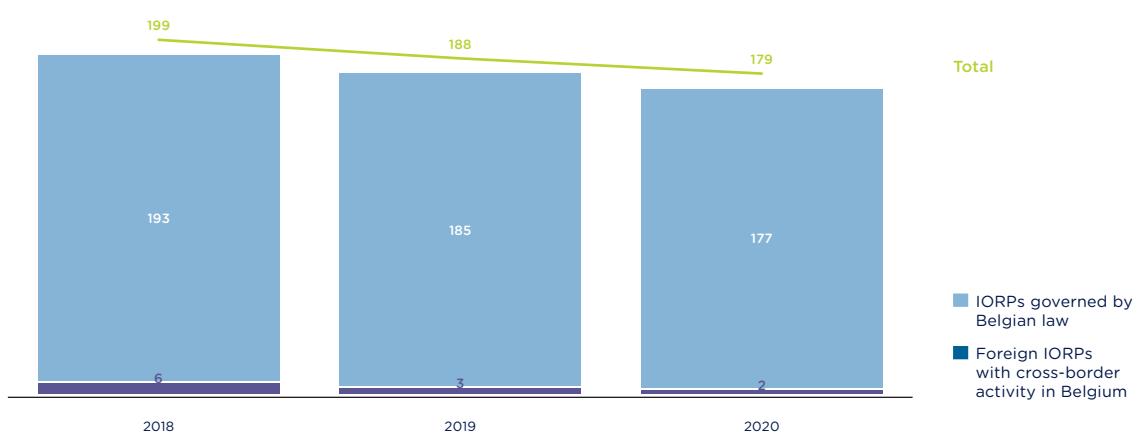
The consolidation in the pension funds sector is linked to the increased obligations as regards governance. These come out of the entry into force of the IORP II Directive and additional reporting requirements from the European Central Bank and the European authority EIOPA.

Apart from the 177 IORPs governed by Belgian law, at the end of 2020, two pension funds from other Member States of the European Economic Area (EEA) managed pension plans subject to Belgian social and labour legislation.

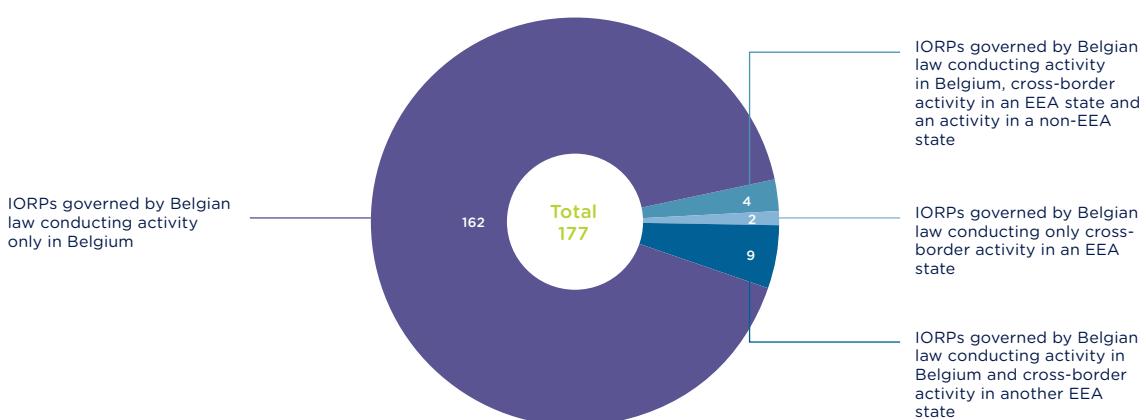
At the end of 2020, the FSMA had 15 pension funds with activity abroad under its supervision. In the period under review, the FSMA received nine notifications for the exercise of new cross-border activity and one notification for the change of an activity already exercised. A cross-border activity in Germany was launched for the first time.

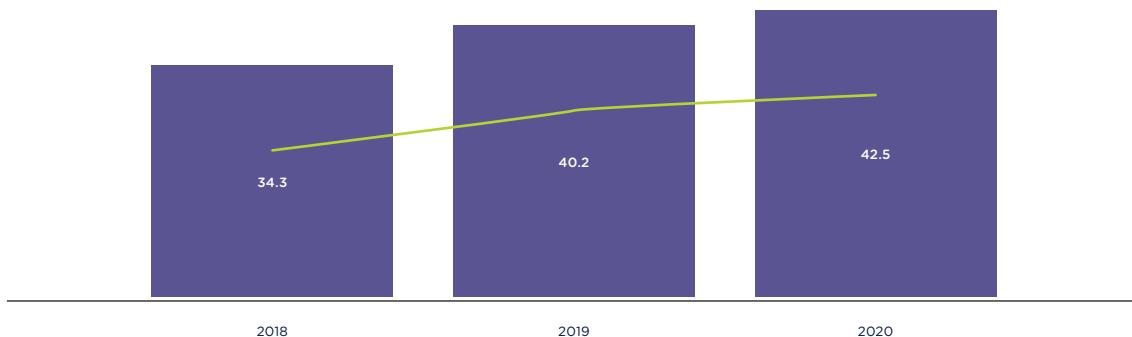
A number of key figures on the pension fund sector are shown in the following graphs. More statistics on the sector can be found on the FSMA's website.

**Graph 21:** Number of IORPs



**Graph 22:** Number of IORPs governed by Belgian law (in 2020)



**Graph 23:** Balance sheet total of IORPs governed by Belgian law (in EUR billion)

## Pension funds achieve positive returns despite the coronavirus crisis

In 2020, the coronavirus crisis caused a sharp downturn in the financial markets. This had a major impact on the assets of pension funds. Despite this, pension funds achieved positive results at the end of the period under review.

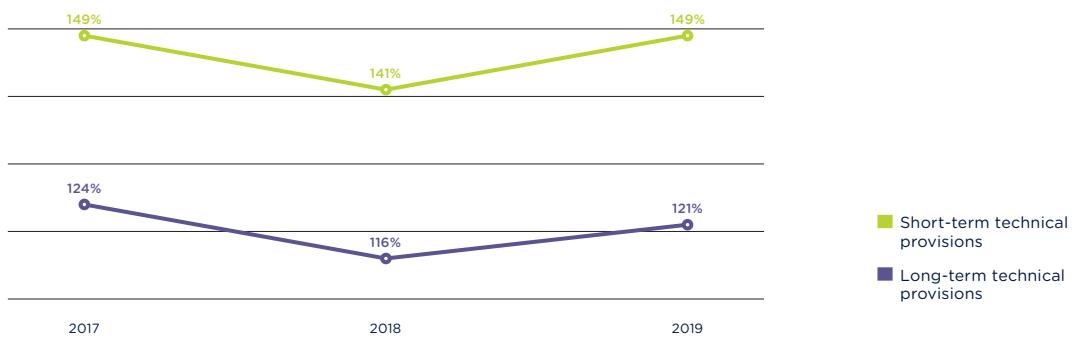
In mid-March, the financial markets reached rock bottom. The joint balance sheet total of pension funds was 18 per cent lower than at the end of 2019. The sector's coverage ratio fell to 101 per cent in comparison with 121 per cent at the end of 2019. This figure shows the means a pension fund has to meet its requirements long term.

Despite the significant contraction, the pension funds' sector showed, on average, a slightly positive return in the period under review. The joint balance sheet total rose from 40.2 billion euros at the end of 2019 to 42.5 billion euros at the end of 2020<sup>74</sup>. This is an increase of over five per cent.

This result was primarily thanks to the swift recovery of the financial markets. New cross-border activity had an additional beneficial effect on the result. The 2020 results were, however, under those of 2019. In that year, the joint balance sheet total rose by 17 per cent.

The FSMA closely followed up the financial situation of pension funds. It closely monitored the impact of the sharp downturn of the financial markets on the financial health of pension funds. To measure this impact, it developed a semi-automated tool to simulate coverage ratios. Equally, it asked for more and regular information from the large pension funds.

<sup>74</sup> These are provisional figures.

**Graph 24:** Evolution of the level of coverage

## Pension funds take recovery measures

Pension funds with a funding gap must take recovery measures to remedy that gap. A gap may occur at the level of the fund as a whole – an ‘overall deficit’ – or at the level of the pension plan of one or more sponsoring undertakings – a ‘partial deficit’.

The number of pension funds with an overall deficit fell sharply from 22 at the end of 2018 to seven at the end of 2019. This sharp fall was primarily due to the good financial returns in 2019. The number of pension funds with a partial deficit rose slightly from seven at the end of 2018 to 14 at the end of 2019.

At the end of 2020, there were still seven pension funds with an overall deficit and seven with a partial deficit.

The surpluses and deficits of pension funds can largely be explained by the investment results. Many gaps are also the result of stricter – and therefore safer – assumptions used by pension funds to calculate their pension liabilities. For example, pension funds have to set aside more money in a long-term low-interest-rate environment.

Funding gaps primarily occurred with regard to long-term pension liabilities. At the end of 2019, there was only one IORP with a short-term gap. At the end of 2020, this situation appeared to remain stable.

The coverage ratio shows the means a pension fund has to continue to meet its requirements. Short-term provisions are in line with accrued rights. These are the reserves that affiliates can transfer to another pension institution if they leave their employment. The long-term provisions are formed by a prudent estimate of pension liabilities managed. The difference between the short- and long-term commitments could also be seen from the average coverage ratios of the sector, which came to 149 per cent and 121 per cent at the end of 2019 respectively.

**Graph 25:** Number of IORPs with/without a deficit

### The FSMA grants pension funds an extension for submitting dossiers

Given the unprecedented circumstances pension funds were faced with during the coronavirus crisis, the FSMA showed flexibility. It gave pension funds an extension for their annual reporting to the FSMA. EIOPA extended its reporting deadlines too. The FSMA also temporarily simplified the administrative formalities for submitting dossiers with a view to a fit & proper assessment of directors and key function holders. It provided support by publishing guidelines with points to bear in mind and potential measures to guarantee the continuity of pension funds' operation.

## Inspections focus on the investment policy, multi-employer funds and the actuarial function

In the period under review, the FSMA completed its inspections on the investment policies of pension funds. It looked at how IORPs manage the decision-making process and monitor investments. Special attention was paid to the appropriate management of conflicts of interest that can occur with investments.

The FSMA also pursued its inspections on the management and operational rules in multi-employer funds. These IORPs manage pension schemes of different undertakings that may or may not belong to the same group of companies. The FSMA looked into how the IORPs apply the commitments in practice that they have made with the sponsoring undertaking on a number of operational rules. More particularly, the rules on allocating assets, returns and costs to the various sponsoring undertakings and pension schemes.

### FOCUS 2021

The European Union focuses a lot of attention on sustainability. In that context, it imposed new transparency obligations on the financial sector. These requirements also apply to pension funds. From March 2021, pension funds must provide information on the way in which they integrate sustainability in their risk policy and investment objectives. The European legislation in this matter is evolving at a rapid pace. The FSMA is the contact point for the sector in these matters.

The FSMA also started a new inspection campaign on the independence of the actuarial function. Every pension fund must enable the holders of the actuarial function and their staff to undertake their duties effectively in an objective, fair and independent manner. Potential conflicts of interest can occur when an external service provider is responsible for the actuarial function and at the same time conducts operational or advisory tasks that are relevant for the actuarial function and fall within its domain. In this case, extra attention is needed.

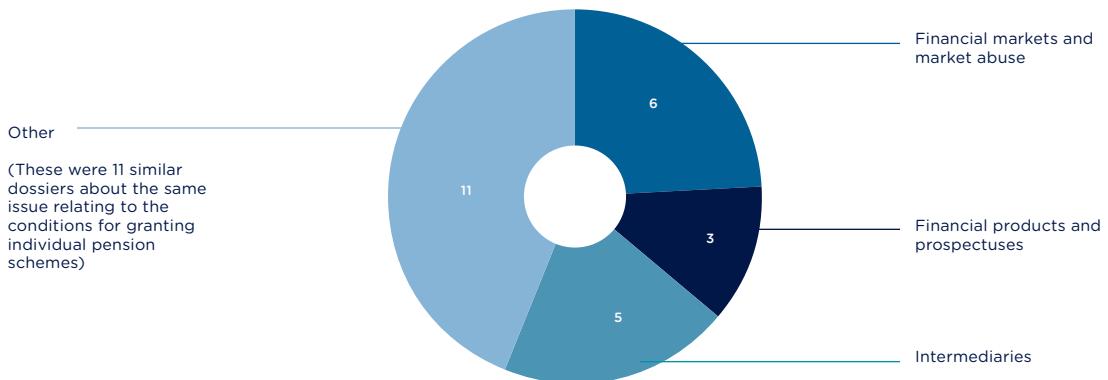




# COMBATING FINANCIAL INFRINGEMENTS

For infringements of the financial legislation, the FSMA can impose an administrative fine. These sanctions take the form either of administrative fines imposed by an independent Sanctions Committee, or of agreed settlements.

25 new investigations in 2020	130
15 agreed settlements in 2020	131
International cooperation	135

**Graph 26:** Thematic overview of investigative dossiers opened in 2020

## 25 new investigations in 2020

When the Management Committee identifies strong indications of a practice liable to give rise to a fine, it tasks the investigations officer with investigating the dossier<sup>75</sup>. The Management Committee makes this decision on the basis of indications sent by the FSMA's supervisory services or in response to a complaint or message.

In 2020, the Management Committee opened 25 new investigations<sup>76</sup>.

When a decision is made to investigate indications of a practice for which an administrative sanction may be imposed, in accordance with Article 70, § 1 of the Law of 2 August 2002, an investigative dossier is opened. Such a dossier relates to facts, not people. It is therefore possible that once these facts are investigated, the number of people concerned needs to be adjusted.

The members of the team led by the investigations officer investigate the facts. The law gives them different investigative powers for this purpose. The FSMA may for example ask to be given information in writing, it may question a person, ask for details of telecommunications, or seize certain data<sup>77</sup>.

Once the investigation is complete, the investigations officer provides the final report to the Management Committee<sup>78</sup>. Based on that report, the Management Committee then decides on the outcome of that dossier<sup>79</sup>. The Management Committee may require further investigative duties to be carried out, it may transfer the dossier to the Sanctions Committee, accept an agreed settlement or close the case.

<sup>75</sup> Article 70, § 1 of the Law of 2 August 2002.

<sup>76</sup> Investigations launched by the FSMA for a request for cooperation from a foreign supervisory authority are not included in these figures. For more information on how such requests are handled, see this report p. 135.

<sup>77</sup> Article 78 to 85bis of the Law of 2 August 2002.

<sup>78</sup> Article 70, § 2 of the Law of 2 August 2002.

<sup>79</sup> Article 71 of the Law of 2 August 2002.

In 2020, the Management Committee decided to close a case based on the investigations officer's final report. The investigations officer had thoroughly investigated indications of a potential misuse of inside information in transactions executed by a member of the management committee of a pharmaceutical company. One week before the company was to publish the topline results of a phase III trial, this person had exercised a substantial amount of options on shares in the company, after which he immediately sold the shares. Questions arose as to the timing of the transactions, and all the more so because the person concerned had a management position. The publication of the results produced a drop in the share price. However, the investigation did not confirm that the person concerned had inside information at the time of the transactions. For example, neither his telephone conversations nor his emails showed that he had contact with those involved in the clinical study. That study was, moreover, not conducted by the pharmaceutical company itself but through a partner company. The person concerned only became aware of the results of the study after he made the transactions. He provided credible reasons for the timing, which were backed up by various documents in the dossier.



#### Limited impact of the coronavirus crisis

The coronavirus crisis has barely influenced the progress of investigations and administrative procedures. It was only impossible to organize hearings for a couple of weeks and some requests for international cooperation took a little more time to handle than normal. Overall, the consequences of the coronavirus crisis for combating financial infringements were minimal.

## 15 agreed settlements in 2020

The law provides for the possibility of closing a dossier with an agreed settlement<sup>80</sup>.

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

In 2020, the Management Committee, on the proposal of the investigations officer, accepted 15 agreed settlements for a total amount of 2,122,382 euros. These concerned both natural persons and legal persons.

<sup>80</sup> Article 71, § 3 of the Law of 2 August 2002.

The investigative dossiers for which an agreed settlement was reached related to various areas of supervision. By way of example, a few agreed settlements are explained as follows<sup>81</sup>. All the texts of these settlements that were closed in 2020 can be found on the FSMA's website.

#### **Agreed settlement with a bank and one of its traders**

On 7 January 2020, the FSMA came to an agreed settlement in a dossier on a bank and one of its former traders who, at the time of the case worked in the liquidity provision department. This trader, in the same year, executed dozens of series of orders and transactions repeatedly on the Euronext Brussels stock markets.

The first step in this series of orders and transactions entailed that one or more substantial orders was placed for the bank at the best limit on the buy or sell side. As a reaction to this, other market participants positioned themselves at the best limit on the same side of the order book, with buy orders at a slightly higher price than the bank's initial order, and with sell orders at a slightly lower price than that initial order. The bank then placed itself on the other side of the order book, this time as a counterparty for the orders that the other market participants had placed. That way, the bank could execute new orders at a better price than the price from prior to placing its initial orders. When the transactions were settled, the bank cancelled its initial orders.

According to the FSMA, the bank had made substantial orders without actually having the intention of fulfilling them. That meant that with those orders, false and misleading signals had been given. Moreover, the bank's transactions on the other side of the order book had been executed at a price that would never have been reached without the initial orders. The initial orders, which were cancelled after the fulfilment of the transactions, therefore led to the price of the shares concerned being set at an abnormal and artificial level.

For the agreed settlement, the bank, which had obtained a limited capital gain with the contested series of orders, received a 100,000 euros fine. The trader, who had obtained no capital gain, paid a fine of 25,000 euros for the agreed settlement.

#### **Agreed settlements with a bank in connection with the MiFID rules**

On 28 July 2020, the FSMA reached an agreed settlement with a bank for a number of non-conformities with the application of MiFID I and II.

The bank, among other things, provides investment advice and portfolio management services to retail clients. As a result, it is subject to the provisions of MiFID II since 3 January 2018. Until then, it had been subject to the provisions of MiFID I, obliging it to comply with the conduct of business rules relating to the suitability test of such services.

<sup>81</sup> Please note that here, we only describe the agreed settlements for which a general explanation can be given.

During its investigation, the FSMA identified several non-conformities, in particular as regards the following obligations:

- the obligation to acquire certain information from retail clients, including on their knowledge, and to take it into account when subjecting the services to suitability testing;
- the bank's prohibition from basing itself on information provided by retail clients, when it knows that this information is significantly outdated.
- the prohibition of giving retail clients inaccurate or misleading information, including on the fact that account is taken of their knowledge of simple financial instruments;
- the obligation of having an appropriate business organization that enables a guarantee of compliance with the legal and regulatory provisions.

The agreed settlement entailed a fine of 800,000 euros and a publication, with names, on the FSMA's website. The high fine is because of the diversity of the infringements and the period in which they continued to persist.

The bank remedied the non-conformities by adjusting its procedures and strengthening its operational teams. It also offered compensation to certain retail clients for whom the transactions recommended or executed appeared unsuitable by virtue of their updated risk profile.

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

On 1 December 2020, the FSMA reached an agreed settlement with a listed company that had published inside information late and had spread inaccurate and misleading information on a listeria infection in its frozen vegetable factory in Hungary. At the time of the facts, the Hungarian producer of frozen vegetables was a 100 per cent subsidiary of the Belgian company.

The FSMA looked into how this company, as a listed company, had communicated after the Hungarian food safety agency took measures on 29 June 2018 against the listeria infection. The agency had recommended a recall campaign, both among clients and consumers, of all frozen products that were produced in the Hungarian factory between 13 August 2016 and 20 June 2018. Moreover, the agency banned the continued sale of these products.

In the reasoning for its decision of 29 June 2018, the food safety agency referred to the analyses that had been conducted by the European laboratory of reference for listeria. This revealed that there was a link between the specific variant of the listeria bacteria encountered in 47 sick people, nine of whom died, and in the products made and sold by this company. This is also stated in the joint report from the European competent authorities that was published without mentioning names on 3 July 2018, and which the company was informed of on the same day. In its decision, the Hungarian food safety agency also referred to this report.

The FSMA was of the opinion that this information qualified as inside information. Although the company possessed all it needed, at the latest on 3 July 2018, to publish this inside information, it only did so on 13 July 2018. According to the FSMA, the company thereby failed in its obligation to publish inside information as quickly as possible.

Moreover, in a press release on 4 July 2018, the company presented a number of aspects that pointed to the severity of the situation in an inaccurate and misleading way. As a result, it spread information that gave or was likely to give inaccurate or misleading signals on the price of the share. The company knew or should have known that this information was inaccurate or misleading. That constituted, according to the FSMA, a breach of the prohibition on market manipulation.

The agreed settlement entailed a fine of 500,000 euros and a publication, with names, on the FSMA's website.

#### **Agreed settlement with a company active in the tax shelter sector**

On 1 December 2020, the FSMA came to an agreed settlement with a company active in the tax shelter sector. From 24 January 2018 to 22 January 2019, an offer was running from this company for tax shelter investments. For that offer, the company had prepared a prospectus that was approved by the FSMA on 23 January 2018.

On 13 July 2018, the company was informed that there had been an attempt at fraud in the administrative procedure to obtain, via the tax shelter, a tax advantage for investors in an animated series. The company immediately reported the attempted fraud to the Wallonia-Brussels Federation. Purportedly, that attempted fraud had been committed by the managing director of another company that was involved in the administrative procedure. The Wallonia-Brussels Federation refused to provide the certificate that was required for the investors to obtain the tax benefit.

At the beginning of October 2018, the attempted fraud was reported in the press. On 12 October 2018, the company asked the Wallonia-Brussels Federation to provide it with the required certificate by 19 October 2018. When the company received no answer from the Wallonia-Brussels Federation on 23 October 2018, it published a supplement to its prospectus of 23 January 2018, after having contacted the FSMA. The company after all considered that there was a new development that justified the publication of a supplement, namely that it had not received an answer from the Wallonia-Brussels Federation to its request to inform it on 19 October 2018 of its decision as to whether or not to issue a certificate.

In that respect, the Law says: 'any new significant fact or any substantial mistake or inaccuracy concerning the information contained in the prospectus, such as may influence the assessment of the investment instrument, which occurs or is observed between the approval of the prospectus and the final closing of the public offer [...] shall be mentioned in a supplement to the prospectus'. Pursuant to this provision, the FSMA ruled that the company's discovery of the fraud, on 13 July 2018, was a significant new development that could influence the assessment of the investment instrument. According to the FSMA, this significant new development, as soon as it was discovered, should have been published in a supplement to the prospectus, which did not happen.

The agreed settlement entailed a fine of 50,000 euros for the company and a publication, with names, on the FSMA's website.

# International cooperation

In 2020, the FSMA received 15 requests for international cooperation from foreign supervisory authorities. In 2019, it was 22. All of these requests were handled within an average of 32 days. The duration of that period was determined by the nature and scale of the necessary investigative duties. Often, the FSMA has to identify the beneficiaries of a transaction.

Sometimes, the FSMA also has to collect information from an issuer or a telecoms operator, or organize a hearing for people who are suspected of having committed or who have witnessed an infringement.

In 2020, the FSMA sent 30 requests for cooperation to foreign competent authorities, compared to 51 in 2019.



# FINANCIAL EDUCATION FOR EVERYONE

Contributing to the financial education of the public is one of the FSMA's statutory tasks. This is why it set up Wikifin, a programme that develops initiatives to improve the population's financial literacy. The programme is based on several pillars. For the general public, there is the website Wikifin.be and campaigns to raise awareness. For youngsters (and their teachers), there is an educational section. Finally, there is the Wikifin Lab, a digital and interactive centre for financial education.

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# The Wikifin.be portal and awareness-raising campaigns

## Wikifin.be, a reference for financial consumers

The [www.wikifin.be](http://www.wikifin.be) portal was launched in 2013 and aims to provide consumers with neutral, reliable and practical information on money matters they come across in their day-to-day lives. The website's launch met with a great deal of success. Since then, the Wikifin website has had 14.5 million visits. In 2020, it was estimated to have had more than 3.5 million visitors. And that number continues to rise.

Apart from comprehensive financial information, the website also contains practical tools for consumers. These tools are very popular and give citizens a concrete image of the impact of a financial decision on their daily financial situation and of the various possibilities they have. The inheritance simulator gives consumers an idea of how their inheritance will be divided up and how much their heirs will have to pay in inheritance tax. With the real estate simulator, consumers can estimate the cost of a home project they have, meaning they can work out the impact thereof on their budget. There are many more tools to be found on Wikifin.be.

The success of the website shows that consumers are on the lookout for reliable and independent information on a range of subjects relating to everyday money matters and more broadly, to planning their financial future.

In 2021, the [www.wikifin.be](http://www.wikifin.be) portal is being entirely renewed to better be able to achieve its many objectives. First and foremost, the presentation of the Wikifin offer will be improved. Over the past few years, that offer has increased considerably. For that reason, the portal will be structured around the three pillars of the Wikifin programme, each with their own home page: the information site itself, the educational Wikifin School platform and the Wikifin Lab.

Furthermore, the ergonomics and navigation options will be better aligned with current needs, expectations and the behaviour of internet users. The financial information will be more efficiently structured based on key themes. The search functions will perform better, making searches for financial information or teaching worksheets easier. The more modern design will fit in with the latest trends and trigger internet users to discover new content.

The new information structure will above all make the internal administration of updates more efficient and provide for a smoother integration of new content on the site. The security will also be upgraded to the now stricter standards.

## Targeted awareness-raising campaigns

Apart from mini ads to put the Wikifin content in the spotlight on Google, regular social media posts and monthly newsletters for the general public, the FSMA has also run more large-scale campaigns to raise awareness on the initiatives of its financial education programme.

### General branding campaign

At the beginning of 2020, the FSMA launched a large-scale branding campaign on its financial education programme. The aim was to gain brand awareness of Wikifin and of itself and boost the number of visits to the financial education website.

The first campaign targeted the general public. There were several humorous spots about the Wikifin calculators broadcast on various popular radio stations. In line with the concept of the radio spots, a digital advertising campaign ran on Instagram and Facebook and via Google banners.

Through this campaign, the number of visits to the website [www.wikifin.be](http://www.wikifin.be) rose considerably. The average number of visits to the website during the three-week campaign shot up by 64 per cent.

### Wikifin School campaign

In 2020, the coronavirus crisis caused a sharp increase in the number of searches for online material. To make teachers aware of the availability of free teaching materials on the Wikifin School platform and turn Wikifin into a reference in financial education matters, a digital campaign was launched in August and September 2020, just before the new school year started.

With the campaign via Google Search, Google Display and Facebook, several thousand teachers were able to be reached. The campaign had a major impact on the number of worksheets that were downloaded by teachers on the Wikifin platform: the average number of downloaded sheets rose by over 22 per cent. From the number of downloads, it can be seen that budget management is the most popular lesson subject.

### Wikifin Lab campaign

Due to the coronavirus crisis, the branding and registration campaigns for the Wikifin Lab had to evolve and be adapted throughout the year. The provision of information on the subject, which was initially planned for the beginning of the year, could only start in December 2020 in the end. Given the limited number of places for classes, the FSMA decided to run the registration campaign for the Wikifin Lab through its own channels. A digital Wikifin mailshot was sent to the teachers who were subscribed, and the opening of registrations was announced in the Wikifin School newsletter and via the Wikifin Facebook account. Thanks to that campaign, the Wikifin Lab was fully booked until June 2021 after only a few days.

# Increasing attention to financial education at school

From the start, the younger generations have formed an important target market for the FSMA's programme for financial education. Learning to manage money and picking up healthy financial habits should start as early as possible. In order to successfully appeal to this target market, the FSMA works closely with the educational sector.

## Economic and financial skills are one of the key aspects of learning outcomes in the Flemish schools

In January 2018, the Flemish Parliament approved a new decree that redefines the scope of the new learning outcomes and establishes the key skills that should be integrated into the learning outcomes for secondary education.

The authorities defined sixteen basic skills that Flemish pupils must have to be able to live in a fast-changing and ever-changing society. One of the new key skills is 'economic and financial knowledge'. This has three objectives, namely:

1. developing an insight into consumer behaviour, income earning and financial products, to be able to estimate short- and long-term effects on budgets,
2. explaining how companies and organizations operate and their role in society, and
3. thinking about how markets and the economy work as a system, and understanding the government's influence thereon in a national and international context.

The reform of the learning outcomes in Flemish secondary education for the first year started on 1 September 2019. The work is still fully underway for the second and third years of secondary education. For those two years, the new learning outcomes should in principle be implemented on 1 September 2021.

To support the teachers who will have to work from 1 September 2021 with financial education in the second year of secondary education, the FSMA in 2020 mainly focused on developing new materials for classes in the third and fourth year of secondary education. Teaching materials were developed, for example, on the following themes:

- financial markets and products;
- social security;
- consumer credit;
- ways of saving;
- insurance;
- reflections on online and offline shopping;
- reflections on cash and digital payments.

## Financial education also incorporated into the curriculum of the Wallonia-Brussels Federation

In the Wallonia-Brussels Federation, financial education is being integrated into the 'Pact for Excellence'. That redefines and modernizes the education that all French-language pupils will follow in the future. In practice, this means that all pupils must acquire certain proficiencies in the common-core syllabus. This runs from the third year of primary school to the third year of secondary education. The common-core syllabus includes five non-transversal and two transversal learning areas. The theme of financial education and responsible consumption comes up in learning areas 6 and 7 of the Pact for Excellence, titled 'creativity, engagement, and entrepreneurship and 'learning to learn and to make choices'. Areas of learning 6 and 7 are transversal areas, which therefore need to come up in all subjects taught.

'Financial education and responsible consumption' will soon therefore form part of the curriculum for all pupils from the third year of primary school to the third year of secondary education.

By way of reminder: the FSMA sits on the steering committee, which is tasked with formulating concrete proposals for optimal integration of financial education and responsible consumption in the school curriculum.

Because of the coronavirus crisis, the work around the Pact of Excellence experienced delays. After all, the crisis had a considerable impact on the organization of lessons at schools. In 2020, little progress was made on the integration of financial education and responsible consumption in the school curriculum too.

## An extensive offer for introducing financial education in classrooms

### Educational activities and courses via the Wikifin School platform

To help teachers reinvent themselves and conduct classes remotely, the FSMA directed them to the free tools that can be found on the Wikifin School platform. It presented them with a lot of ideas on educational activities that they could organize with pupils at home.

Throughout the year, the tools that were already available to teachers were updated, and new activities were presented based on the following themes:

- financial markets (beginner and advanced);
- insurance;
- social security, with an educational video made by Wikifin;
- a reflection with relevance to society weighing up the pros and cons of traditional trade versus online trade and the use of cash versus electronic payment means.

Just like in previous years, the FSMA continued its efforts to keep offering teachers better training on financial education and responsible consumption. It organized training, prepared digital courses for them and provided educational routes for free on the Wikifin platform.

### **EDUbox**

Wikifin has developed two EDUboxes on financial education in conjunction with VRT NWS, the BELvue Museum and the National Bank of Belgium.

The EDUbox 'Money and me' is about the role of money in our lives and on how individual choices determine where people spend their money. The second EDUbox, 'Money in the world' explains the economic system and the role of different factors in the economy, and explains what inflation is.

The EDUbox is an educational concept by VRT NWS to get youngsters familiarized with a particular theme in society. Every EDUbox informs, inspires and stimulates youngsters. In these times of remote education, VRT has worked on the digital component alongside the physical box.

Wikifin distributed more than 500 EDUboxes for free to Flemish teachers.

In 2021, a new edition of the Dutch-language EDUboxes is planned, and a French-language version will be distributed for the first time.

## The Wikifin Lab opened its doors

### **The capstone of an ambitious project**

The Wikifin Lab opened its doors on 8 September 2020 in the presence of Her Majesty Queen Mathilde, the Federal Ministers of Economy and Finance, the Minister-Presidents of Flanders and the Wallonia-Brussels Federation, and the European Commissioner for Justice and Consumer Protection. They followed Dutch-speaking and French-speaking pupils during their tour of the Wikifin Lab. This opening was the finale of a large-scale and innovative project.

### **Alternating between individual and group tours**

The Wikifin Lab is an interactive and digital centre for financial education, where visitors can experiment with different day-to-day financial situations. During the two-hour tour there are activities that are sometimes done individually and sometimes in small groups. The tour is conducted in a building of more than 1,000m<sup>2</sup> spread across several floors. Every pupil has their own tablet that presents the tour and is also used for certain activities. There is a guide allocated to each group who introduces educational moments during the visit to awaken visitors' critical mind and trigger them to remember the knowledge they have acquired. During the tour, visitors gain insights that can provide answers to their questions on money matters, such as 'how and why is my

consumption behaviour influenced? Am I prepared to take risks with my savings? What impact do my choices have on my environment and on society? How can I keep my budget balanced?

The Wikifin Lab offers visitors a fun and educational experience. This encourages them to hone their critical mind and confronts them with their personal choices and those they make as a citizen. It also helps visitors improve their knowledge and better understand certain basic financial mechanisms.

Visits are subdivided into three cycles, each with their own theme. Within each cycle, three teaching methods alternate:

- small groups of three to five players with an activity;
- individual activities;
- educational debriefing moments with the whole class, to stimulate interaction with the entire group.

The visit ends with a film in the auditorium that aims to encourage pupils to take their financial future into their own hands.

### **Current affairs**

The themes presented in the Wikifin Lab were not plucked from thin air. The four themes are key to financial education, as determined by specialists. They also reflect current challenges in society. They also focus on points included in the curriculum on both sides of the language border.

The following four themes are presented in the Wikifin Lab:

- influences on consumption;
- savings choices;
- the impact of specific choices on society and the environment;
- balancing budgets.

To elaborate on these themes, the FSMA called on leading specialists, such as university researchers specialized in behavioural economics and gamification. They provided their expertise to elaborate on the theme of influences on consumption and to adapt the educational moments of the tour to a school audience. During those moments, the behavioural aspects that everyone should be aware of when taking financial decisions were focused on. The vision of the experts was also key to creating the content regarding choices we make as citizens.

Prominent economists and experts in the field of financial education helped the FSMA elaborate on the theme of savings choices. A renowned trainer provided expertise for the educational moments. During these moments, visitors get the opportunity to relive and analyse their own experiences, and to understand the various concepts and mechanisms they have seen during the activity. These educational moments should help visitors understand the messages underlying each activity and remember them. Finally, teachers from Dutch-language schools and the Wallonia-Brussels Federation shared their expertise to flesh out the activities in the Wikifin Lab to ensure they fully align with the objectives of the various educational networks.

## Experiential learning

To realize these objectives, the Wikifin Lab opted for an experience-based approach, rather than accumulation of knowledge. Pupils play an active role in the experience rather than just observing. Afterwards, they have to think about that experience to extract the necessary lessons from it and put into practice what they have learned. That way, they can use their knowledge and newly acquired skills as guidance in their future decisions and action.

## Opting for a digital tour

Although the Wikifin Lab is not an amusement park, visiting the centre still has to be fun. The choice of a fully digital tour is motivated by the wish to interest pupils through a medium they value, without ever losing sight of the educational aspect. Alternating digital interactive elements and debriefing moments in the form of group discussions should motivate the pupils further and allow them to remember what they have learnt. Educational research clearly shows the advantages of digital technology for pupils' learning process, who appear to be more engaged and highly motivated when different learning methods are alternated.

## The Knowledge Wall

The wide hallway between the Wikifin Lab and the auditorium is set up as a 'knowledge wall'. It has been designed as a space filled with peculiar objects to spark visitors' curiosity.

The Knowledge Wall is divided into three themes: personal finance, the financial sector, and economic and financial concepts. Visitors discover how money is made, what role banks play in the economy, how the stock markets work, what an economic crisis is and more. Did you know, for example, that the word 'bank' comes from 'bench' because the first bankers exchanged money on a bench under the Florentine sun? In the personal finance theme, visitors are warned, for example, against investment fraud and alerted to debt problems and over-indebtedness. Insurance, loans and means of payment are other themes covered. Illustrated by a family with lots of children, the basics of the pension system are explained, which is partly based on solidarity between the various generations. The Knowledge Wall also focuses on economic and financial concepts such as the Big Mac index, compound interest, inflation and deflation, price balance, the employment market, cryptocurrencies, etc.

The Knowledge Wall therefore complements the Wikifin Lab tour and can be visited before or after the Lab tour.

## A highly successful launch

Since its opening, the Wikifin Lab has been fully booked. Due to the pandemic, visits sadly had to be stopped after October. There was such an influx of registrations in the period from January to June 2021 that the Wikifin Lab was straight away fully booked until the end of June.



### Strict compliance with sanitary measures in the Wikifin Lab

Sanitary safety is guaranteed in the Wikifin Lab. The FSMA applies very strict measures during visits to the Wikifin Lab:

- pupils' and teachers' temperatures are taken when they enter the building;
- wearing a mask is obligatory during the entire visit;
- there is hand sanitizer available on each floor of the building;
- there are markings on the floor to show where participants must stand so that social distancing can be guaranteed at all times.

The FSMA moreover chooses only to welcome one class at a time in the Wikifin Lab. That way, there is only ever one bubble, which never comes into contact with another bubble during the tour. The FSMA also decided only to let in two classes per day: one in the morning and one in the afternoon. That way, maintenance staff can disinfect the building after each visit.

Between September and December 2020, the FSMA also provided a free bus for schools, so that pupils and teachers could be transported safely to and from the Wikifin Lab.

## Preparing for the future...

### European project for digital and interactive education

In 2019 and 2020, the FSMA received support from the European Commission in a thought experiment on the possibilities of new digital learning solutions for financial education in the various target groups, including groups other than schools.

A cooperation was set up between the European Commission's Directorate-General for Structural Reform Support and the FSMA to ascertain how and to what extent digital and interactive solutions can be utilized for the needs of different population groups with regard to financial education.

### The Wikifin Financial Literacy Chair and the importance of research

Over the past few years, there has been increasing attention paid to the importance of financial education. Because this is a relatively new area and the societal context is in constant flux, new and additional scientific research is paramount to continue to give substance to financial education.

To capitalize on this, the FSMA set up the Wikifin Financial Literacy Chair in 2016. For four years (2016-2020), Wikifin and KU Leuven worked together on research in financial literacy. Based on this research, the political world, and the players in the field, including the FSMA and the Wikifin programme, could better align their work with the real needs present in Belgium.

As part of this Chair, on 15 September 2020, Kenneth De Beckker successfully defended his doctoral thesis titled 'On the role, determinants and consequences of financial literacy'. De Beckker became the first person in Belgium with a PhD in financial literacy.



### The coronavirus required certain adjustments

Because of the measures by the various governments to combat the spread of the coronavirus, visits to the Wikifin Lab, the FSMA's new centre for financial education, had to be temporarily suspended from October to the end of 2020. In that period, the registration requests for the first half of 2021 kept coming in, as a result of which the Wikifin Lab was already quickly fully booked until June 2021.

Since its opening, a number of drastic measures have been taken in the Wikifin Lab to comply with sanitary standards and offer each visitor maximum safety. Hand sanitizer is available on all floors, the number of visitors is drastically reduced, the building is fully disinfected between two visits and the Wikifin Lab is fully privatized so that only one bubble at a time can visit. A free bus was also provided for schools to safely transport the school groups to and from the Wikifin Lab.

As regards what the FSMA provides to teachers, promotional campaigns are conducted to ensure the various educational tools available on the [wikifinschool.be](http://wikifinschool.be) platform free-of-charge are known about, and to thereby help teachers give distance financial education lessons to their classes.

Preparations have been made to organize distance learning and webinars from the beginning of 2021.

### FOCUS 2021

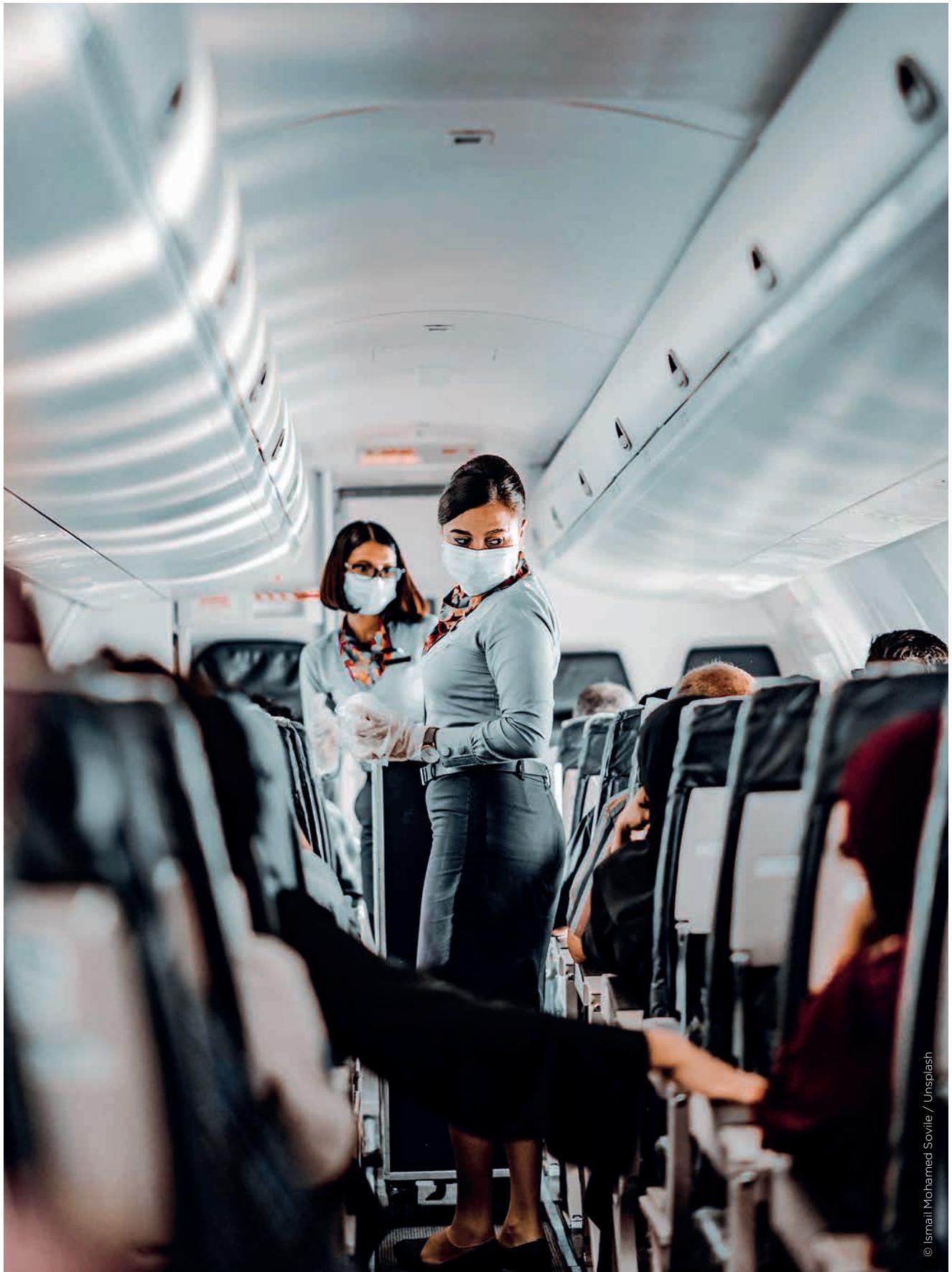
2021 will be the year of classes returning to the Wikifin Lab as soon as the health situation permits. The FSMA has done everything possible to ensure this return occurs under optimum conditions.

The FSMA teams can't wait to present this unique experience once again to pupils from all parts of the country.

In 2021, the Wikifin.be website is set for a full overhaul. The website will become more user-friendly, inter alia by structuring the information more efficiently.

After an unusual year, in which Money Week could not be organized, this themed week can once again take place in 2021, albeit in a slightly different form. The money games developed by the FSMA can be played in the classroom, a competition is being organized on social media and, in conjunction with Febelfin, a huge quiz is being held. A major new development in 2021 is that pupils can take part in VIP classes that several Ministers teach personally, after which these classes are made available in digital format to teachers and pupils. During these classes, different themes on financial education are covered.





# INTERNATIONAL ACTIVITIES

The internationalization of the financial markets has led to financial regulations increasingly being set at European or international level. International cooperation and collaboration between supervisors has, as a result, gained importance. The FSMA is a member of several international and European organizations which are instrumental in setting new rules and standards for the financial sector.

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# The FSMA's European and international activities

## International

At international level, the FSMA is a member of:



The International Organization of Securities Commissions



The International Association of Insurance Supervisors



The International Organization of Pension Supervisors

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



## Europe

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



The European Securities and Markets Authority



The European Insurance and Occupational Pensions Authority

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



ESRB  
European Systemic Risk Board  
European System of Financial Supervision

The FSMA sets great store by international and European cooperation. It plays an active role in a range of international and European organizations and its Chairman, Jean-Paul Servais, holds various other leading international offices.

At European level, the FSMA sits on the Board of Supervisors of ESMA and EIOPA and is a member of the General Board of the ESRB. The FSMA sits on the Board of IOSCO, is a member of IAIS and IOPS, and is involved with the work of the FSB.

The Chairman of the FSMA has been playing a leading role in IOSCO for several years. Since 2016, he is also Vice Chair of IOSCO and of the IOSCO Board. Since October 2014, he chairs the European Regional Committee of IOSCO and its Financial and Audit Committee.

As Vice Chair of IOSCO, he represents IOSCO within a number of other international organizations. He is part of the Official Sector Steering Group (OSSG), which works on reforming financial benchmarks such as the Euribor and the Libor and reports to the FSB.

He also fulfils an important role in the international governance for standard-setters in the area of accounting and audit standards in his capacity of Chair of the IFRS Monitoring Board for accounting standards<sup>82</sup> and as co-Chair of the Monitoring Group for accountant audit standards<sup>83</sup>.

The FSMA also takes part in the work of several IOSCO working groups. The FSMA is a member of a new IOSCO task force set up at the end of 2019 to focus on IOSCO's objective of contributing to financial stability (Financial Stability Engagement Group). Over the course of 2020, this group took over the coordination of IOSCO's response to the COVID-19 crisis and especially the interaction with the FSB, through the exchange of market-related data. The FSMA also gave input for the preparation of the IOSCO Retail Market Conduct Task Force report published in 2020 and which cites several FSMA initiatives for the protection of retail investors as good practices<sup>84</sup>.

<sup>82</sup> This body supervises the International Accounting Standards Board (IASB), which prepares international reporting standards for annual reports and annual accounts.

<sup>83</sup> The Monitoring Group brings together different international institutions and financial supervisors who look after the public interest in domains concerning the establishment of international audit standards and audit quality.

<sup>84</sup> See IOSCO, Retail Market Conduct Task Force Report, Initial Findings and Observations About the Impact of COVID-19 on Retail Market Conduct, December 2020, available on [www.iosco.org](http://www.iosco.org).

# Increasing importance of sustainable finance

2020 will certainly go down in history as a year of considerable change. The economic and social tremor caused by the COVID-19 pandemic also sparked thinking about a potentially more sustainable economic recovery. Everyone now agrees that the energy transition and the environment have to take pride of place in national and international recovery plans.

The financial world plays a key role in this turnaround. Its crucial task consists of focusing attention on the actual environmental impact, on social matters and managing the capital that the economy as a whole has. In the current – very globalized – economy, climate, ecological and social phenomena have an impact that transcend the Belgian borders. That is why it is logical that the most ambitious initiatives on sustainable finance come out of international institutions.

In the European Union, the first texts to come out of the 2018 action plan entered into force in 2020. Since the start of 2021, the Sustainable Finance Disclosure Regulation applies to products, financial market participants and financial advisors. Pursuant to that Regulation, producers of financial products and financial advisors must provide detailed information on the environmental, ecological and social impact of their products. They must also state how they take these aspects into account in their management and advice. Since March 2021, the FSMA looks at whether this information is also truly provided to consumers on the website of the producer or manager of the product, and in pre-contractual and periodic documentation.

In June 2020, the Taxonomy Regulation was published. Thanks to that Regulation, a clearer line can be drawn under the economic activities that can be considered sustainable, and those that do not contribute enough to the European Union's climate and environmental objectives. Next year, these initiatives will continue to be added to. The non-financial information that listed companies have to publish has gone through an overhaul. There is also a model of European green bonds. The European ecolabel is also being extended to financial products. The FSMA is contributing to the preparation of these texts. It also advocates striking the delicate balance between full information disclosure to the consumer based on relevant and accessible indicators, and obligations that are proportionate and easy to meet for the entities under supervision. These initiatives have several aims. Work has been put into achieving greater awareness among consumers as to the impact of their investment decisions. There are also keys to a better understanding of the impact of management of different products. Finally, these initiatives foster more sustainable growth.

As regards sustainable finance, the FSMA has, since the very first meetings, presented itself as an advocate of international regulations. It contributed to the development of those regulations by studying the implementing measures in the European texts and by supporting the initiatives of the IFRS and IOSCO. At the level of the European supervisors, the FSMA forms part of a small group of authorities that develop the RTS (Regulatory Technical Standards) of the Transparency and Taxonomy Regulation, in conjunction with the Commission and the European Supervisory Authorities (ESAs). The FSMA also takes part in the work of IOSCO in the area of sustainability. This work aims to improve reporting by listed companies on sustainability aspects, as well as to protect investors from greenwashing. As regards non-financial reporting, IOSCO works with the IFRS Foundation, which proposes to take a leading role in the development of international standards on sustainability reporting by companies. The Chairman of the FSMA is closely involved with this latter initiative as Vice Chair of IOSCO and as Chairman of the IFRS Monitoring Board that

supervises the IFRS. After a successful public consultation in 2020, the IFRS has taken on the task of setting up a new body by the end of 2021 to develop international sustainability standards. At European level, initiatives can be expected from the European Commission in the domain of ESG reporting by companies based on input from the EFRAG<sup>85</sup>.

At national level<sup>86</sup>, the FSMA sits on the Federal Task Force for sustainable finance. It also engages in action to prevent greenwashing<sup>87</sup> and supports ambitious initiatives. Since the end of 2020, it is also actively involved in setting up a national plan to make the Belgian private and public financial sector greener, in conjunction with other federal bodies, and with the support of the European Commission.

<sup>85</sup> European Financial Reporting Advisory Group.

<sup>86</sup> See also this report, p. 28.

<sup>87</sup> Greenwashing is a marketing tactic through which an organization gives a misleading image of its environmental responsibility.

# International community makes agreements on crisis management in combating COVID-19

The outbreak of the COVID-19 pandemic in 2020 and its economic consequences have placed severe pressure on the financial markets in Europe and all over the world. The way in which this happened was unseen since the worldwide financial crisis of more than ten years ago.

European and international organizations, in which the FSMA is involved, have been conducting their activity in the area of coordination and crisis management.

ESMA coordinated the efforts of the national supervisors in the area of crisis management. ESMA coordinated the national measures for short selling transactions.

ESMA also played a role in the areas where a common supervision approach was needed to facilitate an effective reaction to market developments. The European authority published several public statements to clarify the application of the legislation and regulations in these special circumstances. For example, there was a clarification to the rules for the recording of telephone conversations by investment firms that was intended to promote business continuity of the market participants.

The ESRB undertook a number of activities from a macro-prudential perspective. This committee made recommendations on the usefulness of liquidity management instruments in collective portfolio management.

The FSMA was also involved in a number of coordination efforts at a global level, in particular by the FSB and IOSCO, including its new Financial Stability Engagement Group.

# Reform strengthens role of European supervisory authorities

Recent European legislation and regulations have introduced changes in the operation of ESMA, EIOPA, and the EBA, the three European Supervisory Authorities<sup>88</sup>. Their role in steering financial supervision is being reinforced.

The changes build on the existing decentralized model of financial supervision in the European Union<sup>89</sup>. In this model, the national supervisory authorities are responsible for the day-to-day supervision of the financial sector in their countries. The ESAs ensure convergence of the supervision in terms of the application and compliance with European legislation and regulations. Together, they form the European supervision system.

The reform in the first place reinforces the supervisory convergence instruments of the ESAs, such as peer reviews. They test the quality and comprehensiveness of national supervision.

By virtue of their changed mandate, ESMA and EIOPA set out the EU's strategic supervisory priorities for the first time in 2020. They took into account the current market developments and trends and the main cross-border risks. The national supervisors have to integrate these priorities in their own work programmes.

ESMA chose the research into costs and performance for retail investment products and market data quality as the EU's strategic supervisory priorities for 2021. EIOPA identified product oversight and governance as priorities for the national supervisors.

<sup>88</sup> See the 2019 annual report, p. 154.

<sup>89</sup> With the exception of the Single Supervisory Mechanism for banking supervision in the Eurozone and specific domains such as credit rating agencies, where ESMA has direct supervisory powers.

# ESMA makes recommendations for improving financial supervision in Germany

European authority ESMA issued a peer review in 2020 following the Wirecard incident. The report included recommendations for reinforcing financial supervision in Germany.

In the period under review, Wirecard, listed in Germany, was called into question on suspicion of fraud. Partly at the request of the European Commission, ESMA assessed the response of the supervisors to the events that led to the fall of Wirecard. The report brought deficiencies to light as regards the effectiveness of the supervision of compliance with ESMA's guidelines on the enforcement of financial reporting. The investigative report in particular set out a number of recommendations to improve supervision in Germany of the financial information to be presented by listed companies.

The investigation was in the hands of a Peer Review Committee chaired by a member of ESMA's staff and composed of experts from the national competent authorities and ESMA. The peer review of the Wirecard incident for the first time proceeded according to a new method and an accelerated procedure. This was the first peer review geared only to one jurisdiction and one market participant.

# European plan aims to facilitate the economy's recovery from the COVID-19 crisis

On 24 July 2020, the European Commission published a package of proposals introducing targeted amendments to MiFID II<sup>90</sup>, the Prospectus Regulation<sup>91</sup> and the securitization rules<sup>92</sup>. Those proposals, which are included in the recovery package for the capital markets, aim to facilitate the economy's recovery from the COVID-19 pandemic.

The proposed amendments to MiFID II are aimed primarily at simplifying certain disclosure and information requirements. They strive to introduce a shift from paper-based information disclosures to electronic information disclosures. Equally, bonds with make-whole clauses and financial instruments intended only for eligible counterparties are to be exempt from the scope of the product governance rules. The needs of the commodities derivatives market are also addressed.

The main proposed amendment to the Prospectus Regulation is the introduction of an EU Recovery Prospectus. Companies with which the market is already familiar may use that recovery prospectus for the public offer of shares or bonds. This new type of prospectus should help companies opt more quickly for issuances and thereby provide for their funding needs.

<sup>90</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU as regards information requirements, product governance and position limits to help the recovery from the COVID-19 pandemic.

<sup>91</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries to help the recovery from the COVID-19 pandemic.

<sup>92</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 pandemic et Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 pandemic.

# Digital transition of the financial sector

As part of the digital finance package published on 24 September 2020, the European Commission proposed the following draft documents:

- a proposed regulation on crypto-assets titled Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937<sup>93</sup> (hereinafter referred to as "MiCA" for "Markets in Crypto-Assets Regulation"), and
- a proposed regulation on digital operational resilience<sup>94</sup>, titled Regulation of the European Parliament and of the Council on digital operational resilience (hereinafter referred to as 'DORA' for "Digital Operational Resilience Act"), and a proposed regulation amending several existing directives<sup>95</sup> to include a more express legal basis for digital operational resilience and to refer to DORA<sup>96</sup>.

MiCA aims to regulate public offers (or applications for admission to trading on a crypto-asset trading platform) for certain kinds for crypto-assets, i.e. (i) crypto-assets other than asset-referenced tokens or e-money tokens, (ii) asset-referenced tokens and (iii) e-money tokens, within the meaning of MiCA, and the offer of crypto-asset services. MiCA also includes rules for issuers of asset-referenced tokens or e-money tokens and for supervision by the EBA of asset-referenced tokens and e-money tokens deemed to be significant. It is important to underline that MiCA does not apply to financial instruments, deposits, structured deposits or electronic money, which have their own framework.

DORA defines uniform requirements on security of network and information systems for a number of entities<sup>97</sup>, such as investment firms, UCI management companies and insurance intermediaries. The aim is to reach higher levels of digital operational resilience. These requirements aim to prevent the impact of incidents relating to information and communication technologies and limit the consequences thereof. DORA also includes a supervisory framework for companies that offer digital and data services such as cloud computing to entities that fall within its scope.

93 Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

94 By virtue of Article 3(1) of DORA, "digital operational resilience" means the ability of a financial entity to build, assure and review its operational integrity from a technological perspective by ensuring, either directly or indirectly, through the use of services of ICT third-party providers, the full range of ICT-related capabilities needed to address the security of the network and information systems which a financial entity makes use of, and which support the continued provision of financial services and their quality". In this context, "network and information system" means: "network and information system as defined in point (1) of Article 4 of Directive (EU) No 2016/1148" (article 3(2) DORA) and "security of network and information systems" means: "security of network and information systems as defined in point (2) of Article 4 of Directive (EU) No 2016/1148" (article 3(3) DORA).

95 Namely the following directives: Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), 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 (Solvency II), Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers, 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, MiFID II, Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs).

96 Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341.

97 Article 2(1) DORA.



# LEGISLATION AND REGULATIONS

The FSMA is closely involved in the transposition of the new legislation on the new rules for the financial sector. This chapter presents an overview of the most important developments in 2020.

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# Royal Decree on certain measures relating to the COVID-19 pandemic

The health crisis due to the COVID-19 pandemic has also had a great impact on the economy and financial markets. To limit that impact, the federal government took a number of measures.

One of those measures was extending certain terms laid down in the financial legislation with which companies and people working in the financial sector have to comply. This specific measure is provided for in a Royal Decree of 8 June 2020<sup>98</sup>.

That Royal Decree covers terms relating to the requirements on professional knowledge, including passing exams and following continuing education.

The measure addresses the sector's problems with organizing exams or training courses during lockdown as a result of the COVID-19 pandemic and for a certain time after its lifting.

Given that these are mandatory terms to which sanctions apply, maintaining them during lockdown was detrimental to the companies or people to which they apply.

For the exams, the term of four months was extended for Persons in Contact with the Public at insurance or reinsurance intermediaries or insurance or reinsurance companies. Article 13 of the Royal Decree of 18 June 2019<sup>99</sup> after all requires that those people who do not have certain qualifications prove their theoretical knowledge by passing an exam within one year after their appointment. If that does not happen, the person concerned may no longer be deemed a Person in Contact with the Public, without the FSMA having any say therein.

The measure to extend the term applied for every Person in Contact with the Public in training for whom the lockdown fell partly or entirely within that term of one year. These were people who on 18 March 2020 had been appointed for less than one year as a Person in Contact with the Public, and those who were appointed in that capacity between 18 March 2020 and 30 June 2020.

<sup>98</sup> Royal Decree of 8 June 2020 containing specific measures aimed at extending certain regulatory deadlines for the professional knowledge requirements of compliance officers and intermediaries in the financial and insurance sector, in order to address the consequences of the COVID-19 epidemic.

<sup>99</sup> Royal Decree of 18 June 2019 implementing Articles 5, 19° /1, 264, 266, 268 and 273 of the Law of 4 April 2014 on insurance.

As regards the obligation of continuing education for professional knowledge, Article 2 of the Royal Decree of 8 June 2020 grants an additional term of four months to those whose period for continuing education lapsed at the end of 2020.

Several people to whom professional knowledge obligations apply have to update their professional knowledge through continuing education under the supervision of the FSMA. This continuing education obligation applies not only to financial intermediaries, some of their managers, those responsible for distribution or Persons in Contact with the Public, but also to compliance officers appointed at financial institutions or insurance companies and authorized by the FSMA. Depending on the case, the continuing education periods have a duration of one to three years.

There are sanctions for not complying with the continuing education obligations. An infringement of continuing education obligations can lead to the decision to withdraw the registration of the intermediary concerned and the authorization of compliance officers.

Account needs to be taken of the potential problems these people might encounter to follow continuing education during the lockdown due to the COVID-19 pandemic and for some time after it is lifted. For this reason, it seemed appropriate to offer these people the possibility of exceptionally extending the time for their continuing education obligations for the periods that elapsed at the end of 2020. The extension of that specific period does not, however, have any impact on the continuing education obligations of those people during the next continuing education period. The usual rules apply for that continuing education period.

## Combating money laundering and terrorist financing

The Law of 20 July 2020<sup>100</sup> transposes the fifth European Directive<sup>101</sup> on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing into Belgian law. This Law amends the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash. The transposition of the European Directive does not, however, lead to a fundamental change to the Belgian legislation in this area. The Law does introduce provisions though that strengthen the Belgian prevention system. The main changes for the FSMA are covered below.

<sup>100</sup> Law of 20 July 2020 containing various provisions on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

<sup>101</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

One of the main changes in the Belgian legislation is that new entities are brought within the scope of the Law of 18 September 2017. As a result of this broadening, the Law from now on also applies to custodian wallet providers and providers engaged in exchange services between virtual currencies and fiat currencies established within the territory of Belgium. By including these providers within the scope, the lawmakers address the issue of the anonymity of transactions in virtual currencies. After all, that anonymity stands to benefit misuse for criminal purposes. That is a major change for the FSMA, which is competent for registering these service providers and supervising their compliance with the anti-money laundering rules. The Law stipulates that the registration conditions have to be laid down in a Royal Decree. That way, the service providers will have to show that they have the requisite professional integrity and appropriate expertise to conduct their activity. The FSMA will also have to ascertain whether there are people among their shareholders who have the requisite qualities to ensure sound and prudent management of the company.

The Law of 20 July 2020 also aims to tighten and harmonize certain due diligence measures, especially the measures for transactions involving high-risk third countries. Admittedly, the Law of 18 September 2017 already laid down enhanced due diligence measures for such transactions, but these measures have now become even stricter and more rigorous.

The Law of 20 July 2020 also draws up a list of prominent Belgian public functions. The list should clarify the definition of “politically exposed person”. This makes it simpler to determine who should be deemed a politically exposed person. For politically exposed persons, the obliged entities have to take enhanced due diligence measures.

Lastly, the Law of 20 July 2020 introduces further rules for cooperation and sharing of information between competent authorities, both on a national and an international level. Those new rules aim to facilitate cooperation and eradicate impediments thereto, more specifically when information is shared or when assistance is required. At national level, the new rules organize the cooperation and information sharing between the authorities competent for money laundering and terrorist financing (including the FSMA), the prudential supervisors, the FSMA in its capacity of supervisor of the financial markets and the CTIF-CFI.

The rules for combating money laundering and terrorist financing will probably be tightened. On 7 May 2020, the European Commission published an ambitious action plan to further broaden the European range of instruments to step up the fight against money laundering and terrorist financing. That action plan entails, inter alia, that the European Commission is set to propose, over the course of 2021, a more harmonized set of rules.





# THE ORGANIZATION OF THE FSMA

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# Structure and bodies of the FSMA

## Management Committee



**Jean-Paul Servais,**  
Chairman



**Annemie Rombouts,**  
Deputy Chairman



**Gregory Demal,**  
Member



**Henk Becquaert,**  
Member

## Organization chart of the departments and services

(status as at 31 December 2020)



## Supervisory Board

### Composition



Jean Eylenbosch



Roland Gillet



Deborah Janssens



Pierre Nicaise



Frédéric Rouvez



Kristien Smedts



Reinhard Steennot



David Szafran



Dirk Van Gerven



Jan Verhoeve

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

#### General oversight of the FSMA

The Supervisory Board is tasked with the general oversight of the FSMA's work.

In 2020, the Members of the Supervisory Board met eight times and used the written procedure twice. During the coronavirus crisis, the Board mainly met online. The members welcome the fact that the FSMA's IT environment enabled the Board to continue to fulfil its tasks to the full.

## Coronavirus crisis

During this year, the Supervisory Board particularly monitored the organization of the FSMA and its work during the pandemic.

The Members of the Supervisory Board received an explanation during each of their meetings from the Management Committee on the organization of the FSMA's work, which had to constantly adjust to the government measures put in place to combat the pandemic. The members were able to see that the FSMA adjusted every time to the government measures set, and absorbed the impact thereof on the supervisory activity and the FSMA's other tasks in a professional manner. As the Chair of the Management Committee explained in the preface, the FSMA was able to continue to contribute to protecting investors and to the proper functioning of the financial markets it supervises thanks to excellent IT support and the flexibility of its staff. The Supervisory Board wishes to thank the members of staff of the FSMA wholeheartedly for their efforts and professionalism in these difficult times.

The Supervisory Board was also kept updated as to the measures taken by the FSMA during the market turbulence in the initial phase of the coronavirus crisis, such as the temporary ban on short selling positions. The Management Committee also regularly informed the members on the FSMA's monitoring of the developments in the relevant sectors under the FSMA's supervision. The members especially welcome the FSMA's close monitoring of the evolution of the situation of investment funds and institutions for occupational retirement provision. The members were also informed of the action that the FSMA took to ensure that fund managers took the necessary measures to have the possibility of being able to use the liquidity management instruments where necessary (a possibility that did not have to be used during the market turbulence). This proactive stance by the FSMA ensures that the Belgian fund sector is among the forerunners in addressing the European and international recommendations as regards liquidity management.

The Supervisory Board was also regularly informed of the dashboards developed by the FSMA's services with useful quantitative data on the financial and economic indicators relevant to the FSMA linked to the coronavirus crisis.

## Other subjects handled

The Board closely followed the FSMA's initiatives regarding financial education and particularly welcomes the successful opening of the Wikifin Lab, which constitutes a milestone in the ten-year existence of the FSMA. In view of the interest that has already been seen among the target group of youngsters, the members are convinced that this centre will achieve its objectives and become an international reference.

Like in previous years, the FSMA's services provided an overview of the impact of new technology on the financial sector and on the FSMA's supervisory methods. The members also discussed the experience with the FSMA's whistleblower contact point and the prevention action the FSMA has taken against investment and credit fraud. They also received a presentation on the FSMA's sanctions policy and were able to see how the agreed settlement has grown to become an important deterrent.

By virtue of its statutory task contained in Article 49, § 3, of the Law of 2 August 2002, the Supervisory Board also advised the Management Committee on the draft Regulation on storing insurance documents.

The members exchanged views on other current themes too, such as the preparations for Brexit and the initiatives at a Belgian and European level on sustainable finance. The members were pleased to note the leading role that the FSMA and its Chairman play in many international organizations, which contributes to the international image of Belgium.

### Functioning of the FSMA

The Members also regularly exchanged views on topics that concern the organization and personnel policy of the FSMA. The Members in particular focused attention on the governance and the IT budget, as well as how consumer enquiries are handled.

As part of its statutory tasks, the Board approved the FSMA's 2021 budget on 10 December 2020 and deliberated on the FSMA's global action plan for 2021. The Board approved the annual accounts for the year 2019 on 27 April 2020 and the annual accounts for 2020 on 22 April 2021.

The Supervisory Board approved the present report as regards the Supervisory Board on 22 April 2021.

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

The Audit Committee met nine times in 2020. Since the outbreak of the pandemic, a significant proportion of the meetings was dedicated to the impact of the pandemic on the FSMA. The members were satisfied that the FSMA had taken the appropriate measures to safeguard the continuity of the performance of the FSMA's tasks. The members received full information from the Management Committee on the change in the FSMA's organization of its work and on the manner in which the FSMA's supervision of the markets and market participants took place in this context.

The audit committee was also informed as to the latest preparations for the completion and opening of the Wikifin Lab.

In application of Article 48, § 1ter, first paragraph, 3° of the Law of 2 August 2002, the Audit Committee handled several internal audit reports, including an audit report on the procedures followed when purchasing through tenders. The Audit Committee discussed the follow-up to the recommendations from previous audit reports.

During its meetings, the Audit Committee, at the proposal of the Management Committee, audited the 2020 Annual Report, the 2020 accounts and the budget for 2021 and advised the Supervisory Board to approve these.

Equally, the Audit Committee agreed on changing the FSMA's internal auditor.

## The internal audit function at the FSMA

Internal audit is an independent and objective activity that gives an organization certainty as to its degree of governance, gives it advice on how to improve its operation and contributes to creating added value. Internal audit helps the organization attain its objectives through a systematic and disciplined evaluation of the processes for risk management, governance and steering, and

by making suggestions to improve their effectiveness. In November 2020, a new internal audit manager was appointed.

The FSMA's Audit Committee supervises the work of the internal audit department. It is composed of four Members of the Supervisory Board.

The internal audit manager presents all audit reports for discussion and handling to the Management Committee. They are then sent to the Audit Committee for approval and explained, along with the measures taken by the Management Committee to follow-up the audit recommendations.

In 2020, internal audit accomplished two main tasks. A third task was still pending completion at the end of 2020. In the final quarter of 2020, an ad-hoc task was also conferred on the department.

Apart from these tasks, internal audit is actively working on a multi-annual transversal project to realize and oversee a comprehensive matrix mapping of the strategies and policies for supervision of regulations for which the FSMA is competent. To fulfil this task, the service was allocated additional resources (1 FTE) through internal redeployment.

Because of the coronavirus crisis, internal audit was forced to slightly amend the initial audit planning. The activities were primarily geared to conducting the transversal project and to providing advice and support for the internal organization within the FSMA in the context of the coronavirus crisis.

Apart from these different tasks, internal audit, as usual started the follow-up of its audits. This looks into whether the measures for following up on recommendations were implemented.

Finally, the Audit Committee examined the half-yearly activity reports of the internal audit service for the years 2019 and 2020, and the service's action plan for the year 2021 was approved.

## Auditor

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

## Sanctions Committee

### Composition

The composition of the Sanctions Committee is as follows:



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



**Martine Castin**  
Member of the Sanctions Committee with appropriate expertise in the area of statutory audits of annual accounts



**Sofie Cools**  
Member of the Sanctions Committee



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



**Guy Keutgen**  
Member of the Sanctions Committee



**Jean-Philippe Lebeau**  
President of the Commercial Court of Hainaut, member of the Sanctions Committee in the capacity of magistrate who is neither a counsellor at the Supreme Court nor at the Brussels Court of Appeal



**Christine Matray**  
Counsellor at the Supreme Court, member of the Sanctions Committee on the recommendation of the first president of the Supreme Court.



**Pierre Nicaise**  
Member of the Sanctions Committee



**Philippe Quertainmont**  
Counsellor at the Council of State, member of the Sanctions Committee on the recommendation of the first president of the Council of State



**Reinhard Steennot**  
Member of the Sanctions Committee



**Kristof Stouthuyzen**  
Member of the Sanctions Committee with appropriate expertise in the area of statutory audits of annual accounts



**Marnix Van Damme**  
Chamber President of the Council of State, member of the Sanctions Committee on the recommendation of the first president of the Council of State

## Decisions by the Sanctions Committee

### **Administrative sanction for non-compliance with the reporting obligations as small-scale manager of AIFs – Publication by name**

In 2020, the Sanctions Committee identified an infringement to the legislation and regulations for AIF managers and imposed a fine. The decision of the Sanctions Committee of 2 July 2020 was appealed against, and on 23 December 2020, the Market Court declared the appeal unfounded.

The Sanctions Committee found that two small-scale managers of AIFs, in this case venture capital funds, had not complied with their reporting obligation within the meaning of Article 107, § 2, first paragraph and Article 107, § 2, second paragraph, 1° of the Law of 19 April 2014 for a number of financial years. For this infringement of Article 107, § 2, first paragraph, and Article 107, § 2, second paragraph, 1° of the Law of 19 April 2014, the Sanctions Committee imposed a fine of 10,000 euros on each of the managers. The Sanctions Committee ruled that the objectives of the reporting obligations for small-scale managers of alternative funds would be jeopardized if repeated infringements thereof remained unpunished. Failure by a small-scale manager of AIFs to report to the FSMA all necessary data to keep its registration dossier up-to-date and repeated failure to report to the FSMA information on the main instruments traded by the manager and on the main risk positions and main concentrations of the AIF it manages, undermines an effective supervision of systemic risks. After all, the work of small-scale managers of AIFs, although their managed assets are more limited, can have aggregate consequences for the financial stability and can cause systemic risks. This is why the European (and Belgian) legislature deemed it necessary to oblige these small-scale managers, even though no full authorization obligation applies to them, to report information on the main instruments they trade and the main risk positions and concentrations of the AIFs they manage.

In this decision, the Sanctions Committee made use of the ESMA guidelines to clarify a number of key concepts from the legislation and regulations regarding AIFs.

In this case, the Sanctions Committee rejected the parties' request for a preliminary ruling from the Court of Justice. Having regard to Article 267 of the Treaty on the Functioning of the European Union, some judicial authorities can ask the Court of Justice for a preliminary ruling. It is also clear that the Sanctions Committee does not make judicial decisions. The fact that an administrative authority imposes sanctions does not lend it the status of administrative jurisdiction. The Sanctions Committee, the FSMA's body tasked with imposing administrative fines, is an administrative authority and not an administrative jurisdiction.

The Sanctions Committee's decision was published with names on the FSMA's website, but in line with proportionality, it will be anonymized after two years.

#### **Breaches of the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorist financing - publication with names and a fine**

On 23 July 2020, the Sanctions Committee imposed a sanction on a currency exchange office because of several breaches of the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorist financing. The Sanctions Committee's decision was appealed against at the Market Court. That appeal was still ongoing at the time of preparing this annual report. The decision of the Sanctions Committee of 23 July was published with names, on the FSMA's website, mentioning the appeal at the Market Court, in accordance with Article 72, § 3, seventh paragraph of the Law of 2 August 2002.

#### **Administrative sanction for infringing the prohibition of market manipulation – Publication by name**

In 2020, the Sanctions Committee identified an infringement to the legislation and regulations on market manipulation and imposed a fine. This decision of 6 October 2020 was appealed against at the Market Court. This decision was published with names on the FSMA's website, stating that an appeal had been lodged.

#### **Administrative sanction for non-compliance with the rules on publication of inside information – Anonymous publication**

In a decision of 13 November 2020, the Sanctions Committee identified a breach of the rules on publication of inside information.

The Sanctions Committee identified that an issuing institution had not complied with its obligation to publish inside information directly relating to it as quickly as possible. For this breach of Article 17.1 of the Market Abuse Regulation<sup>102</sup>, the Sanctions Committee imposed a 50,000 euros fine to the issuing institution.

<sup>102</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

Based on the details of the case, the Sanctions Committee decided that the issuing institution had wrongly waited 11 calendar days to publish that a second clinical study needed to be conducted for a candidate product, a standard marketing authorization could not be given and a request for contingent marketing authorization had been submitted to the authority that supervises the marketing process. This information was indeed sufficiently concrete without the answer of the authority as regards the contingent marketing authorization or without waiting for specific details as to the refusal of the standard marketing authorization.

The Sanctions Committee's decision was published anonymously on the FSMA's website. No appeal was lodged against this decision.

# The organizational structure in practice

## Human resource management

### Wellbeing

As was the case for the whole country, the COVID-19 crisis took over the agenda in 2020. From one day to the next, almost the entire staff of the FSMA switched to full-time teleworking, even those who had never previously worked from home. Thanks to the almost simultaneous roll-out of online communication tools, first Skype for Business and then Teams, this went more smoothly than expected.

Teleworking equally did not jeopardize the realization of the FSMA's planned supervisory actions for 2020. In addition, new initiatives were taken for reporting and several internal processes were optimized, such as the digitization of most outbound letters.

A number of members of staff stayed in the FSMA building, first of all to ensure continuity and then to implement all the preventive measures. In some roles in which teleworking is not possible (building maintenance, kitchen, etc.), the workload decreased considerably<sup>103</sup>. Those members of staff showed they were prepared to take on different tasks. A technician became a receptionist and a member of the kitchen staff made face masks for all members of staff.

The FSMA regularly published comprehensive messages to staff with the most recent insights on the spread of the virus, all preventive measures to take into account and all organizational aspects to make sure the new way of working together remotely could go as smoothly as possible.

<sup>103</sup> The members of staff who temporarily had less work, were encouraged to plan enough holidays.

The exceptional circumstances forced the FSMA to be very agile and flexible. During the closure of schools or quarantine, members of staff with children could combine care and home-schooling to the best of their abilities with teleworking. Extra flexibility was introduced in working hours, in the part-time timetables and in taking up leave (paid or unpaid). Parents whose children caught the virus got five extra days of authorized unpaid leave. Only very few staff took parental leave because of the pandemic. Staff were encouraged, despite the lockdown, to take holidays so that the FSMA would not have to face an accumulation of holidays at the end of the year, which would have jeopardized the continuity of activities. Taking regular and sufficient rest is moreover important for the wellbeing of staff.

The FSMA took initiatives for wellbeing, such as publishing tips on ergonomics, teleworking and psychosocial wellbeing, as well as organizing several webinars on how to be more resilient. As soon as the national lockdown was over and the building was fitted with all the necessary and useful preventive measures, the FSMA organized the possibility, starting from mid-July to again work one and subsequently two days from the office. When full-time teleworking became obligatory again during the second wave of coronavirus in mid-October, the prevention service again published brochures with tips on full-time teleworking and managing stress.

To allow staff to have a professional working environment at home, the FSMA also provided for a teleworking compensation and ad-hoc contributions to office materials. The staff who ensures continuity in the building also received a small compensation to cover extra costs (for example commuting by car).

During the cooperation meetings in the summer, staff were asked about their experience of this unusual period. The evaluation was overall very positive, both as regards the speed at which management acted, and the communication by the management during the crisis. The flexibility as to working hours, the fast roll-out of the IT tools and the financial assistance were especially appreciated. In turn, the management was particularly pleasantly surprised with the smooth switch to almost full-time teleworking and the efforts staff made to take care of the progress of their work despite the difficult circumstances.

Luckily, the main traditions were honoured: the New Year reception was organized, even though it was online. With the help of the talented kitchen staff, surprise boxes full of delicious treats were sent to staff. After the Chairman's speech, all members of staff took part, in mixed teams, in the online teambuilding with difficult puzzles and guessing games. The event was very well received by staff.

### **Human resource management**

The HR action plan naturally had to be adapted to the reality of the COVID-19 crisis.

All HR processes had to be digitized quickly. Recruitment is now fully digital. Staff who retired were bidden farewell online. Training was organized online and alternatives were sought for team building events.

The full HR administration was digitized as HR was still working with paper staff files. During this exercise, other optimization opportunities and efficiency gains were sought too.

Work was done on updating important documents and reporting. A virtue was made of necessity. The work regulations, which had to be aligned with recent legislation, underwent a full makeover. The social documentation and the career path rules were adjusted to recent changes in the law or policy decisions by the management committee. An HRM report was also prepared describing all the staff-related activities over the past five years as well as the challenges for the future.

### Staff complement

In 2020, the FSMA welcomed 24 new members of staff. Taking into account the employees who retired or left, the year ended on 31 December 2020 with a headcount of 375.

**Table 10:** Staff complement

	31/12/2019	31/12/2020
Number of staff members according to the staff register (number)	365	<b>375</b>
Number of staff members according to the staff register (FTE)	343.79	<b>353.54</b>
Operational staff complement (FTE)	333.20	<b>343.35</b>
Maximum staff complement <sup>104</sup> (FTE)	399	<b>399</b>

The number of statutory and contractual members of staff of the former ISA remained on 14. The average age of this group of staff is 53.5 years, the youngest of which is 45.

The average age of FSMA staff rose slightly, to 43.

In 2020, there was a slight predominance of female members of staff, both in terms of staff with university and bachelor's education. At management level there is good gender diversity too. Although there are more male coordinators, the proportion is reversed when it comes to directors and deputy directors.

At the end of 2020, 61 per cent of FSMA staff had a university education and 27.5 per cent had a bachelor's diploma.

The qualifications of university graduate staff are the following:

**Table 11:** Qualifications of university graduate staff

Law	48.71 %	Economics	36.21 %
Science	3.02 %	Other <sup>105</sup>	12.07 %

<sup>104</sup> See Royal Decree of 17 May 2012 on the operating expenses of the FSMA as amended by the Royal Decree of 28 March 2014.

<sup>105</sup> This concerns mainly members of support staff and the financial education department.

Thirty-two per cent of staff have some form of part-time work arrangement. Over the past few years, the FSMA has observed a slight rise in the number of part-time arrangements. This rise is most pronounced among management staff, including males. The 90 and 95 per cent arrangements remain very popular, both for male and female staff.

### Language complement

As a public institution, the FSMA is subject to the legislation on the use of official languages in government affairs. The beginning of 2018 saw the publication of the royal decrees that establish the updated hierarchical grades and the linguistic framework for the FSMA<sup>106</sup>. The language proportion is 43.85 per cent French-speaking and 56.15 per cent Dutch-speaking staff members within each language grade. At the end of 2020, the FSMA had 56 per cent Dutch-speaking and 44 per cent French-speaking staff.

### 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. This code of ethics especially lays down the prohibition of trading in the financial instruments of companies subject to the FSMA's permanent supervision. It is also focused on eliminating all conflicts of interest or potential semblance of conflicts of interest. For this reason, members of staff are not allowed to accept corporate gifts from companies under supervision.

Over the past year, staff queries were handled in relation to financial transactions or the exercise of additional roles, whether or not as an extension of the FSMA's powers. In this respect, the Management Committee has continued with the policy of previous years.

If a member of staff has signed an employment contract with a company under the FSMA's supervision, access is blocked with immediate effect, systematically and as a preventive measure, to the files on this company.

## Consultation on social matters

In 2020, the organization of the social elections took up a great deal of the consultation on social matters. Initially planned for May 2020, they were postponed, because of the COVID-19 crisis, to November 2020.

Through the postponement of the social elections, the elected employee representatives still received some important tasks in 2020 such as following up all preventive measures taken in the FSMA building. They also conducted an on-site visit, along with the health and safety advisor. They also examined all the proposed changes to the work regulations. This consultation allowed the FSMA to hone its proposals. The text of the new pension scheme was finalized in consultation with the trade unions too.

<sup>106</sup> Royal Decree of 9 January 2018 establishing the linguistic framework of the Financial Services and Markets Authority, published in the Belgian Official Gazette of 25 January 2018 and Royal Decree of 9 January 2018 establishing the hierarchical grade of the Financial Services and Markets Authority, published in the Belgian Official Gazette of 25 January 2018.

Where in 2016 the elections still took place in the conventional way with voting booths and paper ballots, the FSMA wanted in 2020 to move over to electronic voting. Initially, the employee representatives advocated an intermediate form, in which staff could still come and vote at a polling station, but via a voting computer.

The COVID-19 and the teleworking that arose from that, however, sped up the digitization. After the elections were postponed for the first few months, they took place on Monday 23 November 2020.

There were 330 members of staff with voting rights: 287 of those could vote by electronic means and 43 by letter. Finally, 270 members of staff voted electronically. Of the 43 letter voters, one voted in person and 23 voted by letter. In total, 294 of 330 members of staff (89 per cent) voted.

In joint committee 325, talks commenced on the introduction of a mediation procedure if considered opportune, as provided for in Article 6 of the aforementioned agreement. These talks will continue in 2021.

## Developments in IT

2020 is the year of lockdown due to the coronavirus crisis, with all the implications of mandatory and long-term teleworking as a consequence.

As soon as the first lockdown happened, the FSMA opened Skype for Business to all its staff. This program was being tested at the time with the IT department. The FSMA has provided for the necessary support for teleworking, and provided its staff with the necessary materials to be able to work more comfortably remotely. In September, Skype for Business was replaced with Teams, a program that offered more possibilities, including for contact with external parties. The VPN infrastructure was reinforced so that all members of staff could have video conferences with no bandwidth problems.

Furthermore, the FSMA took on the necessary tools for digitizing processes that were still done on paper, such as scanning, electronic signatures and cooperation platforms. The digitization was utilized to review those environments and processes and where necessary simplify them. The procedure for presenting files to the Management Committee was reviewed to make it fully digital, with no physical intervention needed from staff in the FSMA building.

The necessary tools were also introduced for more professional communication, with the possibility of filming presentations, webinars and organizing Teams meetings for large groups, etc.

The FSMA strengthened its security, including with a new procedure to analyse supplier security and systematically to scan the machines in its network. A new, more secure, system was set up for user authentication.

In terms of the development of applications, the FSMA started the first production phase of the FINPRO project, which offers the necessary support for the supervision of financial products.

The department has also worked on the development of the Workbench with which data collected could be used for different FSMA services. Focus was placed on automation of reports on the data collected during the pandemic, the introduction of reports for the supervision of company auditors and reports on continuing education, the set-up of reports on the use of FINPRO data, the roll-out of risk models for certain sectors and of dashboards on economic and market indicators.

## Sustainability

In its internal operations, the FSMA places a great deal of importance on its corporate social responsibility and sustainability.

In 2020, the coronavirus crisis had a major impact. The working habits of all FSMA staff changed completely from one day to the next. They had to switch to a fully online working environment. That transition did, however, have a positive ecological impact. Business trips were replaced with online meetings and signed files with secure electronic signatures. Within the FSMA, a working group was also set up that examined the benefits of the new working environment to be able to draw the necessary conclusions and offer reflections for the near future.

In its purchasing, the FSMA's attention was focused very specifically on the ecological and environmental responsibility aspects. Where possible, it used ecological selection criteria for public tenders. In 2020, it did that for example when granting public procurement contracts for painting, printing of publications and gardening.

Due to the health crisis, the traditional charity breakfasts were not organized last year. Staff supported the charity sector in other ways: the Saint Nicholas cheques were for example all donated to charitable organizations.

In terms of infrastructure works, the FSMA completed the installation of solar panels in 2020, the refurbishment of green areas and the extension of its bicycle parking, doubling the number of bicycle parking spaces.





# ANNUAL ACCOUNTS FOR THE 2020 FINANCIAL YEAR

Pages 185-197 and footnotes 107-117 are not translated into English, but are available in French and Dutch on the FSMA's website.

# ABBREVIATIONS

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

AI	Artificial intelligence
AIF	Alternative Investment Fund
AMF	Autorité des Marchés Financiers (the French financial regulator)
AMLD	Anti-money laundering Directive
BEL 20	Main share index of the Brussels stock exchange that includes 20 listed companies
Bevak	Belgian open-ended investment company
CFD	Contract for difference
CTIF-CFI	The Belgian Financial Intelligence Processing Unit (CTIF-CFI)
COVID-19	Coronavirus Disease 19
CSA	Common Supervisory Action
DB2P	supplementary pensions database
DORA	Digital Operational Resilience Act
EBA	European Banking Authority
ECB	European Central Bank
EECS	European Enforcers Coordination Sessions
EEA	European Economic Area
EFRAG	European Financial Reporting Advisory Group
EIOPA	European Insurance and Occupational Pensions Authority
EMTN	Euro Medium Term Notes
ESA	European Supervisory Authority
ESAP	European Single Access Point
ESEF	European Single Electronic Format
ESG	Environmental, Social and Governance
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
Euribor	Euro Interbank Offered Rate
FAQ	Frequently Asked Questions
Fintech	Financial technology
FPS	Federal Public Service
FSB	Financial Stability Board
FSEG	Financial Stability Engagement Group
FSMA	Financial Services and Markets Authority
GDPR	General Data Protection Regulation
GVV/SIR	Regulated real estate companies

IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
IDD	Insurance Distribution Directive
IFRS	International Financial Reporting Standards
IOPS	International Organization of Pension Supervisors
IORP	Institution for Occupational Retirement Provision
IORP II	The Directive on the work and supervision of Institutions for Occupational Retirement Provision
IOSCO	International Organization of Securities Commissions
IPO	Initial Public Offering
ISA	Insurance Supervision Agency
KB PUB	Royal Decree of 25 April 2014 imposing certain information obligations when distributing financial products to retail clients
KID	Key Information Document
LMT	Liquidity Management Tools
MAR	Market Abuse Regulation
MiFID	Markets in Financial Instruments Directive
ML	Machine Learning
MLM	Multi-level marketing
MTF	Multilateral Trading Facility
NBB	National Bank of Belgium
OSSG	Official Sector Steering Group
PCP	Person in Contact with the Public
PRIIP	Packaged Retail and Insurance-based Investment Product
RTS	Regulatory Technical Standard
SFDR	Sustainable Finance Disclosure Regulation
Sicav	Belgian open-ended investment company
SME	Small and Medium-sized Enterprises
UCI	Undertaking for Collective Investment
UCITS	Undertaking for Collective Investments in Transferable Securities
VAPW/PLCS	Voluntary supplementary pension for employees
VAPZ/PLCI	Voluntary supplementary pension for self-employed persons
VAPZNP/PLCIPP	Supplementary pension for self-employed persons working as a natural person
WAP/LPC	The Belgian Law on Supplementary Pensions
WAPBL/LPCDE	The Belgian Law on supplementary pensions for company directors
WAPW/LPCS	The Law on Voluntary Supplementary Pensions for Employees
WAPZNP/LPCIPP	Law on Supplementary Pensions for Self-Employed Natural Persons



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