



European Securities and
Markets Authority

Follow-up Report to the Peer Review on MiFID Conduct of Business rules relating to fair, clear and not misleading information

Four large, light blue, five-pointed stars are arranged in a diagonal line from the bottom left towards the top right, set against a solid dark blue background.

ESMA42-113-627, 18 May 2017

Table of Contents

1. Executive Summary	4
2. Introduction	5
3. Assessment Method	6
4. Overview of the Progress made	7
5. Detailed Findings of the Follow-up	14
5.1 CySEC Cyprus	14
5.2 Finanstilsynet Denmark ("Danish FSA")	21
5.3 EFSA Estonia ("Finansinspeksioon")	22
5.4 HCMC Greece	24
5.5 FMA Liechtenstein	25
5.6 LB Lithuania	27
5.7 MFSA Malta	30
5.8 KNF Poland	33
5.9 CMVM Portugal	36
5.10 ASF Romania	37

1. Executive Summary

1. ESMA is committed to monitor follow-up actions taken by national competent authorities (NCAs) to address the findings of peer reviews. This report provides an update on the actions NCAs have undertaken further to the 2014 Peer Review on MiFID Conduct of Business rules relating to fair, clear and not-misleading information, which focused on NCAs' supervision of information and marketing communications under MiFID.
2. Providing fair, clear and not-misleading information to clients is a corner stone for investor protection under MiFID. The report concluded that there was overall a high degree of compliance amongst NCAs with the identified ESMA good practices. However, ten NCAs (CY, DK, EE, EL, LI, LT, MT, PL, PT, RO) were found to be not fully applying certain criteria considered essential for effectively ensuring the application of MiFID rules. There has been diversity in the number and types of deficiencies observed, as regards organization, supervision, monitoring activities, thematic work or complaints handling.
3. The follow-up work was launched in September 2016 through letters of ESMA's Chair addressed to the Heads of these ten NCAs. Overall, more than half, i.e. six of the NCAs (LI, LT, MT, PL, PT, RO) reported to have addressed all deficiencies identified. For the remaining four NCAs, one (DK, EE, EL) or more (CY) deficiencies remain, although significant efforts have been made by CY and EL.
4. As in previous peer reviews and follow-up exercises, risk based approaches to supervision have been cited as a reason for not taking sufficient action in following up on the specific deficiencies identified in 2014. While a risk-based approach can naturally fit with the supervision of MiFID conduct of business rules, such an approach should be able to take into account signals on potential breaches by firms of their MiFID obligations. Deficiencies found are expected to be addressed also having in mind that the supervision of one NCA may impact on other NCAs and the protection of investors beyond national borders, through the use of pass-ported activities under MiFID.
5. To conclude, ESMA welcomes the important efforts made by most NCAs, and in particular the authorities of PL, PT, MT and RO, in addressing deficiencies identified in the 2014 peer review. There is substantial divergence in intensity of supervision and monitoring among NCAs and ESMA trusts that those NCAs in which deficiencies remain will address those under the new MiFID2/MiFIR regime, which will become applicable in January 2018. ESMA will continue to foster supervisory dialogue on MiFID rules on fair, clear and not-misleading information provided to clients and on conduct of business rules in general.

2. Introduction

6. This report analyses the actions undertaken by the NCAs which were found to have made insufficient application of certain ESMA good practices established for the 2014 peer review on MiFID Conduct of Business - fair, clear and not misleading information (ESMA/2014/1485). All ESMA Members except Iceland (IS) contributed to the 2014 peer review.
7. The 2014 peer review concluded that market specificities (structure, volume of transactions, degree of exposure to cross-border business) play an important role in determining the supervisory approach chosen by NCAs. Supervisory approaches also differ depending on the emphasis that is laid on ex-ante / ex-post supervision, i.e. depending on whether the documents are partly/fully reviewed before the launch of the offer or the distribution or afterwards. There are also differences among NCAs in terms of supervisory reliance on checks performed by external auditors commissioned to carry out such checks on behalf of the supervised entity, with some NCAs heavily relying on this method of supervision. The peer review also raised awareness of the lack of a precise and common definition in the community legislation of the term “marketing communication”. This has an impact on NCAs’ supervisory approaches, especially in the context of supervision of cross-border activities of firms.
8. In preparation for the entry into application of MiFID2/MiFIR, checks on progress made by NCAs in implementing recommendations of the two peer reviews on MiFID Best Execution and now on MiFID Conduct of Business - Rules on fair, clear and not misleading information, were undertaken in the more expedient form of follow-up letters from the ESMA Chair, as foreseen in the Review Panel Methodology (ESMA/2013/1709).
9. Chair’s letters were sent on 6 September 2016 to ten NCAs (CY, DK, EE, EL, LI, LT, MT, PL, PT, RO) asking them to update ESMA on follow-up work undertaken to address the findings from the 2014 Report. The ESMA Chair received responses from all ten NCAs.

3. Assessment Method

10. The assessment of this follow-up peer review continues to use the criteria established by the assessment framework set by the original peer review (i.e. Key Issues, Key Questions, Benchmarks) and does not have the objective to reconsider the judgements on the benchmarks "full application" or "insufficient application" of the different criteria established in the 2014 peer review. The assessment has been a pure desk-based information gathering exercise, which sought to determine whether deficiencies identified in the 2014 peer review have been addressed by the 10 NCAs being subject to this follow-up peer review.
11. To recall, the findings of the 2014 peer review were organized around Key Issues identified for the following areas:
 - A. Organisation
 - B. Supervisory Approach¹
 - C. Monitoring
 - C.1. Desk-based monitoring
 - C.2. On-site inspections
 - D. Thematic work
 - E. Complaints

¹ The 2014 peer review set minimum factors for NCAs to apply in order to be considered as having a fully compliant supervisory approach: Scale of activities / volume of products marketed / volume of assets under management; Volume of complaints and alerts received; Indicators from the regular review of audit reports or Indicators from the review of information and data transmitted from intermediaries; Nature of complaints and alerts received; Risk of products as assessed by the CA.

4. Overview of the Progress made

The following table provides an overview of the areas where NCAs were found to have insufficient application of ESMA good practices in the 2014 peer review and the progress that has been made by 2017.

	CY		DK		EE		EL		LI		LT		MT		PL		PT		RO	
	2014	2017	2014	2017	2014	2017	2014	2017	2014	2017	2014	2017	2014	2017	2014	2017	2014	2017	2014	2017
A. Organisation	insuff.	partly	full		full		full		full		full		full		full		full		full	
B. Supervisory Approach	insuff.	partly	insuff.	remain	insuff.	addr.	full		full		insuff.	addr.	insuff.	addr.	full		full		insuff.	addr.
C. Monitoring	insuff.	partly	full		insuff.	remain	full		full		insuff.	addr.	full		insuff.	addr.	full		full	
D. Thematic Work	full		full		full		insuff.	partly	insuff.	addr.	full		insuff.	addr.	full		insuff.	addr.	full	
E. Complaints	insuff.	partly	full		full		full		insuff.	addr.	full									

² 2014: Insufficient application: "insuff.", Full application: "full",
2017: Deficiencies addressed: "addr.", Deficiencies partly addressed: "partly", Deficiencies remain: "remain".

The table below provides an overview of the conclusions reached per NCA in the context of the follow-up work:

NCA	Summary of findings of the 2014 peer review ³	Findings of the 2017 follow-up	Conclusions of the 2017 follow-up
CY ⁴	<p>Organisation: Insufficient application</p> <p>CySEC did not appear to be sufficiently staffed to adequately supervise the marketing activities of investment firms authorised in Cyprus.</p> <p>Supervisory approach: Insufficient application</p> <p>CySEC appeared to rely on a reactive approach to supervision, based on complaints received or concerns expressed by other NCAs.</p> <p>Monitoring: Insufficient application of C.2 - On-site inspections</p> <p>On-site inspections in the field of information and marketing communications were carried out only on a limited and ad hoc basis and did not</p>	<p>Organisation: deficiencies partly addressed</p> <p>Supervisory Approach: deficiencies partly addressed</p> <p>Monitoring /C.2 : deficiencies partly addressed</p>	<p>Additional staff have been recruited (either through secondments from other entities or in the form of new staff), each of these staff members have responsibilities for the supervision of a number of investment firms. While the resource issue has certainly improved, new staff will need to be trained and it is unclear whether the gap between staff on one hand and the number of firms to be supervised on the other hand has been adequately addressed. The number of authorizations is still high, compared to the resource available. While the number of staff allocated to on-going supervision and enforcement increased recently, more staff is allocated to processing authorization requests than to on-going supervision, which remains counterintuitive given that requirements to supervise by far outweighs the number of checks to be performed at authorization stage.</p> <p>CySEC reported that it had implemented additional supervisory tools, and explained how its new supervisory system includes signals relevant from the supervision of marketing materials (complaints, distribution network, marketing material). These are real improvements but concerns remain about the effectiveness of supervision exercised by CySEC as aggressive marketing communications continue to be reported.</p> <p>Concerning monitoring, important improvements are noted, such as the increase of inspections (22 onsite inspections in 2015-2016) and sanctions. This however is directly linked to major concerns expressed by ESMA and other NCAs at these Cypriot firms, and to specific monitoring put in place as a consequence. In addition, concerns remain about the effectiveness of the measures taken.</p> <p>Concerning CySEC's limited capacities to monitor marketing materials because of a lack of translations, CySEC reported specific obligations on compliance officers to correct any</p>

³ For the presentation of the detailed findings of the 2014 Peer Review, please see the Section presenting detailed findings for each NCA.

⁴ CySEC had been subject to an on-site visit during the 2014 Peer Review, therefore the 2014 findings cover also the more specific deficiencies identified through the on-site visit.

<p>benefit from regular planning prompted by predefined criteria.</p> <p>Complaints: Insufficient application</p> <p>CySEC did not fully apply the key issues set in the peer review as regards complaints.</p> <p>The onsite report also stated that CySEC may consider whether it should react in a more timely manner to complaints or cases signalled by fellow regulators. It should also be noted that CySEC does not necessarily intervene with cease and desist orders until a final decision on the case is made by CySEC. This could potentially lead to other investors being misled while the issue is being investigated. Furthermore, given the large number of investors from other Member States, such investors could also face language problems in submitting complaints directly to CySEC.</p>	<p>Complaints: deficiencies partly addressed</p>	<p>weaknesses on any languages used in a marketing communication issued by its firm. While this is an improvement, it does not fully address the original recommendation of the 2014 peer review. CySEC still relies on the monitoring of English versions of marketing material.</p> <p>On sanctions, CySEC stated that it may impose an administrative fine not exceeding the amount of 350.000 euros as regards to the infringements relating to the Conduct of Business (CoB) obligations. CySEC publishes sanctions (name of entity, administrative sanction imposed, specification of violations of the Law) on its website. The sanctions ranged from 75.000 to 160.000 euros, with a total of 1.295.000 euros in the past two years for breaches of MiFID CoB obligations.</p> <p>CySEC has also presented its regular planning of on-site inspections prompted by predefined criteria.</p> <p>CySEC reported that it has set up a system where it receives complaints, facilitates contact, and provides information on complaints handling. The majority of the complaints are now tackled by the Cyprus Ombudsman and CySEC concentrates on the investigation of the more serious investor complaints. Concerns remain about the effectiveness of supervision exercised by CySEC.</p> <p>CySEC has also implemented a timeframe for providing responses and tries to acknowledge receipt of the complaints and of the requests for assistance from other NCAs within 3 calendar days. 30 calendar days are allowed for response to requests for information which do not entail investigation. For exchange of information with NCAs for investigations, CySEC should strive to shorten the current response period of six months.</p>
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	work in relation to information and marketing communications.		
PL	<p>Monitoring: Insufficient application of C.2 On-site inspections</p> <p>KNF did not seem to have established clear criteria to determine when there is a need to organise on-site inspections.</p>	Monitoring: deficiencies addressed	Considerable progress noted. KNF clearly indicated in its response the criteria it uses to determine whether an onsite visit is to be launched (e.g. risk profile of the entity, significance of the entity, suspicion of misconduct), which was the deficiency identified at the moment of the peer review.
PT⁵	<p>Thematic Work: Insufficient application</p> <p>CMVM had not carried out “horizontal reviews”, i.e. cross-sectoral reviews of specific issues. CMVM understood under “thematic reviews” individual reviews of firms, risk outlooks, regular reportings and was invited to reconsider its approach.</p>	Thematic work: deficiencies addressed	Considerable progress made in the context of thematic work. The CMVM’s reply explained how “horizontal reviews” have evolved since 2014 to include specific work to be undertaken each year. The reviews are in line within what the peer review understood under thematic reviews. CMVM also presented in detail the thematic reviews carried out (e.g. compliance with CMVM regulation on complex financial products, conduct of business guidelines to prevent and mitigate misselling of investment and saving products).
RO	<p>Supervisory Approach: Insufficient application</p> <p>ASF did not systematically use for its examinations all minimum factors established in the peer review.</p>	Supervisory approach: deficiencies addressed	Considerable progress made in enhancing the supervisory approach. ASF explained in detail its use of all the minimum factors established by the peer review for its examinations (such as aggressive sales approach/marketing of products, improvement of the website in relation to complaints, etc.).

⁵ CMVM had been subject to an on-site visit during the 2014 Peer Review, therefore the 2014 findings cover also the more specific deficiencies identified through the on-site visit.

5. Detailed Findings of the Follow-up

12. The following section presents the findings of the follow-up on an NCA per NCA basis.

5.1 CySEC Cyprus

13. The 2014 peer review report noted insufficient application relating to the Organisation, Supervisory Approach, Monitoring (C.2 On-site inspections) and Complaints handling.

The main points CySEC mentioned in response to the ESMA Chair's letter were the following:

Organisation

14. Regarding the recruitment of personnel, as CySEC indicated during the ESMA on-site visit in Cyprus in May 2014, the Ministry of Finance had imposed a moratorium on the opening of new positions. As a result, CySEC proceeded with the first recruitment tranche of thirty-five new permanent personnel who are expected to join CySEC on 14th of November 2016.

15. In addition, a Law that allows the transfer of staff on a permanent basis from the Cyprus Stock Exchange ("CSE") to CySEC has been implemented and 8 members of the CSE staff that were on a "secondment basis" to CySEC (9 at the time of ESMA's on-site visit to CySEC) have been transferred on a permanent basis. This staff has already considerable experience in the financial services sector and has adapted to the nature of work without the need for induction training.

16. The total staff number has increased in last months in the following manner: Authorisations (19 to 26 staff), Supervision (12 to 21 staff), Market Surveillance & Investigations (7 to 10 staff).

17. Ten people of the thirty-five new personnel will be assigned to the Supervision Department increasing the current staff from currently twelve to twenty-two people. The majority of the additional personnel will be allocated to the units of On-Going Supervision of CIFs and CIFs' Thematic Supervision, Markets and Products. In addition to this, CySEC is currently considering the likelihood to recruit staff on a temporary basis (fixed term contracts).

18. The seconded staff had already considerable prior experience in the financial services sector when they were seconded to CySEC and therefore they were able to very quickly adapt to the nature of CySEC work without the need for the usual training for new recruits. As a consequence, it was possible for the workload of the Supervision and Investigation Departments to be re-allocated to the seconded staff thus easing the heavy workload of the existing staff. Each employee was allocated a number of CIFs and is responsible for the monitoring of these specific entities including the monitoring of their marketing communication. In addition, the seconded staff had contributed significantly to the timely

completion of the on-site checks, conducted in the scope of the CySEC Action Plan as shared with the Joint Cooperation Group, comprising ESMA, CySEC and some other NCAs.

19. The new staff arrived in November 2016 and has been allocated to the various departments of CySEC. Nine people have been allocated to the Supervision Department. They have undertaken a series of in-house training programs. Similar to the seconded staff, the new staff assists the existing staff with the workload. Each employee is responsible for the monitoring of the compliance of a number of entities assigned to him/her including the monitoring of the marketing communication: website, banners, landing pages etc. As a consequence, since there is a bigger number of staff in the Department, the number of entities allocated to each employee is smaller, leading to a more efficient and effective monitoring of each supervised entity.

Supervisory Approach

20. CySEC reported that it has taken a number of measures that will enable it to have a more active role and to improve the intensity and timeliness of its actions. These measures have been described in depth in the Action Plan agreed in the scope of the Joint Cooperation Group and are outlined hereafter:
21. The establishment of the Statistics, Studies and Risk Management Department and specifically the collection and analysis of data of the supervised entities has provided a clearer and more objective picture of the market.
22. With the Risk Based Supervision Framework (RBS-F) CySEC has implemented in late 2015 a more sophisticated tool than the one previously used. Its aim is to allow for a more efficient allocation of resources by focusing supervision where there is more risk/impact, provide a more comprehensive framework of all supervisory areas and to facilitate a more strategic view of market issues.
23. Under the RBS-F, at the beginning of each regulatory period a new risk assessment is made for each entity and is finalised/validated at the end of the year, upon completion of the qualitative work and the relevant assessment. In addition, all quantitative risk measures are assessed for all entities at the beginning of the regulatory year.
24. The RBSF was utilized for the preparation of the 2016 supervision program.
25. The RBS-F, aims to assist CySEC to effectively manage the risk of failing to meet its statutory obligations, while at the same time taking into consideration the reputational risks emanating from its duties and its role within the international financial markets and that of the European Union specifically. The risk profile of each entity, defines the supervisory approach that will be followed, that is, the intensity of supervision, and other areas of focus. RBS-F is implemented across the entire organization.

26. RBS-F aims to be forward looking and thus allows for a proactive supervision, by aiming at the early identification of issues and timely intervention, where corrective action is considered necessary, through sufficient knowledge of the market and the external environment, by taking into consideration both risks inherent to the activities undertaken by the firm and the management/controls of those risks and by considering a consolidated assessment of the overall risk from the firm's significant activities to arrive at a composite view. Furthermore, the RBS-F provides for distinctive risk rates amongst the different risk factors, which allows the supervisory team to focus in those areas where risks are considered to be greater. The existence of evaluation factors enables a more meaningful and targeted risk supervision towards specific areas that appear to be problematic. The risk results of regulated entities across the evaluation factors / categories may provide the Supervisory team with potential areas of thematic reviews.
27. With regard to marketing communication, the RBS-F takes into account a number of quantitative factors to address the inherent risks of each entity and qualitative factors to address the management/controls of those risks. The qualitative factors are assessed by the CySEC staff based on detailed audit programs that cover each of those risk factors and which is based on the results of their supervisory assessment (e.g thematic reviews, desk-top reviews, review of websites, on-sight reviews etc.) and sound judgment.

Monitoring

28. During 2015-2016, twenty-two on-site inspections CySEC carried out following the aforementioned audit program and focused on areas of code of conduct including information addressed/provided to clients. Various weaknesses were identified in 21 out of the 22 CIFs and CySEC imposed administrative fines/reached settlements totally 2.954.000 euros for the infringements identified including regarding code of business including information addressed/provided to clients.
29. The planning of on-site inspections is based on the RBS-F results and is performed on an annual basis. Taking into consideration a number of different criteria collectively (qualitative and quantitative), the supervised entities are classified as High Risk, Medium-High Risk, Medium-Low Risk and Low Risk. In addition, thematic reviews and thematic on-site checks may, if considered appropriate based on additional information received in the interim, be conducted for the whole population of the supervised entities. The subject matter and the sample of the firms to be reviewed for thematic on-site checks and reviews are selected based again on the RBS-F results, since the system can provide us with a classification of the firms as to their risk profile for each pre-determined criterion entered into the system. In addition, the results for each audit, (on site, desk based, full audit or thematic) performed are entered into the system and the risk profile for each entity is re-assessed.
30. As regards to the translations of marketing material, CySEC note's that in case of a weakness identified in the English language in any promotion, banner, etc., then the entity is required to re-assess all its marketing material in all other languages and take the necessary corrective measures. In addition, the responsibility of the quality of translation

of the entities' marketing material lies with the Compliance Officer who is responsible to assess continually all the marketing material before this is disseminated either on the website of the company, or to affiliates etc. and verify that the information contained is in compliance with the relevant regulations.

31. Moreover, CySEC has the possibility during the on-site checks “to choose in their sample marketing communications (banners, landing pages, telephone conversations etc.) in any language the firm offers services, and require the firm to translate it or to use the services of a professional translator.”
32. Furthermore, CySEC has also requested the assistance from other NCAs participating in the Joint Cooperation Group in assessing the marketing material of entities operating websites in their jurisdictions/national language.
33. As regards to sanctions please note that according to article 42(3) of the Investment Services and Activities and Regulated Markets Laws of 2007-2016, CySEC may impose an administrative fine not exceeding the amount of 350.000 euro as regards to the infringements relating to the Conduct of Business Obligations when providing services to clients, including the provision of fair, clear and not misleading information. During 2016-2017 CySEC has imposed amounts between 75.000-160.000 euro to each supervised entity, regarding infringements relating to the Conduct of Business obligations with a total of 1.295.000 Euro. As regards to the name and shame approach, CySEC publishes on its website, the name of the CIF, the administrative sanctions imposed and the specific violations of the Law.
34. In addition, CySEC states that it always acts upon information received from other NCAs regarding marketing communications (unsolicited assistance).

Complaints handling

35. CySEC reported that the Financial Ombudsman (FO) has recently become operational and accepting the submission of complaints. With the new procedure, the Risk Based Supervision Framework, CySEC stated that it can therefore now concentrate on the investigation of the more serious investor complaints they receive directly by the investors or referred to it by National Competent Authorities (NCAs) instead of investigating every single complaint referred to it by NCAs as has been the case until recently. All investor complaints will be used as input to the RBS-F in order to determine the areas of risk concentration (firm / theme). The complaints handling procedure has changed since the Financial Ombudsman of Cyprus ('FO') has become operational and started to accept the submission of complaints. Due to the fact that CySEC does not have any restitution powers, investor complaints submitted to CySEC in relation to entities under its supervision, are not investigated on an individual basis. However, the general issues raised are taken into consideration in the performance of its supervisory mandate, as well as in the course of any investigations and enforcement actions that are or will be conducted into the said entities. The complainants, who may be claiming compensation and who have

already sent their complaints to the supervised entities and remain unsatisfied, are encouraged to check whether they are eligible to also submit their complaints to the FO.

36. CySEC ensures that the NCAs referring complaints are made duly aware of this new complaints handling procedure. Furthermore, CySEC respectfully suggests to NCAs that it might be helpful if complainants are advised to refer to the relevant announcement on CySEC's webpage.
37. Information on how to complain is clearly provided to clients via a dedicated section of the CySEC website regarding complaints handling procedure, which can be found at the following link: <http://www.cysec.gov.cy/en-GB/complaints/how-to-complain/>.
38. Furthermore, on 22 October 2015, CySEC issued an announcement informing the public and all stakeholders on the way complaints against CIFs are handled on the occasion of the full operation of the Financial Ombudsman of the Republic of Cyprus. The said announcement can be found at the following link <http://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=5beac5b7-7580-4018-9423-7c73c9d7b3a3>
39. If an investor is unhappy with a financial product or service provided to him by a CIF, the investor can submit a complaint. At first, the complainant should contact directly the CIF to express his complaint. If the complainant is not satisfied with the CIF's response, the CIF rejected his complaint or he did not receive an answer within three months, he is encouraged to check with the office of Financial Ombudsman ("FO") whether he is eligible to file a complaint and seek mediation for possible compensation. The FO website can be accessed through: <http://www.financialombudsman.gov.cy>. Alternatively or if the complainant does not accept the decision taken by the FO, he could take the matter to court. The three steps that are available to an individual to file a complaint can be found at CySEC's website (<http://www.cysec.gov.cy/en-GB/complaints/how-to-complain/>).
40. Furthermore, in order to perform its supervisory mandate, CySEC requires from CIFs to submit a monthly report regarding all the complaints they received from their clients. Then, the CySEC Market Surveillance and Investigations Department processes all the data gathered from the CIFs, other Competent Supervisory Authorities and directly from investors and informs the Supervision Department on a regular basis of these complaints.
41. From the data gathered, the areas of concern are identified (i.e. CIF, category, financial instrument), and if considered necessary, an investigation is conducted in relation to the matters raised in the complaints.
42. Furthermore, individual complaints are a source of input into the RBS-F, as they are one of the factors used in order to determine the areas of risk and concentration.
43. The system is built in a manner to facilitate effective communication amongst users, in regards to the investigations being conducted.

The follow-up assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p>Organisation</p> <p>CySEC⁶ did not appear to be sufficiently staffed to adequately supervise the marketing activities of investment firms authorised in Cyprus. Specific concerns were expressed as these firms presented complex business models (essentially offering web-based investment services on a cross-border basis), and as the number was increasing. The specific report from the CySEC on-site visit invited CySEC to consider increasing its staff resources and/or reconsidering the current allocation of staff to the Supervision and Market Surveillance and Investigation Departments.</p> <p>Supervisory Approach</p> <p>CySEC⁷ appeared to rely on a reactive approach to supervision, based on complaints received or concerns expressed by other NCAs. More specifically, the report from the on-site visit to CySEC noted that the supervision of marketing and communication only took place in the form of ex-post reviews and backward indicators. This situation may have led to breaches being only detected a long time after the clients' investments occurred. Such an approach did not appear to allow CySEC to undertake prompt action and request corrective actions from investment firms. CySEC was therefore invited to improve the intensity and timeliness of its actions.</p> <p>Monitoring</p> <p>CySEC⁸ appeared to actively monitor the information and marketing communication through desk-based reviews. However, the Report noted that on-site inspections in the field of information and marketing communications were carried out only on a limited and ad hoc basis and did not benefit from regular planning prompted by predefined criteria. The on-site visit noted that limited attention was given to pre-contractual/point of sale material information</p>	<p>Organisation: deficiencies partly addressed</p> <p>Additional staff have been recruited (either through secondments from other entities or in the form of new staff), each of these staff members have responsibilities for the supervision and authorization of a number of investment firms. While the resource issue has certainly improved, new staff will need to be trained and it is unclear whether the gap between staff on one hand, and the number of firms to be supervised on the other hand has been adequately addressed. The number of authorizations is still high compared to the resource available. While the number of staff allocated to on-going supervision and enforcement increased recently, more staff is allocated to processing authorization requests than to on-going supervision, which remains counterintuitive given that requirements to supervise by far outweighs the number of checks to be performed at authorization stage.</p> <p>Supervisory Approach: deficiencies partly addressed</p> <p>CySEC reported that it had implemented additional supervisory tools, and explained how its new supervisory system includes signals relevant from the supervision of marketing materials (complaints, distribution network, marketing material). These are real improvements but concerns remain about the effectiveness of supervision exercised by CySEC as aggressive marketing communications continue to be reported.</p> <p>Monitoring: deficiencies partly addressed</p> <p>Concerning monitoring,</p> <ul style="list-style-type: none"> - important improvements are noted, such as the increase of inspections (22 onsite inspections in 2015-2016) and sanctions. This however is directly linked to major concerns

⁶ Report further to the onsite visit performed at CySEC, paragraph 40

⁷ CySEC Onsite report paragraphs 46, 58 and 104

⁸ CySEC Onsite report paragraph 68

communicated to the client, which is best checked onsite, and that CySEC had not carried out onsite inspections in this area since 2008. It was recommended in the 2014 Peer Review Report that CySEC re-commence on-site inspections in this area.

The on-site visit report also set out that CySEC was not able to review the websites or advertising material of Cypriot authorised investment firms offering investment services abroad where the language used was other than English (or Greek), since no translations were requested from investment firms. CySEC⁹ was therefore requested to require that the firms providing investment services in languages other than English or Greek should translate their information and marketing to these languages to enable CySEC to monitor such material. CySEC also was recommended to review the maximum level of administrative sanctions and the name and shame approach to ensure that they act as credible deterrents.

expressed by ESMA and other NCAs at these Cypriot firms, and to specific monitoring put in place as a consequence. In addition, concerns remain about the effectiveness of the measures taken.

- Concerning CySEC's limited capacities to monitor marketing materials because of a lack of translations, CySEC reported specific obligations on compliance officers to correct any weaknesses on any languages used in a marketing communication issued by its firm. While this is an improvement, it does not fully address the original recommendation of the 2014 peer review. CySEC still relies on the monitoring of English versions of marketing material.
- On sanctions, CySEC stated that it may impose an administrative fine not exceeding the amount of 350.000 euros as regards to the infringements relating to the Conduct of Business (CoB) obligations. CySEC publishes sanctions (name of entity, administrative sanction imposed, specification of violations of the Law) on its website. The sanctions ranged from 75.000 to 160.000 euros, with a total of 1.295.000 euros in the past two years for breaches of MiFID CoB obligations.
- CySEC has also presented its regular planning of on-site inspections prompted by predefined criteria.

Complaints

The 2014 Peer Review Report noted that due to the lack of resources it was unclear whether CySEC fully applied the key issues set in the peer review as regards complaints. Furthermore, the on-site visit report suggested that CySEC¹⁰ may consider whether it should react in a timelier manner to complaints or cases signalled by fellow regulators. CySEC was therefore advised to look into possible improvements to enhance internal exchanges of

Complaints: deficiencies partly addressed
 CySEC reported that it has set up a system where it receives complaints, facilitates contact, and provides information on complaints handling. The majority of the complaints are now tackled by the Cyprus Ombudsman and CySEC concentrates on the investigation of the more serious investor complaints. Concerns remain about the

⁹ CySeC Onsite report paragraph 71 and 77

¹⁰ CySEC Onsite report paragraph 102

<p>information between the relevant departments as well as consider ways to ensure timely responses are provided to other NCAs' requests for cooperation.</p>	<p>effectiveness of supervision exercised by CySEC.</p> <p>CySEC has also implemented a timeframe for providing responses and tries to acknowledge receipt of the complaints and of the requests for assistance from other NCAs within 3 calendar days. 30 calendar days are allowed for response to requests for information which do not entail investigation. For exchange of information with NCAs for investigations, CySEC should strive to shorten the current response period of six months.</p>
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5.2 Finanstilsynet Denmark (“Danish FSA”)

44. The 2014 peer review report noted insufficient application of the Supervisory Approach.

The main points the Danish FSA mentioned in response to the ESMA Chair’s letter were the following:

45. As described in the Danish FSA's response to the peer review self-assessment questionnaire a significant part of the supervisory approach is based on thematic investigations. In selecting themes and firms for investigation the Danish FSA has routinely relied on the information available, such as size of the institution, volume and nature of complaints received by the Danish FSA and the risk and complexity of the products and distribution methods. In that sense the information has been used systematically for planning and prioritization of supervisory activities related to conduct of business but the use has not been formalized, for example through “step-by-step guidelines for financial inspectors”.
46. So far the Danish FSA has not deemed it necessary to develop specific supervisory guidelines on the particular aspect of prioritizing particular conduct of business supervisory activities simply because the scale of our supervisory activities and the relevant information available does not justify it. To provide an illustration of this, the number of complaints received by the Danish FSA relating to MiFID conduct of business rules has since 2012 not exceeded 14 annually (apart from 2015 in which we received an unusual high number of complaints due to the Swiss Franc event).
47. The Danish FSA disagrees with the ESMA approach of assessing the NCA’s supervisory approach. As stated previously in relation to other peer review exercises, the DFSA do not believe that a “tick the box” assessment concept that allows for no explanation of deviation from the identified peer review assessment criteria is a robust way of assessing the NCAs supervisory approach.

The follow-up assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p>Supervisory Approach</p> <p>The Danish FSA had not clearly defined criteria in place for its supervisory approach relating to when and how to take actions in relation to information and marketing communication, nor how to determine the main points of emphasis for an examination. In particular, the Danish FSA did not systematically use for its examinations all minimum factors established in the peer review. These factors were only used indirectly as factors to be discussed and taken into consideration when investment firms were selected for investigation.</p>	<p>Supervisory Approach: deficiencies remain</p> <p>In the context of the risk-based approach the Danish FSA could not explain how all minimum factors established in the peer review are used in a systematic manner in the risk-based model (i.e. how signals on potential breaches of firms with their obligations to provide fair, clear and not misleading information to their clients are integrated in the supervisory approach).</p> <p>However, it has to be noted that the deficiency is limited to one of the five criteria assessed in 2014.</p>

5.3 EFSA Estonia (“Finansinspeksioon”)

48. The 2014 peer review report noted insufficient application of the Supervisory Approach and Monitoring (C.1 Desk-based monitoring).

The main points Finansinspeksioon mentioned in response to the ESMA Chair’s letter were the following:

Supervisory approach

49. Finansinspeksioon truly believes that due to the limited size of Estonian market, the organization of the supervisory tasks is correspondingly arranged. Taking that into account Finansinspeksioon is utilising every supervisory method to ensure efficient and legitimate functioning of the financial markets.

50. Regarding the finding from the Report related to the Supervisory Approach, Finansinspeksioon confirms that it is using risk-based approach and thereby makes also use of the “risk of products” factor. Afore cited is also stated in the Finansinspeksioon’s Strategic objectives for 2016-2018 that it will apply the rules based on risk by achieving the desired result and disclosing our actions as applicable.

51. MiFID is directly transposed into domestic law via Securities Markets Act (SMA), which sets concrete requirements to the service providers on the information which is presented to customers (e.g. that includes the requirement to properly and fairly categorize the products by the types of risks, requirements on the advertising connected to the issuance of new securities). General requirements on advertising are also set at Advertising Act.

52. As a basis mostly of SMA Finantsinspektsioon has carried out its supervisory activities – both planned and un-planned on-site and off-site visits (latter includes both desk-based and thematic reviews). During these activities the assessment of presented customer information content alongside with assessment of target customers suitability/appropriateness and the substance of the product offering (including categorisation of product types by risk) has been among the basis of our supervisory approach. For example, at the end of 2015 we initiated un-planned on-site inspection based on published ad campaign by the branch of the foreign credit institution (campaign aimed to target deposit investor to use investment products as alternative). Also, Finantsinspektsioon is regularly registering the conditions of different types of investment funds to be offered in the local market – that also includes the assessment of the provided public information and risk categorisation of the product.
53. Finantsinspektsioon assumes that “the risk of products” evaluation aims to draw a connection between the presence and popularity by volumes of different investment products with requirements assessment related to the offering of these products. Several on-site inspections have been carried out related to the period of interest. Among the scope of these inspections Finantsinspektsioon also evaluated how customers’ needs were matched in provided recommendations suitability and appropriateness assessment. Latter assessment also included the evaluation how different product types were categorized and matched with customers risk tolerance and financial ability. Also, in our response earlier we have indicated the general breakdown between different investment and savings instruments.”
54. Looking at investments and saving products volumes in general, then as of 31.12. 2014, overall volume of such products was 18,7 bn EUR, out of which 8,1 bn EUR were placements by Estonian individual residents. Different types of deposits /demand, O/N, term and savings) allocated 5,3 bn EUR, II pillar pension funds represented 2.3 bn EUR in assets, third largest product group were unit-linked products with 0,2 bn EUR, assets placed in investment funds (both domestic and foreign) stood at 0,14 bn EUR). Assets placed in investment deposits stood at 0,1 bn EUR.
55. In 2014 EFSA carried out market survey (previously also in 2006, 2009) to evaluate the knowledge and practical usage of different financial products. Over past five years from respondents, only 2% had invested in investment deposit, 1% in unit linked products, 1% in investment funds, 2% in publicly traded stocks. This reflects extremely conservative attitude of Estonian individuals towards risk taking. Reviews can be found here: <http://www.fi.ee/index.php?id=11902> (in Estonian, results for 2014 survey are not published yet).

Monitoring

56. Regarding the finding from the Report related to the Monitoring, Finantsinspektsioon are considering both thematic and desk-based reviews carefully as potential supervisory tools. Frequency and scope of such reviews are depending on the identified issues in the market.

Considering the small size of the Estonian market and risk-based supervisory approach Finantsinspektsioon is guided by the priorities and it would not be reasonable to actively monitor the information provision and marketing communication through desk-based reviews focusing all range of financial instruments. It is important to Finantsinspektsioon to focus on priorities determined through risk-based supervisory approach, which are additionally to investment funds also the pension funds.

The assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p>Supervisory Approach</p> <p>Finantsinspektsioon did not systematically use for its examinations all minimum factors established in the peer review. In particular, the statements and evidence Finantsinspektsioon provided indicated that it did not appear to make use of the “risk of products” factor.</p> <p>Monitoring</p> <p>Finantsinspektsioon did not actively monitor the information provision and marketing communication through desk-based reviews because its focus of desk-based reviews was only on investment funds rather than on all the range of all financial instruments.</p>	<p>Supervisory Approach: deficiencies addressed</p> <p>Finantsinspektsioon explained that it takes into account the categorisation of product types by risk both for planned and unplanned onsite and off-site work. It gave an example of recent onsite work tackling the question of marketing information.</p> <p>Monitoring: deficiencies remain</p> <p>Finantsinspektsioon’s reply indicates that it does not actively monitor the information provision and marketing communications through desk-based reviews on all financial instruments, instead it focuses on investment funds and pension funds.</p>

5.4 HCMC Greece

57. The 2014 peer review report noted insufficient application of Thematic Work.

The main points the HCMC mentioned in response to the ESMA Chair’s letter were the following:

58. As stated in HCMC’s initial response to ESMA, the HCMC did not undertake thematic work within the review period dedicated to information and marketing communications or general thematic work. However, an adequate number - in respect to the size of the local capital market - of on-site audits was conducted during this time period. In addition, a thematic review on information and marketing communications was undertaken in 2013, on thirty (30) investment firms capturing the highest market share (ca. 96% of the total). The HCMC decided to impose administrative sanctions on four (4) investment firms.

59. The HCMC stated that it recognises the benefits of improving its risk assessment and management capabilities in order to include thematic reviews in a more consistent manner in its supervisory programme; for this purpose, the HCMC intends to develop and fully automate its risk assessment and management policy taking into consideration the size of the Greek capital market, the size of the investment firms licensed and supervised by the HCMC, the type of financial instruments and the range of investment services provided by the firms, the number and frequency of the relevant complaints, etc

The assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p>Thematic Work</p> <p>HCMC did not have a clear approach to determine the focus of a thematic review, for the following reasons: HCMC did not provide clear information on the adopted approach and how the risk-factors were taken into account when determining the need to conduct thematic work in relation to information and marketing communications.</p>	<p>Thematic Work: deficiencies partly addressed</p> <p>Progress was made. The deficiencies identified in the peer review concerned the HCMC’s lack of formalized thematic work. HCMC mentioned that it undertook significant thematic on-site audits on information and marketing communications on 30 investment firms after the peer review. As regards the methodological approach to thematic work, however, while HCMC stated its intention to make improvements, it has not formalised its relevant approach yet to take the risk-factors into account when determining the need to conduct thematic work in relation to information and marketing communications.</p>

5.5 FMA Liechtenstein

60. The 2014 peer review report noted insufficient application of Thematic Work and Complaints.

The main points the FMA mentioned in response to the ESMA Chair’s letter were the following:

Thematic work

61. Supervisory framework :The FMA applies a risk based supervisory approach on firm level. Each year, all supervised MiFID investment firms are subject to a comprehensive risk assessment regarding all applicable legal provisions, including MiFID. The risk assessment captures the inherent risk, extent of potential damage, likelihood of occurrence of damage as well as the control risk (i.e. implemented control measures at firm level) of a subject (i.e. compliance function, MiFID suitability, data security, capital requirements, etc.). The result

are individual net risks for all subjects. The net risk in turn determines the intensity and periodicity of examination of the specific subject at firm level, i.e. it specifies the supervisory examination program for each individual firm. This approach ensures not only that each firm has an annual base supervision but also that it is supervised according to its specific risk profile. The FMA considers this full coverage of the market a significant advantage of its supervisory approach.

62. Additionally, the FMA conducts thematic work at all or some supervised entities. For this purpose, the FMA defines usually one focus subject, which is examined at all supervised firms. In 2015 the FMA has conducted thematic work regarding the MiFID suitability requirements in 2015 and thematic work in relation to control functions in investment firms during the first half year of 2016.
63. Further thematic work has been conducted regarding the implementation of the FMA Communication 2013/08, which became applicable on 1 January 2016. Based on a quantitative analysis the FMA conducted thematic reviews on a subset of firms that were critically impacted by the FMA Communication 2013/08.
64. With regard to conduct of business and marketing communication the FMA undertook thematic work in the form of a focused review of publicly available marketing information. For this purpose, all supervision staff of the asset management division spent one day searching for publicly available information and browsed the websites of supervised firms. Subsequently the gathered information was analysed and - when necessary - supervisory measures were implemented.
65. Internet monitoring days are usually scheduled once per year for checking publicly available marketing information. The supervisory actions generally depend on the deficiencies identified. Please find hereafter a number of examples on supervisory follow-up actions:
 - In one case the FMA became aware of misleading and imprecise information (e.g. a management company used confusing wordings in an advertisement regarding the status of an approved AIFM. It could have been concluded that the company had already obtained an AIFM licence from the FMA even though this is not yet the case (instead, the company planned to obtain an AIFM licence). The FMA ordered the firm to refrain from using the advertisement and to make clear statements regarding the status of the licence(s) in the future.
 - Another case concerned an investment firm advertising on its website that it intends to offer crowdfunding services. The information did not clearly state that the crowdfunding activity was not covered by the licence as an investment firm. At the time no change of authorization to offer crowdfunding in addition to the services of portfolio management had been requested. The FMA opened a formal investigation, inter alia also on the information about crowd funding. The supervisory proceeding resulted in the exit of the company from the market.

- In other cases the FMA found outdated information (e.g. a member of the management board was not on the internet although the person had been approved by the FMA). Generally, cases of outdated information were brought to the attention of the company and the companies were asked to update information or delete unused links from their websites.

Complaints

66. The issue of missing information on how to complain is resolved. In April 2015 the FMA amended its homepage with information on complaints. This includes information about who is the competent authority for which types of complaints and about the process of filing a complaint. The information is provided in German as well as in English. As the first step of a complaint, the FMA Liechtenstein recommends contacting the financial intermediary. A personal talk can clarify a problem and often help jointly find a solution. The FMA recommends filing complaints in writing by way of a letter or e-mail. To ensure efficient processing, FMA explains in detail, which information the complaint should contain; in English and German.

The assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p>Thematic work</p> <p>FMA did not seem to have a clear approach to determine the focus of a thematic review, for the following reasons: FMA did not mention any thematic work undertaken in relation to marketing communications, or MiFID I related issues.</p> <p>Complaints</p> <p>FMA could not show that information on how to complain is clearly provided to clients. In particular, FMA provided detailed information on how to complain only on demand.</p>	<p>Thematic Work: Deficiencies addressed</p> <p>Thematic reviews have been carried out annually in the form of one-day internet monitoring of publicly available marketing information. The FMA also gave examples of supervisory actions it has taken further to these internet monitoring days. Consideration could be given to increase the regularity of these monitoring days.</p> <p>Complaints: deficiencies addressed</p> <p>FMA gives now clear instructions (in two languages) on its webpage of how to complain</p>

5.6 LB Lithuania

67. The 2014 peer review report noted insufficient application of the Supervisory Approach and deficiencies under Monitoring (C.1 Desk-based monitoring).

The main points the LB mentioned in response to the ESMA Chair's letter were the following :

Supervisory Approach

68. Financial services in Lithuania are supervised applying risk-based supervision principles for consumer protection and resources are allocated to financial services and products that pose the greatest risk to consumers. Every year the Supervision Service of the Bank of Lithuania creates a financial products risk map, based on the financial product risks to consumers and the significance of the product (size of the market). The risk evaluation is based on results of inspections, thematic reviews, product analysis carried out by the Supervision Service, data of disputes and complaints and covers areas such as the corporate culture of the market participants, product design, oversight, governance and distribution processes, information disclosure, flexibility and other characteristics of the product.

69. The main risk areas in recent years have consisted of private pension funds, unit-linked life insurance and consumer credits. A number of regulatory changes, supervisory actions or changes in supervision processes have been initiated in these areas.

70. LB launched a Financial Products Risk Map.

71. Moreover, a revision of the existing supervision processes and documentation regarding financial services was initiated in 2015 and is expected to be finalised by the Q1 of 2017. The supervision process will be amended according to the Concept of Risk Assessment System approved by the Committee of the Supervision Service, as follows:

- all financial products and services will be assigned to one of four categories (F1-F4) according to the risks they pose for consumers;
- the evaluation of product/service risks will be based on qualitative and quantitative criteria;
- the intensity of supervisory actions and/or regulatory changes initiated will depend on the product risk category.

72. The Bank of Lithuania (LB), in supervising conduct of financial market participants (including supervision of information and marketing communication), uses almost all factors mentioned in Self-assessment Questionnaire B. 4. The most commonly used factors include:

- 1) Scale of activities/volume of products marketed/volume of assets under management;
- 2) Volume of complaints and alerts received;
- 3) Indicators from the regular review of audit reports;

- 4) Indicators from the review of information and data transmitted from intermediaries;
- 5) Nature of complaints and alerts received;
- 6) Risk of products as assessed by the CA;
- 7) Results from thematic review and other type of reviews.

73. The Bank of Lithuania (LB) applies risk based supervision principles in supervision of financial services (including supervision of information and marketing communication), i.e., resources are allocated to financial services and products that pose the greatest risk to consumers.

74. Description of the Process of the Financial Services Supervision was approved in the end of 2016. According to it, every year LB creates a risk map of financial products, taking into account the following criteria: (i) financial product risks to the consumer and (ii) significance of the product (size of the market). Expert judgment is used for evaluation of financial product risks. Following areas are assessed: corporate culture of “manufacturers” of particular financial products, product design, oversight, governance and distribution processes, information disclosure, flexibility of the product and etc. Evaluation is based on results of inspections, thematic reviews, product analysis carried by LB, data of disputes and complaints, etc. Quantitative data is used for determining significance of the product, for example, the amount of money the consumer dedicates for a particular financial product, etc.). After the risk evaluation, a Supervisory program, which includes planned supervisory activities related to desk-based and onsite supervision of the financial services for the following year is approved.

75. Currently, LB is drafting the methodology for financial product risk assessment which will also include assessment of individual financial market participants offering retail financial products which pose the highest risk for consumers. The methodology is planned to be finalized by the end of Q1 2017. It will formalize existing practices and include:

- all financial products and services will be assigned to one of four categories (F1-F4) according to the risks they pose for consumers;
- the evaluation of product/service risks will be based on qualitative and quantitative criteria;
- the intensity of supervisory actions and/or regulatory changes initiated will depend on the product risk category.

76. Moreover, according to national legislation, financial market participants are obliged to inform LB about new financial products (or significant changes of existing products) to be

launched and provide with appropriate information about the product. Therefore, LB has a possibility to review marketing information on new financial products and to provide comments if needed. Usually, financial market participants take into account LB's comments and change information on the product accordingly.

Monitoring

77. Monitoring of the marketing communications regarding financial services is conducted by the Financial Services Supervision Division of the Financial Services and Markets Supervision Department. Usually, time dedicated for monitoring is one hour per week. In order to improve the monitoring, the Description of the Monitoring of Financial Services Advertising was approved by the Director of the Financial Services and Markets Supervision Department on 13 March 2015. The monitoring is conducted applying risk-based supervision approach.

78. LB is willing to evaluate whether the frequency/length of the time dedicated to monitoring is appropriate.

The assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p>Supervisory Approach</p> <p>LB could not show its use of all minimum factors mentioned in the key issue in the questionnaire. In particular, the statements and evidence you provided indicated that LB did not have written procedures and had not made clear to what extent the factors were taken into account.</p> <p>Monitoring</p> <p>LB did not actively monitor the information provision and marketing communication through desk-based reviews rather it only reviewed information and marketing communications on a case by case basis.</p>	<p>Supervisory Approach: deficiencies addressed</p> <p>LB has developed a risk-based final products map and is in the process of reviewing its supervisory process. Minimum factors are taken into account; results of inspections, thematic reviews, product analysis, disputes and complaints data are integrated in the system. A methodology is currently being drafted for financial product risk assessment. LB could consider dedicating more time to the risk evaluation.</p> <p>Monitoring: deficiencies addressed</p> <p>Concerning monitoring, progress was made. Since 2015, monitoring has been conducted as part of a risk based approach. LB could consider whether the frequency/length of the time dedicated to monitoring is appropriate.</p>

5.7 MFSA Malta

79. The 2014 peer review report noted insufficient application of the Supervisory Approach and Thematic Work.

The main points the MFSA mentioned in response to the ESMA Chair's letter were the following:

Supervisory Approach

80. MFSA stated that the remit of the CSU includes supervision of the conduct of Business obligations of various regulated entities on a cross sectorial basis and, as from the 1st September 2016, this Unit took on the responsibility for the supervision of investment firms' conducts in the following areas: Client disclosures, and reporting (including marketing communications); Conflicts of Interest and Inducements; selling processes and practices; Contractual agreements with retail clients; Execution of clients' orders and Governance – primarily to ensure that customers are treated fairly.
81. Furthermore, the MFSA is currently drafting a comprehensive Conduct of Business Rulebook which would contain all the conduct of business regulatory requirements applicable to investment firms, insurance undertakings and insurance intermediaries. In this regard, the section dealing with disclosure requirements, which would, inter alia transpose the respective requirements of MIFID II, has been drafted and issued for consultation to the industry.

Thematic Work

82. Thematic Reviews allow the Conduct Supervisory Unit (CSU) to assess the current market conditions including current or possible emerging conduct risks. CSU is currently undertaking a Thematic Review with respect to the sales processes of investment firms. During this review, the MFSA will obtain information as to what products are being sold locally to retail investors by Maltese investment firms. This will allow CSU to assess the products currently on the market and a further analysis will be carried out in order to assess whether particular products are giving rise to a significant number of complaints and whether these products are being marketed to the appropriate target market.
83. In carrying out this particular reviews, the CSU has determined the sample of investment firms to be subjected to the review on the basis of:
- a) the size of the investment firms' client base;
 - b) the type of clients which the investment firm usually targets;
 - c) the marketing efforts carried out by investment firms (i.e. the level of advertising carried out by the investment firm concerned);
 - d) the activities for which such firms are licensed;
 - e) the type instruments they offer (e.g. complex) and
 - f) their complaints record.
84. Thematic Reviews are to be used by the CSU to assess the current market conditions including current or possible emerging conduct risks. In determining the sample of firms

which would be subject to a thematic review the following criteria, as applicable, should be taken into account:

- a) Scale of activities / volume of products marketed/ volume of assets under management;
- b) Volume of complaints and alerts received with respect to the Regulated Person;
- c) Number of security deposits;
- d) Indicators from the regular review of audit reports;
- e) Indicators from other regulatory checklists used by the CSU itself;
- f) Nature of complaints and alert received with respect to the Regulated Person;
- g) Aggressive sales approach;
- h) Internal arrangements and controls of the Regulated Person;
- i) Indications from the regular review of information and data transmitted to the Authority by the Regulated Person both on a periodic basis as well as ad hoc transmissions;
- j) Marketing of Complex products y the Regulated Person;
- k) Marketing of Products with innovative features or new products by the Regulated Person;
- l) Level of risk of the products marketed by the Regulated Person as assessed by CSU;
- m) Significant Consumer Detriment caused by the actions of the Regulated Person as assessed by CSU;
- n) Changes of financial or market conditions;
- o) Nature of target audience of the Regulated Person;
- p) Marketing Reach - type of media used by the Regulated person to carry out its marketing communications and number of consumers likely to be influenced by the information and marketing communications;
- q) Results from thematic reviews and other reviews previously carried out by the MFSA;
- r) Distribution channels used by the Regulated Person (e.g. number of tied agents/commercial agents);
- s) Review of the presentation of costs and presentation of past and future performance by the Regulated Person in the marketing material it circulates.

85. MFSA explained how the risks factors are taken into account when launching thematic reviews. A thematic review is currently being undertaken on sales processes of firms, including on their marketing efforts. (topic of thematic work slightly changed with further explanations) *“..... with respect to the sales processes of investment firms with particular focus on the disclosures made to clients in the documentation which needs to be completed in carrying out a suitability or appropriateness test. As part of this review, the Conduct Supervisory Unit is obtaining information about what products are being sold locally to retail investors by Maltese investment firms. This will allow CSU to assess the products currently on the market and a further analysis will be carried out in order to assess whether particular products are giving rise to a significant number of complaints and whether these products are being marketed to the appropriate target market.”*

86. In addition to the above, the Conduct Supervisory Unit, on a regular basis, assesses marketing efforts of investment firms ex post by reviewing, on a sample basis, any

marketing communications that are published by investment firms both on line and in the traditional media. When the Unit deems marketing communications not to be in line with the “fair, clear and not misleading” requirements, the investment firm is contacted and may be requested to halt any further publication of such adverts with immediate effect.

The assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p data-bbox="199 584 464 613">Supervisory Approach</p> <p data-bbox="199 667 879 831">MFSA did not systematically use for its examinations all minimum factors established in the peer review. The Report found that MFSA does not consider marketing communications as a major concern for market specificities (e.g. the size of the financial market, the number of licensed firms and the limited use of marketing communication by licensed entities).</p> <p data-bbox="199 943 379 972">Thematic Work</p> <p data-bbox="199 999 879 1106">MFSA did not provide clear information on the approach adopted by MFSA and how the risk-factors were taken into account when determining the need to conduct thematic work in relation to information and marketing communications.</p>	<p data-bbox="901 584 1321 640">Supervisory Approach: deficiencies addressed</p> <p data-bbox="901 667 1412 913">Improvements have been made in building more robust supervision. A new Conduct Supervisory Unit was established at the beginning of 2015 which includes a Financial Promotion and Risk Assessment Team, with clear objectives and processes established. Based on MFSA’s reply, the NCA seems to use of all minimum factors established by the peer review for its examinations.</p> <p data-bbox="901 943 1362 972">Thematic Work: Deficiencies addressed</p> <p data-bbox="901 999 1412 1245">Improvements have been made in the context of thematic work. MFSA explained how the risks factors are taken into account when launching thematic reviews. A thematic review is currently being undertaken on sales processes of firms with particular focus on the disclosure made to clients in the documentation which needs to be completed in carrying out a suitability or appropriateness test.</p>

5.8 KNF Poland

87. The 2014 peer review report noted insufficient application of Monitoring C.2 On-site inspections).

The main points KNF mentioned in response to the ESMA Chair’s letter were the following:

88. The KNF states that on-site inspections regarding Polish investment firms are carried out based on the annual plan of inspections. The aforesaid plan of inspection is set up according to standardized methodology adopted within the KNF and approved by the Chair of the KNF and corresponds to the scale and nature of supervised entities providing investment services in Poland. The selection process of investment firms to be supervised in a particular calendar year is determined by taking into account the following factors:

- average time of on-site inspection of one investment firm. The determination of time necessary to conduct on-site visit in a supervised entity is based primarily on the experiences from the previous on-site visit;
 - significance of the investment firm in term of security of trading of securities and the market participants;
 - risk profile of a regulated entity (details provided below);
 - any indication of misconduct or suspicion of such gathered from off-site supervision, licensing team or other units and departments;
 - negative score for a given entity received during supervisory review and evaluation process (SREP). The KNF is also a prudential regulator. The KNF conducts every year a SREP, where regulated entities activity is verified taking into account prudential and conduct of business rules. The SREP process provides important indication on the need to conduct planned or ad-hoc on-site inspection;
 - results of previous on-site inspections in relation to a given entity;
 - share of a regulated entity in the capital market (number of clients, value of clients' money in custody of a regulated entity);
 - dates of the last on - site visit carried out in investment firm;
 - information on any suspicion concerning a regulated entity misconduct gathered from external sources (individuals or legal entities);
 - complaints received by the KNF in relation to a regulated entity;
 - human resources of the KNF's Inspection Unit in a given year, (in order to determine the maximum number of entities covered by the annual on-site inspection plan).
89. The KNF also stressed that within annual on-site inspection plan a reserve for non-routine (ad-hoc) on-site activities is secured. However, in some cases non-routine and not planned on-site visits may require an amendment in the adopted annual on-site inspection plan through the deletion of planned inspections and subsequent replacement by other ones.
90. Taking into account the need of appropriate resources allocation by the KNF in terms of on-site inspection it is necessary to assess the supervisory needs of the market. Supervisory needs are a result of the identified risk on the market. Generally speaking, the on-site visits are addressed to the entities that pose high risk profile and potentially their activity arises supervisory concerns. The KNF, while assessing the risk posed by supervised entity, takes into account the following factors:-impact of potential negative event / default on the supervised entity, financial system as well as social system,-probability of turning up of the negative event / default. The assessment of the aforesaid factors determining the supervised entities to undergo on-site visit is based on the expert knowledge of the KNF's employees that, so far, is efficient and effective in terms of the scale and nature of investment services provided by the supervised entities.
91. The on-site inspections referring to Polish investment firms are carried out based on the annual plan of control. The aforesaid plan of inspections is set up according to standardized methodology adopted within the KNF and approved by the Chair of the KNF.

92. A precise term of particular on-site visit relating to selected investment firms is determined based on the following criteria:

- significance of the problem (infringements) identified in investment firms during the desk-based supervision, received complaints or results of the earlier on-site visit,
- anticipated time of the on-site visit as well as the possibility to adjust human resources to the significance of the identified infringements,
- necessity of taking into consideration that at the same time a given number of the on-site inspections could be launched and carried out (taking into consideration the resources),
- necessity of taking into consideration the on-site visit in other cities (outside Warsaw),
- necessity of taking into consideration that the on-site visit plan must be completed within a year.

93. The criteria mentioned above correspond with the criteria underlined by the KNF within explanations provided to Peer Review on the best execution follow-up i.e. the process of selection of the investment firms to be visited in particular calendar year is determined by the average time of on-site inspection of one investment firm. The determination of the time necessary to carry out an on-site visit in a supervised entity is based primarily on the experiences from the previous onsite visits. Time dedicated for onsite visit depend on the nature and the scale of the supervised entity and the number of inspectors in particular inspection team. Moreover, it also depends on the number and category of investment services being inspected during the on-site visit, risk profile in the particular investment firm and some other aspects that should be supervised in course of the on-site visit.

94. The inspection lasts about 2 – 3 months taking into account the scale, nature of the supervised entity and the scope of investment services provided by investment firm, as well as the number of members of the on-site visit team.

95. The KNF stresses that - within a given cycle - all investment firms in Poland are subject to the on-site visits / supervision regardless of the scope, nature and the extent of the provided investment services or activities.

The assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p>Monitoring</p> <p>KNF did not seem to have established clear criteria to determine when there is a need to organise on-site inspections.</p>	<p>Monitoring: deficiencies addressed</p> <p>Considerable progress noted. KNF clearly indicated in its response the criteria it uses to determine whether an onsite visit is to be</p>

	launched (e.g. risk profile of the entity, significance of the entity, suspicion of misconduct), which was the deficiency identified at the moment of the peer review.
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5.9 CMVM Portugal

96. The 2014 peer review report noted insufficient application of the Thematic Work.

The main points CMVM mentioned in response to the ESMA Chair’s letter were the following :

97. CMVM provided the view at the time of the peer review as to why it considered that supervisory work undertaken over investment firms on specific issues across sector and within a given timeframe would meet the relevant criteria, moreover when such reviews are at times complemented by the publication of results on CMVM’s website for the benefit of the industry. It looks, however, that at the time of the on-site visit and farther to the discussions held, the CMVM definition as to what “thematic work” would consist or encompass, did not coincide totally with ESMA’s perspective. Notwithstanding the above, CMVM’s approach to “thematic work” has since evolved more in line with ESMA’s definition and expectation and the overall purpose of such horizontal reviews.

98. A memo containing detailed explanation of the thematic work undertaken since 2015 was attached to CMVM’s answer. As a conclusion, CMVM states that it has taken good note of the discussions held with ESMA in the course of the peer review and notably the recommendation to make more use of “horizontal reviews”. only complements but also enhances CMVM’s supervisory role over the activities of investment firms. The approach to on-site supervisory work continues to be based on the output of the relevant risk model which is ultimately approved by the Executive Board on an annual basis. The process was explained during the Peer Review on-site visit and is described in detail on the draft report.

99. The annual supervisory plan, however, and as mentioned above, has evolved since 2014 to include specific thematic work to be undertaken each year. The approach taken continues to be risk based in view of limited resources and the criteria a direct result of (i) issues repeatedly identified during the on-site inspections across firms raising cause for concern (ii) information obtained from Internal control reports (iii) information obtained from audit reports (iv) investors complaints and (v) emerging issues related to market risk, showing potential risk from an investors protection perspective. Specific inspections may also result from the Executive Board initiative or by means of a proposal submitted by the Committee for Financial Innovation.

Thematic work undertaken since 2015

104. In addition to the on-site inspections approved by the Executive Board to take place each year, the following thematic work, mostly desk-based, has also been undertaken:

1. Swiss Franc (“CHF gap”) - Thematic/supervisory review on OTC Forex Electronic Trading Platforms.
2. Compliance with CMVM Regulation no. 2/2012 on Complex Financial Products (CFP).
3. Verification of the observance of, Distribution and Safekeeping of financial instruments on clients account, duties, up on a credit event on a Portuguese debt issuer.
4. Anti-Money Laundering and Terrorism Financing
5. Conduct of Business guidelines to prevent and mitigate mis-selling of investment and savings products
6. Other thematic work under the supervision of collective investment schemes

The assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p>Thematic Work¹¹</p> <p>CMVM had not carried out “horizontal reviews” what CMVM understood under “thematic reviews” focusing on an issue or product across a number of firms within a sector or market and was invited to reconsider its approach to thematic review, and undertake cross-sectoral reviews aimed at addressing common issues in a sector.</p>	<p>Thematic Work: Deficiencies addressed</p> <p>Considerable progress made in the context of thematic work. The CMVM’s reply explained how “horizontal reviews” have evolved since 2014 to include specific work to be undertaken each year. The reviews are in line within what the peer review understood under thematic reviews. CMVM also presented in detail the thematic reviews carried out (e.g. compliance with CMVM regulation on complex financial products, conduct of business guidelines to prevent and mitigate misselling of investment and saving products).</p>

5.10 ASF Romania

105. The 2014 peer review report noted insufficient application of the Supervisory Approach.

The main points ASF mentioned in response to the ESMA Chair’s letter were the following :

106. The ASF presented its actions including both structural and specific ones.

¹¹ CMVM Onsite-report paragraph 84 and Findings from the 2014 Peer Review Report, page 14 paragraph 53

107. As a structural measure, the ASF mentioned, among others, that it established an off-site supervision unit specialized in business conduct, set up an integrated structure with responsibilities in the investors/consumers protection area.
108. Concerning the specific measures, the ASF presented the main measures addressing the issue of a more active approach of the business conduct supervision, from the off-site perspective. In the same time, the cooperation between off-site and onsite units have been significantly increased, on a day-by-day basis.
109. The ASF has adopted the following steps:
- As regards the aggressive sales approach and aggressive marketing of products and/or services:
 - the ASF official website includes a new section in order to facilitate the receipt of the investors'/consumers' complaints,
 - On-site inspection activity has been enhanced by performing thematic inspections,
 - Letters were sent to investment firms,
 - Several alerts were published on the ASF's website,
 - Concerning Internal arrangements and controls within the off-site/on-site supervision activity on business conduct, ASF's units take into account both the relevant aspects/conclusions of the reports submitted by the compliance department, risk administrator, internal and external auditor and other internal structures/committees and the suitability of the control procedures and internal mechanisms of an investment firm.
 - Regarding Indicators from the regular review of the periodic information and data transmitted from the intermediaries, the new off-site supervisory unit also takes into account this issue when verifying the fulfilment of conduct legal requirements by investment firms in regards to their clients. As part of the off-site supervisory process, the investment firms are periodically requested to provide our authority different documents and reports.
 - As far as the results from thematic review and other type of thematic reviews is concerned, the off-site supervision activity consists in monitoring all identified non-compliant issues.
110. During the last two years, following internal assessments, the off-site unit performed thematic reviews on certain services provided through another investment company, on verifying the integrity of the clients' assets and the concordance between internal registers and the reports submitted to the clients, monitors margin trading operations made by

investment Finns, on the way the investment firms verify the activity of the branches. Based on the conclusions of the analysis of the information provided by the investment firms, recommendations on conduct of business and proposals for changing secondary legislation have been made.

111. The off-site unit periodically checks whether investment firms comply, in a continuous way, with their obligations imposed as a result of an on-site mission.

The assessment concludes as detailed in the table hereafter:

Findings Peer Review Report 2014	Findings 2017 Follow-up
<p>Supervisory Approach</p> <p>ASF did not systematically use for its examinations all minimum factors established in the peer review.</p>	<p>Supervisory Approach: deficiencies addressed</p> <p>Considerable progress made in enhancing the supervisory approach. ASF explained in detail its use of all the minimum factors established by the peer review for its examinations (such as aggressive sales approach/marketing of products, improvement of the website in relation to complaints, etc.).</p>