

**Financial Supervision in the EU**  
**A consumer perspective**  
**ANNEX: National country reports**

Submitted to  
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## Table of Contents

1	AUSTRIA .....	7
1.1	Summary .....	7
1.2	Austrian Financial Market Authority (FMA) .....	7
1.2.1	Basic data .....	7
1.2.2	Institutional structure and objectives.....	7
1.2.3	Activities and supervision in practice .....	10
1.2.4	Operational capacity of the supervisor and views .....	12
2	BELGIUM.....	13
2.1	Summary .....	13
2.2	Banking, Finance and Insurance Commission (CBFA) .....	13
2.2.1	Basic data .....	13
2.2.2	Institutional structure and objectives.....	14
2.2.3	Activities and supervision in practice .....	16
2.2.4	Operational capacity of the supervisor .....	17
2.2.5	Supervisor views and ideas .....	18
3	BULGARIA .....	19
3.1	Summary .....	19
3.2	Financial Supervision Commission (FSC).....	19
3.2.1	Basic data .....	19
3.2.2	Institutional structure and objectives.....	19
3.2.3	Activities and supervision in practice .....	21
3.2.4	Operational capacity of the supervisor .....	23
3.2.5	Supervisor views and ideas .....	24
4	CYPRUS .....	26
5	CZECH REPUBLIC .....	27
6	DENMARK .....	28
6.1	Summary .....	28
6.2	Danish Mortgage Credit Complaint Board/Danish FSA.....	28
6.2.1	Basic data .....	28
6.2.2	Institutional structure and objectives.....	28
6.2.3	Activities and supervision in practice .....	30
6.2.4	Operational capacity of the supervisor and views .....	31
7	ESTONIA.....	33
7.1	Summary .....	33
7.2	Estonian Financial Supervision Authority (EFSA) .....	33
7.2.1	Basic data .....	33
7.2.2	Institutional structure and objectives.....	33
7.2.3	Operational capacity of the supervisor and its views ....	35
8	FINLAND .....	37
8.1	Summary .....	37
8.2	Finanssivalvonta (FIN-FSA).....	37
8.2.1	Basic data .....	37
8.2.2	Institutional structure and objectives.....	37
8.2.3	Activities and supervision in practice .....	39
8.2.4	Operational capacity of the supervisor and its ideas ....	40

9	FRANCE .....	42
9.1	Summary .....	42
9.2	Autorité de contrôle prudentiel (ACP) .....	43
9.2.1	Basic data .....	43
9.2.2	Institutional structure and objectives.....	43
9.2.3	Activities and supervision in practice .....	45
9.2.4	Operational capacity of the supervisor and its views ....	46
9.3	DG Competition Policy, Consumer affairs & Fraud .....	47
9.3.1	Basic data .....	47
9.3.2	Institutional structure and objectives.....	47
9.3.3	Activities and supervision in practice .....	49
9.4	Financial Markets Authority (AMF).....	51
10	GERMANY.....	52
10.1	Summary .....	52
10.2	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) .	52
10.2.1	Basic data .....	52
10.2.2	Institutional structure and objectives.....	52
10.2.3	Activities and supervision in practice .....	55
10.2.4	Operational capacity of the supervisor .....	57
10.2.5	Supervisor views and ideas .....	58
11	GREECE .....	60
11.1	Summary .....	60
11.2	Bank of Greece.....	60
11.2.1	Basic data .....	60
11.2.2	Institutional structure and objectives.....	61
11.2.3	Activities and supervision in practice .....	63
11.2.4	Operational capacity and supervisor views .....	65
11.3	Hellenic Capital Market Commission (CMC) .....	65
11.3.1	Basic data .....	65
11.3.2	Institutional Structure and Objectives.....	65
11.3.3	Complaints, activities and supervision in practice .....	68
11.3.4	Operational Capacity and supervisor views.....	69
12	HUNGARY.....	70
12.1	Summary .....	70
12.2	Hungarian Financial Supervisory Authority (HFSA) .....	70
12.2.1	Basic data .....	70
12.2.2	Institutional structure and objectives.....	70
12.2.3	Activities and supervision in practice .....	73
12.2.4	Operational capacity of the supervisor .....	74
12.2.5	Supervisor views and ideas .....	75
13	IRELAND .....	76
13.1	Summary .....	76
13.2	Central Bank of Ireland .....	76
13.2.1	Basic data .....	76
13.2.2	Institutional structure and objectives.....	76
13.2.3	Activities and supervision in practice .....	81
13.2.4	Operational capacity of the supervisor .....	86
13.2.5	Supervisor views and ideas .....	87
14	ITALY .....	88
14.1	Summary .....	88
14.2	Commissione Nazionale per le Società e la Borsa (Consob).....	88
14.2.1	Basic data .....	88

14.2.2	Institutional structure and objectives.....	89
14.2.3	Institutional powers behind the mandate .....	91
14.2.4	Activities and supervision in practice .....	93
14.2.5	Operational capacity of the supervisor and its views ....	95
14.3	Banca d'Italia .....	96
14.3.1	Basic data .....	96
14.3.2	Institutional structure and objectives.....	96
14.3.3	Operational capacity of the supervisor .....	100
15	LATVIA .....	101
16	LITHUANIA .....	102
16.1	Summary .....	102
16.2	State Consumer Rights Protection Board (VVTAT) .....	102
16.2.1	Basic data .....	102
16.2.2	Institutional structure and objectives.....	102
16.2.3	Complaints handling.....	105
16.2.4	Operational capacity and supervisor views .....	106
16.3	Insurance Supervisory Commission (DPK) .....	106
16.3.1	Basic data .....	106
16.3.2	Institutional structure and objectives.....	106
16.3.3	Complaints, activities and operational capacity .....	108
17	LUXEMBURG .....	111
17.1	Summary .....	111
17.2	Commission de surveillance du secteur financier (CSSF).....	111
17.2.1	Basic data .....	111
17.2.2	Institutional structure and objectives.....	111
17.2.3	Activities, complaints, capacity and views .....	112
18	MALTA .....	114
18.1	Summary .....	114
18.2	Malta Financial Services Authority (MFSA) .....	114
18.2.1	Basic data .....	114
18.2.2	Institutional structure and objectives.....	114
18.2.3	Activities and supervision in practice .....	116
18.2.4	Operational capacity of the supervisor and its views ..	118
19	NETHERLANDS.....	119
19.1	Summary .....	119
19.2	Authority for Financial Markets (AFM).....	119
19.2.1	Basic data .....	119
19.2.2	Institutional structure and objectives.....	120
19.2.3	Activities and supervision in practice .....	123
19.2.4	Operational capacity of the supervisor .....	126
19.2.5	Supervisor views and ideas .....	127
20	POLAND .....	129
20.1	Summary .....	129
20.2	Polish Financial Supervision Agency (KNF) .....	129
20.2.1	Basic data .....	129
20.2.2	Institutional structure and objectives.....	129
20.2.3	Activities and supervision in practice .....	131
20.2.4	Operational capacity of the supervisor and its views ..	134
21	PORTUGAL .....	135
21.1	Summary .....	135
21.2	Portuguese Securities Market Commission (CMVM) .....	135

21.2.1	Basic data .....	135
21.2.2	Institutional structure and objectives.....	135
21.2.3	Activities and supervision in practice .....	140
21.2.4	Operational capacity of the supervisor .....	145
21.2.5	Supervisor views and ideas .....	147
22	ROMANIA .....	149
23	SLOVAKIA .....	150
23.1	Summary .....	150
23.2	Slovak Trade Inspection (SOI) .....	150
23.2.1	Basic data .....	150
23.2.2	Institutional structure and objectives.....	150
23.2.3	Activities and supervision in practice .....	152
23.2.4	Operational capacity of the supervisor and its views ..	154
23.3	Narodna Banka Slovenska (NBS) .....	155
23.3.1	Basic data .....	155
23.3.2	Institutional structure and objectives.....	155
23.3.3	Activities and supervision in practice .....	157
23.3.4	Operational capacity of the supervisor and its views ..	158
24	SLOVENIA .....	160
24.1	Summary .....	160
24.2	Bank of Slovenia.....	160
24.2.1	Basic data .....	160
24.2.2	Institutional structure and objectives.....	160
24.2.3	Activities and supervision in practice .....	163
24.2.4	Operational capacity of the supervisor and its views ..	164
24.3	Insurance Supervision Agency (ISA) .....	165
24.3.1	Basic data .....	165
24.3.2	Institutional structure and objectives.....	165
24.3.3	Activities and supervision in practice .....	167
24.3.4	Operational capacity of the supervisor and its views ..	168
25	SPAIN.....	170
25.1	Summary .....	170
25.2	Banco de Espana .....	170
25.2.1	Basic data .....	170
25.2.2	Institutional structure and objectives.....	170
25.2.3	Activities and supervision in practice .....	174
25.2.4	Operational capacity of the supervisor .....	176
25.2.5	Supervisor views and ideas .....	177
25.3	Dirección General de Seguros y Fondos de Pensiones ...	178
25.3.1	Basic data .....	178
25.3.2	Institutional structure and objectives.....	178
25.3.3	Operational capacity of the supervisor .....	181
25.3.4	Supervisor views and ideas .....	182
25.4	Comision Nacional del Mercado de Valores (CNMV) .....	182
25.4.1	Basic data .....	182
26	SWEDEN .....	183
27	UK.....	184
27.1	Summary .....	184
27.2	Financial Services Authority (FSA) .....	185
27.2.1	Basic data .....	185
27.2.2	Institutional structure and objectives.....	185
27.2.3	Activities and supervision in practice .....	188

27.2.4	Operational capacity of the supervisor and its views ..	189
27.3	Office of Fair Trading (OFT).....	189
27.3.1	Basic data .....	189
27.3.2	Institutional structure and objectives.....	190
27.3.3	Activities and supervision in practice .....	193
27.3.4	Operational capacity of the supervisor .....	195
27.3.5	Supervisor views and ideas .....	195
28	NORWAY .....	196
28.1	Summary .....	196
28.2	Financial Supervisory Authority (Finanstilsynet).....	196
28.2.1	Basic data .....	196
28.2.2	Institutional structure and objectives.....	197
28.2.3	Complaints.....	198
28.2.4	Operational capacity of the supervisor and its views ..	198
ANNEX 1: SUPERVISORS AND THEIR ORGANISATIONAL CHART ....		
ANNEX 2: LIST OF SUPERVISORS INVOLVED IN THE STUDY .....		

This Annex should be read in conjunction with the main report. The country sections in this "Annex: Country Reports" are presented in a standardised way along the following lines:

- A brief summary description of the country's system with regards to financial supervision and consumer protection
- Details from the financial supervisors active in consumer protection and who have kindly participated in a valuable way to this research.

In total 32 EU supervisors have contributed written answers for this study. The UK, Slovakia, Slovenia, Italy, France, Spain, Lithuania, Greece are the only countries where more than one supervisor is included in the country section. Unfortunately, no own detailed supervisor responses could be included for Cyprus, Czech Republic, Denmark, Latvia, Romania and Sweden. However, both the Main Report and this Annex Country Reports has taken existing information on these EU Member States into account for the overall analysis of the situation in the EU. The supervisors listed in the Table of Contents have all provided their valuable assistance, for which the research team is grateful. The study has also added non-EU country Norway to help with comparisons.

The overview of responses received from EU supervisors for this study is shown below.

No.	Type of Supervisor reported on (Member State)
4	General consumer protection authority (LT,SK,UK,FR)
6	National Central Bank (SI, GR, ES, SK, IE, IT)
4	Other (FR, IT, DK, ES)
2	Stand-alone insurance supervisor (SI, LT)
12	Stand-alone integrated financial supervisor (AT,BE,BG,EE,DE,FI,HU,LU,MT,PL,UK)+NO
4	Stand-alone securities supervisor (NL, PT, GR, ES)

The information and answers provided by the national supervision authorities have been the basis for the analysis and the details reported in this Annex Report. One should not forget when reading the reports that these supervisors have replied to the questionnaire from their perspective. This perspective may differ for supervisors country to country and can only represent a partial judgement on the overall quality and efficiency of the work of those supervisors with regard to their work on consumer protection. Please keep in mind that such an auto-evaluation in the form of a questionnaire does not necessarily provide an assessment that is totally in line with the views of other stakeholders in that country such as the consumer organisations themselves.

## 1 Austria

### 1.1 Summary

The Austrian Financial Market Authority (FMA, Finanzmarktaufsicht) is the main financial supervisor in Austria and since 2002 has been the sole independent agency in charge of banking, insurance, pension fund and securities supervision. While the Oesterreichische Nationalbank (OeNB), the central bank of Austria can be involved in FMA investigations and in areas of market and credit risk, the FMA, an institution under public law, is the appropriate agency for financial supervision of financial services and is obliged to care for consumer, investor and creditor protection. As explored in the sections below, the FMA uses a set of instruments in order to reach its goals: For instance, it monitors and takes any measures necessary to ensure compliance with provisions of law. Moreover, the FMA defines minimum standards and publishes regulations putting legal provisions into concrete terms. One of the FMA's tasks is monitoring compliance with the Rules of Conduct referring to the following investment services: investment advice, brokerage of securities transactions, asset management, trading in securities and third party issuing of securities.

Public agencies that look after consumer protection in the area of financial services in the country include the Chamber of Labour (AK), Association for Consumer Information (VKI).

### 1.2 Austrian Financial Market Authority (FMA)

#### 1.2.1 Basic data

Main Department that provided answers	Executive Board Affairs and Public Relations
Status of supervisory authority	Stand-alone integrated financial supervisor
Independence	The supervisor is not controlled by a governmental body.
Type of institutions supervised	Credit institutions; Investment firms; Providers of money transmission services; Providers of currency exchange services; Insurance firms; Financial advisers; Other: pension companies, staff provision funds, investment funds, investment service providers, companies listed on the stock exchange, stock exchanges.
Type of institutions not supervised	Providers of credit and store cards; Foreign financial institution representative offices; Financial intermediaries; Real estate agents; Credit referencing agencies
Areas of supervision	Macro-prudential, Micro-prudential

#### 1.2.2 Institutional structure and objectives

Consumer protection is not an explicit goal of the agency. The FMA is not a consumer protection organization in the classic sense. Its contribution to consumer protection lies only in the supervision of solvency, the market and conduct. In this sense the FMA protects the consumer only on a general basis, but it does

not help the individual consumer to enforce any possible damage claims or claims against supervised companies as these are civil court matters.

Own agency definition of consumer protection:

According to the Federal Ministry of Labour, Social Affairs, and Consumer Protection Consumer Protection provides a legal framework for individual consumer protection in regard to general consumer protection laws (cancellation of contracts, general standard terms and conditions, unfair contract terms), general law of contract (legal and commercial guarantees, errors, default, damages), landlord/tenant law, housing law, real estate agents, time-sharing, financial services (laws governing loans, insurance, banks, securities, leasing), law on competition (misleading advertising, competitions and prize draws), trade laws (regulations for practising trades, direct advertising, automotive sector, debt collectors), prices and price marking, data privacy, product safety, accident prevention/EHLASS and standardisation, product information of environmental and consumer relevance, access to law, debt, personal bankruptcy, description of food-stuffs, pharmaceuticals and patients' rights, telecommunications and public utilities (gas and electricity providers), travel; new media (Internet, electronic commerce, digital signature, e-cash). Furthermore, consumer protection secures for fair competition and functioning markets, provides correct and exhaustive information about product safety and pricing, data protection, and new technologies.

The only accepted definition of consumer protection which the FMA assigns to is consumer protection is achieved by the contribution towards the stability of Austria as a financial market, the reinforcement of confidence in the ability of the Austrian financial market to function, the protection of investors, creditors and consumers in accordance with provisions of law, and the constant punishment of supervised companies in case of violation of the supervisory standards. The agency's supervisory approach in consumer protection can be described as follows:

The FMA's contribution to consumer protection lies in the supervision of solvency, the market and conduct. The FMA is not a consumer protection organisation in the classic sense as its role is not to assist complainants in enforcing any possible damage claims or claims against supervised companies.

### 1.2.2.1 Supervisory objectives

The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate		Legal Source	Explanations
Promoting supervisory cooperation and convergence of EU supervisory practices	Fully	Article 9 Bankwesengesetz (Banking Act, BWG), Article 91 Wertpapieraufsichtsgesetz (Securities Supervision Act, WAG), Article 98a ff, 107 Versicherungsaufsichtsgesetz (Insurance Supervi-	The FMA ensures that credit institutions, insurance firms and investment service providers authorised under the law of a Member State comply with Austrian regulations for their business conduct in Austria and cooperates with the supervisory authority of the home state. The FMA

		sion Act, VAG),	cooperates with supervisory authorities of other member states of the EU and the European Commission to prevent financial crime including anti-money laundering and combating financing of terrorism.
Ensuring compliance with consumer protection measures	Not fully	Article 34 ff Bankwesengesetz (Banking Act, BWG); Article 61 Wertpapieraufsichtsgesetz (Securities Supervision Act, WAG)	These provisions are not consumer protection measures in the classic sense as they concern only information obligations to the consumer. The FMA ensures the compliance with these obligations.

Mandates that are not fully the responsibility of the FMA in Austria include: Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures; Protecting clients from misconduct and/or bad business practices; Monitoring if financial institutions follow their own voluntary codes of conduct and respect public commitments they have made to protect the interests of consumers; Promoting consumer awareness of the obligations of financial institutions; Fostering an understanding of financial services and related issues; and monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial services.

In addition, other mandates of the agency not included in the table above include: Maintaining financial stability; Ensuring compliance with banking regulation; Ensuring compliance with securities regulation; and preventing financial crime including anti-money laundering/combating financing of terrorism.

The FMA is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency. However, the following are not included in its set of responsibilities: Professional compliance to use of fair contract terms; Personal integrity of personnel; and Prevention of criminal behaviour.

### 1.2.2.2 Institutional powers behind the mandate

The Table below shows how certain powers are exercised in the country. It also distinguishes between tasks carried out directly by the supervisory agency and those responsibilities shared with other bodies.

Agency has the power to:		Other body that has this power	Circumstances where power can be exercised/measure be taken
Make rules directly affecting consumer protection	No	Parliament	
Make any other rules	Not fully		The FMA is allowed to pass general regulations only on a

			very restricted basis.
Issue guidance	No	Chamber of Labour (AK), Association for Consumer Information (VKI)	
Give individual advice to consumers	No	Lawyers	

The Federal Ministry of Labour, Social Affairs, and Consumer Protection is responsible for the individual consumer protection in Austria and proposes the legal framework for regulations regarding consumer protection which has to be passed by parliament.

Among the powers which the agency has, is an ability to address a complaint to the firm, refer a complaint to another agency, initiate criminal procedures, fine delinquents, initiate and execute investigations. However, this also means it is not able to address a complaint to the complainant, and start a legal action in court. These powers may only be exercised in regard to the supervisory authority of the FMA. In the supervisor's eyes, the 2 most effective sanctions in consumer protection are the following: 1) Publishing details of any penal decisions and administrative decisions prohibiting the business; 2) Informing the public by means of an announcement that a person is not authorised to carry out certain transactions that require a licence.

Sanctions are never made public. Only the overall number of complaints and the dominating subjects are disclosed in the Annual Report. The maximum amount for a financial penalty that the agency is allowed to impose for breach of consumer protection rules was not disclosed. The FMA is not able to punish staff at a financial institution on a personal basis following a case of wrong-doing.

### 1.2.3 Activities and supervision in practice

While the FMA was unable to give examples of its conduct of business supervision in 2009, the following are examples available for activities they have been involved in. For example, the FMA took some measures, which had an obvious impact in market behaviour in 2009. Especially, the problems associated with the volume of foreign currency loans (denominated in Swiss francs) which had consistently grown from 1995 to 2008. Due to a sharp rise in the exchange rate of Swiss franc (CHF) and simultaneously occurring sharp falls in prices of investment products coupled with loans, a lot of debtors got serious problems with their banks. As a consequence of those troubles, in March 2010 the FMA issued new minimum standards regarding foreign currency loans which led to a prohibition of offering foreign currency loans.<sup>1</sup>

While the competence of FMA inspection is still in some cases too slow in releasing relevant information regarding financial services companies that are subject to proceedings of the FMA. Therefore, more transparency<sup>2</sup> is being asked by the consumer advocates in Austria.

<sup>1</sup> <http://www.fma.gv.at/cms/site/EN/detail.html?doc=CMS1272028958594&channel=CH0081>.

<sup>2</sup> Due to the official secrecy, investors as well as the Federal Chamber of Labour have no right to the inspection of files. The AK Wien believes that in some cases of reasonable doubt, consumer protection should be attached more importance than the need to be bound by official secrecy.

In addition, the AFM provides complaint forms on its website in order to gather consumer problems<sup>3</sup>, and it publishes warnings („warning notifications“) of financial services companies.<sup>4</sup>

### **1.2.3.1 Complaints and publication of complaints**

A public financial ombudsman system exists in this country. Mediation Body of the Austrian Credit Service Sector - the ombudsman, functions as a mediating body between participating credit institutions and its customers.

With regards to enquiries and complaints received from consumers, the supervisor's established structure to respond to consumers with an answer when they complain about a provider involves reliance on the Federal Chamber of Labour (AK), and the Association for Consumer Information (VKI). The former has registered a lot of the activities of the FMA, in particular since September 2008. The FMA however is particularly useful at reaching the public by means of press releases.

The FMA examines the complaints of consumers and evaluates whether the Rules of Conduct have been violated or whether financial services have been offered without a licence. As a primary result of examinations the FMA is enabled to put administrative penalty proceedings up to EUR 20,000.

According to the FMA in 2009, the number of enquiries and complaints submitted by consumers with regard to supervised companies continued to rise. While in 2006 and 2007 the number of enquiries and complaints was around 4,500 per year, followed by 7,400 in 2008, there were more than 9,300 in 2009.<sup>5</sup> In particular, the following issues played a major role in 2009:

- With regard to banking supervision, these particularly concerned rules on deposit guarantees, the FMA's position regarding the granting of new foreign currency loans to consumers, the Zahlungsdienstegesetz (ZADIG; Payment Services Act), which entered into force on 1 November 2009, as well as consumer protection provisions laid down in the Bankwesengesetz (BWG; Banking Act);
- With regard to insurance supervision, the main issues were insurance companies paying out only partial benefits or none at all, doubts as to the accuracy of calculations, termination of the contract, and exemption from or discounts on premiums;
- With regard to securities supervision, primarily failure to observe rules of conduct, lack of proper advice, failure to protect investors' interests and investment of funds at an inappropriate level of risk.

In the enforcement of supervisory laws, the FMA has administrative penal jurisdiction in the first instance. As such it is entitled to conduct administrative penal proceedings in the event of violations of provisions of supervisory law.

According to reports of the FMA, at the beginning of 2009, 78 proceedings were pending, while a further 449 administrative penal proceedings had been initiated in the course of the year. Of all the administrative penal proceedings concluded in 2009, 117 resulted in penal decisions, 314 in penal orders and nine in admoni-

<sup>3</sup> [http://www.fma.gv.at/JBInteraktiv/2009/DE/CH0194\\_CMS1239133843765\\_detail.htm](http://www.fma.gv.at/JBInteraktiv/2009/DE/CH0194_CMS1239133843765_detail.htm).

<sup>4</sup> E.g. [http://www.fma.gv.at/cms/site/EN/warnmeldung\\_liste.html?channel=CH0207&year=2009](http://www.fma.gv.at/cms/site/EN/warnmeldung_liste.html?channel=CH0207&year=2009).

<sup>5</sup> From AFM interactive annual report 2009, available under [http://www.fma.gv.at/JBInteraktiv/2009/EN/index\\_frame.htm](http://www.fma.gv.at/JBInteraktiv/2009/EN/index_frame.htm).

tions. In all, 59 cases were dropped, and in 255 cases no administrative penal proceedings were initiated.

An annual report is published for the supervised companies and it contains information on FMA activities, operations, and the number and nature of complaints that it has received. The agency however, does not appear to produce a specific business plan outlining how it will develop and implement new initiatives to foster consumer protection alongside the annual report.

#### **1.2.4 Operational capacity of the supervisor and views**

The source of the agency's funding is purely levied from the financial institutions that it monitors. No data was available or could be provided to the research concerning the importance of the funds needed to run the agency and its consumer protection units. There is no budget for this matter. No data was provided with regards to staffing levels and broad distribution of employees in terms of qualifications.

The FMA does not incorporate or involve consumers or consumer representatives in a formal way in its activities. In 2009, FMA staff was involved in such activities including the Consumer Policy Forum (Konsumentenpolitisches Forum) of the Federal Ministry of Labour, Social Affairs, and Consumer Protection.

The Austrian Financial Market Authority preferred not to assess the adequacy of current supervision in Austria. The structure is likely to be satisfactory from the point of view that there are a number of examples of relative prompt reaction to developing problems when these emerged and threatened to cause widespread harm to consumers.

There are no current initiatives focused on the separation of prudential supervision from consumer protection tasks in Austria. When asked which additional powers could help them improve consumer protection in their country, the FMA has answered that an explicit and clear mandate is key since at the moment there is very little remit for them in this area.

Other Stakeholder views:

A lack of effective supervision in the field of consumer protection might result from some circumstances, established by law: Consumers have to know that the FMA is not allowed by law to give complainants the right to the inspection of files, due to the fact of official secrecy. This means that consumers as well as the Arbeiterkammer do not have the opportunity to be informed about the progress or the result of an examination.

Moreover, some consumers believe that the FMA helps complaining investors to get their rights. But that is a wrong consumer expectation. The investor himself has to take legal action against the relevant financial services company in order to obtain any compensation (at civil court). The FMA does not assist complainants in enforcing any possible damage claims or claims against supervised companies. The consumers concerned must pursue claims for damages by taking legal action through the civil courts.

## 2 Belgium

### 2.1 Summary

The Belgian Government decided to concentrate all types of supervision in the hands of the Banking, Finance and Insurance Commission (CBFA) in 2003. This resulted in the integration of the Insurance Supervisory Authority (ISA) into the Banking and Finance Commission (BFC) with the new agency thereby overseeing pension funds, investment funds, real estate credit, banking and the newly added insurance firms (only consumer credit and money laundering were excluded from its remit). However, seven years later in 2010, this single integrated supervisor (which nevertheless followed a clear internal structure along sectoral lines) will be changing its name again as the country's regulatory structure adopts the twin-peaks model of supervision. As in France and the Netherlands, Belgium banks have acquired controlling holdings in insurance companies and this may have led to a greater need for conduct of business supervision.

The National Bank of Belgium has no specific competence in the matter of consumer protection with the exception of the Central Individual Credit Register. The latter is an instrument used to curb excessive indebtedness by recording information on all loans contracted by natural persons for private purposes as well as any overdue debts relating to these loans. Because the Central Individual Credit Register was not directly targeted by the questionnaire for this study, the central bank chose not to participate.

The FPS Economy SMEs, Self-employed and Energy (<http://economie.fgov.be>), is the other government body looking after consumer protection in the area of financial services.

### 2.2 Banking, Finance and Insurance Commission (CBFA)

#### 2.2.1 Basic data

Main Department that provided answers	Department for the protection of financial consumers
Status of supervisory authority	Stand-alone integrated financial supervisor
The supervisor is controlled by a governmental body	Ministry of Finance
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers; Other: Consumer credit excluded; Type of institutions not supervised; Real estate agents; Credit referencing agencies.
Areas of supervision include	Micro-prudential; Conduct-of-business

### 2.2.2 Institutional structure and objectives

As of end 2010, consumer protection is not an explicit goal of the CBFA. Currently the CBFA does not have a fully-fledged statutory consumer/investor protection objective in respect of financial services. However, the Law of 2 August 2002 on the supervision of the financial sector, establishing the CBFA and defining its competencies, does list amongst the CBFA's missions: - to ensure compliance with the rules aimed at protecting the interests of the investor in transactions in financial instruments, - to contribute towards compliance with the rules aimed at protecting savers and investors against the illegal offer or supply of financial products and services, - to ensure supervision of compliance with the provisions of the Law of 25 June 1992 on the insurance policy, in particular the verification of compliance by insurance companies with the provisions in the law that regulate (life and non-life) insurance contracts, - to ensure supervision of operations by mortgage credit institutions, as referred to in the Law of 4 August 1992 concerning mortgage credit, - to ensure supervision of compliance with the provisions of the Law of 27 March 1995 on (re)insurance intermediaries and the Law of 21 March 2006 on banking and investment services intermediaries, in particular as regards the information to be provided to clients and the identification of clients' needs, - to ensure supervision of compliance with the provisions of Title II, Chapter I, Section 4, of the Programme Law (I) of 24 December 2002, relating to supplementary pensions for the self-employed, - to ensure supervision of compliance with the provisions of the Law on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social-security benefits. The aim of these provisions is the protection of the consumers of financial services. Furthermore, Articles 27 to 28bis of the Law of 2 August 2002 introduce conduct of business rules and client information obligations that apply in connection with the provision of investment (or ancillary) services (those Articles transpose in Belgian Law Article 19 (mainly) of the MiFID). By virtue of Article 28ter, a Royal Decree (to be taken) can apply the provisions of Articles 27 to 28bis to other categories of financial intermediaries (in particular insurance intermediaries and banking/investment services intermediaries). FPS Economy is responsible as regards the Law on market practices.

CBFA's own definition of consumer protection is:

"Current legislation does not provide for a definition. The CBFA believes that all 7 arguments listed in the questionnaire should be taken into account when defining consumer protection. A ranking however was not suggested by the respondent."

In terms of the CBFA supervisory approach in consumer protection, it can be described as the CBFA verifies financial institutions' and financial intermediaries' compliance with the financial legislation through off-site and on-site verifications and inspections; and the CBFA will take corrective measures if these institutions and intermediaries do not implement correctly the regulation. These corrective measures can take different forms, such as fixing a deadline by which it must rectify its behaviour, administrative fines, public warnings, a revocation of the authorization etc.

In terms of the CBFA's supervisory objectives, the table below summarises which explicit mandates it has been given.

Elements of mandate	Legal Source	Details
Ensuring compliance with consumer protection measures	See text above	
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	See text above	
Protecting clients from misconduct and/or bad business practices	See text above	
Monitoring if financial institutions follow their own voluntary codes of conduct and respect public commitments they have made to protect the interests of consumers		part of CBFA's policy
Fostering an understanding of financial services and related issues		part of CBFA's policy
Monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial services		part of CBFA's policy

Other mandates of the agency not included in the table above include: Ensuring compliance with banking regulation; ensuring compliance with securities regulation; and preventing financial crime. For a number of these mandates however, the CBFA's mandate is not exclusive.

The agency's remit is for retail investment issues but does not deal with the supervision of consumer credit. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; and Personal integrity of personnel. Again for some of these, the CBFA's mandate is not exclusive e.g. the FPS Economy is responsible as regards the Law on market practices. In addition, two areas, namely issues of professional compliance to fair commercial practices and prevention of criminal behaviour, are not part of its responsibilities.

### 2.2.2.1 Institutional powers behind the mandate

The Table below shows how certain powers are exercised in the country. It also distinguishes between tasks carried out directly by the supervisory agency and those responsibilities shared with other bodies.

Agency has the power to:		Other body that has this power	Circumstances where power can be exercised/measure be taken
Make rules directly affecting consumer protection	Yes	legislator, government	legislator, government
Issue guidance	No		CBFA: interpretation of legislation via circulars
Give individual advice to consumers	No		

Among the powers which the agency has, is an ability to refer a complaint to another agency, start a legal action in court, fine delinquents, initiate and execute investigations.

However, this also means it is not able to address a complaint to the complainant, address a complaint to the firm, and initiate criminal procedures, in the field of the CBFA's missions.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; seek a remedial commitment from the firm; Withdrawal of the license; Demand withdrawal of director; Prohibition of certain professional activities; and impose a pecuniary sanction (monetary penalty).

However, the following set of sanctions cannot be currently imposed by the supervisor at present: Impose criminal sanctions; Orders for institute directors.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): public warning; revocation of the authorization; fixing a deadline by which the behaviour must be rectified.

Sanctions and/or complaints are only made public in some cases and not on a systematic basis. Sanctions may be published on the CBFA's website. The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules can be found via the different legislations on the CBFA's website.

In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing, but this happens in exceptional cases only. The CBFA was not able to provide data on the number of sanctions it has taken with regard to breaches of consumer protection related rules.

### 2.2.3 Activities and supervision in practice

The following table gives concrete examples for various activities which the agency has been responsible for in the year 2009.

Examples of functions fulfilled	Description, details, links etc.
Compliance with consumer protection rules, product transparency and consumer education	Details available in the annual reports. See: <a href="http://www.cbfa.be/fr/publications/ver/pub_annualrep_cbfa.asp">http://www.cbfa.be/fr/publications/ver/pub_annualrep_cbfa.asp</a>
Monitoring financial institution compliance with voluntary codes of conduct (and their own public commitments)	As regards insurance contracts and mortgage credit loans, the CBFA has actively encouraged the financial sector to adopt codes of conducts and its own guidelines, the CBFA has on several occasions referred to such codes of conducts (e.g. in order to comply with the information requirements under chapter III of Directive 2002/92/EC on insurance mediation, the insurance sector has agreed on a code of conduct and on standardized key information documents, with input and support from the CBFA. The financial sector also agreed on a code of conduct on responsible mortgage lending, also with support from the CBFA).

#### Complaints and publication of complaints:

A private financial ombudsman system exists in this country but a public one does not. Two organizations have been established for that purpose: The Bank-Credit-Investments Mediation Service ([www.ombfin.be](http://www.ombfin.be)) for banking, investment and credit services, and the Insurance Ombudsman ([www.ombudsman.as](http://www.ombudsman.as)) for insurance services.

Except in the field of mortgage credit and supplementary pensions, the CBFA does not examine complaints from individual customers concerning a supervised undertaking. Two organizations have been established for that purpose: The Bank-Credit-Investments Mediation Service ([www.ombfin.be](http://www.ombfin.be)) for banking, investment and credit services; The Insurance Ombudsman ([www.ombudsman.as](http://www.ombudsman.as)) for insurance services.

In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved. The CBFA is only able to register complaints and respond to them, but only in the field of mortgage credit and supplementary pensions.

As mentioned above, an annual Report is published and contains information on activities, number and nature of complaints that have been brought to their attention, and other information such as an explanation of the CBFA's policy regarding (amongst other) protection of the financial consumer. The agency however, does not appear to produce a specific business plan outlining how it will develop and implement new initiatives to foster consumer protection alongside the annual report.

In the past 2 years, the supervisor has been responsible for concrete legal or regulatory changes affecting consumers. The CBFA is a frequent participant in third party research and consultations and has been involved in the drafting of new regulation.

#### **2.2.4 Operational capacity of the supervisor**

The source of the agency's funding is purely levied from the financial institutions that it monitors. Conditions are determined by royal decree. Some data is available from the Annual report but not broken down into costs of consumer protection activities.

In terms of staff, the supervisor has around 440 staff members, but the exact number of these dealing with consumer protection issues only is not known. There are also restructurings at the moment with staff moving from one body to the new one.

The broad distribution of employees in terms of qualifications is broken down between lawyers, economists, and administrative staff.

The CBFA does not incorporate or involve consumers or consumer representatives in its activities.

The increasing international scope to supervision and effects of globalisation on financial services markets means that supervisors and their staff can benefit from being part of international network meetings on consumer protection issues. Staff was involved in such activities in 2009.

### **2.2.5 Supervisor views and ideas**

Regulation in Belgium tends to be effective and despite a catastrophic track record in terms of Belgian bank solvency in the country, Belgian consumers are generally well served by its supervisors and regulators.

Supervision in Belgium is moving towards a Twin Peaks model. Within that model, the new CBFA (name will be modified) will receive new competences focusing more on financial consumer protection (with regard to investment financial products in general: financial instruments, insurance products, etc.). More especially, the CBFA will be in charge of the following tasks (amongst others): 1) ensure compliance with the rules aimed at protecting the interests of the financial consumers investor in transactions in financial instruments, 2) contribute towards compliance with the rules aimed at protecting savers and financial consumer/investors against the illegal offer or supply of financial products and services, 3) contribute to financial education of investor/financial consumers, 4) contribute to the development of rules dedicated to ensure honest, fair and professional treatment of financial consumer/investors (such as rules regarding information to clients/consumers, due diligence requirements towards financial consumer/investors, rules about marketing communication, etc.). The CBFA will also have the power to prohibit or restrict the marketing of retail investment products.

When asked which additional powers could help them improve consumer protection in their country, the CBFA confirmed that this was currently under investigation, e.g. as regards the competences of home and host supervisors.

### 3 Bulgaria

#### 3.1 Summary

Public agencies that look after consumer protection in the area of financial services in the country include the Financial Supervision Commission, the Bulgarian National Bank, and the Consumer Protection Commission. The Bulgarian Central bank licences and supervises the banking institutions. The Financial Supervision Commission (which regroups all other forms of financial supervision, including the nonbank financial institutions), was established in 2003, and is an independent agency in charge of securities supervision, including securities markets and their infrastructure, brokers and securities transactions, and also on insurance companies and intermediaries.

The existing system does not appear to be delivering the level of protection and enforcement that it is designed to. Redress for consumer detriment is very difficult to obtain and stakeholders feel this may be due to consumer protection and non-prudential supervision being split between these agencies, with the view that each is taking the opportunity to shed responsibility, interpret their mandate narrowly and refer a complaint to the other, ultimately advising consumers to go to court.

#### 3.2 Financial Supervision Commission (FSC)

##### 3.2.1 Basic data

Main Department that provided answers	The answers have been prepared from different experts from the Investment, Insurance and Social Insurance Supervision Divisions and have been incorporated in a joint version.
Status of supervisory authority	Stand-alone integrated financial supervisor
Independence	The supervisor is not controlled by a governmental body
Type of institutions supervised	Investment firms; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers; Credit referencing agencies; Other: Social Insurance Companies
Type of institutions not supervised	Credit institutions; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Real estate agents
Areas of supervision	Macro-prudential; Micro-prudential; Conduct-of-business

##### 3.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

FSC own definition of consumer protection:

“Consumer Protection is providing more efficient control over the financial services that are offered to the public”

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...secures for fair competition and functioning markets in financial services.
3	...provides equal opportunities to all consumers especially to the poor.
4	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
5	...prevents over-indebtedness, exclusion, old age poverty.
6	...limits economic power with regard to consumer needs
7	...guarantees a general framework in which others can provide individual consumer protection

Another additional definition of consumer protection of the FSC is 'guarantees a general framework in which others can provide individual consumer protection', which the FSC's Insurance Supervision Division ranks as level of importance 3.

The FSC's supervisory approach in consumer protection can be described as follows: When the Investment Supervision Division receives a complaint, they register it immediately and consider it in maximum of 1-month term and take the appropriate measures.

The agency can be described as having an exclusive role in monitoring compliance.

The agency's remit neither includes consumer credit issues nor retail investment ones. However the agency is responsible for the following consumer protection measures: Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; and Prevention of criminal behaviour.

However, the following are not included in its set of responsibilities: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; and personal integrity of personnel.

### **3.2.2.1 Institutional powers behind the mandate**

Among the powers which the agency has, is an ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, start a legal action in court, fine delinquents, and initiate and execute investigations.

However, this also means it is not able to initiate criminal procedures. Notification letters are forwarded to the interested parties/government authorities who are competent to undertake actions in order to protect the rights and the interests of the claimant. In the Social Insurance Supervision Division are drafted Acts of establishment of the violations and there are issued Penal Orders. Penal Orders (penal enactments) are appealed before the court.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; Seek a remedial commitment from the firm; Orders

for institute directors; Withdrawal of the license; Demand withdrawal of director; Prohibition of certain professional activities; and impose a pecuniary sanction (monetary penalty). However, it is not possible to impose criminal sanctions at present.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) Pecuniary sanctions, penalties and property sanctions; 2) Remedial Commitment; 3) Prohibition of certain professional activities.

Sanctions and/or complaints are made public on a systematic basis, through the Official Monthly Bulletin (12 issues per year).

The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is EUR 100,000 for the Investment Supervision Division, EUR 200,000 for the Insurance Supervision Division, while the Social Insurance Supervision Division have penalties of EUR 10,000 for physical persons, and EUR 50,000 for property sanctions for legal entities. In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing.

The agency has reported having taken the following number of sanctions relating to a breach of consumer protection related rules: 622 in 2008 and 485 in 2009. Among those sanctions, 508 (in 2008) and 369 (in 2009) were pecuniary sanctions (i.e. fines). The lowest and highest financial penalty imposed in 2008 was EUR 100 (minimum amount that is prescribed by the Law and has been imposed for many different kinds of violations), and EUR 25,000 is the maximum for Investment Supervision Division. It has been imposed on a legal entity for market manipulation and contracts with related parties above definite thresholds. EUR 10,000 is the maximum for the Social Insurance Division.

In 2009: EUR 100 was the minimum amount that is prescribed by the Law and has been imposed for many different kinds of violations. The maximum of EUR 10,000 has been imposed on a physical person for market manipulation and contracts with related parties above definite thresholds.

Ratio of sanctions disclosed to the public over the total number of sanctions in 2008 and 2009 respectively: 100%. The strictest non-pecuniary sanction was binding order to do specific actions.

### **3.2.3 Activities and supervision in practice**

The FSC carried out 18 onsite inspections in 2009. During the exercised operating control over compliance with the provisions of the SIC and the acting sub-statutory acts, and also with the Law on Measures against Money Laundering and the Rules of implementation thereof, in total 16 on-site inspections were conducted, from which 6 full planned inspections and 7 thematic in PICs and the managed by them SPIFs. From the thematic inspections 4 were planned and 2 in relation to received signals and information in FSC about admitted offences. One joint inspection was also carried out with the State Agency for National Security. Jointly with Bank Supervision Department of the BNB 3 inspections were also conducted in custodian banks, as a result of which 12 recommendations were given about their operation.

There has also been an effort in 2009 to focus on product transparency. A concrete example was in the area of lawfulness of advertising, Inspections & Estab-

ishments: whereby compliance to the contents of the advertising and written information materials submitted with the provisions of the Social Insurance Code (SIC) (e.g.: the PIC may not organise lotteries or to promise future profitability under investments made), and with the Requirements set towards the contents of the advertising and the written information materials of SPIFs and of a PIC as approved by the Deputy Chair of the FSC in charge of the Social Insurance Supervision Division, - Whether the drafts of the advertising and the written information materials of PIC and SPIF have been duly executed by the executive director and the head of the Internal Audit unit, - Whether the Internal Audit unit at the PIC exercises control over the contents of the advertising and written information materials issued and circulated, and over the website.

In terms of complaints and publication of complaints, Bulgaria is one of the few EU countries where there is no such agency as a financial ombudsman, neither private nor public. With regards to enquiries/complaints received from consumers, the Investment Supervision Division has received an average of about 1300 complaints per year for the last 3 years. During 2009, Social Insurance Supervision Division received 184 complaints from insured persons, 42 warnings and 18 inquiries on issues related to the supplementary pension insurance. A large part from the complaints of the insured persons (125 in number) concerned switching of participation and transfer of resources from one to another supplementary pension insurance fund (SPIF), regulated in Ordinance Number 3 of FSC, where the main groups of the individuals' complaints were as follows: - they did not sign and file applications for switching of participation, but such were filed without their knowledge and consent, - they did not sign the applications for switching of participation in the presence of a notary/ mayor, - simultaneously signed applications for switching of participation and pension insurance contracts, - abuse of personal data, - lack of information about the possibility the funds of the insured persons to decrease and for whose account the risk of their investing was.

In case of a consumer complaint, the FSC is able to make binding decisions for some (but not all) of the parties involved, although this does not apply to the Insurance Supervision Division which cannot. The FSC registers and records complaints, responds to them, directly assists in resolution of complaints, indirectly assists in resolution by passing complaints on to the respective authorities, and publishes statistics on them.

When the FSC reviews complaints and receives warnings from the public, the procedure followed is the following: 1) Reasonability Check: Upon receipt of a complaint or a warning about a violation committed by an insured person submitted by a given PIC against another PIC or by persons who are not supervised by the FSC, the circumstances under the complaint are studied, as well as the claims made under it and the evidence provided. Depending on the information submitted and the information, to which the officer has access (i.e.: public registers, the FSC's Register, etc.), initial appraisal of the complaint's reasonability and the complainant's claims are made. Where all circumstances established undoubtedly indicate that the complaint is groundless, a letter - reply is forwarded in the time period set under the resolution, containing the reasons due to which the complaint is groundless. Where the complaint does not contain the entire information needed, such information is additionally exacted. 2) Authenticity Check: Following the initial appraisal of the reasonability of the complaint received, activities are undertaken to check the authenticity of the claims - through a letter and exacting documentation and explanations on the part of the

PIC, through an on-site inspection, etc., 3) Undertaking Supervisory Activities: Depending on the result of the inspection carried out and with a view to the nature and the contents of the complaint itself, the following activities are undertaken: - A thematic on-site inspection is carried out, - A coercive administrative measure is imposed on the company - infringer, - A statement of established administrative violation is drawn up, - Notification letters are forwarded to the interested parties/government authorities which are competent to undertake actions in order to protect the rights and the interests of the claimant, - A letter is forwarded to the claimant, notifying them of the results as established during the inspection, of the actions undertaken and of their lawful powers to protect their rights and interests.

An annual Report is published for the Bulgarian Parliament<sup>6</sup> and contains information on FSC activities, operations, as well as on the legislative framework for consumer protection, as well as on the number and nature of complaints that have occurred.

During 2009, the Social Insurance Supervision Division received 184 complaints from insured persons, 42 warnings and 18 inquiries on issues related to the supplementary pension insurance. A large part from the complaints of the insured persons (125 in number) concerned switching of participation and transfer of resources from one to another supplementary pension insurance fund (SPIF), regulated in Ordinance No.3 of FSC, where the main groups of the individuals' complaints were as follows: they did not sign and file applications for switching of participation, but such were filed without their knowledge and consent; they did not sign the applications for switching of participation in the presence of a notary/ mayor, - simultaneously signed applications for switching of participation and pension insurance contracts; there was abuse of personal data; lack of information about the possibility the funds of the insured persons to decrease and for whose account the risk of their investing was. Tools of the supervisor include off-site control (daily, periodic) and on-site inspections, whereas the actions available include coercive administrative measures, acts for establishment of administrative violation and penal warrants. The supervisor is also involved in monitoring of PIC information and advertising activity.

Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework. Strategy for Development of the Financial Supervision Commission (2010-2012)<sup>7</sup>.

Over the past 2 years, the supervisor does not appear to have been responsible for concrete legal or regulatory changes affecting consumers.

### **3.2.4 Operational capacity of the supervisor**

The source of the agency's funding for consumer protection activities is from both the financial institutions that it monitors and the government and other sources.

The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009, was EUR 5 million all operations included. However, the consumer protection operations cannot be specified.

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<sup>6</sup> Available at <http://www.fsc.bg/go.idecs?c=893>.

<sup>7</sup> [http://www.fsc.bg/media\\_center/files/report2009\\_EN\\_last.pdf](http://www.fsc.bg/media_center/files/report2009_EN_last.pdf).

In terms of human resources, the supervisor has approximately 200 employees but the share of those working on consumer protections issues is not known. The broad distribution of employees in terms of qualifications is as follows: 50% are economists; 30% lawyers; 10% mathematicians and IT personnel; and 10% administrative staff.

The supervisor includes consumer views into its work through direct consultation with consumer organisations and individual consumers. Some of the staff of the FSC was furthermore a part of international network meetings in 2009.

### **3.2.5 Supervisor views and ideas**

The current level of supervision with respect to consumer protection in Bulgaria is assessed by the FSC itself as being very satisfactory. This is surprising in the sense that it does not match the views expressed by other stakeholders in the country. Although it must be noted that the Insurance Supervision Division did indicate that supervision was 'not satisfactory'.

There are some discussions taking place in Bulgaria regarding the issue of separating prudential supervision from consumer protection tasks, but no concrete plans. The FSC did not mention any additional powers that it would deem useful in terms of delivering on their consumer protection mandate.

Despite the EU initiative and consultation on collective redress, class actions are not a theme of discussion in Bulgaria.

When the supervisors were asked which fields of consumer protection they believe should be more extensively covered by the authorities in the future, the following answers were suggested: Consumer literacy about financial services, rights and obligations, and possibilities consumers have to defend their own interest.

Other stakeholder views:

Consumers in Bulgaria are seen by consumer associations as helpless and the non-prudential financial supervision as inadequate and ineffective. Financial services providers count on not being held to account and abuse their market power. Examples of areas where problems are not being detected or fixed include: Credit markets: unilateral changing the interest rate and the method by which the rate is being calculated by the bank in violation of the credit contract. Thousands are affected, dozens have complaint formally to all institutions to no avail; Payment services: the voluntary reconciliation commissions are ineffective, banks ignore them; and Insurance: unclear responsibility, reduced coverage after the insured event has occurred.

The main Bulgarian consumer association (BNAP) makes the following recommendations for improvement of supervision IN Bulgaria (and regulation):

- One way to improve the non-prudential supervision and consumer protection in Bulgaria is to establish a Financial Ombudsman as a single agency responsible for handling consumer complaints in all the sectors of the financial services, independent and accountable to the National Assembly. The Financial Ombudsman should be adequately resourced and should be providing speedy, free and effective out-of-court settlement of consumer disputes.
- Another way would be to review all the National legislation transposing the EC directives regarding consumer protection for adequacy to the purpose

and the intent of the Directives. For example, transposing the Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers in Bulgaria via the Law on Consumer credit has resulted in making it legal for banks to change unilaterally the way they calculate variable interest rates on consumer and mortgage loans and thus making it impossible for the consumer to work out the change in the interest of their loan after it has been extended or to make an informed decision before taking out the loan (since her creditor can unilaterally change the interest rate subsequently at its own discretion). Therefore, in this particular case, it is not an unfair contract provision that is concerned, it is that the law itself is unfair to the consumer.

- A third recommendation would be to introduce a minimum competency requirement for all those selling financial products to the public.
- A fourth suggestion would be for a Law on Personal Bankruptcy to be adopted in Bulgaria.
- A fifth proposal would be for a National Strategy for Financial Education targeting the general public to be developed and implemented in Bulgaria along the principles suggested in the Commission Communication of 18 December 2007.

## 4 Cyprus

The sectoral model that exists in Cyprus means that several separate agencies are in charge of supervision of the financial sector: The Central bank supervises the banks and the payment and settlement systems; the Cyprus Securities and Exchange Commission supervises the securities business including the stock exchange, the brokers, the investment services companies, and the investment funds; and the Ministry of Finance through its Insurance Companies Control Service (ICCS) supervises the insurance firms.

The supervision of financial services for consumers is undertaken by a) the Central Bank of Cyprus for commercial banks, b) the Cooperative Central Bank for coop. institutions and c) the Supervisor of Insurance Companies. For stock exchange transactions there is a separate authority. There is also the Competition Protection Commission for competition issues. However, consumer associations in the country have voiced their concerns that there is a serious gap in the system concerning the solution of small differences between consumers and financial institutions.

Financial supervision of the banking sector in Cyprus has always been performed by the Central Bank of Cyprus<sup>8</sup>. However it only has a prudential mandate and has no legal powers what so ever to intervene in relationships between customers and their bank. Such contract law relationships are the responsibility of the Ministry of Trade, Industry and Tourism. They deal with provisions relating to unfavourable bias or abuse of dominant positions. The service of Competition is also responsible in this area of consumer protection. The Central Bank does not deal with any complaints. Information on markets is published on a bi-annual basis on the central bank website<sup>9</sup> though the data is not collected by the central bank itself and only published by them e.g. data on lending and views of consumers on mortgages etc.

The Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism is the responsible Authority for consumer protection including for Consumer Credit Directive's purposes.

The Authority for the Supervision and Development of Cooperative Societies (ASDCS) is primarily responsible for the prudential supervision of CCIs, the monitoring of their on-going operations and generally the protection of the deposits of CCIs' customers. The Cooperative Societies Law does not directly provide for any consumer protection powers to be exercised by the ASDCS and so it was not able to complete the iff research questionnaire.

Also, in the course of exercising supervision on CCIs, the ASDCS handles matters that relate to the right approaches used by CCIs as regards their relations with depositors, lenders and the public overall. Additionally, under Cooperative Societies Law any disputes between the CCIs and any other party are referred to the Commissioner of the ASDCS who attempts settlement of the dispute or refers the matter for disposal to an arbitration process.

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<sup>8</sup> Based on a telephone conversation 13.12.10 with Mr Phanopoulos (Assistant Director of the Bank Supervision and Regulation Department of the Central Bank of Cyprus).

<sup>9</sup> At the English version of the website:  
[http://www.centralbank.gov.cy/nqcontent.cfm?a\\_id=1&lang=en](http://www.centralbank.gov.cy/nqcontent.cfm?a_id=1&lang=en).

## 5 Czech Republic

The single integrated model that exists in the Czech Republic since 2006 saw the Czech National Bank already competent for banking supervision take over the activities of the former securities commission that was also in charge of insurance and pension fund supervision.

Alongside the Czech National Bank which supervises banking, securities and insurance, but was not able to contribute to this study<sup>10</sup>, other supervisors include the Czech Trade Inspectorate (for some aspects of the Consumer Credit Act i.e. the non-banking sector) and the Czech Financial Arbitrator (which settles disputes between institutions, such as banks or institutions issuing electronic payment instruments, and their clients).

However, the current level of both financial regulation and supervision does not seem to be the most performing judging from stakeholder views. For example, the main problems facing Czech consumers are said to be due to the insufficient level of consumer protection in substantial law. At the same time, the competence of the Financial Arbitrator is seen by some to need to be increased (e.g. cover more types of disputes in financial market). Furthermore, due to ineffective division of competences between the Czech National Bank and Czech Trade Inspectorate there are some problems with identifying the competent authority (which are linked to the fragmented legal regulation in place). The centralised model of supervision with operations conducted by the Czech National Bank means that it is the only institution with supervision authority in the Czech Republic. Problems with the lack of regulation of non-bank lenders and subsequent lack of almost any supervision at all, means that consumer problems have been reported by consumer associations and calls have been made for the Czech National bank to supervise this part of the financial market as well. The supervisory capacity of the Czech Trade Inspectorate is seen as insufficient.

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<sup>10</sup> One source of information on the Czech Republic was from a link provided in a footnote in an article from Eddy Wymeersch, to presentations giving some analysis leading to the adoption of the integrated supervisor in the Czech Republic: See Czech national bank, Rocoča, P., Two-phase process of integration of financial regulation and supervision in the Czech Republic, [www.hnb.hr/dub-konf/fsi-bscee-2004/prezentacije.htm](http://www.hnb.hr/dub-konf/fsi-bscee-2004/prezentacije.htm).

## 6 Denmark

### 6.1 Summary

The Danish Financial Supervisory Authority (Finanstilsynet) is the integrated supervisor for the Danish market, in charge of supervision of banks, securities business including investment funds, mortgage credit, insurance companies and pension funds. It acts as the secretariat for the three councils standing for the main business lines: the Business Council, the Securities Council and the Pension Market Council. Public agencies that look after consumer protection in the area of financial services in the country include the numerous financial complaint boards and to a certain extent the Consumer Ombudsman. The details in this country section were received from our respondent from the Danish Mortgage complaints board. Answers were given with the Finanstilsynet in mind since the integrated supervisor was unable to contribute a response to this research.

### 6.2 Danish Mortgage Credit Complaint Board/Danish FSA

#### 6.2.1 Basic data

Main Department that provided answers	General Secretary
Status of supervisory authority	Other: The Danish Mortgage Credit Complaint Board
The supervisor is controlled by a governmental body	The Ministry of Economic and Business Affairs
Type of institutions supervised	Credit institutions; Investment firms; Providers of money transmission services; Foreign financial institution representative offices; Insurance firms; Credit referencing agencies
Type of institutions not supervised:	Providers of credit and store cards; Providers of currency exchange services; Financial intermediaries; Financial advisers; Real estate agents
Areas of supervision include	Macro-prudential; Micro-prudential; Conduct-of-business

#### 6.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency. The Mortgage Complaint Board's view is that all definitions given for consumer protection are suitable measures that will ensure that the consumer gets the proper financial product.

The Complaints Board is not a part of the supervisory authorities, but it regards the approach of the Danish FSA as a combination of monitoring and enforcement of consumer protection regulation.

The Danish FSA has tasks regarding regulatory work as well as simply monitoring compliance (also in the field of consumer protection).

Supervisory objectives: The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures; Protecting clients from misconduct and/or bad business practices; Promoting access to banking services; Promoting supervisory cooperation; Promoting consumer awareness; Fostering an understanding of financial services; Monitoring and evaluating trends	The Financial Business Act	Fully
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	Executive orders	Not Fully
Ensuring institutional participation of consumer organisations in your decision making or advice received	The Openness Act	Not Fully
Ensuring comprehensive transparency of official decision making processes and access to documents	The Openness Act	Not Fully

Other mandates of the agency not included in the table above include: Maintaining financial stability; Ensuring compliance with banking regulation; Ensuring compliance with securities regulation; Preventing financial crime including anti-money laundering/combating financing of terrorism.

All the tasks are handled by the FSA and are reflected in the regulation (primarily the Financial Business Act and a number of executive orders).

The agency's remit is for both consumer credit and retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; Personal integrity of personnel; Prevention of criminal behaviour. The tasks regarding marketing will presumably be transferred to the Consumer Ombudsman (a bill suggesting that has recently been introduced).

Among the powers which the agency has, is an ability to address a complaint to the firm, refer a complaint to another agency, initiate criminal procedures, fine delinquents, initiate and execute investigations. However, this also means it is not able to address a complaint to the complainant or start a legal action in court.

The FSA can draw the consumer's attention to misconduct by publishing the decision or its findings during a survey or a visit of inspections etc. The Consumer Ombudsman can start legal actions in court.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; Impose criminal sanctions; Orders for institute directors; Withdrawal of the license; Demand withdrawal of director; Prohibition of certain professional activities; and impose a pecuniary sanction (monetary penalty). E.g. police reports regarding non-compliance with the insider rules in the

Securities Trading, etc. Act. However, The Danish FSA cannot seek a remedial commitment from the firm.

The 3 most effective sanctions in consumer protection could be summarised as: 1) Withdrawal of the license/of directors; 2) Prohibition of certain professional activities; and 3) Publication of decisions, surveys, criminal sanctions etc. naming providers.

The first two sanctions are far more severe for the service provider than fines or monetary penalties. As they are so severe the sanctions can only be used in very severe cases. Otherwise it would harm the confidence in the industry as a whole. Even though these sanctions cannot often be used, they still have preventive qualities. The sanctions have typically a direct economic impact on the provider/the director. Some of the same arguments regarding the severity etc. can be used about the publication of decisions etc. naming providers. However the sanction is in my opinion a necessary and effective way of communicating what is considered the proper behaviour etc. The sanction has no doubt an impact on the reputation of the provider (and maybe also on the industry) and might often lead to a more indirect economic impact.

Sanctions and/or complaints are made public on a systematic basis. Furthermore, these sanctions and complaints are often on a named basis.

The legislation does not regulate the maximum amount a sanction can be. The agency is however, not able to punish staff at a financial institution on a personal basis following a case of wrong-doing. The punishment will be imposed on the provider.

The agency was not able to provide data on the number of sanctions it has taken with regard to breaches of consumer protection related rules.

### **6.2.3 Activities and supervision in practice**

The relevant figures were not easy to find considering that the Danish Financial Services Authority did not complete a questionnaire for this study. A description of a number of surveys does reveal some data<sup>11</sup>.

#### Complaints and publication of complaints

In this country, both a private and a public ombudsman system exist. While Denmark does not have a specific financial ombudsman, it does have a number of financial complaint boards, which are semi-public (approved of by the Minister of Economic and Business Affairs and funds by the industry). Furthermore the country has a public sector Consumer Ombudsman though his competence regarding the financial services area is seen as being very limited.

The complaints handled by the FSA can only be about business conduct, whereas complaints containing a claim for damages or any other economical compensation are referred to the financial complaint boards or the courts.

Supervisor's established structure to respond to consumers with an answer when they complain about a provider (including any other organisations that are in

<sup>11</sup> See link (in Danish): <http://www.ftnet.dk/da/Tal-og-fakta/Rapporter.aspx>, and statistical analyses at: <http://www.ftnet.dk/da/Tal-og-fakta/Statistik-noegletal-analyser/Analyser.aspx>. The annual reports contain figures as well e.g. for 2009 see: <http://www.ftnet.dk/da/Om-os/Finanstilsynets-opgaver/Beretninger-regnskaber-aarsrapporter/Aarsrapport-fra-Finanstilsynet-2009.aspx>. Furthermore, decisions from the FSA are available in Danish at: <http://www.ftnet.dk/da/Regler-og-praksis/Afgoerelser.aspx>.

charge of consumer complaints): The Consumer Ombudsman and the private funded financial complaint boards.

In case of a consumer complaint, the supervisor is able to make binding decisions for some (but not all) of the parties involved

The supervising agency is able to do the following things with a consumer complaint: Register/record them; Respond to them; Directly assist in resolution of complaints; Indirectly assist in resolution by passing complaints on to the respective authorities. (However, there is no publishing of statistics on them). The decisions will be directed to the financial service provider. If the decision is in favour of the consumer the financial service provider will be ordered to change its behaviour - and will maybe also be fined.

An annual Report is published for the businesses, the public etc. and gives information on markets and operations. Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework. The current business plan is covering 2010-2012<sup>12</sup>.

In the past 2 years, the supervisor has been responsible for concrete legal or regulatory changes affecting consumers.

A) Counselling regarding structured bank deposits (guidelines). Banks have been prohibited to offer loan finance, when the banks sell their own shares or guarantee certificates (amendment of the Financial Business Act). Furthermore guidelines have been issued covering such sales in general. B) Openness regarding 1) decisions from the Security Council and the Financial Business Council onsdrådets and 2) the consumer targeted supervision of the FSA (amendment of the Financial Business Act). C) Authority for the Consumer Ombudsman to 1) initiate civil legal actions regarding claims from a consumer related to non-compliance with good business practice and 2) to negotiate with the financial service providers in order to reach a settlement in an specific court case (amendment to the Financial Business Act). D) Duty for the FSA to notify the Consumer Ombudsman, if the FSA becomes aware of a situation, where a consumer might have suffered a loss related to non-compliance with good business practice (amendment to the Financial Business Act). E) Authority for the Minister to issue an executive order on a mandatory risk classification of investment products (amendment to the Financial Business Act). F) A similar authority has recently been given regarding loans and mortgages.

#### **6.2.4 Operational capacity of the supervisor and views**

The source of the agency's funding is purely levied from the financial institutions that it monitors. The individual providers are charged a fixed fee and a variable fee. The amount and the percentage vary depending on the type of provider.

The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009, was EUR 29.300.000 all operations included. However, no estimate was available for the cost of the consumer protection operations.

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<sup>12</sup> Annual report at <http://www.ftnet.dk/da/Om-os/Finanstilsynets-opgaver/Beretninger-regnskaber-aarsrapporter.aspx>. For Business plan in Danish see: <http://www.ftnet.dk/da/Om-os/Finanstilsynets-opgaver/Finanstilsynets-kontrakter.aspx>.

In terms of human resources, the supervisor has approximately 220 employees but the share of those working on consumer protection issues is not known as internal staff was unable to find specific figures relating to consumer protection.

Consumer participation and input into the work of the agency is enabled through participation on the advisory council and the supervisory council.

The Financial Business Council, which is the supreme decision-maker in supervisory matters of principle or comprehensive significance. The FB Council also gives advice to the FSA regarding information etc. The FB Council is not an independent authority but functions as a part of the FSA. The Danish Securities Council, which enforces compliance of undertakings listed or traded on a stock exchange or traded on an authorised market place with the current accounting regulations in their annual and interim reports. The Money and Pension Panel, whose aim it is to further a more comprehensive knowledge of and interest in financial matters among consumers. The councils as well as the Panel have consumer representation (members nominated by the Danish Consumer Council and/or the Danish Shareholders Association).

The increasing international scope to supervision and effects of globalisation on financial services markets, means that supervisors and their staff can benefit from being part of international network meetings on consumer protection issues. In 2009, staff was involved in such activities.

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'. Denmark is not seeing much discussion around the issue of separating prudential and conduct-of-business supervision at the current time. The issue of class action lawsuits is to some extent taken into consideration in discussions.

## 7 Estonia

### 7.1 Summary

The main public agency that looks after consumer protection in the area of financial services in the country is the Estonian Consumer Protection Board (CPB). However, the CPB does not actively supervise financial institutions in Estonia to the extent that our questionnaire required at the current time. The CPB revises terms of the agreements only after the receipt of a complaint and such complaints regarding financial institutions is only small part of their activity. Therefore, the CPB was not able to give in-depth and substantive answers to most of the questions, and preferred to let the more competent authority, the Estonian Financial Supervision Authority to give its answers on Estonian financial supervision.

The Financial Supervision Authority is an agency with autonomous competence and a separate budget, which operates at the Bank of Estonia. The Supervision Authority conducts financial supervision in the name of the state. The Supervision Authority is independent in the conduct of financial supervision. It is not directly controlled by government. The EFSA reports to the Parliament. The Board consists of six members, two of whom are members by virtue of office - the Minister of Finance and the Governor of the Bank of Estonia - and four of whom are appointed members. One-half of the appointed members are appointed and removed by the Government of the Republic on the proposal of the Minister of Finance and one-half by the Board of the Bank of Estonia on the proposal of the President of the Bank of Estonia. The Minister of Finance is the Chairman of the Board by virtue of office.

### 7.2 Estonian Financial Supervision Authority (EFSA)

#### 7.2.1 Basic data

Main Department that provided answers	Business conduct supervision
Status of supervisory authority	Stand-alone integrated financial supervisor
	The supervisor is not controlled by a governmental body
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Insurance firms; Financial intermediaries; Financial advisers; Investment Funds, Pension Funds
Type of institutions not supervised	Providers of currency exchange services; Foreign financial institution representative offices; Real estate agents; Credit referencing agencies
Areas of supervision	Micro-prudential; Conduct-of-business

#### 7.2.2 Institutional structure and objectives

Consumer protection is not an explicit goal of the agency.

According to the Financial Supervision Authority Act: Financial supervision is conducted in order to enhance the stability, reliability, transparency and efficien-

cy of the financial sector, to reduce systemic risks and to promote the prevention of abuse of the financial sector for criminal purposes, with a view of protecting the interests of clients and investors by safeguarding their financial resources, and thereby supporting the stability of the Estonian monetary system. There no other explicit rule or other high-level general clause for the protection of consumers of financial services. The goals and responsibilities of EFSA are largely derived from different legal Acts. According to the Financial Supervision Authority Act "state financial supervision" means supervision over the subjects of state financial supervision and the activities provided for in this Act, the Credit Institutions Act, the Insurance Activities Act, the Investment Funds Act, the Funded Pensions Act, the Securities Market Act, the Motor Third Party Liability Insurance Act, the E-money Institutions Act, the Estonian Central Register of Securities Act, and legislation established on the basis thereof.

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

The agency's supervisory approach in consumer protection can be described as follows: (i) Provide transparent, exhaustive and correct information to consumers to be able to make their own decisions; (ii) Provide sufficient regulation of financial services (sufficient pre-contractual information, fair marketing rules, suitability tests etc.); (iii) Proper internal procedures implemented by the service providers (internal rules, compliance, training etc.).

The agency can be described as having an exclusive role in monitoring compliance. The agency's remit is for both consumer credit and retail investment issues. In addition, the agency is responsible for the following consumer protection measures: professional compliance to fair commercial practices; professional compliance to use of fair contract terms; controls of methods of marketing (e.g. misleading advertising); transaction transparency; personal integrity of personnel; and prevention of criminal behaviour.

#### **7.2.2.1 Institutional powers behind the mandate**

Details on the powers that are exercised by the agency as well as Guidelines of EFSA are available here: <http://www.fi.ee/index.php?id=775>.

Among the powers which the agency has, is an ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, initiate criminal procedures, fine delinquents, and initiate and execute investigations. However, it cannot start a legal action in court. In case of non-compliance with consumer protection legislation and rules, the agency can carry out all actions other than to impose criminal sanctions. In the supervisor's eyes, the most effective sanctions in consumer protection are the following: 1) Punishment of staff; and 2) Monetary penalties. Sanctions and/or complaints are made public on a systematic basis and are often on a named basis.

The EFSA has the right to disclose, in full or in part, a decision, administrative act or contract under public law as of the date of its issue or conclusion if this is necessary for the protection of investors, clients of financial supervision subjects or the public, or for ensuring the lawful or regular functioning of the financial market.

The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is EUR 32,000. In addition, staff at a financial institution can be punishable on a personal basis following a case of

wrong-doing. The EFSA was not able to provide data on the number of sanctions it has taken with regard to breaches of consumer protection related rules.

### **7.2.2.2 Complaints and publication of complaints**

A private financial ombudsman system exists in this country but only the insurance sector is covered, established and supported by the Estonian Traffic Insurance Fund and Estonian Insurance Association. While no public one exists, the establishment of a financial ombudsman is just under discussion with Ministry of Finance and Ministry of Justice.

Enquiries/complaints received from consumers in 2009 totalled 180 (ca 50% banks, 50% insurance, very limited cases in investment services field). In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved. These complaints are nevertheless a valuable source for the business conduct supervision. The EFSA opinion often change outcome of the dispute.

The agency is able to deal with complaints in all possible ways i.e. it can register/record them, respond to them, directly assist in resolution of complaints, indirectly assist in resolution by passing complaints on to the respective authorities, and publish statistics on them. While reporting on activities, operations, and details on the number and nature of complaints, the report does not contain details on legislative framework for consumer protection, performance of firms with compliance of consumer protection rules, and procedures for treating complaints.<sup>13</sup>

A business plan is also drafted by the agency with both an EFSA 4 year strategy plan, and a 1-year based working plan.

In the past 2 years, the supervisor has been responsible for concrete legal or regulatory changes affecting consumers such as MiFID-like regulation (obligation to assess the suitability). At the moment the amendments of the legislation, to apply similar regulation as MiFID (EU Directive 2004/39/EC) to all a financial products that contain investment risk (for example unit-linked, structured deposits) are in process in Estonian parliament.

### **7.2.3 Operational capacity of the supervisor and its views**

The source of the agency's funding is purely levied from the financial institutions that it monitors. No data was available concerning the importance of the funds needed to run the agency and its consumer protection units, however, the finances available for all operations of the agency amounted to EUR 4,500,000.

In terms of human resources, the supervisor has 75 employees for all its operations. About 20 of these are employed to carry out operations that are linked to consumer protection tasks and about 12 of these only work on consumer protection issues (i.e. 16% of staff). The staff background qualifications of those in charge of consumer protection activities are made up of lawyers and economists. Only 2 people are employed to deal exclusively with consumer complaints in the financial services area. One person covers investment and banking services, other insurance services.

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<sup>13</sup> See <http://www.fi.ee/aastaraamat2009/>.

Consumer representation within the work of the agency is difficult since there are reported to be no active consumer organisations in Estonia in the field of financial services.

Meetings with peers and experts have taken place through the agency taking part in OECD International Network of Financial Education, but this is just one aspect of consumer protection.

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'. There are no current initiatives focused on the separation of prudential supervision from consumer protection tasks in Estonia. The EFSA has a 2-pillar supervisory approach (prudential and business-conduct and market supervision). No other talks to separate prudential supervision from consumer protection tasks (e.g. by establishing 2 different authorities etc.).<sup>14</sup>

As there is a raising trend of providing services in cross-border basis where the host Member State`s supervisory competence is very limited, there should be a level playing-field/minimum regulatory approach for both home and host Member States to protect consumers' rights to avoid any regulatory arbitrage.

The discussion on class actions is of low importance at the moment. Class action lawsuits are the responsibility and right of the Estonian Consumer Protection Board.

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<sup>14</sup> See <http://www.fi.ee/index.php?id=760>.

## 8 Finland

### 8.1 Summary

Public agencies that look after consumer protection in the area of financial services in the country include: The Consumer Ombudsman, the Financial Supervision Authority (FIN-FSA) and marginally the Bank of Finland.

In Finland, the FIN-FSA, an independent decision making body since 2003, supervises a broad range of financial services, and since a few years ago the insurance sector as well. The Consumer Ombudsman has a broad competence to monitor the compliance with legislation that has been enacted to protect consumers, and also covers all financial services (banking, securities, and insurance). Both their competence and monitoring responsibilities are similar, however, the FIN-FSA has a task to supervise the procedures that service providers apply to their customer relationships and their mutual contacts. The Finnish supervisory model is thought to function well. The broad overall jurisdiction of the Consumer Ombudsman as the monitoring body for compliance with the consumer protection provisions in law ensures that consumers' interests are taken into consideration in the same way and level in all branches. The model of two parallel supervisors is also seen to provide a flexible opportunity to combine the special expertise of both authorities. Maintaining fair competition and similar issues is the responsibility of the Competition Authority.

### 8.2 Finanssivalvonta (FIN-FSA)

#### 8.2.1 Basic data

Main Department that provided answers	Legal adviser
Status of supervisory authority	Stand-alone integrated financial supervisor
The supervisor is controlled by a governmental body	Eduskunnan pankkivaltuusto (Parliamentary Supervisory Council)
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers
Type of institutions not supervised:	Providers of currency exchange services; Real estate agents Credit referencing agencies
Areas of supervision include	Micro-prudential; Conduct-of-business

#### 8.2.2 Institutional structure and objectives

Consumer protection is not an explicit goal of the financial supervisory authority (FIN-FSA). However, it is quite clearly implied in the law text by a term 'customer protection', hence including businesses as customers.

The FIN-FSA's own agency definition of consumer protection is the same as items 1 and 2 in the table below:

Rank	Consumer protection...
1	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
2	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
3	...secures for fair competition and functioning markets in financial services.

Only 3 choices were made since the other definitions were seen as being further away from the core of the Fin FSA to put them in a clear order. The agency's supervisory approach in consumer protection can be described as follows:

"Maintaining stability and reliability of the markets so people can trust them"

The agency's role is not exclusively restricted to monitoring compliance, as it is also able to give its own regulations for some business areas.

Supervisory objectives: The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures	Laki Finanssivalvonnasta, 3 § (878/2008) - Law of the Financial Supervisory Authority, section 3.	Unofficial English version of the law can be found at: <a href="http://www.finanssivalvonta.fi/en/Regulation/Legislation/Finnish/Pages/Default.aspx">http://www.finanssivalvonta.fi/en/Regulation/Legislation/Finnish/Pages/Default.aspx</a>
Promoting the adoption by financial institutions; Protecting clients from misconduct; Promoting supervisory cooperation; Monitoring if financial institutions follow their own voluntary codes of conduct; Promoting consumer awareness and understanding; Monitoring and evaluating trends	As above	
Ensuring institutional participation of consumer organisations	As above, also section 47	
Promoting access to banking services (e.g. by low income individuals)	Not Fully	'To follow and evaluate the access to basic banking services on yearly basis'

Maintaining financial stability is not one of the agency's mandate, however ensuring compliance with banking regulation, ensuring compliance with securities regulation, and preventing financial crime all are. More specifically the FIN-FSA mandate is to maintain stability and reliability of the markets so people can trust them.

The agency's remit is for both consumer credit and retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; Personal integrity of personnel; Prevention of criminal behaviour (for the latter, sometimes misconduct is both a crime and an act that the supervisor tries to prevent).

### **8.2.2.1 Institutional powers behind the mandate**

Among the powers which the agency has, is ability to address a complaint to the firm, refer a complaint to another agency, initiate criminal procedures, initiate and execute investigations. However, this also means it is not able to address a complaint to the complainant, start a legal action in court, or fine delinquents. The supervisor can ask for an explanation from the supervised entities. Even though it does not handle individual cases (as claims) it can use the information it gets from the public, even if their actual case would be handled in some other authority. The Police is responsible for criminal issues, but the agency can investigate the supervised entities and also report noted possible crimes to the police.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; Seek a remedial commitment from the firm; Orders for institute directors; Withdrawal of the license; Prohibition of certain professional activities; and impose a pecuniary sanction (monetary penalty). Notifying the firms happens at least weekly, the other ones are not so often used. Quite frequently the agency urges an insurance company to speed up their decision making considering insurance claims. However, the following set of sanctions cannot be currently imposed by the supervisor at present: Impose criminal sanctions nor demand withdrawal of a director.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) Notify the firm of a violation, 2) Seek a remedial commitment, 3) Public warning, which is quite seldom used.

Sanctions and/or complaints are only made public in some cases and not on a systematic basis.

The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is 200.000 EUR. The law considering this kind of power has been into force for only some days. In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing. The agency has reported a rough estimate of 50 cases of having taken sanctioning actions in 2008 and 50 cases in 2009. Most of these were notifications of violations. None of these were pecuniary sanctions in the form of a fine. Ratio of sanctions disclosed to the public over the total number of sanctions in 2008 and 2009 respectively: 0/50. These notifications are not usually disclosed. Insisting some procedures to be changed was the strictest sanction imposed in 2008 and 2009.

### **8.2.3 Activities and supervision in practice**

Below are examples given by the supervisor of activities it conducted in 2009:

Examples of specific monitoring tasks carried out	Qty (2009)	Details
Tests on the accuracy, simplicity, comparability of pre-contractual information ( <b>ex-ante</b> )	2	Index-linked bonds (risk presentation & used terminology) and Savings- and investment insurances (product material)
Tests of <b>suitability requirements</b> when advice or recommendations are offered	1	Considering Portfolio management and investment advising

A list of concrete examples for various activities which the agency has been responsible for in the year 2009 was not possible, because its day-to-day work includes practically all of these examples suggested in our questionnaire and it was considered unfortunately too time consuming to detail this information.<sup>15</sup>

### 8.2.3.1 Complaints and publication of complaints

A private financial ombudsman system exists in this country but a public one does not.<sup>16</sup>

Enquiries/complaints received from consumers: 300 phone calls and 200 registered written complaints. A rough estimation is that most are about errors in banking services and about compensation by insurance. In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved. The FIN-FSA does not give an opinion on an individual case, as its aim is the collective customer protection. Regarding consumer complaints, it can register/record them, respond to them, indirectly assist in resolution by passing complaints on to the respective authorities and can publish statistics. (However, there is no directly assistance offered in the process of resolution of complaints).

An annual Report<sup>17</sup>, published for the public in general, contains information on activities, operations, the legislative framework for consumer protection, performance of financial institutions in complying with consumer protection provisions including numbers the nature of complaints that have been made. Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework. It is a yearly internal plan.

In the past 2 years, the supervisor has been responsible for concrete legal or regulatory changes affecting consumers. In practically all new financial law or regulation the FIN-FSA tries to ensure that the consumers' point of view has been taken into account.

### 8.2.4 Operational capacity of the supervisor and its ideas

The source of the agency's funding is from the financial institutions that it monitors as well as through other ways. 95% from the institutions it monitors and 5 % from the Bank of Finland. The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009, was EUR 24,500,000 all operations included. However, no estimate of the breakdown due to consumer protection was available.

<sup>15</sup> The main examples can be found in the annual report: at [http://www.finanssivalvonta.fi/en/Publications/Annual\\_reports/Pages/Default.aspx](http://www.finanssivalvonta.fi/en/Publications/Annual_reports/Pages/Default.aspx).

<sup>16</sup> See [http://www.finanssivalvonta.fi/en/Consumer/Contact\\_for\\_help/Fine/Pages/Default.aspx](http://www.finanssivalvonta.fi/en/Consumer/Contact_for_help/Fine/Pages/Default.aspx).

<sup>17</sup> See [http://www.finanssivalvonta.fi/en/Publications/Annual\\_reports/Pages/Default.aspx](http://www.finanssivalvonta.fi/en/Publications/Annual_reports/Pages/Default.aspx).

Likewise, in terms of human resources, the supervisor had 218 employees for all its operations. Very rough estimates have 10 % (i.e. 20 persons) working on subjects and tasks in some way linked to consumer protection and only 5 % (10 persons) are likely to be directly employed to conduct supervision of financial consumer protection operations only. Furthermore, 10 members of staff deal exclusively with consumer complaints relating to financial issues, but work includes also other non-consumer tasks. The FIN-FSA does not have categorised personnel that precisely to a specific task. The broad distribution of employees in terms of qualifications is as follows: Mostly lawyers, economists, social scientists and administrative staff.

It is not possible to give answer to this question since consumer protection is often a part of a larger training day and it is not clearly separated from the whole issue. One could say that consumer protection is always at least an aspect on the background.

In the Annex of this report, agency organisational charts have been collated together (please see respective pages). Some agencies have devised a reporting structure to mitigate risk of conflicts of interest, either between supervisory mandates or in terms of codes of conduct for staff behaviour. In consumer affairs such risk profiling/mitigation has not been found necessary. However, if any such conflict might arise the person has to step off from the task at hand.

The supervisor includes consumer views into its work through direct consultation with consumer organisations. International networks are also a regular part of the staff's work. For example, FIN-FSA has been a member of CEIOPS committee on consumer protection and through that committee international network meetings have been arranged. These have been found useful for getting information from abroad.

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'.

There are no current major changes planned in Finland, and the supervisor believes that at the moment there is no imminent need for any new powers. For example, the issue of class actions is seen as a low priority in Finland right now, this is mainly because the Consumer Agency, is already an authority in Finland taking care of class actions ever since the legislation of class actions came into force.

## 9 France

### 9.1 Summary

In France, until last year, the supervisory structure corresponded to the sectoral model where the Commission bancaire supervised the banks and investment firms, the Comité des établissements de crédit et des entreprises d'investissement (CECEI) was in charge of delivering bank licences and deciding upon bank mergers or takeovers, the Commission de contrôle des assurances, des mutuelles et des institutions de prévoyance (CCAMIP) was supervising the insurance sector. Now that a single prudential supervisor has been created (the Autorité de Contrôle prudentiel, ACP, merging both banking and insurance and the licensing authorities), France has moved away from a strict sectoral model of supervision.

Separate from the ACP and the central bank is the Autorité des marchés financiers (AMF, the supervisory authority for financial markets) who remains in charge of securities' market supervision in general as well as some elements of conduct-of-business supervision (e.g. vetting financial information published by listed companies, adopting practice rules or conduct of business rules to be applied by different actors intervening in the markets (investment firms, stock exchanges and settlement organisations) and supervising the asset management sector.

Other public agencies that look after consumer protection in the area of financial services in the country include the French central bank (Banque de France) for irregular payment registers and overindebtedness as well as issues of access to basic bank account and the enforcement of usury ceilings in credit markets; and the Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF), the government office in charge of Competition Policy, Consumer affairs and Fraud control. This body deals with consumer protection in general, including financial services and has a market regulatory role around 3 axes: consumer economic protection, market competition regulation and consumer safety. In France, consumer protection in the area of credit is the responsibility of the DGCCRF. It also has a mandate with regards to competition issues, though this responsibility has become smaller since the competition authority (autorité de la concurrence) overtook some of its former activities.

A distinctive feature of the French system is the very effective communication between the supervisory agencies (probably because of the role and culture of the central bank housing a number of "gangways" created between them). It is too early to judge the effectiveness of the new ACP in terms of conduct supervision, but there is probably still a need for greater clarity in terms of how monitors what exactly e.g. the DGCCRF is in charge of marketing practices and controlling for unsolicited visits for offering financial services including banking services, the AMF for conduct of business in the area of securities activity, the ACP, its transversal directorate (the DCPC), the common pole for banking and insurance (Pôle Commun) and the coordination between the ACP and the AMF in terms of consumer protection measures.

In addition, in France, the institutionalising role played the Comité consultatif du secteur financier (CCSF) in bringing stakeholders and regulators and supervisors together is very noteworthy and constitutes best practice in supervision.

## 9.2 Autorité de contrôle prudentiel (ACP)

### 9.2.1 Basic data

Main Department that provided answers	in charge of European affairs within the supervision of business practices department
Status of supervisory authority	Other: Banking and insurance supervisor, under the umbrella of the French central bank (Banque de France)
The supervisor is not controlled by a governmental body	
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries
Type of institutions not supervised	Financial advisers; Real estate agents; Credit referencing agencies
Areas of supervision include	Micro-prudential; Conduct-of-business

### 9.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

According to Article L612-1 of the French Monetary and financial code, 'The ACP ensures that the financial system remains stable and that the clients, insured persons and beneficiaries are protected.'

According to its supervisory functions, the ACP must ensure that the entities under its supervision (banks, insurance undertakings and intermediaries) comply with consumer protection rules and that they have the necessary internal procedures in place in this respect (Article L612-1 of its Monetary and financial code). The ACP's role is not exclusively restricted to monitoring compliance. It does not only monitor, it supervises and may take actions in case of non-compliance, and it also provides expertise for regulatory work in this area.

The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures; Protecting clients from misconduct and/or bad business practices; Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures; Promoting supervisory	Article L612-1 of Monetary and financial code	

cooperation		
Ensuring institutional participation of consumer organisations in your decision making or advice received	Article L612-14 of Monetary and financial code	+ Decision of the ACP to set up to a consultative group on selling practices (29 Sept 2010)
Ensuring comprehensive transparency of official decision making processes and access to documents	Law of 17 July 1978	There is a right of access to any administrative document.
Monitoring if financial institutions follow their own voluntary codes of conduct and respect public commitments they have made to protect the interests of consumers	Article L612-1 and Article L612-29-1 of Monetary and financial code	The ACP may approve professional codes of conduct and, on request of the Ministry of Finance, control the application of voluntary commitments.
Promoting consumer awareness of the obligations of financial institutions and fostering understanding of financial services	Article L612-1 of Monetary and financial code	Shared with Banque de France

The other mandates of the ACP apart from consumer protection include: maintaining financial stability; Ensuring compliance with banking regulation; and preventing financial crime including anti-money laundering/combating financing of terrorism.

The agency's remit is for both consumer credit and retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency. However, the following are not included in its set of responsibilities: Personal integrity of personnel and prevention of criminal behaviour

### 9.2.2.1 Institutional powers behind the mandate

The Table below shows how certain powers are exercised in the country. It also distinguishes between tasks carried out directly by the supervisory agency and those responsibilities shared with other bodies.

Agency has the power to:	Comments
Make rules directly affecting consumer protection	The Ministry of finance and Parliament adopt legislation and regulation
Make any other rules	The ACP has the power to issue recommendations and positions regarding best practices.
Issue guidance	The ACP has the power to issue recommendations and positions regarding best practices and to approve the codes of conduct from professional unions.
Give individual advice to	Through the Ombudsmen

consumers	
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Among the powers which the agency has, is an ability to start a legal action in court, initiate criminal procedures, fine delinquents, initiate and execute investigations. However, this also means it is not able to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, investigations in the sense of onsite inspections. In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: notify the firm of a violation, seek a remedial commitment from the firm, issue orders for directors, withdraw licenses, demand withdrawal of directors, prohibit certain professional activities, and impose a pecuniary sanction. However, the following set of sanctions cannot be currently imposed by the supervisor at present: Impose criminal sanctions. Sanctions and/or complaints are made public in most cases. Article L612-39 of the French monetary and financial code, states that, in principle, sanctions are made public, but, if it may have overly detrimental effects on financial markets or on the person concerned, the ACP can decide not to publish the sanctions.

The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is

Pecuniary sanctions can amount up to 100 million euros (Articles L612-39, L612-40, L612-41 of its monetary and financial code). Some penalties can also be added in case of in execution or late execution of the sanction.

In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing.

The agency was not able to provide data on the number or type of sanctions it has taken with regard to breaches of consumer protection related rules.

### 9.2.3 Activities and supervision in practice

Note that the ACP was created in March 2010, there are therefore no figures available for 2009, other than policy statements it made, namely: the Recommendation of 15 October 2010 on complex financial instruments. Position of 4 November 2010 on promotion selling of life insurance.

Among the tasks and activities, the following table shows two areas which the ACP has made concrete steps already.

Examples of functions fulfilled	Description
Monitoring financial institution compliance with voluntary codes of conduct (and their own public commitments)	2010: concerning the possibility to change of banks easily.
Consumer education in the financial sector, and information on recourse	A dedicated website created in 2010: <a href="http://www.abe-infoservice.fr">www.abe-infoservice.fr</a>

#### Complaints and publication of complaints

A private financial ombudsman system exists in this country but a public one does not. For the banking and insurance sector, only ombudsmen within banks or insurance companies or their professional bodies exist. In France, banks are required to establish an ombudsman (Article L.315-1 of the Monetary and Finan-

cial Code). In addition, a committee of banking mediation is responsible for reviewing the annual reports from the mediators and is expected to draft an assessment of the performance of banking mediation which it is to provide to the CCSF (advisory committee of the financial sector, see Article L.315-2 of the Monetary and Financial Code).

Enquiries/complaints received from consumers in 2009 were 4,112 for the insurance sector (main subjects: life, health, motor) and 190 cases for the banking sector (recorded since March 2010 only, as it is a new task for the ACP). The Banque de France moreover also receives enquiries from consumers.

In France's established structure for responding to consumers, the ACP however only provides information on the appropriate body to contact and the applicable legislation. It does not intervene in the complaints themselves, except in case of obvious cases of legal breaches. Other organisations: Banque de France (irregular payment registers, basic access to bank accounts, over-indebtedness...), AMF (supervisory authority for financial markets) mediation; ombudsmen in banking and insurance sectors.

While the ACP is not able to make binding decisions for any of the parties involved, it is able to do the following things with a consumer complaint: Register/record them, respond to them Indirectly assist in resolution by passing complaints on to the respective authorities, Publish statistics on them (However, there is no directly assistance offered in the process of resolution of complaints). In its responses, the ACP provides information on the appropriate body to contact and the applicable legislation. The ACP does not intervene in the complaints themselves, except in case of obvious cases of legal breaches. An annual Report is published and is addressed to the French President and to the Parliament. In addition the APC will also publish another annual report in collaboration with AMF on consumer protection in the area of financial services (banks, insurances and financial markets).<sup>18</sup> The Annual report contains information on the following agency and market details: activities, operations, and number and nature of complaints that have been brought to your attention. The agency however, does not appear to produce a specific business plan outlining how it will develop and implement new initiatives alongside the annual report.

#### **9.2.4 Operational capacity of the supervisor and its views**

The source of the agency's funding is purely levied from the financial institutions that it monitors, plus some additional funding from the French Central Bank (Banque de France). The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009, was 160 million of euros in 2010 (the ACP was created in March 2010) all operations included. The cost of consumer protection operations was not estimated.

Likewise, in terms of human resources, the supervisor had approximately 950 employees (end 2010) of which 60 were employed to conduct supervision of financial consumer protection operations only (i.e. 6% of total staff). Furthermore, 10 members of staff deal exclusively with consumer complaints relating to financial issues. The distribution of employees in terms of qualifications include lawyers, inspectors, experts in consumer advice and in financial institutions. The

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<sup>18</sup> The two reports will be available at the following links: <http://www.banque-france.fr/acp/publications/rapport-annuel-de-l-acp.htm>, and <http://www.banque-france.fr/acp/consommateurs/pole-commun-acp-amf.htm>.

only specific specialists hired because of their skill set are the legal experts in advertising.

Consumer participation and input into the work of the agency is enabled through an advisory council as well as through direct consultation with consumer organisations. The consultative commission on selling practices is chaired by 2 members of the board and is composed of representatives of users (5), of financial institutions (4), of intermediaries (2), trade union (1), of the press (1) and of 1 academic.

International events are seen by the agency as useful to the staff of the newly created ACP to know more about what other authorities do and exchange best practices.

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being very satisfactory. Significant changes have occurred in 2010 with the merger of previous supervisor within the ACP which becomes the prudential controlling authority in France, therefore no major additional reforms are being considered at the current time. Furthermore, the ACP did not mention any additional powers that it would deem useful in terms of delivering on their consumer protection mandate.

### 9.3 DG Competition Policy, Consumer affairs & Fraud

#### 9.3.1 Basic data

Status of supervisory authority	Government body in charge of consumer protection
Type of institutions supervised	All that have activities related to consumers
Areas of supervision include	Other: consumer protection

#### 9.3.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

The General Directorate for Competition Policy, Consumer affairs and Fraud control (DGCCRF) has a market regulatory role around 3 axes: consumer economic protection, market competition regulation and consumer safety. One of its aims is to inform and protect the consumer against abusive business practices.

The table below shows how the DGCCRF ranks the different aspects of consumer protection with regard to its mandate.

Rank	Consumer protection...
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...secures for fair competition and functioning markets in financial services.
3	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
4	...limits economic power with regard to consumer needs

5	...guarantees a general framework in which others can provide individual consumer protection
6	...provides equal opportunities to all consumers especially to the poor.
7	...prevents over-indebtedness, exclusion, old age poverty.

The DGCCRF's supervisory approach in consumer protection can be described as follows:

- Ensure the quality of a product or service which the consumer has a right to expect.
- Facilitate the development of features and tools enabling the promotion and valuation of quality, and to be the body guaranteeing this level of quality.
- Investigate and record violations and breaches of consumer protection (false advertising, abuse of weaknesses etc.) and check the correct application of rules on advertising of prices.
- Perform a watchdog function on prices by monitoring when these are subject to or are likely to experience unusual changes, as a consequence of events that can affect prices.

The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures	Code de la consommation; code monétaire et financier	Multi-year performance contract (2009-2011); National orientation Directive (Directive nationale d'orientation); Strategic project
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures (incl. institutional participation of consumer organisations)	Code monétaire et financier	Participation in work done by the comité consultatif du secteur financier (CCSF), the body that includes representatives from both industry and consumer groups and is charged with studying issues related to relations between credit institutions, investment firms and their respective customers. It proposes appropriate measures in this area (opinion, general recommendations etc.)
Protecting clients from misconduct and/or bad business practices	Code de la consommation; code monétaire et financier	Fight against unfair commercial practices; and framing of distance marketing and face to face marketing of financial services products.
Promoting access to banking services (e.g. by low income individuals)	Code monétaire et financier	Clarity of information, including pricing, signing a bank account with all the details required.
Monitoring if financial institutions follow their own voluntary codes of conduct		Investigations on French territory to monitor compliance of banking institutions to the commitments they made

Promoting consumer awareness of the obligations of financial institutions	General mission	Consumer information on the website of the DGCCRF; Development and dissemination of brochures; Regular publication of articles in the monthly magazine "Competition and Consumption" (Concurrence et consommation)
Monitoring and evaluating trends and emerging issues		Improve the agency's own technical expertise to face changes in methods of marketing in the banking sector (surveys, studies, assessments, proposals for action)
Promoting competition		Guarantee the conditions for balanced and transparent markets: 1) fight against cartels and abuses of dominant position (DGCCRF Minister may propose to call on the Competition Authority); 2) Control of mergers and concentration ratios to ensure the existence of competitive structures in the economy.

The DGCCRF received a total of 3,452 claims in 2009, primarily concerning consumer information, particularly information on prices and general conditions of sale of financial products, the contract for financial services in a broad sense (performance of agreements, contract termination, payment) and canvassing. Disputes with banks, are mainly focussed on the price information, deceptive business practices, and financial losses resulting from investments on savings products.

### 9.3.3 Activities and supervision in practice

The Table below contains numerical data for some of the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009.

Examples of specific monitoring tasks	Qty (2009)	Details
Tests on the accuracy, simplicity, comparability of pre-contractual information ( <b>ex-ante</b> )	3	1 - Services « packagés » offerts par les banques aux publics jeunes (248 agences ou sièges d'établissements bancaires) 1 - Information tarifaire dans les banques (490 agences ou sièges d'établissements bancaires) 1 - Relations banques-clients (127 agences ou sièges d'établissements bancaires)
Tests on the accuracy, simplicity, comparability of pre-contractual information ( <b>ex-post</b> )	1	1 - Diffusion des récapitulatifs annuels de frais bancaires (490 agences ou sièges d'établissements bancaires)
Checks for compliance with fair, non-misleading <b>advertising</b> practices	2	1 - Placements financiers / information et conseil aux épargnants : conditions de vente d'un ensemble de produits financiers susceptibles d'être proposés aux particuliers (205 agences ou sièges d'établissements bancaires) 1 - 380 providers - banks and financial institutions

		(310) and intermediaries of revolving credits (70)
<b>Onsite inspections</b>	2	1 - 380 providers - banks and financial institutions (310) and intermediaries of revolving credits (70) 1 - 49 financial institutions - Adjustable-rate mortgages
<b>Market studies</b>		1 - Enquête à visée informative sur la mobilité bancaire (490 agences ou sièges d'établissements bancaires)
Tests for <b>APR</b> price disclosure		380 providers - banks and financial institutions (310) and intermediaries of revolving credits (70)

No mystery shopping exercises were conducted. Additional details on specific examples are provided for the year 2009 below:

<b>Examples of functions fulfilled</b>	<b>Description</b>
<b>Compliance</b> with consumer protection laws and regulations	1) About forty notifications of regulatory information, twenty reminders and 8 legal proceedings (survey 2009) were established within the banking sector (excl. credit) 2) Concerning revolving credits' advertising, some providers doesn't respected the totality of the device of consumers' protection such as fair information. 3) Concerning adjustable-rate mortgages, controls led with 49 providers revealed that these mortgage loans were not distributed very widely due to the economic situation. Most of them had rate caps which protected consumers. Furthermore, all the banking institutions were seen to respect the consumer protection laws.
Monitoring financial institution compliance with voluntary <b>codes of conduct</b>	As far as adjustable-rate mortgages are concerned, controls were about some of the commitments taken by the banking institutions such as the implementation of a glossary for consumers.
<b>Initiatives</b> that have helped to improve the balance of power relationships	Participation of the DGCCRF at meetings of the CCSF, follow-up surveys to check respecting of commitments by banks to industry rules.
<b>Consumer education</b> in the financial sector	1) Brochures: "Relations avec votre banquier : le compte bancaire"; "Paiement par carte bancaire" 2) Fiches réflexes: "chèques sans provision"; "Contrat"; "Crédit: exécution du contrat, crédit gratuit, crédit renouvelable, crédit immobilier"; "Délais de réflexion et de rétractation"; "Dettes"; "Moyens de paiement".
<b>Recourse:</b> e.g. informing consumers about their rights	1) Brochure: "Litiges de consommation avec un professionnel établi dans l'Union européenne" 2) Fiches réflexes: "Clauses abusives"; "Contrat"
<b>Wrong advice:</b> e.g. misselling of investment products	Concerning adjustable-rate mortgages, none misselling of this product was noticed.
<b>Product transparency:</b>	Concerning revolving credits' advertising, unfair practices

e.g. deceptive advertisements, unfair contract terms etc.	were noticed such as deceptive information on the promotional rate or on consumers' rights.
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Complaints are handled by the central offices and the decentralised service stations. Publication of statistics is especially done through annual activity report<sup>19</sup> of the DGCCRF as well as its monthly magazine "Competition and Consumption".

No publication of sanctions took place in 2009 (in any case sanctions are not published on a named basis). The barometer of complaints provides public access to information on industries that are the subject of consumer complaints. This includes details on the types of breaches committed by the professionals involved. The number of penal sanctions, relating to a breach of consumer protection related rules that have been taken was 119 rappels de réglementation, 6 Injonctions administratives and 44 procès verbaux (in 2008) and 87 rappels de réglementation, 12 Injonctions administratives and 38 procès verbaux (in 2009). Of these, 7 also included financial penalties in 2008 and 5 in 2009. The lowest and highest amounts of these fines were €1,500-39,600 (in 2008) and €2,400-6,000 (in 2009).

Areas where the agency instigated some regulatory changes in 2009 include the fee schedule by banks and the bank deposit account agreement. In addition, in 2010, a new law (Law No. 2010-737 carrying the reform of consumer credit) was adopted and is thought to be able to strengthen the consumer's protection and to make the lenders responsible in their lending.

#### **9.4 Financial Markets Authority (AMF)**

The French financial markets authority in charge of supervision of the securities sector was unfortunately unable to submit its responses to our questionnaire in time for the publication of the report.

<sup>19</sup> See: [http://www.dgccrf.bercy.gouv/bilandgccrf\\_4p.pdf](http://www.dgccrf.bercy.gouv/bilandgccrf_4p.pdf) (for 2010) and [http://www.minefe.gouv.fr/services/som\\_rapports.php](http://www.minefe.gouv.fr/services/som_rapports.php). A Ministry report which has been referenced to on a number of occasions in the Main report of the study is for example the Deletré report from 2009: <http://www.minefe.gouv.fr/services/rap09/091103rap-deletré.pdf>.

## 10 Germany

### 10.1 Summary

Prior to 2002, Germany operated under an institutional model of supervision, with separate federal supervisors for banking, securities, and insurance. In 2001, the government initiated a reform of the German central bank (the Bundesbank) and assessment of market developments led to the creation of a single, integrated supervisor, the Federal Financial Supervisory Authority (BaFin). While the BaFin supervises all three traditional financial businesses—banking, securities, and insurance—and aims to ensure the safety and soundness of these institutions, the central bank nevertheless retained a number of important supervisory functions, and thus BaFin coordinates its supervisory functions with the central bank. The insurance sector, which is also regulated on a regional as well as federal level (as is the case with certain stock exchanges), is subject to some overlap in the supervisory responsibilities of the central bank and BaFin, and supervisory reform discussions are a topical subject in Germany for a number of reasons explored in this section.

The Federal Ministry of Food, Agriculture and Consumer Protection (BMELV) is the main public agency that looks after consumer protection in the area of financial services in Germany.<sup>20</sup>

### 10.2 Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)

#### 10.2.1 Basic data

Main Department that provided answers	Consumer Protection/ Legal Department
Status of supervisory authority	Stand-alone integrated financial supervisor
The supervisor is controlled by a governmental body	Federal Ministry of Finance
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers
Type of institutions not supervised	Real estate agents; Credit referencing agencies
Areas of supervision include	Macro-prudential; Micro-prudential; Conduct-of-business

#### 10.2.2 Institutional structure and objectives

Consumer protection is not an explicit goal of the agency.

For purposes of banking supervision under the German Banking Act (KWG), consumer protection as defined in the questionnaire is not a task that BaFin has. BaFin's tasks are described as follows:

<sup>20</sup> The BMELV has a section for finance and insurance. See government website at: [http://www.bmelv.de/cln\\_163/EN/ConsumerProtection/Finance-Insurance/finance-insurance\\_node.html](http://www.bmelv.de/cln_163/EN/ConsumerProtection/Finance-Insurance/finance-insurance_node.html).

"The authority shall counteract undesirable developments in the banking and financial services sector which may endanger the safety of the assets entrusted to institutions impair the proper conduct of banking business or provision of financial services or involve serious disadvantages for the national economy"

The responses provided to this questionnaire are therefore seen by the BaFin as not relevant for banking supervision. It also selected and ranked the 3 consumer protection definitions it has established in the light of its supervisory functions (with non-selected arguments not being relevant for the BaFin).

<b>Rank</b>	<b>Consumer protection...</b>
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...guarantees a general framework in which others can provide individual consumer protection
3	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.

The agency's supervisory approach in consumer protection can be described as follows: BaFin has to counteract irregularities (e.g. section 6 of the Banking Act (KWG), section 4 Securities Trading Act (WpHG), section 81 Insurance Supervision Act (VAG). The interests of the investors/consumers are mentioned in supervisory law, e.g. in section 81 of the Insurance Supervision Act (VAG). Though consumer protection is not an explicit goal of BaFin, the mentioned supervisory measures are protecting consumers indirectly.

The agency's role is not exclusively restricted to monitoring compliance.

BaFin operates in the public interest. Its primary objective is to ensure the proper functioning, stability and integrity of the German financial system. BaFin ensures the ability of banks, financial services institutions and insurance undertakings to meet their payment obligations.

The table below indicates supervisory objectives:

Elements of mandate		Legal Source	Explanations
Ensuring compliance with consumer protection measures	Not Fully	E.g. the consideration of consumer interests are named in Section 81 of the Insurance Supervision Act (VAG)	Infringement of consumer protection measures can be an offence which can be punished by BaFin
Promoting supervisory cooperation and convergence of EU supervisory practices	Fully		At the European level the three sector-specific committees, and now the three new authorities (EBA, EIOPA and ESMA).
Fostering an understanding of financial services and related issues	Not Fully		Answers to FAQs to financial products on the BaFin homepage <sup>21</sup>
Monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial services	Fully		For internal practices only

Other mandates of the agency not included in the table above include: Maintaining financial stability; Ensuring compliance with banking regulation; Ensuring compliance with securities regulation; preventing financial crime. For legal basis e.g. see section 6 of the Banking Act (KWG), section 4 Securities Trading Act (WpHG), section 81 Insurance Supervision Act (VAG).

The agency's remit does not include consumer credit issues and the agency reports that the only consumer protection measure it is responsible for is the personal integrity of personnel.

The licence procedure defined in section 32 of the banking act e.g. includes the proof of reliability of the managers (also see section 5 of the insurance supervision act and section 37i of the securities trading act). The securities trading act (WpHG) contains several regulations concerning transaction transparency (e.g. § 31h WpHG) and rules of conduct including prohibition of misleading marketing, §§ 31 f. WpHG) which are enforced by BaFin.

However, the following are not included in its set of responsibilities: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; and Prevention of criminal behaviour

#### 10.2.2.1 Institutional powers behind the mandate

The BaFin does not have the power to make rules directly affecting consumer protection as the Ministry of finance and parliament do (this restriction on rule-making is with regard to consumer protection rules only). While the BaFin has some power allowing it issue swift regulatory responses to emerging situations,

<sup>21</sup> See: [http://www.bafin.de/cln\\_161/nn\\_722564/DE/Verbraucher/FAQVerbraucher/faqverbraucher\\_no.de.html?\\_\\_nnn=true](http://www.bafin.de/cln_161/nn_722564/DE/Verbraucher/FAQVerbraucher/faqverbraucher_no.de.html?__nnn=true).

it does not have this same power over on-going situations. i.e. it can take the initiative in case of "undesirable developments which may adversely affect the orderly conduct of trading with financial instruments or the provision of investment services or ancillary services or which may result in serious disadvantages for the financial market." (§ 4 WpHG). Furthermore, the BaFin can issue guidance in order to interpret legislation (§§ 31 ff. WpHG).

Among the powers which the agency has, is an ability to address a complaint to the firm, however, it is not able to address a complaint to the complainant, refer a complaint to another agency, start a legal action in court, initiate criminal procedures, fine delinquents, initiate and execute investigations.

Complaints provide BaFin with an important source of information for its supervisory work. They alert the BaFin to cases where it needs to review whether a company is taking its responsibilities seriously and whether supervisory measures are necessary. Complaints can also reveal organisational weaknesses in a company. Therefore the agency addresses received complaints to the firm for statements and further treatment. BaFin also initiates criminal procedures concerning unauthorised financial services, insider trading and market manipulation. BaFin imposes administrative fines for infringements of Supervisory legislation in many cases determined by law.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; and seek a remedial commitment from the firm. In a grievance, the agency says that the appropriate and necessary measures of the above mentioned are taken, according to the principle of proportionality.

However, the following set of sanctions cannot be currently imposed by the supervisor at present: Impose criminal sanctions; Orders for institute directors; Withdrawal of the license; Demand withdrawal of director; Prohibition of certain professional activities; Impose a pecuniary sanction (monetary penalty).

In the supervisor's eyes, the most effective sanctions in consumer protection are the following (in descending order): 1) Notify the firm of violation and 2) Impose a pecuniary sanction. In general firms are willing to comply with the law when BaFin notifies a violation. In the younger past it has not been necessary to take further action.

Sanctions and/or complaints are only made public in some cases and not on a systematic basis. In case of imminent danger to other consumers, BaFin can make its actions public (e.g. see section 37 of the German banking act). The agency is however, not able to punish staff at a financial institution on a personal basis following a case of wrong-doing. BaFin can only punish the financial institution. The number of sanctions as of 2008 and 2009 are available in BaFin's annual reports, but not specified concerning consumer protection related issues, sanctions are indirectly related to consumer protection rules.

### **10.2.3 Activities and supervision in practice**

The following table gives concrete examples for various activities which the agency has been responsible for in the year 2009.

<b>Examples of functions fulfilled</b>	<b>Examples: Description, details, links etc.</b>
<b>Consumer education</b> in the financial sector: e.g. materials published by your agency (guides/tools to help consumers understand and shop around)	BaFin offers answers to frequently asked questions of consumers on its webpage and publishes information brochures for consumers on an irregular basis, e.g. 1) on how to recognize unscrupulous investment firms <sup>22</sup> ; 2) and consumer awareness dealing with securities
<b>Initiatives</b> that have helped to improve the balance of power in the relationship between financial institutions and consumers	BaFin regularly hosts conventions on consumer related issues (Verbraucherschutzforum)
<b>Compliance</b> with consumer protection laws and regulations	Part of general supervision of credit institutions and investment firms: regular (mostly annual) examination of compliance with supervisory legislation, e.g. §§ 31 ff. Securities Trading act, WpHG)
<b>Product transparency</b> , overcharging, wrong advice etc..	Part of the supervision described above.
<b>Recourse:</b> e.g. informing consumers about their rights to complain, how and where to complain and receive appropriate redress	Adequate information can be found on the BaFin homepage in German and English. <sup>23</sup>

#### Complaints and publication of complaints

The ombudsman system in Germany can be described as special. The ombudsmen are not entirely independently organised and the public scheme does not play a significant role in consumer protection.<sup>24</sup> In contrast to a number of schemes elsewhere in the EU, Germany does not have an interconnection of supervision or a real public scheme. Public ADR schemes mainly exist on paper, although the public task to execute the schemes was indeed granted to the services' associations by law. Because provider associations provide the service for their members, this has left the public scheme running only for the few residual cases that are not being covered by them.

<sup>22</sup> See following links for 1) and 2):  
[http://www.bafin.de/clin\\_179/nn\\_1314142/SharedDocs/Downloads/DE/Service/Broschueren/vb\\_geldanlage,templateId=raw,property=publicationFile.pdf/vb\\_geldanlage.pdf](http://www.bafin.de/clin_179/nn_1314142/SharedDocs/Downloads/DE/Service/Broschueren/vb_geldanlage,templateId=raw,property=publicationFile.pdf/vb_geldanlage.pdf). and  
[http://www.bafin.de/clin\\_179/nn\\_1314142/SharedDocs/Downloads/DE/Service/Broschueren/vb\\_wertpapiergeschaeft,templateId=raw,property=publicationFile.pdf/vb\\_wertpapiergeschaeft.pdf](http://www.bafin.de/clin_179/nn_1314142/SharedDocs/Downloads/DE/Service/Broschueren/vb_wertpapiergeschaeft,templateId=raw,property=publicationFile.pdf/vb_wertpapiergeschaeft.pdf).

<sup>23</sup> For English version see:  
[http://www.bafin.de/clin\\_171/nn\\_720486/EN/Consumers/Complaintscontacts/complaintscontact\\_s\\_\\_node.html?\\_\\_nnn=true](http://www.bafin.de/clin_171/nn_720486/EN/Consumers/Complaintscontacts/complaintscontact_s__node.html?__nnn=true).

<sup>24</sup> In Germany several ombudsmen and other arbitration boards have been established, mostly by the associations of the financial institutions, e.g. Versicherungsombudsmann e.V for insurances and Ombudsmann der privaten Banken. A list of German arbitration boards can be found under the FIN NET website: [http://ec.europa.eu/internal\\_market/fin-net/members\\_en.htm](http://ec.europa.eu/internal_market/fin-net/members_en.htm).

More than 20,000 enquiries/complaints are received p.a., mostly concerning insurances (2008: 22,408 in total, 15,111 concerning insurances).<sup>25</sup> Most complaints in 2009 also concern insurances, followed by banking and securities (see annual report for 2009).

The BaFin is able to do the following things with consumer complaints: Register/record them; Respond to them; and publish statistics on them. However, neither direct nor indirect methods of assisting in the resolution of a complaint are possible. Although it is the citizens' constitutional right (Art. 17 of the Grundgesetz / Constitution) to address complaints to the competent authority (BaFin), the BaFin is not an arbitration body and cannot give binding rulings on individual disputes.

The BaFin's aforementioned annual report gives details on its activities in general and gives information on the statistics on received complaints.

#### **10.2.4 Operational capacity of the supervisor**

The source of the agency's funding is purely levied from the financial institutions that it monitors

BaFin raises the funds required to cover its costs from the undertakings it supervises. The legal foundation for this is the Act Establishing the Federal Financial Supervisory Authority (Finanzdienstleistungsaufsichtsgesetz - FinDAG). Pursuant to section 13 (1) of the Act, BaFin's sources of funding consist primarily of: Fees (section 14 of the Act); Separate reimbursements (section 15); and Contributions (section 16).

The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009 were EUR 135,300,000 all operations included. The cost of consumer protection operations was not estimated. The amount cannot be calculated because consumer protection is inseparable part of all supervisory activity.

Likewise, in terms of human resources, the supervisor has approximately 1900 employees of which 140 (department Q 2) are estimated to be somehow linked to consumer protection operations. Of which only 9 (Unit Q 21) are directly and solely focused on consumer protection (i.e. 0.5% of total staff). The department Q 2 is responsible for consumer protection relates issues and consumer complaints. The unit Q 21 of department Q 2 is in charge of policy issues concerning consumer protection. Furthermore, approximately 90 members of staff deal exclusively with consumer complaints relating to financial issues (of which 22 for consumer credit operations and 12 for consumer investment operations).

The employees of the BaFin are fully qualified lawyers, scientists, statisticians, business economic lawyers and others. In 2009, the advanced training received by the staff of the agency in the field of consumer protection was 20 hours of trainings (hours/days) and 80 people trained. Issues for training were the legal changes concerning financial services, e. g. the implementation of the consumer credit directive. In the Annex of this report, agency organisational charts have been collated together (please see respective page for the BaFin).

Consumer participation and input into the work of the agency is enabled through an advisory council.<sup>26</sup>

<sup>25</sup> More information is available from the 2008 annual report: [http://www.bafin.de/cln\\_171/nn\\_720486/SharedDocs/Downloads/EN/Service/Jahresberichte/2008/annualreport\\_\\_08\\_\\_complete,templateId=raw,property=publicationFile.pdf/annualreport\\_08\\_\\_complete.pdf](http://www.bafin.de/cln_171/nn_720486/SharedDocs/Downloads/EN/Service/Jahresberichte/2008/annualreport__08__complete,templateId=raw,property=publicationFile.pdf/annualreport_08__complete.pdf).

<sup>26</sup> BaFin consulting committee - see section 8 of the FinDAG at <http://www.gesetze-im-internet.de/findag/BJNR131010002.html#BJNR131010002BJNG000200000>.

The BaFin takes part in international exchanges and says that beyond allowing for an exchange of opinion and experiences between national supervisors, the example of the area of financial literacy was given as an example.

### 10.2.5 Supervisor views and ideas

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'.

The current level of discussion of financial supervision is high<sup>27</sup> and the BaFin agrees that a clear legal basis concerning consumer protection could be a helpful measure to improve the system in Germany.

While class action lawsuits are not considered by the BaFin as particularly topical at the moment, it did point out that cross-border financial operations were an issue e.g. catching rogue traders in a single Member State of the EU can become almost impossible when they are located in another country. Cooperation between national authorities often is the only way to ensure that such rogue traders are sanctioned. Therefore BaFin takes part in the CPCS - a Consumer Protection Cooperation System of the European Commission.

Other stakeholder views:

The German financial supervisor has no legal obligation to protect consumers. Financial Supervisory Authority (BaFin), Bundesbank and the Federal Ministry of Finance therefore even explicitly exclude any reflections on individual interests of consumers. Market supervision - as they usually put it - is public not private and therefore cannot and must not take notice of the individual. Reflections on a risk of damage claims of consumers against the authorities failing to provide adequate supervision were some of the underlying reasons to completely exclude consumer interest as a concept with these authorities so far.

Therefore, financial supervisors are not endowed with necessary investigation and sanctioning powers. BaFin runs a kind of consumer complaint centre, but apart from registering complaints consumers do not get any sort of substantial help, neither directly nor indirectly. Financial ombudsmen are provided privately by schemes hosted by the banking associations themselves. There are no public schemes of ombudsmen similar to those in UK and Sweden, which might helpfully interfere and tackle consumers' claims and pass these issues on to the authorities.

Conflicts of interests are constant. It is easy to consider the conflict that may arise within one authority that might need to deal with consumers and providers interest, e.g. if a high court decision rules on substantial repayment claims for consumers and support for these claims would substantially destabilise those providers, which needs to be prevented by that authority as well.

Further observations include the following:

- **Non-transparency:** The BaFin will hardly ever communicate publicly any useful information with regard to the types or numbers of consumers being subject to detriment or unsatisfactory sale of financial services. There is believed to be an excessive unbalanced position of the supervisor in favour of the providers at the expense of the consumers and the public generally (e.g. by falsely assuming that the sacrosanct industry trust is unable to not tolerate any divulgence of information to be kept secret within privileged industry players and regulators).

<sup>27</sup> See the following link for information on the present discussion on possible new structure of financial supervision in Germany: <http://www.handelsblatt.com/politik/deutschland/reform-der-finanzaufsicht-10-punkte-plan-im-ueberblick;2714281>.

- **Toothless measures:** Little behavioural response from providers is expected when providers are asked to change their practices e.g. when compared to the situation of payment protection insurance in the UK (which has undergone repeated investigation and FSA initiatives), the BaFin merely addressed a single-sided letter to providers. Furthermore, the impact this letter has had has not been measured or communicated sufficiently well. Some stakeholders thus question the actual ability of the BaFin to solve certain issues dear to consumer interests.
- **Misleading representation:** BaFin's stakeholder group which it holds by law, should constitute among others of three members of consumer organisations, with one seat held by Stiftung Warentest but the remaining two seats occupied by ombudsmen/ombudsmen service that should not be considered consumer organisations.
- **Partiality of ombudsmen in Germany:** The banking ombudsman suffers from being too closely attached to the banking associations. Each trade association has its own ombudsman (Sparkassen, cooperative banks, private banks, public banks etc.. including sometimes a regional body as well) and can create its rules as it wants (e.g. rules of engagement, the rules of bindingness, the rules on how far they can inquire). Consumer influence in the mediation process is seen as too limited and restricted (e.g. to the approval of a nomination of the ombudsmen).<sup>28</sup>
- **Increasing fragmentation** of the ombudsman system: The concept of ADR ombudsmen is no longer associated with a rather public and neutral institution, but more akin to a sort of customer management system hidden behind the ombudsman term. Furthermore there is a recent trend in the creation of additional private ombudsmen e.g. the association of investors that buy credit claims, the major credit referencing agency (Schufa credit bureau) has initiated their own "private" ombudsman.
- **Federal structure:** Some of the supervision is in the competence of Bundesländer and communities and therefore the following are aspects that BaFin does not yet control: In part supervision of stock exchanges (by federal state ministries); supervision of Landesbanken the Banking Institutes of the Federal States (by federal state ministries); supervision of smaller regional insurers (federal state ministries); supervision on the information duties with regard to advertising, including APRC (local pricing authorities at the municipal level – although there have been initiatives by Bundesländer to shift their constitutional competence on this to the Federal Republic which could mean greater scope of competence on APRC given to the BaFin or another Federal authority); licence for insurance intermediaries (local Chamber of Industry and Commerce); licence for credit intermediaries as well as for unregulated investment firms (local trade office).

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<sup>28</sup> The ombudsman for insurances is the one positive exception to the poor performance of the financial sector with regards to responding in a neutral matter to consumer complaints (and is rooted in a separate and independent legal platform with participation of all stakeholders).

## 11 Greece

### 11.1 Summary

In Greece the vertical supervisory model involves the following institutions: the Bank of Greece (BofG), the Hellenic Capital Markets Committee (HCMC) and the Private Insurance Supervision Committee (PISC). Consumer protection is only partly ensured by these authorities due to lack of relevant legislation and different interpretation by the authorities of the existing legislation.

For instance, the BofG is responsible for protecting consumers only with regards to transaction transparency. It is not responsible for unfair contract terms even though in some cases unfair terms could be interpreted as being related to transaction transparency. On the other hand, the PISC, which has been recently established, has been endowed with more powers. While the competent authority for the consumer protection (financial services included) is the Ministry of Employment and Social Insurance, the prudential supervision of the Bank of Greece, shall be aimed, inter alia, at ensuring transparency of the procedures and terms of transactions carried out by those subject to supervision (e.g. credit institutions). In this frame, the Bank of Greece has codified and supplemented the provisions governing the transparency of banking transactions (Governor's Act 2501/2002 - attached). This Act stipulates minimum information and transparency to bank costumers, mode of provision and timing of information.

In cases of non-compliance with provisions pertaining to its responsibilities, as described above, the Bank of Greece may impose administrative sanctions to credit institutions. The Bank of Greece nevertheless accepted to respond to the questionnaire, in the context of its competence.

The only competent authority for consumer protection is the Ministry of Employment and Social Insurance (General Secretariat for Consumers) and the Counsel for Consumers which is an independent organisation supervised by the Ministry of Employment and Social Insurance. Bank of Greece is competent only for transparency in banking transactions (Governor's Act 2501/2002).

### 11.2 Bank of Greece

#### 11.2.1 Basic data

Main Department for answers	Department for the Supervision on Credit and Related Financial Institutions (Deputy Director, and Supervisor, Banking Transparency Institutional Framework Section)
Status of supervisory authority	National Central Bank
	The supervisor is not controlled by a governmental body
Type of institutions supervised	Credit institutions; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Benefit of credits firms, financial leasing and factoring companies
Type of institutions not supervised	Investment firms; Insurance firms; Financial intermediaries; Financial advisers; Real estate agents; Credit referencing agencies
Areas of supervision	Macro-prudential; Micro-prudential

### 11.2.2 Institutional structure and objectives

Consumer protection is not an explicit goal of the central bank and of the consumer protection definitions suggested to it only one was recognised, namely "providing transparent, exhaustive and correct information to consumers to be able to make their own informed decisions".

The agency's supervisory approach in consumer protection can be described as follows: Prudential supervision of the Bank of Greece, shall be aimed, inter alia, at ensuring transparency of the procedures and terms of transactions carried out by those subject to supervision (e.g. credit institutions). In this frame, Bank of Greece has codified and supplemented the provisions governing the transparency of banking transactions (Governor's Act 2501/2002-attached). This Act stipulates minimum information to bank customers, mode of provision and timing of information. In cases of non-compliance with provisions pertaining to its responsibilities, Bank of Greece, may impose administrative sanctions to credit institutions. The objectives of prudential supervision shall be to enhance the stability and effectiveness of the credit system and of the financial sector in general. Regarding consumer protection, the exclusive competent authority is the Ministry of Employment and Social Insurance (Law 2251/1994, as valid). As regards investment issues, the competent authority is the Capital Market Commission. Therefore, answers in this section are only in the frame of the Bank of Greece's direct jurisdiction. Where the term 'consumer protection' is mentioned, it will refer to "transparency in banking transactions".

The agency's role is not exclusively restricted to monitoring compliance. Bank of Greece lays down regulation regarding transparency in bank transactions and monitors the compliance of supervised institutions with these regulations.

The table below indicates supervisory objectives:

Elements of mandate		Legal Source	Explanations
Ensuring compliance with consumer protection measures; Promoting the adoption by financial institutions of policies and procedures	Fully	Banking Law 3601/2007 (article 25) and Bank of Greece Statute (article 55A)	Binding
Promoting supervisory cooperation and convergence of EU supervisory practices	Not Fully		Although there are no common practices in the frame of EU regarding transparency in banking transactions exclusively, Bank of Greece takes into consideration the relevant framework.
Promoting consumer awareness of the obligations of financial institutions	Fully	Bank of Greece has published on its website the provisions about transparency in transactions (Gov-	These obligations are binding for the supervised financial institutions.

		ernor's Act 2501/2002, as valid) that includes the credit institution's disclosure requirements to retail customers.	
Fostering an understanding of financial services and related issues	Fully	Bank of Greece Governor's Act 2501/2002	Binding
Monitoring and evaluating trends and emerging issues	Fully	Bank of Greece announces on its website:- a comparative table which includes, interest rates and fees in basic banking products, providing the ability to the consumers to compare them. A table about intermediaries/tied agents that are used by the credit institutions for the banking products and services promotion. Bank of Greece sends to supervised institutions issues guidance and recommendations regarding the implementation of the transparency provisions.	The Bank's guidance and recommendations to supervised financial institutions are binding

Other mandates of the agency not included in the table above include: maintaining financial stability; ensuring compliance with banking regulation; and preventing financial crime. According to Bank's Statute (article 55A), the objectives of prudential supervision shall be to enhance the stability and effectiveness of the credit system and of the financial sector in general. Prudential supervision shall also be aimed at ensuring transparency of the procedures and terms of transactions carried out by those subject to supervision.

The agency's remit is for consumer credit issues but not for retail investment issues. The Bank is responsible for transaction transparency for consumers but not professional compliance to fair commercial practices/fair contract terms, nor for controls of methods of marketing etc.

Among the powers which the agency has, is ability to fine delinquents, initiate and execute investigations. However, this also means it is not able to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, start a legal action in court and initiate criminal procedures. In case of non-compliance with provisions pertaining to its responsibilities (Governor's Act 2501/2002, as valid), Bank of Greece may impose administrative sanctions to supervised institutions e.g. it can notify the firm of a violation, impose a financial penalty but undertakes other actions the most of the time such as issuing Recommendations. The following set of sanctions cannot be currently imposed by the supervisor at present: Seek a remedial commitment from the firm, impose criminal sanctions, orders for institute directors, Withdrawal of the license, demand withdrawal of director, and prohibition of certain professional activities.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): Sanctions and/or complaints are made public on a systematic basis. Furthermore, these sanctions and complaints are often on a named basis.

According to Banking Law 3601/2007 (article 69), Bank of Greece may publish its decisions, provided that it judges that such publication is not linked to the supervisory requirements laid down in the Law and not likely to create any risk of serious disturbance to financial markets or of disproportionate loss to the parties concerned.

According to Governor's Act 2602/2008 may impose the following sanctions: - a non-interest-bearing deposit with the Bank of Greece in an amount up to €20,000,000 and for a period up to 1 year, - a fine in favour of the Greek State in an amount up to €2,000,000 and in the event of repetition €3,000,000. The Bank is however, not able to punish staff at a financial institution on a personal basis following a case of wrong-doing. In 2008, the competent Bank of Greece Committee, imposed sanctions to 14 credit institutions, of total amount €695,000 as a non-interest-bearing deposit for six months. In 2009, the competent Bank Committee, imposed sanctions to 9 credit institutions, of total amount €735,000 as a fine in favour of the Greek State.

Among those sanctions, 13 of them were pecuniary and 1 non-pecuniary (recommendation) in 2008, and all of them were pecuniary in 2009. In 2008, the lowest sanction was €5,000 and the highest was €100,000, in 2009, the lowest sanction was €5,000 and the highest was €250,000. All were disclosed.

### 11.2.3 Activities and supervision in practice

The Table below contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009.

Examples of specific monitoring tasks carried out	Qty (2009)	Details
Tests on the accuracy, simplicity, comparability of pre-contractual information (ex-ante)	92	
Tests on the accuracy, simplicity, comparability of information after purchase (ex-post)	89	
Onsite inspections	4	
Thematic consultations	2	1) Consultation for the integration of Directive 2008/48/EC on credit agreements for consumers. 2) Consultation with Ministry of Development on the issue of law for firms, responsible for the information of borrowers.
Own agency policy statements and opinions	1	Bank of Greece sent a letter to all supervised financial institutions about the disclosure to consumers relating to the procedure in order to end a credit card agreement or a revolving credit.

The following table gives more details of examples for the Bank's activities in 2009.

<b>Examples of functions fulfilled</b>	<b>Description</b>
<b>Product transparency:</b> e.g. deceptive advertisements, unfair contract terms, excessive small print, complicated terms, inadequately trained staff etc.	1) Among 92 complaints regarding pre-contractual information provided to consumers, 24 of them pertain to deficient or unclear information to customers about the nature and the characteristics of the products and services offered by specific credit institutions. 2) Among 89 complaints regarding during the agreement, 21 of them refer to not response or overdue response to consumer's complaints or requests.
<b>Consumer education</b> in the financial sector	Bank of Greece announces on its website a comparative table which includes, interest rates and fees in basic banking products, so as the consumers are able to compare them.
<b>Recourse:</b> e.g. informing consumers about their rights	Bank of Greece announces on its website a table with contacts details of special units established by credit institutions and credit companies for reviewing customer complaints and reports.
Other: e.g. inadequate documentation	Examination of consumer complaints revealed that in 6 cases copies of contracts were not provided to customers.

#### Complaints and publication of complaints

In Greece, there is both a private and a public financial ombudsman system in place. The Banking Ombudsman is private agency and the Counsel for Consumers is a public agency.

In 2009 the Bank of Greece received 2,820 complaints. In 2010, it received 1,720 complaints, of which 137 referred to deposits, 1,461 to credit/loans, 31 to synthetic/investment products, 22 to means of payments and 69 to other subjects.

Greek organisations that are in charge of consumer complaints include: 1) The General Secretariat for Consumers that belongs to Ministry of Employment and Social Insurance; and 2. The Counsel for Consumers that is supervised by the Ministry of Employment and Social Insurance.

The Bank of Greece does not have the jurisdiction to solve the disagreement between the financial institutions and consumers. Its decisions are taken for supervisory purposes only, in the frame of its competence. If the consumer complaints come within its jurisdiction, the agency examines them according to the provisions of the Governor's Act 2501/2002. The outcome of the assessment by the Bank of Greece is disclosed to sender of the complaint. In addition, it does not publish statistics on complaints. In fact, no annual Report is published by the Bank. There is however a business plan and it contains details about: the way the Bank will manage the consumer complaints in the future; the codification of transparency provisions; the conformation of standing framework, where it is necessary; and consumer education.

In the past 2 years, the supervisor has issued circular letters to all credit institutions referring to their obligation to report to the Bank of Greece important changes are made, particularly as regards the procedures, the way or the content of information to customers, according to Governor's Act 2501/2002.

#### **11.2.4 Operational capacity and supervisor views**

No data was available or could be provided to the research concerning the importance of the funds needed to run the agency and its consumer protection units.

In terms of staff, the supervisor has 10 staff members for its activity. Furthermore, 7 of these deal with consumer complaints relating to financial issues.

The Banking Transparency Division consists of two sections: The Banking Transparency Examination Section and the Banking Transparency Institutional Framework Section. In terms of employee qualifications, 8 members have degrees in finance (bachelor and master) and 2 have a law degree.

The Bank of Greece does not incorporate or involve consumers or consumer representatives in any way in its activities. Furthermore, the Bank of Greece was one of the only institutions that did not report having been part of an international network and having attended consumer protection related meetings in 2009. Domestic problems and international negotiations of a different sort may explain this lack of exchange with its peers in the area of financial consumer protection.

In terms of assessing the level of satisfaction with supervision in Greece, the central bank considers that the Ministry of Employment and Social Insurance, as the competent authority, is the best placed body to give a judgement for this assessment. The government officials were not interviewed for this study.

There are no current initiatives focused on the separation of prudential supervision from consumer protection tasks in Greece and the Bank of Greece did not specify which additional powers it could find beneficial for its consumer protection mandate.

### **11.3 Hellenic Capital Market Commission (CMC)**

#### **11.3.1 Basic data**

Main Department that provided answers	Directorate of International Relations
Status of supervisory authority	Stand-alone securities supervisor
The supervisor is controlled by a governmental body	Ministry of Finance
Type of institutions supervised	Investment firms; Foreign financial institution representative offices; Financial intermediaries and Financial advisers
Areas of supervision	Macro-prudential; Micro-prudential; Conduct-of-business

#### **11.3.2 Institutional Structure and Objectives**

Consumer protection is an explicit goal of the Hellenic Capital Market Commission (CMC).

The CMC ensures compliance of its regulated entities to the existing legal framework for the purposes of consumer protection and proper functioning of the markets.

The table below shows how it ranks the different aspects of consumer protection with regard to its mandate.

Rank	Consumer protection...
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...secures for fair competition and functioning markets in financial services.
3	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
4	...guarantees a general framework in which others can provide individual consumer protection

The CMC's supervisory approach in consumer protection is one based on transparency.

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures	The various laws having implemented the provisions of the EU Directives include provisions with regard to the obligation of the Hellenic Capital Market Commission to ensure compliance with consumer protection measures.	
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures; Protecting clients from misconduct and/or bad business practices;	Article 25 of Law 3606/2007 and HCMC Rules 1/452/1.11.2007 and 1/462/7.2.2008.	
Ensuring institutional participation of consumer organisations in your decision making or advice received	Article 78 A of Law 1969/91 as amended by article 10 of Law 3756/2009.	In the mentioned framework institutional participation of consumer organisations is provided for advice received (consultation before issuing a Rule) rather than in our decision making process.
Ensuring comprehensive transparency of official decision making processes and access to documents		Code of administrative procedure
Promoting supervisory	The various laws having im-	

cooperation and convergence of EU supervisory practices	plemented into the Hellenic legislation the provisions of the EU Directives include provisions with regard to the obligation of the Hellenic Capital Market Commission to ensure compliance with consumer protection measures. The HCMC is a member of both ESMA and IOSCO.	
Monitoring if financial institutions follow their own voluntary codes of conduct and respect public commitments they have made to protect the interests of consumers	Article 25 of Law 3606/2007 and HCMC Rule 1/452/1.11.2007.	The HCMC has issued codes of conduct for various market participants (HCMC Rule 1/452/1.11.2007 and HCMC Rule 1/462/7.2.2008.
Promoting consumer awareness of the obligations of financial institutions	Article 25 of Law 3606/2007 and HCMC Rule 1/452/1.11.2007.	
Fostering an understanding of financial services; Monitoring and evaluating trends	Article 59 of Law 3606/2007, as well as Article 25 of Law 3606/2007 and HCMC Rules 1/452/1.11.2007, and 2/452/1.11.2007.□	

Promoting competition, while also a goal, is not an explicit one. In addition, its other mandates also include maintaining financial stability, ensuring compliance with securities regulation and preventing financial crime.

Among its powers are those to impose sanctions. The CMC can impose sanctions to its regulated entities in case of infringement of their obligation to protect the interests of their customers. Its 3 most effective sanctions in consumer protection are 1) impose a pecuniary sanction, 2) remedial commitment from the firm, and 3) withdrawal of the license of the supervised entity altogether.

Sanctions are made public on a named basis systematically. Press releases are issued, which inform the public about situations where financial penalties above a predetermined limit (above EUR 3,000) have been imposed by the Board of Directors of the CMC to named supervised entities. In addition, it can also disclose the relevant information on an anonymous basis in the Annual Report.

The maximum financial penalty the CMC can impose is EUR 3,000,000 according to article 61 of Law 3606/2007 and EUR 1,200,000 on UCITS management companies, according to article 46 of Law 3283/2004.

The number of sanctions relating to a breach of consumer protection related rules is available from the CMC annual report. While concrete information is not available, data can be found by consulting these<sup>29</sup>. Of the sanctions, 124 and 475 cases overall were financial penalties in 2008 and 2009 respectively. All sanctions above a predetermined limit imposed by the Board of Directors of the Hellenic Capital Market Commission are disclosed to the public. The most penal-

<sup>29</sup> The Annual Report 2008, Table 31, at page 97 and generally pages 93-97, available at [http://www.hcmc.gr/photos/Annual\\_Reports/files/Annual\\_Report\\_2008.pdf](http://www.hcmc.gr/photos/Annual_Reports/files/Annual_Report_2008.pdf); and for 2009, see Table 31, at page 85 and generally pages 78-85, available at [http://www.hcmc.gr/photos/Annual\\_Reports/files/Annual\\_Report\\_2009.pdf](http://www.hcmc.gr/photos/Annual_Reports/files/Annual_Report_2009.pdf).

ising non-pecuniary sanction taken in 2009 was the revocation of license of a supervised entity.

### 11.3.3 Complaints, activities and supervision in practice

Apart from the Complaints Department of the Hellenic Capital Market Commission, Greece also has the Hellenic Ombudsman for Banking-Investment Services (H.O.B.I.S)

The Table below contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009.

Examples of specific monitoring tasks carried out	Qty (2009)	Details
Tests on the accuracy, simplicity, comparability of pre-contractual information (ex-ante)	5	5 for investment firms, N/A for UCITS.
Tests on the accuracy, simplicity, comparability of information after purchase (ex-post)	3	3 for investment firms, N/A for UCITS.
Checks for compliance with fair, non-coercive and reasonable selling practices	2	2 for investment firms, N/A for UCITS.
Tests of suitability requirements when advice or recommendations are offered	2	2 for investment firms and no findings for UCITS.
Onsite inspections (please also indicate if there was a manifested need to make more inspections)	10	10 for investment firms and no findings for UCITS.

More details for specific examples in 2009 are provided here:.

Examples of functions fulfilled	Description
Compliance with consumer protection laws and regulations	<p>Investment firms: In 2009, the HCMC revoked the authorisation of 19 investment firms, imposed pecuniary fines on 3 and reprimand 9 other investment firms for non-compliance with consumer laws and regulations.</p> <p>UCITS: 1) tests conducted with 16 providers (Management Companies) revealed that: a) 6 application forms when investing in mutual funds were not adhered to as stipulated in the law, b) in 25 cases of charges (commissions) to investors for their investment, the rate imposed was not the proper one (according to the company's management policy), c) 6 cases, when mutual funds had exceeded investing limits stipulated by the law.</p>
Product transparency: e.g. deceptive advertisements etc..	<p>For investment firms: in 1 case of the 19 (revocation of authorisation altogether) and in 1 case of the 3 (imposition of a pecuniary fine) mentioned above the investment firms operated without the existence of certified personnel as required by law.</p> <p>For UCITS: in 3 tests performed for possible deceptive advice we found information for mutual funds on them which was not clear.</p>

## Complaints and publication of complaints

### **11.3.4 Operational Capacity and supervisor views**

The CMC produces an annual activity report<sup>30</sup> for the Hellenic Parliament and the public.

Details on financing are not publicly available information. However 175 employees work for the supervisor. 4 members out of the 175 members of the staff are working at the Complaints Department of the Hellenic Capital Market Commission. However, these people closely co-operate with all the other Directorates and Departments of the Hellenic Capital Market Commission in order to deal with consumer complaints. Also in many cases, a great number of consumer complaints is handled directly by other Directorates and Departments of the Hellenic Capital Market Commission.

Consumer representation is a part of the CMC's work through its advisory council as well as through direct consultation which it organises with individual consumers. Furthermore staff of the agency is involved in international exchanges with its peers and in previous years as well as during 2010, members of its staff took part in international network meetings on consumer protection issues (though which exact issues these were was not specified).

The CMC supervises investment firms in order to ensure their compliance with both prudential and consumer protection rules. It is also responsible for ensuring compliance with consumer protection rules by credit institutions providing investment services. The Bank of Greece is responsible for ensuring compliance with prudential rules by credit institutions provided banking services. There is some talk concerning the possible further separation of prudential supervision from consumer protection tasks. An area identified where further powers and reach was deemed necessary, was in the protection of consumers investing through Over-the-counter (OTC) transactions or participating in the online provision of financial services.

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<sup>30</sup> [http://www.hcmc.gr/photos/Annual\\_Reports/files/Annual\\_Report\\_2009.pdf](http://www.hcmc.gr/photos/Annual_Reports/files/Annual_Report_2009.pdf).

## 12 Hungary

### 12.1 Summary

The Hungarian Financial Supervisory Authority (HFSA) is the single integrated supervisor in charge of banking, insurance and securities supervision, including non-bank financial enterprises, private and voluntary pension funds, and insurance intermediaries. Consumer protection is provided by law and ensured by the HFSA which takes into consideration unfair market practices, individual complaints, initiates and executes investigations. As we shall see below, the HFSA is able to impose fines in cases of unfair commercial practices, and apply a number of instruments which are able to drive service providers to fair behaviour.

Inspections specifically for consumer protection issues have only been operationally separated from prudential inspections since January 2010.

There is no other public agency other than the HFSA (or PSZAF) that looks after consumer protection in the area of financial services in Hungary.

### 12.2 Hungarian Financial Supervisory Authority (HFSA)

#### 12.2.1 Basic data

Main Department that provided answers	Consumer Policy Department
Status of supervisory authority	Stand-alone integrated financial supervisor
The supervisor is not controlled by a governmental body	
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers
Type of institutions not supervised	Real estate agents; Credit referencing agencies
Areas of supervision include	Macro-prudential; Micro-prudential; Conduct-of-business and consumer protection

#### 12.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

The Act CLVIII of 2010 on the Hungarian Financial Supervisory Authority (HFSA) declares the protection of the recipients of services provided by financial organizations as one of the main purposes of HFSA.

Own agency definition of consumer protection:

HFSA approach is preventive and protective in the same time. HFSA deals with financial literacy issues and seeks to improve it in order to reduce asymmetry between consumers and providers in the financial market, monitors the market for early warning reasons, but in the same time it deals with consumer complaints in case of breaches of consumer protection laws.

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...secures for fair competition and functioning markets in financial services.
3	...limits economic power with regard to consumer needs
4	...prevents over-indebtedness, exclusion, old age poverty.
5	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
6	...provides equal opportunities to all consumers especially to the poor.
7	...guarantees a general framework in which others can provide individual consumer protection

The agency's supervisory approach in consumer protection can be described as follows:

HFSA identifies risk factors and systematically monitors the market along those factors in order to give signals in early stages. HFSA also conducts thematic consumer protection procedures to supervise fair conduct of business.

The agency's role is not exclusively restricted to monitoring compliance.

Consumer Protection Directorate: - produces consumer protection related recommendations or Dear CEO Letters, - carries out information activity for consumers: financial topic related hand-outs, information sheets, relevant legal provisions, risk alerts, Do's & don'ts, - cooperates with civil organisations, - takes part in EU and international cooperation for consumer protection and financial literacy, - issues open competition (tender) to support different consumer protection issues (literacy, information education)

The table below indicates which explicit mandates the HFSA has been allocated:

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures	laws and regulations	
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	recommendations and CEO letters	non-binding
Protecting clients from misconduct and/or bad business practices	Laws, regulations, recommendations and CEO letters	recommendations and CEO letters are non-binding
Ensuring comprehensive transparency of official decision making processes and access to documents	national law on administrative procedures	
Monitoring if financial institutions follow their own voluntary codes of	Code of Conduct - Principles of	In case of breaching the commitment of

conduct and respect public commitments they have made to protect the interests of consumers	fair conduct by financial organizations engaged in retail lending	the Code of Conduct, financial organizations brake the national law implementing UCP Directive
Promoting consumer awareness of the obligations of financial institutions	recommendation	non-binding
Fostering an understanding of financial services and related issues; and Monitoring and evaluating trends and emerging issues		

Other financial stability areas will fall also fall within the competence of HFSA's prudential part of supervision which is distinct.

The agency's remit is for both consumer credit and retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising).

However, the following are not included in its set of responsibilities: Transaction transparency; Personal integrity of personnel; Prevention of criminal behaviour.

#### 12.2.2.1 Institutional powers behind the mandate

The Table below shows how certain powers are exercised in the country. It also distinguishes between tasks carried out directly by the supervisory agency and those responsibilities shared with other bodies.

<b>Agency has the power to:</b>	<b>Circumstances where power can be exercised/measure be taken</b>
Make rules directly affecting consumer protection	Decrees of the Chairman of HFSA from 2011. HFSA can make propositions on relevant legislations
Make any other rules and issue guidance	Compliance with the content of HFSA recommendations and CEO letters are monitored but no binding resolution can be issued upon
Mount and fund substantial legal actions	

While the HFSA cannot give individual advice to consumers, among the powers which the agency has, is the ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, start a legal action in court, initiate and execute investigations. However, this also means it is not able to initiate criminal procedures, and fine delinquents.

HFSA (Department for Enforcement of Consumer Rights) starts legal actions in court only in case of Legal Recourse in the Public Interest. Consumer Protection Directorate initiate and execute investigations when it is likely that the financial institution breached a consumer protection related law or regulation.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; Seek a remedial commitment from the firm; Prohibi-

tion of certain professional activities; and impose a pecuniary sanction (monetary penalty).

The possible actions are the following: a) order the cessation of the infringement, b) prohibit any further infringement, c) order the infringing service provider to terminate within the prescribed time limit the deficiencies and disparities exposed, and to notify the Authority concerning the measures carried out to eliminate such deficiencies and disparities, d) ban, restrict or impose conditions regarding the pursuit of the activity or the supply of services involved in the infringement, until the infringement is eliminated, and e) impose a consumer protection fine.

However, imposing criminal sanctions, issuing orders or the stepping down of company directors, and withdrawing of a license are not part of the sanctions which the HFSA can use. In its own assessment, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) financial penalty, 2) Provisional cessation or prohibition of the infringement before passing of the resolution if the legal and economic interest of consumers requires it so; and 3) Prohibition of infringement. In the HFSA's experience pecuniary fine has a real retaining force from further infringements and also affect the correct functioning of the whole market. The provisional prohibition is important where the procedure takes long time but consumers' interests are very likely to be damaged

Sanctions and/or complaints are made public on a systematic basis and the HFSA publishes all the resolutions on infringement indicating the name of the affected financial organisation and giving the detailed statement of facts and reasoning but always respecting bank and business secrecy. The maximum amount for a financial penalty for breach of consumer protection rules is HUF 2,000,000,000 (approx. EUR 7,300,000). The agency is however, not able to punish staff at a financial institution on a personal basis following a case of wrong-doing. This is however only in case of prudential inspections.

### **12.2.3 Activities and supervision in practice**

Inspections specifically for consumer protection issues have been operationally separated from prudential inspections only since 01.01.2010. Therefore no separate data is available for previous times. In 2009 several prudential inspections had some consumer protection related elements but independent inspections for consumer protection did not exist. Before January 2010, the HFSA had a consumer complaint handling system having as aim to ascertain whether it is likely or not that the financial organization breached consumer related provisions determined in law, in internal regulation or in the resolutions of the HFSA. If the HFSA ascertained that it is likely that the financial organization breached the (legal) provisions, the Prudential Directorate of HFSA started an inspection. Thus before 2010, the complaint handling procedure was an assisting procedure after which the Prudential Directorate of HFSA was entitled to make binding decisions or even to impose fines. With the organizational changes in 2010 the consumer complaint handling procedure changed and has become an administrative procedure under the name of consumer protection procedure.

#### **Complaints and publication of complaints**

Hungary is one of the few EU countries where there is no such agency as a financial ombudsman, neither private nor public. However, conciliation courts as general alternative dispute resolution bodies may deal with consumer complaints concerning financial products, and a specialized Financial Arbitration Board will start its work from 1 July, 2011 to deal exclusively with financial complaints.

In 2008 HFSA received 8986 complaints. In 2009 HFSA received 11481 complaints. In 2010 HFSA received 11402 complaints. Dominating subjects: - third party liability car insurance products - housing loans in foreign currency.

In case of a consumer complaint, the HFSA is able to make binding decisions for some (but not all) of the parties involved. It can a) order the cessation of the infringement, b) prohibit any further infringement, c) order the infringing service provider to terminate within the prescribed time limit the deficiencies and disparities exposed, and to notify the Authority concerning the measures carried out to eliminate such deficiencies and disparities, d) ban, restrict or impose conditions regarding the pursuit of the activity or the supply of services involved in the infringement, until the infringement is eliminated, and e) impose a consumer protection fine.

An annual Report<sup>31</sup> is published for the Parliament and it contains information on the agency's activities, operations, and on the legislative framework for consumer protection, performance of financial institutions in complying with consumer protection provisions, procedures that financial institutions have in place for dealing with complaints, and contains data on the number and nature of complaints that have been brought to the HFSA's attention. Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework. It has a consumer protection concept which outlines the main duties and the directions for development. The HFSA also has a mission statement for 2011 mentioning its consumer protection aims. In the past 2 years, the HFSA has issued a Code of Conduct - Principles of fair conduct by financial organizations engaged in retail lending, and has seen a recent reinforcement of the HFSA's consumer protection powers.

#### **12.2.4 Operational capacity of the supervisor**

The source of the agency's funding is from the financial institutions that it monitors as well as through other ways such as part of the state budget. No data was available or could be provided to the research concerning the importance of the funds needed to run the agency and its consumer protection units.

Likewise, in terms of human resources, the supervisor had 500 employees of which 58 members of staff were employed to conduct supervision of consumer protection operations of some form (i.e. 12% of total staff). The whole staff of HFSA is 500 person. The staff of Consumer Protection Directorate is 58, they deal with only consumer protection issues. Furthermore, currently 58 members of staff deal exclusively with consumer complaints relating to financial issues.

23 colleagues of the Department of Inspection for Consumer Protection are dealing with consumer protection procedures based on complaints related to various financial issues. 13 colleagues of the Department for Enforcement of Consumer Rights are dealing with the enforcement of consumer rights related to various consumer complaints.

The broad distribution of employees in the agency is comprised of lawyers, economists, and administrative staff. Specialists include lawyers specialized in insurance or banking law, and economists specialized in insurance or banking, both with relevant experience in financial institutions.

In 2009, the advanced training received by the staff of the agency in the field of consumer protection was 4 training days and 58 people trained on issues of Code of Conduct and EU relevant topics.

This supervisory agency ensures that consumer interest and voice is represented in its work through direct consultation with individual consumers. This however

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<sup>31</sup> <http://www.pszaf.hu/data/cms2252064/HFSAannual2009.pdf>.

is the only method of gathering the views of consumer specialists and advocates which they have in place. In 2009, staff was involved in international meetings and the HFSA is a member to OECD's International Network on Financial Education, worked on INFE documents and attended meetings in 2009. HFSA took part in a common action sponsored by the European Commission under the Consumer Protection Cooperation Regulation in the topic of unfair commercial practices.

#### **12.2.5 Supervisor views and ideas**

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'.

Some conflicts of interest have been noticed in the recent past. For example, consumer associations noted that it happens that the HFSA suggests/makes perceptible that it agrees with the complaint of the consumer, but as it has no power to address them, consumers remain disappointed (in case of credit handling, mortgage credit, unit-linked services at elderly people). Despite a number of severe problems in financial services markets for Hungarian consumers, some important changes have taken place within the regulator's internal structure and staff. Inspections for consumer protection have operationally been separated from prudential inspections since January 2010.

When asked which additional powers could help the HFSA improve consumer protection in Hungary, it is a little disappointing to hear that they mention "More attention to financial education is a priority". Though a higher level of financial literacy would be a desirable, enforcing rules as well as designing good regulation in areas susceptible to consumer detriment (as was the case in foreign currency denominated mortgage loans) would also be part of the workings of an effective supervisor.

The discussion on class actions in Hungary is non-existent at the current time though the HFSA initiates public actions in cases of unfair terms and conditions in contracts concluded with financial institutions.

## 13 Ireland

### 13.1 Summary

The Irish financial system of supervision may have been discredited as a result of the financial crisis, however some aspects of its structure are appealing from a consumer protection perspective. While the Financial regulator has been merged within the organisation of the central bank of Ireland, the single integrated supervision model, existing since 2003, was based on the Irish Financial Services Regulatory Authority in charge of regulating all financial institutions, financial intermediaries, investment funds, insurance companies, etc. This agency devoted significant attention to conduct-of-business supervision and while its link with the central bank always allowed it to call on the infrastructure and support services of the Central Bank, it proved unable to supervise the financial institutions in Ireland in terms of solvency and liquidity.

The problem of having the Financial Regulator and the Central Bank of Ireland quite closely linked is said to have caused reluctance on the part of the Regulator to properly investigate financial institutions. Ireland has suffered a terrible banking crisis due in part to problems within large financial institutions when largely unchecked by the Financial Regulator – this is despite reports that the Regulator was aware of certain bad practices of these institutions. When the Regulator does take action it is generally against smaller, foreign institutions that may not be regulated or authorised to operate in Ireland. The question arises on whether the larger, Irish institutions are properly investigated.

The public agency that looks after consumer protection in the area of financial services in Ireland is the National Consumer Agency - [www.nca.ie](http://www.nca.ie) and the Financial Services Ombudsman.

### 13.2 Central Bank of Ireland

#### 13.2.1 Basic data

Main Department that provided answers	Consumer Protection Codes Division
Status of supervisory authority	National Central Bank
The supervisor is not controlled by a governmental body	
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers
Type of institutions not supervised	Real estate agents; Credit referencing agencies
Areas of supervision	Macro-prudential; Micro-prudential; Conduct-of-business

#### 13.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

The Central Bank of Ireland is responsible for ensuring that the best interests of consumers of financial services are protected. On 1 May 2003 the Central Bank & Financial Services Authority of Ireland Act 2003 split the Central Bank of Ireland into two component entities: the Central Bank and the Irish Financial Services Regulatory Authority (the Financial Regulator). The Financial Regulator had responsibility for financial sector regulation and consumer protection and education/information. Under the Central Bank Reform Act 2010 the two entities were merged into one organisation: the Central Bank of Ireland. Section 5A of the Central Bank Reform Act 2010 states - 'The Bank has the following functions: (f) the function of monitoring the provision of financial services to consumers of those services to the extent that the Bank considers appropriate, for the purposes of protecting the public interest and the interests of consumers.' Where previously the Financial Regulator had a role in the consumer education/information functions, these were transferred to a separate agency, the National Consumer Agency under the 2010 Act.

Own agency definition of consumer protection:

See extract from Section 5A of the Central Bank Reform Act 2010 above.

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
2	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
3	...secures for fair competition and functioning markets in financial services.

The agency's supervisory approach in consumer protection can be described as follows:

The main tool through which the agency achieves consumer protection is the setting, monitoring and enforcement of national conduct of business rules (in addition to EU requirements) which financial services firms must abide by in their dealings with consumers. The Central Bank uses a number of methods to monitor compliance such as: inspections, general reviews on a particular topic, mystery shopping, monitoring the advertising of financial services. It publishes feedback to the industry on topics it investigates in order to promote compliance within the industry. Breaches of conduct of business requirements are dealt with in accordance with its Administrative Sanctions Procedure.

The agency's role is not exclusively restricted to monitoring compliance. In addition to monitoring compliance it also develops conduct of business rules and sets minimum competency requirements for individuals selling or advising on financial products.

Supervisory objectives: The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate	Explanations
Ensuring compliance with consumer protection measures	Central Bank Reform Act 2010: Section 5A of the Central Bank Reform Act 2010 states - 'The Bank has the following functions: (f) the function of monitoring the provision of financial services to con-

	sumers of those services to the extent that the Bank considers appropriate, for the purposes of protecting the public interest and the interests of consumers.'
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	The Central Bank of Ireland publishes feedback to the relevant industry sectors on topics we investigate in order to promote compliance with regulatory requirements. Compliance with regulatory requirements is binding. However, the recommendations contained in the feedback are not binding - they are guidance to firms on how best to comply with relevant requirements.
Protecting clients from misconduct and/or bad business practices	Our role in monitoring compliance with regulatory requirements and in developing conduct of business rules aims to protect clients from misconduct/bad business practices.
Ensuring institutional participation of consumer organisations in your decision making or advice received	The Central Bank Reform Act 2010 requires the Central Bank to establish a Consumer Advisory Group consisting of a panel of experts to advise on consumer strategy. Our consultation papers are open to the public and we encourage responses from consumer organisations and individual consumers.
Ensuring comprehensive transparency of official decision making processes and access to documents	Proposals for the introduction or revision of statutory conduct of business rules are subject to a public consultation process. Consultation papers and the final outcome of the process are published on our website. Legislation makes provision for the Central Bank to apply administrative sanctions on firms for breaches of our regulatory requirements, including our conduct of business rules. Our website contains an outline and guidelines of the Administrative Sanctions Procedure.
Promoting access to banking services (e.g. by low income individuals)	Our Consumer Protection Code requires a regulated entity to ensure that, without prejudice to the pursuit of its legitimate commercial aims, it does not, through its policies, procedures or working practices, prevent access to basic financial services. We are also part of a Government group examining the issues of financial access and the development of a basic bank account.
Promoting supervisory cooperation and convergence of EU supervisory practices	The Central Bank participates at EU level on consumer protection initiatives. We accompany the Department of Finance on Government Expert Groups and are a member of the Consumer Protection Co-Operation group. We are represented on the 3 European Supervisory Authorities. We provide submissions to consultations on EU consumer protection initiatives. We are the main competent au-

	thority for the implementation of EU consumer protection directives.
Monitoring if financial institutions follow their own voluntary codes of conduct and respect public commitments they have made to protect the interests of consumers	Last year the Central Bank put the Irish Banking Federation's voluntary Current Account Switching Code on a statutory basis. The Central Bank's Code of Conduct on the Switching of Current Accounts with Credit Institutions became statutory on 1 October 2010. While the switching code was voluntary the Central Bank monitored the level of account switching (stats supplied by the IBF) and carried out a mystery shopping exercise in 2008 on the ease with which consumers could switch between banks.
Promoting consumer awareness; Fostering understanding of financial services	The National Consumer Agency has a role in providing information and education to consumers on financial services. See <a href="http://www.nca.ie">www.nca.ie</a>
Monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial services	The Central Bank receives reports from the Financial Services Ombudsman on trends in consumer complaints and has regular interactions with the National Consumer Agency and other consumer bodies. The Central Bank collects quarterly statistics on the level of mortgage arrears and repossessions difficulties experienced by Irish borrowers. The Irish Banking Federation collects statistics on the numbers of consumers that have switched bank accounts and provides these to the Central Bank.

Other mandates of the agency include maintaining financial stability, ensuring compliance with banking regulation, ensuring compliance with securities regulation and preventing financial crime including anti-money laundering/combating financing of terrorism.

Promoting access: In the country's Consumer Protection Code, a regulated entity must take into consideration the provisions of the relevant Anti Money Laundering guidance notes...in particular any guidance on how to establish identity, to ensure that a person is not denied access to financial services solely on the grounds that the person does not possess certain specified identification documentation. Maintaining financial stability is a function of the Central Bank derived from that of the Eurosystem which has a clear mandate to contribute to financial stability in the euro area. Ensuring compliance with banking regulation is a function that is assigned to the Central Bank in relevant banking legislation. Ensuring compliance with securities regulation is a function that is assigned to the Central Bank in relevant securities legislation. The Central Bank has responsibilities for monitoring compliance with the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 which amends the Criminal Justice Act 1994.

The agency's remit is for both consumer credit and retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; Personal integrity of personnel.

The above are covered by: Unfair Commercial Practices Directive. Unfair Terms in Consumer Contracts Directive. Chapter 7 of the Consumer Protection Code contains advertising requirements applicable to regulated entities. Consumer Credit Directive. Markets in Financial Instruments Directive. The Central Bank operates a 'Fit & Proper' regime where Directors and Managers of financial service providers are required to meet standards of competence and probity known as the 'fit and proper' standards. Under these standards they are required to have the necessary qualifications, skills and experience to perform the duties of their position and to be honest, fair and ethical. The Central Bank's Consumer Protection Code. However, the prevention of criminal behaviour is not included in its set of responsibilities.

### 13.2.2.1 Institutional powers behind the mandate

The Table below shows how certain powers are exercised by the Bank in Ireland.

Agency has the power to:	Circumstances where power can be exercised/measure be taken
Make rules directly affecting consumer protection	Where new rules are required or where existing rules are in need of updating, e.g., we are currently reviewing our Consumer Protection Code to include additional conduct of business rules and make revisions to existing rules where necessary.
Issue guidance	The Central Bank can issue guidance where necessary to clarify/explain regulatory requirement. In addition, we publish feedback from themed inspections. For example, see elaboration section below.
Allow for a range of swift regulatory responses to emergent situations	i) Following the transposition of MiFID a document entitled 'Feedback on Discussions of Conduct of Business Industry Working Group' was published to assist industry in understanding the MiFID requirements. ii) Following receipt of a large number of queries from firms concerning some specific rules in the Consumer Protection Code, it published a document containing clarifications on the most frequently asked queries. iii) Feedback from themed inspections - these publications provide a good opportunity for firms to gain a clearer understanding of what is required of them when seeking to comply with various regulatory requirements. <sup>32</sup>
Mount and fund substantial legal actions	

Regulatory response to emergent situation: One of the effects of the financial crisis has been a rise in the number of borrowers experiencing difficulties in meeting their mortgage repayments. The Central Bank of Ireland identified a clear need for the introduction of conduct of business rules to protect the interests of borrowers when dealing with their lender concerning arrears matter. In February 2009 the now Central Bank of Ireland published a Code of Conduct on Mortgage Arrears (CCMA). The CCMA has recently been revised and the updated version became effective on 1 January 2011.<sup>33</sup>

The Central Bank can address a complaint to the firm, refer a complaint to another agency, start a legal action in court, initiate criminal procedures, fine delinquents and initiate and execute investigations. It however is not able to address a complaint to the complainant directly. The Central Bank can use the

<sup>32</sup> These documents can be found at the following addresses: i) and ii) <http://www.financialregulator.ie/processes/consumer-protection-code/Pages/codes-of-conduct.aspx>, iii) at <http://www.financialregulator.ie/press-area/press-releases/Pages/SettlementAgreementbetweentheCentralBankandofIrelandandAlliedIrishBankspIc.aspx>.

<sup>33</sup> See: <http://www.financialregulator.ie/processes/consumer-protection-code/Pages/codes-of-conduct.aspx>.

powers set out in the applicable Financial Services Legislation to inspect regulated entities and take action against these entities for failure to comply with requirements through the use of the Administrative Sanctions Procedure.

In case of non-compliance with consumer protection legislation and rules, the Central Bank can notify the firm of a violation, seek a remedial commitment from the firm, withdraw a firm's license, prohibit certain professional activities and impose a pecuniary sanction. The action taken, e.g., increased supervisory scrutiny, directions, monetary penalties, disqualifications etc., will depend on the seriousness of the breaches identified whilst also taking into account factors such as the severity and frequency of the problem.<sup>34</sup>

However, neither criminal sanctions nor implications on the directors belong to its set of sanctions. In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) Publicity, 2) Monetary penalty, and 3) Disqualification. While these would be the 3 most commonly used sanctions, it is nevertheless difficult to quantify which are the most effective of the powers available to the Central Bank. Sanctions and/or complaints are made public on a systematic basis. Furthermore, these sanctions and complaints are often on a named basis.

The Central Bank does not publish data on complaints, these are handled by the Financial Services Ombudsman. The Central Bank has stated that it will publish details of Administrative Sanctions cases that are successfully concluded. While the contents of the settlement agreement (the legal agreement entered into between the Central Bank and the regulated entity in which the breaches are outlined and admitted) are confidential and are not disclosed publicly, an agreed publicity statement is released for all cases where sanctions are applied.

The maximum authorised amount for a financial penalty is currently €5,000,000 for a firm and €500,000 in respect of individuals. In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing. Individuals involved in the management of a firm who are deemed to be responsible for a breach may be subject to disqualification or monetary fines of up to €500,000.

The agency has reported having taken the following number of sanctions relating to a breach of consumer protection related rules: 5 in 2008 and 6 in 2009. Among those sanctions, 3 (in 2008) and 5 (in 2009) were fines. The lowest and highest fines being:

2008: Lowest - €5,000, Highest - €45,000. These related to failures to comply with various provisions of the Consumer Protection Code.

2009: Lowest - €7,500, Highest - €20,000. These related to failures to comply with various provisions of the Consumer Protection Code.

Ratio of sanctions disclosed to the public over the total number of sanctions in 2008 and 2009 respectively: 100% were made public. The more penalising non-pecuniary sanction to have been taken by the agency was a disqualification of Directors.

### **13.2.3 Activities and supervision in practice**

The Table below contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009. Please note that the Quantity number in the onsite inspections column double counts some of the other separately listed inspections.

<sup>34</sup> Examples of settlement agreements can be found at the following address:  
<http://www.financialregulator.ie/publications/Pages/settlement-agreements.aspx>

Examples of specific monitoring tasks	Qty (2009)	Details
Checks for compliance with fair, non-misleading <b>advertising</b> practices	223	Various types of firms
<b>Onsite inspections</b>	12	9 - Suitability of Financial Instruments sold to Older Clients by MiFID Firms (9 MiFID firms), 9 - Suitability of Investment Products sold to Older Consumers by Credit Institutions (9 banks), 20 - Suitability of mortgages referred to subprime lenders by mortgage intermediaries (20 mortgage intermediaries), 6 - Suitability of Insurance Products sold to Older Customers (6 life insurance firms), 20 - Operation of client premium accounts by insurance intermediaries (20 insurance intermediaries), 18 - Review of on-site presence of insurance undertakings in the offices of insurance intermediaries (20 intermediaries), 8 - Home insurance claims inspection (8 non-life insurance firms), 8 - Motor Insurance Renewals (8 non-life insurance firms), 6 - Payment Protection Insurance claims inspection (6 insurance firms inspected), 6 - in respect of monitoring compliance with the Minimum Competency Requirements (6 banks), 6 - in respect of evaluating charges applied in instances of the early redemption of fixed rate mortgages (6 banks), 5 - Mortgage Accounts in Arrears (various entity types).
Tests of <b>suitability requirements</b> when advice or recommendations are offered	4	Suitability of Financial Instruments sold to Older Clients by MiFID Firms (9 MiFID firms inspected). Suitability of Investment Products sold to Older Consumers by Credit Institutions (9 banks inspected), Suitability of mortgages referred to subprime lenders by mortgage intermediaries (20 intermediaries inspected). Suitability of Insurance Products sold to Older Customers (6 life insurance firms inspected).
Tests on the accuracy, simplicity, comparability of pre-contractual information ( <b>ex-ante</b> )	1	Motor Insurance Renewals (8 insurance firms inspected)
<b>Mystery shopping</b> exercises	1	Carried out in conjunction with theme on the suitability of investment products sold to the elderly by banks - 15 banks visited
Thematic <b>consultations</b>	1	Telephone Records and Electronic Communications under the European Communities (Markets In Financial Instruments) Regulations 2007 [MiFID] - 3 firms visited
Checks for compliance with fair, non-misleading <b>advertising</b> practices	223	Various types of firms

Please note that the Quantity number in the onsite inspections column double counts some of the other separately listed inspections.

The following table gives concrete examples for various activities which the Bank has been responsible for in the year 2009.

<b>Examples of functions fulfilled</b>	<b>Description</b>
<b>Compliance</b> with consumer protection laws and regulations	<p>1) Suitability of Financial Instruments sold to Older Clients by MiFID Firms. Testing of suitability requirements carried out on MiFID firms in 2009 revealed that record keeping requirements and assessment of a client's suitability requirements were not being adhered to in all cases. These issues were addressed with the individual firms. An industry letter was also issued reminding firms of their requirements in this area. 2) Suitability of Investment Products sold to Older Consumers by Credit Institutions. A number of firm-specific compliance issues were noted, which were dealt with on an individual basis. The primary areas of concern arising from the project were the suitability of certain products recommended to older consumers; the quality of consumer-specific information recorded on the consumer's files; and the area of risk, in particular how a consumer's attitude to risk is measured and documented on file. An industry letter was issued reminding firms of their requirements in this area.<sup>35</sup> Operation of Client Premium Accounts by Insurance intermediaries<sup>36</sup>. Home insurance claims inspection &amp; Motor insurance renewals inspection.<sup>37</sup>, Payment Protection Insurance Claims inspection.<sup>38</sup></p> <p>Results of onsite inspections in the banking sector in respect of the Minimum Competency Requirements revealed that some institutions were unable to demonstrate compliance with the Requirements.<sup>39</sup> Findings from themed inspection on arrears and repossessions handling across credit institutions and other mortgage lenders.<sup>40</sup></p>
<b>Monitoring financial institution compliance with voluntary codes of conduct</b>	In 2008 a mystery shopping exercise was carried out on the voluntary Personal Current Account Switching Code. <sup>41</sup>

<sup>35</sup> <http://www.financialregulator.ie/press-area/press-releases/Pages/WeaknessinSalesProcessesforOlderCustomersIdentifiedinRegulatoryInspections.aspx>.

<sup>36</sup> <http://www.financialregulator.ie/press-area/press-releases/Pages/FindingsofInspectionofInsuranceIntermediariesCompliancewithClientPremiumAccountRegulations.aspx>.

<sup>37</sup> <http://www.financialregulator.ie/press-area/press-releases/Pages/Issuesidentifiedinthemedinspectionstomortgage referrals,homeinsuranceclaimsandmotorinsurancerenewals.aspx>.

<sup>38</sup> <http://www.financialregulator.ie/press-area/press-releases/Pages/FinancialRegulatorconcludesexaminationofclaimshandlingforPaymentProtectionInsurancepolicies.aspx>.

<sup>39</sup> <http://www.financialregulator.ie/press-area/press-releases/Pages/MinimumCompetencyRequirementsThemedInspectionResults.aspx>.

<sup>40</sup> Findings and industry feedback and recommendations are published at <http://www.financialregulator.ie/press-area/press-releases/Pages/ArrearsandRepossessionsInspectionsRevealRegulatoryConcerns.aspx>.

<sup>41</sup> <http://www.financialregulator.ie/press-area/press-releases/Pages/FinancialRegulatormysteryshopsPersonalAccountSwitchingCode.aspx>.

<p><b>Initiatives</b> that have helped to improve the balance of power in the relationship between financial institutions and consumers</p>	<p>In February 2009 we published a Code of Conduct on Mortgage Arrears (CCMA). The CCMA has recently been revised and the updated version became effective on 1 January 2011.<sup>42</sup> In February 2009 we published a Code of Conduct for Business Lending for Small &amp; Medium Enterprises.<sup>43</sup></p> <p>Telephone Records. Under the MiFID Regulations, there are no requirements on MiFID firms to record telephone lines. However, MiFID does allow the competent authority to impose additional obligations on investment firms relating to the recording of telephone conversations or electronic communications involving client orders. We consulted industry on the possibility of introducing such obligations. This was then input into our work with CESR, which led to us contributing in the preparation of the European Commission's MiFID review with regard to telephone recording proposals.</p>
<p><b>Overcharging:</b> e.g. extra fees and commissions, hidden fees on bank accounts etc.</p>	<p>Instances of overcharging must be reported to the Central Bank as required under the Consumer Protection Code. In addition to firms advising us directly of overcharging issues, we also carried out a themed inspection in 2009 to look at 'Charges &amp; Premium Rebates in the Insurance Intermediary Sector' during which a number of overcharging instances were found.<sup>44</sup> The Bank also carried out an examination into how firms handle overcharging matters.<sup>45</sup></p>
<p><b>Consumer education</b> in the financial sector: e.g. materials published by your agency (guides/tools to help consumers understand and shop around)</p>	<p>It is the role of the National Consumer Agency to provide information and education to consumers on financial services matters. See <a href="http://www.nca.ie">www.nca.ie</a></p>
<p><b>Recourse:</b> e.g. informing consumers about their rights to complain, how and where to complain</p>	<p>It is the role of the National Consumer Agency to provide information and education to consumers on financial services matters. See <a href="http://www.nca.ie">www.nca.ie</a></p>

<sup>42</sup> <http://www.financialregulator.ie/processes/consumer-protection-code/Documents/Code%20of%20Conduct%20on%20Mortgage%20Arrears%20%201%20January%202011.pdf>.

<sup>43</sup> <http://www.financialregulator.ie/processes/consumer-protection-code/Documents/Code%20of%20Conduct%20for%20Business%20Lending%20to%20Small%20and%20Medium%20Enterprises.pdf>.

<sup>44</sup> An example of a firm sanctioned for overcharging in respect of fees and administrative charges can be found at the following address:

[http://www.financialregulator.ie/publications/Documents/McHugh%20'Leary%20-%20Final%20Publicity%20Statement%20091217%20\(2\).pdf](http://www.financialregulator.ie/publications/Documents/McHugh%20'Leary%20-%20Final%20Publicity%20Statement%20091217%20(2).pdf).

<sup>45</sup> See: <http://www.financialregulator.ie/press-area/press-releases/Pages/FindingsofExaminationontheManagementandReportingofChargingErrors.aspx>.

and receive appropriate redress	
<b>Wrong advice:</b> e.g. misselling of investment products	Suitability of investment products sold to older persons. While misselling was not identified, this Mystery shop carried out as part of theme on sales to elderly to examine selling practices. <sup>46</sup>
<b>Sales practices:</b> e.g. aggressive sales techniques (door-to-door solicitations or limited-time offers)	Suitability of investment products sold to older persons. Mortgage referrals inspections. <sup>47</sup>
<b>Data privacy:</b> e.g. mistreatment of personal data	The Data Protection Commissioner is responsible for upholding the rights of individuals as set out in the relevant data protection legislation. <a href="http://www.dataprotection.ie">www.dataprotection.ie</a>
<b>Product transparency:</b> e.g. deceptive advertisements, unfair contract terms, excessive small print, complicated terms, inadequately trained staff etc.	Monitors all forms of advertising (newspaper/tv/radio/websites) by financial service providers. In the course of our monitoring we have come across issues such as: <ul style="list-style-type: none"> <li>• Advertising an incorrect number of appointments held, e.g., we have access to all lenders ..." when in fact they didn't have direct access, they only had access through another intermediary,</li> <li>• Advertising that a consumer could get credit while having 'no proof of income',</li> <li>• Advertising the availability of Tracker Mortgages which are no longer available,</li> <li>• Advertising the availability of 100% Mortgages which are of limited availability,</li> <li>• Advertising a rate other than the APR for lending products,</li> <li>• Absence of warnings or use of incorrect warnings,</li> <li>• Use of the Financial Regulator (now Central Bank of Ireland) logo,</li> <li>• Absence of or incorrect Regulatory Disclosure statement,</li> <li>• Breach of S116 of the Consumer Credit Act, trading under a name which is not registered.</li> </ul> The list above covers the types of breaches that were discovered in the course of our monitoring. Letters were issued to the firms highlighting details of the breach and in all cases, the breaches were rectified.

#### Complaints and publication of complaints:

A public financial ombudsman system exists in Ireland and it is the responsibility of the Financial Services Ombudsman ([www.financialombudsman.ie](http://www.financialombudsman.ie)). The Financial Services Ombudsman deals directly with individual consumer complaints. When the Central Bank receives correspondence from a consumer with a complaint the Central Bank explains to the consumer that they have a right to complain and must first set out their complaint to the financial service provider. If they are dis-satisfied with the outcome of the investigation into their complaint by the firm they have a right to refer the matter to the Financial Services Ombudsman.

<sup>46</sup> See <http://www.financialregulator.ie/press-area/press-releases/Pages/WeaknessinSalesProcessesforOlderCustomersIdentifiedinRegulatoryInspections.aspx>, and <http://www.financialregulator.ie/press-area/press-releases/Pages/default.aspx?PagingID=7>.

<sup>47</sup> See <http://www.financialregulator.ie/press-area/press-releases/Pages/Issuesidentifiedinthemedinspectionsintomortgagereerrals,homeinsuranceclaimsandmortinsurancerenewals.aspx>.

The Public Contacts Unit which is a unit in the wider Central Bank organisation deals with enquiries/complaints from consumers in addition to other public enquiries to the Central Bank. Most enquiries concern general banking issues - approx. 1,900 contacts received. The National Consumer Agency also deals with queries from consumers on financial services matters. The website address is [www.nca.ie](http://www.nca.ie) The Financial Services Ombudsman is the office responsible for dealing with individual complaints from consumers concerning financial service providers. The website address is [www.financialombudsman.ie](http://www.financialombudsman.ie)

Complainants are advised firstly to complaint to the firm and if dis-satisfied to contact the Financial Services Ombudsman. Decisions of the Financial Services Ombudsman are binding. Queries are recorded on a database and responses issued. Complainants are advised that they should direct their complaint in the first instance to the financial service provider. If they are dis-satisfied with the outcome they can refer the matter to the Financial Services Ombudsman.

Prior to the merger between the Central Bank and the Financial Regulator, each organisation produced a separate annual report. The new Central Bank of Ireland will publish an annual report. The latest document available for the Central Bank is the Central Bank of Ireland Strategic Plan 2010-2012 and the Central Bank and Financial Services Authority of Ireland Annual Report 2009.<sup>48</sup>

Alongside the annual report, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework (i.e. Strategic Plan 2010-2012).

In the past 2 years the Central Bank has introduced the following binding regulatory requirements applicable to regulated entities when providing services to consumers or SMEs: i) Code of Conduct on Mortgage Arrears - effective since 27 February 2009, ii) Code of Conduct for Business Lending to Small & Medium Enterprises - effective since 13 March 2009, iii) Code of Conduct on the Switching of Current Accounts with Credit Institutions - effective since 1 October 2010, iv) Consumer Protection Code for Licensed Moneylenders - fully effective since 1 September 2009.

#### **13.2.4 Operational capacity of the supervisor**

Funding for the Central Bank's supervisory functions (both consumer protection and prudential) is sourced from a mixture of a levy on financial services providers which constitutes 50% of the funding requirements. The other 50% is met by the Central Bank. The financial levy raised €34.0 million in 2009.

The costs of running the supervisory functions of the Central Bank amounted to €60.2 million in 2009. The costs of running the consumer protection operations of the Central Bank amounted to €13.9 million in 2009. (i.e. 23% of the budget).

In terms of staff resources, 55 persons are dedicated to consumer protection. Furthermore, 7 members of staff deal exclusively with consumer complaints relating to financial issues. 7 staff members deal with queries from the public - only some are 'consumer' related, any consumers with a complaint against a firm is directed to the Financial Services Ombudsman's office. These 7 staff members are part of the wider organisation and deal with all public enquiries to the Central Bank.

The broad distribution of employees in terms of qualifications is as follows: Qualifications in Financial services, compliance, business studies, accountancy, legal studies, experience in financial institutions. In terms of training on consumer protection issues, staff in the Central Bank are provided with both internal and external programmes covering all aspects of the organisation. The Central

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<sup>48</sup> <http://www.financialregulator.ie/publications/Pages/corporate-publications.aspx>.

Bank has a Regulatory Curriculum training programme comprising technical and other training.

Consumer participation and input into the work of the agency is enabled through an advisory council as well as through direct consultation with consumer organisations and individual consumers themselves.

The Consumer Protection Directorate is part of the wider Central Bank<sup>49</sup>. There is a Consumer Protection Director who is the head of the Consumer Protection Directorate and the Central Bank also has access to a Consumer Advisory Group consisting of a panel of experts to advise it on consumer strategy. The Central Bank works closely with the National Consumer Agency, the Financial Services Ombudsman and other consumer representative bodies. The Central Bank currently has a Memorandum of Understanding with the FSO. Its consultation documents are open to the public and consumer organisations and individuals are encouraged to submit their views on their proposals. The consumer protection directorate also has a recently appointed dedicated risk expert who is available to advise on consumer protection issues.

Staff from the consumer protection directorate regularly attend EU and international meetings concerning consumer protection issues. These meetings are useful for inputting the Irish view and the Irish supervisor experience on consumer protection matters to a wide audience and vice versa it gives it the opportunity to listen to how other states manage their consumer protection functions.

### **13.2.5 Supervisor views and ideas**

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'.

The Central Bank already currently separates prudential supervision from consumer protection tasks into two distinct areas. There are no proposals to change this approach. The Central Bank of Ireland was not in a position to specify which additional powers it could find beneficial for its consumer protection mandate. Furthermore, it did not feel class actions were a very topical subject right now.

The Financial Services Ombudsman's office deals with consumer complaints. Fields of consumer protection that should be more extensively covered by the authorities would include: Transparency of remuneration, suitability of mortgage credit, additional responsibilities on product manufacturers to identify the target market of products, risk rating of products. The Central Bank supervises firms that provide services into Ireland on a cross-border basis for conduct of business purposes.

With regards to the issue of conflicts of interest between supervisor objectives, the Irish example, along with the UK where both have been conducting strong consumer research compared to other supervisors, has seen commentators judging the severe bank failures in the country and drawing the conclusion that regulators were excessively preoccupied with conduct of business as opposed to prudential supervision. While acknowledging that conflicts may have diverted some resources, this is not a fair statement reflecting the true causes of the failures, even though the Consumer Panel of the Financial Regulator presented a similar statement in its submission on the Performance Review of the Financial Regulator 2008/2009 when it said "We are also concerned with the view expressed in some quarters that one of the reasons for the regulatory failure was that the FR 'was pre-occupied with its consumer mandate'.<sup>50</sup>

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<sup>49</sup> See organisational chart in the Annex of this report or at the following address: [http://www.financialregulator.ie/about-us/Documents/Org\\_Chart.pdf](http://www.financialregulator.ie/about-us/Documents/Org_Chart.pdf).

<sup>50</sup> See [www.ifsra.ie/consultative-panels](http://www.ifsra.ie/consultative-panels).

## 14 Italy

### 14.1 Summary

While the supervisory structure in Italy appears to be on a sectoral basis i.e. prudential banking supervision is exercised by the Banca d'Italia; insurance supervision by ISVAP (Istituto di Vigilanza sulle Assicurazioni Private) and securities markets supervision by Consob (Commissione Nazionale per le Società e le Borse), a closer analysis reveals that there are strong elements of the twin-peaks model since the central bank conducts prudential supervision of investment funds as well.

In Italy consumer protection in financial services is performed by three Authorities: Banca d'Italia (transparency of products and correctness of the banks), CONSOB (efficiency of the securities market), Autorità garante della Concorrenza e del mercato (unfair commercial practices and anti-competitive practices). In recent years only Autorità garante della concorrenza e del mercato sanctioned the banks. However, the penalties imposed on banks and financial institutions are small (maximum 500.000 euro).

Public agencies that look after consumer protection in the area of financial services in the country include the Consob and the Bank of Italy. While the Central Bank is responsible for some indirect aspects, it is mainly the Consob that looks after consumer protection in the field of financial services. Consob and Isvap are both supervisors and regulators, respectively, in the field of securities and insurance. Commissione di vigilanza sui fondi pensione (COVIP) is responsible for private pension schemes. The Antitrust authority (AGCM) looks after the enforcement of the Unfair Commercial Practices Directive and in the past it has sanctioned some financial operators concerning the free transfer of mortgage credit and misleading advertising.

### 14.2 Commissione Nazionale per le Società e la Borsa (Consob)

#### 14.2.1 Basic data

Main Department that provided answers	International relations office
Status of supervisory authority	Other: Supervision of intermediaries is split between Consob (as regards the transparency and correctness of behaviours) and the Bank of Italy (as regards prudential supervision)
	The supervisor is not controlled by a governmental body
Type of institutions supervised	Investment firms; Financial intermediaries; Financial advisers; Credit institutions providing investment services, insurance companies in respect of financial insurance products
Type of institutions not supervised	Credit institutions; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Real estate agents; Credit referencing agencies
Areas of supervision include	Conduct-of-business; Transparency and fairness in the provision of investment services

### 14.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

CONSOB is the Italian financial supervisory authority (hereinafter the 'Authority') responsible for the transparency and fairness of intermediaries' conduct. Consob is designated as competent authority under MiFID, Article 48. Consob is also designated under Article 4 of Regulation no. 2006/2004/EC as the competent authority responsible for the enforcement of: Directive 2000/31/EC on electronic commerce

Own agency definition of consumer protection:

Directive 2002/65/EC concerning the distance marketing of consumer financial services. One of the main objectives of the supervisory activities discharged by the Authority shall be "the protection of investors" (see Legislative Decree No. 58 of 24 February 1998, Article 5(1) which reads: "The objectives of supervisory activities indicated in this section shall be ... the protection of investors", and Article 5(3): "Consob shall be responsible for the transparency and correctness of conduct"). According to Consob's mandate, consumer protection must be achieved through the transparency and fairness of the provision of investment services to consumers (retail clients under MiFID).

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...secures for fair competition and functioning markets in financial services.
2	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
3	...promotes selling practices and advice consistent with consumers financial needs (Other definition)
4	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
5	...guarantees a general framework in which others can provide individual consumer protection
6	...prevents over-indebtedness, exclusion, old age poverty.
7	...limits economic power with regard to consumer needs
8	...provides equal opportunities to all consumers especially to the poor.

The agency's supervisory approach in consumer protection can be described as follows:

Consob is committed to monitoring the transparency and fairness of intermediaries that are authorized to provide investment services, especially vis-à-vis retail clients (consumers). In fact, the nature of the clients (retail versus professional) is one of the main drivers in its risk-based approach to supervision. In this context Consob also assesses the general policies and decisions of intermediaries with respect to products, operations and services offered to clients in order to detect situations where there is a high risk of conflicts of interest.

The agency's role is not exclusively restricted to monitoring compliance.

Where clients bring a legal action in court, the judicial authority is responsible for addressing complaints from individual investors towards intermediaries.

Supervisory objectives: The table below indicates Consob's explicit mandates.

<b>Elements of mandate</b>	<b>Legal Source</b>	<b>Explanations</b>
Ensuring compliance with consumer protection measures; Protecting clients from misconduct	Legislative Decree No. 58 of 24 February 1998	Consob is the competent authority designated in Italy to discharge the oversight duties provided for under the different provisions of MiFID for transparency and correctness purposes (see Article 5 (1) and Article 5 (3)).
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	Legislative Decree No. 58 of 24 February 1998	Consob monitors the policies and procedures adopted by intermediaries to comply with the requirements aimed at ensuring the transparency and correctness of behaviours. Among other things Consob promotes, in light of its supervisory objectives as set out in Legislative Decree No. 58/1998, the development of industry guidance (see attachment).
Ensuring institutional participation of consumer organisations in your decision making or advice received	Law no. 262 of 28 December 2005	Where any regulatory change is going to be considered, Consob ensures the participation of market stakeholders (including consumer organizations). The process of confirmation of industry guidance by the Authority envisages the participation of consumer organizations as well.
Ensuring comprehensive transparency of official decision making processes and access to documents	Law no. 262 of 28 December 2005; Law no. 241 of 7 August 1990; Legislative Decree No. 58 Of 24 February 1998	The rules issued by Consob are published in the Official Gazette (Gazzetta Ufficiale). Administrative sanctions imposed by the Authority are published in Consob's Bulletin (which is also available on our website). Access to Consob's documents is possible, subject to the limits set forth by Law no. 241/1990.
Promoting access to banking services	Not fully responsible	Measures taken by the Authority will result in an increased competition and levelling playing field for intermediaries. This will favour access to financial services (not banking services).
Promoting supervisory cooperation	Legislative Decree no. 58 of 24 February 1998; EU	Consob must exercise its powers consistently with the provisions of the EU law and apply the regulations and decisions of the Europe-

	Regulation no. 1095/2010 of 24 November 2010	an Union. As a CESR (now ESMA) member, Consob promotes supervisory cooperation and convergence in EU. See the Regulation establishing the European Securities and Markets Authority.
Monitoring if financial institutions follow their own voluntary codes of conduct	Legislative Decree No. 58 of 24 February 1998	We are notified of the commitment of any intermediary to comply with industry guidance confirmed by us and we take this commitment into account within our risk based approach and reviews.
Promoting consumer awareness and understanding	Legislative Decree No. 58 of 24 February 1998	In accordance with its consumer protection tasks under Legislative Decree No. 58 of 24 February 1998, Consob has set up an office in charge for promoting consumer awareness in the field of investment services.
Monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial services	Legislative Decree No. 58 of 24 February 1998	Monitoring and evaluating trends and emergency issues that may have an impact on consumers of financial services are part of our risk-based approach.
Promoting competition	Legislative Decree No. 58 of 24 February 1998.	Consob's supervision aims, among other, to promote the competitiveness of the financial system.

Other mandates of the agency not included in the table above include: Maintaining financial stability; Ensuring compliance with securities regulation; Preventing financial crime including anti-money laundering/combating financing of terrorism.

Consob's supervision on intermediaries aims at enhancing the safeguarding of confidence in the financial system, the protection of investors, the stability and correct operation of the financial system, the competitiveness of the financial system and the compliance with the securities regulation. Consob has also competences, together with other authorities, in the field of anti-money laundering and combating financing terrorism, with respect to the entities subject to its supervision. Please note that prudential supervision is in the remit of the Bank of Italy.

The agency's remit is for retail investment issues but does not deal with the supervision of consumer credit. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; Personal integrity of personnel; and Prevention of criminal behaviour.

### 14.2.3 Institutional powers behind the mandate

Among the powers which the agency has, is an ability to initiate criminal procedures, fine delinquents, initiate and execute investigations. However, this also

means it is not able to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, start a legal action in court.

In case of non-compliance with consumer protection legislation and rules, Consob has the full range of actions which it can take i.e. it can notify the firm of a violation, seek a remedial commitment from the firm, impose criminal sanctions, give orders for institute directors, withdraw licenses, demand withdrawal of director, prohibit certain professional activities, and impose a pecuniary sanction (monetary penalty).

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) Injunctions, 2) Suspension of administrative bodies, and 3) Pecuniary sanctions. Sanctions and/or complaints are made public in the Consob's Bulletin on a systematic basis. The maximum authorised amount for a fine is EUR 250,000 (two hundred and fifty thousand euro) for each breach of a conduct of business rule and any natural person involved.

In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing. Those who perform administrative or management functions in, and employees of, companies or authorised entities can be punished by a pecuniary administrative sanction. The same sanction can also apply to those who perform supervisory functions.

With regard to the number of sanctions taken by the supervisor, 7 investigations on investment services-related infringements were completed in 2008 with the infliction of pecuniary sanctions: 5 referred to banks (85 people sanctioned, a total of Euro 2.8 million), 1 to an investment firm (13 people sanctioned, a total of Euro 29,000), and 1 to an asset management company (5 people sanctioned, a total of 109,000 Euro). In addition, with regard to financial salesmen, 93 disciplinary measures were imposed in 2008, including 44 disqualifications from the register, 43 fixed-term suspensions (from a minimum one month to a maximum four months), 2 financial penalties (1,516 euro) and 4 written reprimands. The Commission also issued 42 reports to the judicial authorities for criminal offences and 20 fixed-term suspensions as a precautionary measure. 9 investigations on investment services-related infringements were completed in 2009 with the infliction of pecuniary sanctions: 1 referred to a bank (16 people sanctioned, a total of Euro 156,000), 4 to investment firms (6 people sanctioned, a total of Euro 380,000), 2 to asset management companies (20 people sanctioned, a total of Euro 945,000) and 2 to stockbrokers (a total of Euro 415,000). In addition, with regard to financial salesmen, 74 disciplinary measures were imposed in 2009, including 43 disqualifications from the register, 25 fixed-term suspensions (from a minimum one month to a maximum four months), 1 financial penalty (Euro 3,000) and 5 written reprimands. The Commission also issued 43 reports to the judicial authorities for criminal offences and 23 fixed-term suspensions as a precautionary measure.

In 2008, the total amount of pecuniary sanctions imposed by Consob against intermediaries and financial salesmen was around 3.4 million Euro. In 2009, the total amount of pecuniary sanctions imposed by Consob against intermediaries and financial salesmen was around 2.2 million Euro.

In 2008, the highest financial penalty amounted to EUR 2,121,000 and the lowest one to EUR 29,700, and in 2009 these figures were EUR 825,500 and EUR 80,000 respectively. All sanctions are disclosed to the public. The more penalising non-pecuniary sanction to have been taken by the agency was a disqualification of financial salesmen from the register.

#### 14.2.4 Activities and supervision in practice

The Table below contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009. Consob adopts a risk-based approach, which involves a wide range of intermediaries, via a scrutiny on aspects related to general compliance with conduct of business rules and then a focus on critical cases.

Examples of specific monitoring tasks	Qty (2009)	Details
Tests on the accuracy, simplicity, comparability of pre-contractual information ( <b>ex-ante</b> )	134	9 major banking groups, 9 medium size banks, 1 financial services provider mainly authorized as postal services provider, 5 big financial distribution networks, 110 investment firms (each one of these intermediaries has been subject to a general desk-based scrutiny on the compliance with the relevant conduct of business rules under MiFID and one or more follow-up meetings with the firm's senior representatives)
Tests on <b>information disclosure</b> , compliance with advertising rules and selling practices	134	See above
Tests of <b>suitability requirements</b> when advice or recommendations are offered	134	Compliance with suitability requirements has been one of the main focus of our oversight activity. See above
<b>Onsite inspections</b>	13	9 banks, 3 investment firms and 1 CIS operator. Consob adopts a risk based approach for inspections.
Thematic <b>consultations</b>	3	In 2009 Consob issued two feedback statements with respect to the consultations conducted on the topics covered by the two communications referenced in the answer to the previous question. In addition, Consob issued a consultation paper regarding the regulation of financial advisors.
<b>Market studies</b> in relation to consumer protection issues	2	Consob published 2 market studies as Quaderni di finanza (available on its website)
Own agency <b>policy statements</b> and opinions	2	Consob issued 2 recommendations (raccomandazioni), one on "The intermediary's duty of correct and transparent conduct in the distribution of illiquid financial products" (2 March 2009), and the other one on "The investment research in the relationship between broker and individual portfolio manager" (14 January 2009).

The following table gives concrete examples for various activities which Consob has been responsible for in the year 2009.

<b>Examples of functions fulfilled</b>	<b>Description</b>
<b>Consumer education</b> in the financial sector	A specific section of Consob's website is devoted to consumers' education in the financial sector.
<b>Product transparency</b>	As part of its oversight activity, we checked - among other things - if the agreements with clients properly describe the nature and scope of investment advice provided to clients.
<b>Overcharging</b>	As part of its oversight activity, Consob checked, among other things, the coherence of the pricing procedures adopted by intermediaries in relation to the distribution of their own products.
Monitoring financial institution compliance with voluntary <b>codes of conduct</b> (and their own public commitments)	Consob confirmed a number of industry guidance during 2009 in the field of MiFID conduct of business rules; consumer organizations and other market stakeholders were involved in the relevant confirmation process. Consob is notified of the commitment of any intermediary to comply with those guidance and it takes this commitment into account within its risk based approach and reviews.
<b>Recourse:</b> e.g. informing consumers about their rights to complain, how and where to complain and receive appropriate redress	Information is given by Consob to consumers through the Authority's website, responses to requests submitted by phone or email and answers to complaints received.
<b>Initiatives</b> that have helped to improve the balance of power in the relationship between financial institutions and consumers	One of the main drivers of its supervisory activity is to align intermediaries' behaviours with clients' interests.
<b>Compliance</b> with consumer protection laws and regulations	The outcomes of checks conducted by Consob on the compliance by the 9 biggest banking groups with applicable conduct of business rules revealed the need for several improvements for the purposes of investor protection. In consistency with our regulatory approach, we formally ordered to convene the administrative bodies of those banks, by setting the agenda for the meeting and asking for actions in the critical areas. The orders addressed to the banks were made public. Following those interventions, on-site inspections on those entities were conducted.
<b>Sales practices:</b> e.g.	Detected aggressive sale approaches from one of the

aggressive sales techniques (door-to-door solicitations or limited-time offers)	biggest Italian banks with reference to a bond structured by the same bank. After an on-site inspection, the Authority issued a formal order to put an end to the irregularities detected and the order resulted in that product being substantially stopped to be sold to retail clients.
<b>Wrong advice:</b> e.g. misselling of investment products	It noticed cases of mis-selling of investment products, where some unsuitable products - which were formally sold on a non-advisory basis - had instead been recommended to clients.

#### 14.2.4.1 Complaints and publication of complaints

Consob receives around 900 complaints per year (mainly in relation to the provision of investment services vis-à-vis retail investors). In case of a consumer complaint, the supervisor is able to make binding decisions for some (but not all) of the parties involved. Binding decisions are addressed to intermediaries to protect investors; they can indirectly concern the consumers affected.

The supervising agency is able to do the following things with a consumer complaint: Register/record them; Respond to them; Publish statistics on them. (However, neither direct nor indirect methods of assisting in the resolution of a complaint are possible).

Consob issues an annual report to the Ministry of Economy. Moreover, an annual speech is given by the Chairman of the Authority to the financial market. The annual report, together with the annual speech to the financial market, are publicly available on Consob's website<sup>51</sup>. The Annual report contains information on activities, operations, legislative framework for consumer protection, and contains numbers on complaints. Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework. In its strategic plan<sup>52</sup>, the Authority outlines the drivers that will influence its supervisory actions, having regard to the evidence emerging in the oversight activity.

In the past 2 years, the supervisor has been responsible for concrete legal or regulatory changes affecting consumers. Among others, the Authority highlighted problems arising from rebates in portfolio management activities. Roughly all operators discontinued this practice in Italy. After the issuance of Consob's communication on illiquid products (see answer to question n. 10L above), a relevant part of intermediaries have refrained from selling illiquid products with a short holding period to retail clients.

#### 14.2.5 Operational capacity of the supervisor and its views

The source of the agency's funding for consumer protection activities is from both the financial institutions that it monitors and the government, though almost all the resources come from the financial institutions. The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009, was EUR 90million all operations included. No estimate of the cost of consumer protection activities was possible.

Likewise, in terms of human resources, the supervisor had 580 employees of which 475 are linked to consumer protection in some way and of which 61 per-

<sup>51</sup> See [http://www.consob.it/mainen/consob/publications/annual\\_report/annual\\_report.html?symbblink=/mainen/consob/publications/annual\\_report/index.html](http://www.consob.it/mainen/consob/publications/annual_report/annual_report.html?symbblink=/mainen/consob/publications/annual_report/index.html).

<sup>52</sup> The strategic plan is available on Consob's website at: <http://www.consob.it/mainen/consob/publications/plan/index.html>.

sons were employed to conduct supervision of consumer protection operations only (i.e. 11% of total staff). Usually, more than one unit is involved, depending on the entity the complaint refers to. Employees are either lawyers or economists with some administrative staff. Several days of training are also given to the staff during the year. It concerns all the staff involved in the supervisory activity. Adequate training during the year is given via initiatives which cover the different aspects of the Authority's remit.

No consumer representation was reported to exist in Consob's existing structures though consumer involvement is said to depend on situations.

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being very satisfactory. Although Italy already has a separate prudential supervisor in practice, there does not appear to be talk of further clarifying the supervisory responsibilities institutionally.

Consob did not mention any additional powers that it would deem useful in terms of delivering on their consumer protection mandate. Financial literacy appears to be the area of focus and in addition, the discussion on class actions in Italy is seen as non-existent by consob at the current time.

### 14.3 Banca d'Italia

#### 14.3.1 Basic data

Main Department that provided answers	Servizio Normativa e politiche di vigilanza - Divisione Normativa primaria
Status of supervisory authority	National Central Bank
	The supervisor is not controlled by a governmental body
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Financial intermediaries
Type of institutions not supervised	Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial advisers; Real estate agents; Credit referencing agencies
Areas of supervision	Macro-prudential; Micro-prudential; Conduct-of-business; Smooth functioning of payment systems

#### 14.3.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

only in respect to banking and financial services regulated by the Banking Law, such as loans, deposits, current accounts.

Own agency definition of consumer protection:

"Disclosure of contractual terms and fair behaviour of professionals vis-à-vis their clients".

Among its supervisory objectives, the table below indicates the Bank's explicit mandates.

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures	Banking Law, Consumer Code	
Promoting the adoption by financial institutions of policies and procedures	Banking Law	
Protecting clients from misconduct and/or bad business practices	(Not Fully) Banking Law	The Bank of Italy does not provide clients with an individual protection against misconduct, but can impose administrative sanctions on financial institutions in case of significant infractions.
Ensuring institutional participation of consumer organisations in your decision making or advice received	Law no. 262/2005, (art. 23) and Bank of Italy regulation 24.3.2010	Stakeholders take part in public consultations before any regulatory measure is enacted.
Ensuring comprehensive transparency of official decision making processes and access to documents	law 241/90 and Bank of Italy regulation 11.12.2007	As far as the rules on the transparency of administrative action apply.
Promoting access to banking services (e.g. by low income individuals)	(Not Fully) Bank of Italy regulation 29.7.2009 (section III, par. 4)	The 2009 regulation introduced a standard current account, named "Conto corrente semplice", tailored on the basic financial needs of consumers.
Promoting supervisory cooperation and convergence of EU supervisory practices	(Not Fully) Banking Law no.262/2005	The Bank of Italy co-operates with other national and EU institutions. The Bank of Italy is also a competent authority under EC regulation 2006/2004.
Monitoring if financial institutions follow their own voluntary codes of conduct	(Not Fully) Bank of Italy, regulation 29.7.2009, sez Xi, par. 2	According to the regulation adopted by the Bank of Italy, financial institutions have to set up procedures to effectively apply those codes of conduct to which they have committed
Promoting consumer awareness of the obligations of financial institutions		Although the Bank of Italy has no explicit legal mandate on financial education, it has been taking initiatives aimed at promoting consumer awareness of their rights

Fostering an understanding of financial services and related issues	Banking Law	
Monitoring and evaluating trends and emerging issues	(Not Fully)	The Bank of Italy monitors the most relevant infractions in order to program its regulatory and enforcement action.
Promoting competition	Banking Law	Promoting competitiveness of the financial system is an explicit goal of the Bank of Italy, but the antitrust function is performed by a different authority.
Providing technical and organizational support to the alternative dispute resolution system established for the banking sector	Banking Law Bank of Italy regulation 18.6.2009	

The Bank of Italy has a number of additional mandates including maintaining financial stability, ensuring compliance with banking regulation and preventing financial crime. Furthermore its remit is for consumer credit issues but not for retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Transaction transparency; Prevention of criminal behaviour.

Not included in its set of responsibilities are: Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); and personal integrity of personnel.

When the Bank of Italy receives a consumer complaint, an individual answer is sent to the complainant. However, since the Bank has not the power to solve private disputes, in these cases the answer informs the complainant that the financial institution was requested to provide itself a prompt reply. Among the powers which the agency has, is an ability to address a complaint to the firm, refer a complaint to another agency, fine delinquents, and initiate and execute investigations. However, it cannot address a complaint to the complainant, start a legal action in court, and initiate criminal procedures.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take most actions in the form of a sanction. The exceptions are seeking a remedy from the firm, imposing criminal sanctions or demanding withdrawal of the directors of the firm. The Bank of Italy can impose pecuniary sanctions in case of significant violations of the consumer protection rules. When irregularities come to light in the control activity, the Bank of Italy may prevent financial institutions from undertaking or continuing certain activities, as well as order them to take specific actions. The withdrawal of the license (rather, the deletion from the register) may occur when an intermediary commits a serious or a repeated breach of his duties.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) financial penalties, 2) inhibitory orders (starting from 2010), and 3) automatic substitution of contract terms which have not been correctly advertised. The third of these sanctions is not enforced by the Bank of Italy, but falls within the scope of measures enforceable in court.

While complaints are not made public, sanctions are made public on a systematic basis and are often on a named basis. The Bank of Italy fines the members of the board of the financial institution and not the financial institution itself. The sanctions imposed under the Banking Law are to be published in abridged form in at least two daily newspapers (if the sanction is applied under article 144 of the Banking Law) or in the Supervisory Bulletin (for the other sanctions).

The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is EUR 258,225. In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing. Persons performing administrative or managerial functions and employees are liable to sanctions on behalf of the financial institution, which is not directly punishable.

The agency has reported having taken the following number of sanctions relating to a breach of consumer protection related rules: 6 in 2008 and 37 in 2009. All were fines. All sanctions are disclosed to the public

#### **14.3.2.1 Complaints and publication of complaints**

In Italy, there is both a private and a public financial ombudsman system in place. In addition to the existing private financial ombudsman system, since 2009 a semi-public ADR system is in place, called Arbitro Bancario Finanziario (ABF). It deals with consumers complaints in the area of banking and financial services regulated by the Banking Law and can take reputational measures against the financial institutions which do not comply with the ABF's decisions.

Enquiries/complaints received from consumers in 2009 totalled 7,700. Dominating subjects were loans and payment services.

In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved. The Bank of Italy performs secretarial functions for the ABF (Arbitro Bancario Finanziario), that is an alternative dispute resolution system entitled to take decisions about consumer complaints. Its decisions are not directly binding for any of the parties, but reputational measures may be taken against the financial institution that does not comply with the decision.

The agency is able to deal with complaints in any all ways but cannot respond to them. It can however, register/record them, respond to them, directly assist in resolution of complaints, indirectly assist in resolution by passing complaints on to the respective authorities, and publish statistics on them.

The Bank of Italy Annual Report, presented at the ordinary meeting of shareholders, contains a section devoted to the consumer protection issues. Yearly a specific report is issued to the Parliament and to the Government.<sup>53</sup>

While reporting on activities, operations, legislative framework for consumer protection, and details on the number and nature of complaints, the report does not elaborate on performance of firms with compliance of consumer protection rules nor on the details of the procedures for treating complaints. A business plan is also drafted by the agency.

Not much detail was provided on its supervisory activities. One example of the Bank's initiatives with the issuing of policy statements can be taken from the sector of loans secured by pledge of one fifth of the borrower's salary. In November 2009 the Bank warned financial institutions not to behave fraudulently or in such a way as to damage consumers and to strengthen organizational safeguards in terms of internal controls; in March 2010 the main operators in this

<sup>53</sup> [http://www.bancaditalia.it/pubblicazioni/relann/rel09/rel09en/en\\_rel\\_2009.pdf](http://www.bancaditalia.it/pubblicazioni/relann/rel09/rel09en/en_rel_2009.pdf).  
[http://www.bancaditalia.it/pubblicazioni/relapago/2010/Rel\\_Parlamento\\_Governo\\_2010.pdf](http://www.bancaditalia.it/pubblicazioni/relapago/2010/Rel_Parlamento_Governo_2010.pdf).

sector were requested to communicate any adjustments actually made. In terms of onsite inspections (not specifically for consumer protection), based on the annual program, in 2009 the Bank of Italy has performed the following 577 inspections: i) 443 branches of 100 banks. ii) 134 branches of 60 non-bank financial institutions.

The following table gives examples of some activities in 2009:

Examples of functions fulfilled	Description
<b>Compliance</b> with consumer protection laws and regulations	As a result of the compliance checks, the Bank of Italy applied administrative fines on 37 financial institutions.
<b>Initiatives</b> that have helped to improve the balance of power in the relationship between financial institutions and consumers	Handling customers complaints, the Bank of Italy prompts financial institutions to deliver to the Supervisor and to the client detailed information on the issue raised; in some cases, they have been asked to pay the clients back the money charged for commissions not adequately disclosed to the customers. In cases in which the Italian legislation does not provide for specific sanctions, the Bank of Italy formally reminds financial institutions the importance of adopting fair contractual relationships with customers.
<b>Recourse:</b> e.g. informing consumers about their rights to complain, how and where to complain and receive appropriate redress	In 2009 the Bank of Italy received almost 7000 recourses; it provided a customized answer to the claimants, making also reference to the relevant rules and informing customers of their right to take action before a specific alternative dispute resolution institution: the Arbitro Bancario Finanziario (ABF).
<b>Consumer education</b> in the financial sector	In November 2009 the Bank of Italy published practical guides to help consumers to understand the most widespread retail financial products (i.e.: banking current account and mortgage loan).

The Bank of Italy consults with stakeholders and then publishes an annual regulatory plan outlining the scheduled initiatives for the following year, including, among others, consumer protection regulations.

In the past 2 years, the supervisor has been responsible for concrete legal or regulatory changes affecting consumers: 1) overall reform of the regulation about transparency and fairness in the area of banking services; 2) discipline of the alternative dispute resolution system for banking services (Arbitro Bancario Finanziario - ABF); 3) transposition of the Payment Services Directive and of the directive on credit to consumers.

### 14.3.3 Operational capacity of the supervisor

The source of the agency's funding is neither from the market nor the public purse. No data whether general or specific were available on funding of the supervisor. Data on spending commitments in connection with the Bank of Italy's institutional activities are available only in aggregate form in the Annual Report released on 31 May each year, covering the year ended in December.

In terms of human resources, the supervisor had 7,500 employees for all its operations at the end of 2009. The breakdown of those employed for consumer protection tasks was not possible. Nevertheless, the Bank of Italy has a special unit to monitor and co-ordinate all the activity related to the customer relations of banking and financial intermediaries with a staff of 16 (i.e. 0.2% of total staff). The number of staff involved in consumer protection issues on a non-exclusive basis is nevertheless judged to be high but no data are available. The staff background qualifications of those in charge of consumer protection activities are made up of 13 lawyers and 3 economists.

This supervisory agency ensures consumer representation into the operations of the agency through direct consultation with individual consumers. It does not involve them institutionally. The issue of supervising groups with cross-sector and cross-border operations was seen by the agency as important for consumer protection to avoid regulatory arbitrage.

## **15 Latvia**

In Latvia, the Financial and Capital market Commission is in charge of banking, securities and insurance supervision. However, this single integrated regulator did not take part in this study. A greater look at the market for financial services from the consumer perspective in this Baltic state would be of great interest for further research.

## 16 Lithuania

### 16.1 Summary

The Bank of Lithuania is in charge of supervising the credit institutions, while the Lithuanian Securities Commission supervises the Lithuanian securities market and its participants. The Insurance Supervisory Commission is in charge of the supervision of insurance firms and of insurance intermediaries. Consumer protection in the area of financial services is however the responsibility of the country's general consumer protection agency, the State Consumer Rights Protection Board. The other public agencies sited as looking after consumer protection in the area of financial services were: the Communications Regulatory Authority of the Republic of Lithuania, the State Energy Inspectorate under the Ministry of Economy, and the National Control Commission for Prices and Energy.

### 16.2 State Consumer Rights Protection Board (VVTAT)

#### 16.2.1 Basic data

Main Department that provided answers	Economic interest department
Status of supervisory authority	General consumer protection authority
The supervisor is controlled by a governmental body	The Ministry of Justice.
Type of institutions supervised	Other: The Authority does not supervise the market of financial services. It only provides the consumer protection in the field of financial services.
Type of institutions not supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers; Real estate agents; Credit referencing agencies.
Areas of supervision include	Other

#### 16.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency. The law in Lithuania does not define consumer protection. But according to the Law on Consumer protection the spheres of the protection of consumer rights shall be purchase-sale of goods and the services related thereto, all repayable services when goods are acquired or services are supplied to consumers.

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
3	...provides equal opportunities to all consumers especially to the poor.
4	...prevents over-indebtedness, exclusion, old age poverty.
5	...guarantees a general framework in which others can provide individual consumer protection

The agency's supervisory approach in consumer protection can be described as follows:

State Consumer Rights Protection Authority's (VVTAT) activities: - Coordinates state institutions' activities on protection of consumers, - Protects consumers' public interest, - Performs alternative consumers' disputes resolution, - Undertakes control over practice of unfair terms specified in the contracts with consumers, - Analyses consumer complaints on unfair contract terms, - Carries out-of-court examination of consumer complaints resulting from consumers' disputes with credit providers, - Organises and carries out education of consumers and services providers', - Organizes the exchange of information with the European Union and Member States, - Represents the Republic of Lithuania in European Union and international organizations in consumer rights protection field.

The agency can be described as having an exclusive role in monitoring compliance.

The VVTAT regulates how the financial services providers comply the laws that regulate the consumer protection in financial services field.

Supervisory objectives: The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures; Promoting access; Promoting consumer understanding; Monitoring and evaluating trends	Law on Consumer Protection; Law on Consumer credit; Law on Payments	
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	Not fully	Authority provides remarks and comments on the consumer rights protection board in the field of insurance and investment.
Protecting clients from misconduct and/or bad business practices	Law on Consumer Protection	
Ensuring comprehensive		According to the Law on Pay-

transparency of official decision making processes and access to documents		ments if a service provider breaks the law, the Authority provides information in the webpage <a href="http://www.vvtat.it">www.vvtat.it</a> . According the Law on Consumer protection notifications about the failure to implement decisions and peaceful settlement agreements shall be publicly announced in the website of the Authority. All the laws regarding the consumer protection are provided in Authority's webpage.
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The agency's remit is for both consumer credit and retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; Performs alternative consumers' disputes resolution, Carries out-of-court examination of consumer complaints resulting from consumers' disputes with credit providers, Organizes and carries out education of consumers and services providers'. Controlling for the Personal integrity of the financial institutions' personnel and is not however part of the supervisor's tasks, nor is prevention of criminal behaviour.

#### 16.2.2.1 Institutional powers behind the mandate

The Table below shows how certain powers are exercised by the agency.

Agency has the power to:	Details
Make rules directly affecting consumer protection	Improving laws regulating the consumer protection.
Issue guidance	Providing analysis of consumer complaints.
Allow for a range of swift regulatory responses to on-going/emergent situations	Authority always responds to situations: via newspapers, television, dealing directly with consumers and financial services providers.
Give individual advice to consumers	Authority directly consults the consumers.

Among the powers which the agency has, is an ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, However, this also means it is not able to start a legal action in court, initiate criminal procedures, fine delinquents, initiate and execute investigations.

The laws do not allow the Authority to mount or fund substantial legal actions. However it is able 1) to obtain information relating to the protection of consumer rights from state and municipal authorities responsible for an appropriate management sphere; to request that producers, importers, sellers and service suppliers or their representatives arrive to the State Consumer Rights Protection Authority and submit explanations orally or in writing; to set up commissions, working groups for drafting of legal acts or solving other issues falling within the competence of the State Consumer Rights Protection Authority, to include in them the specialists of other institutions (after consultation with their heads). If

the firm breaks the Law on Payments - the Authority has the right to impose the pecuniary sanction. If the break is provided first time - 1000-3 0000 LTL, if there were aggravating circumstances - 30 000 - 120 000LTL. Because the law on Payment came into force only in 2009, the authority did not impose any fines on any financial services providers. Sanctions and/or complaints are usually made public on a systematic basis. Furthermore, these sanctions and complaints are often on a named basis. However, the following set of sanctions cannot be currently imposed by the supervisor at present: Notify the firm of a violation, Seek a remedial commitment from the firm, Impose criminal sanctions, Orders for institute directors, Withdrawal of the license, Demand withdrawal of director, Prohibition of certain professional activities.

According to the Law on Payments if a service provider breaks the law, the Authority provides information in the webpage [www.vvtat.lt](http://www.vvtat.lt) . According the Law on Consumer protection notifications about the failure to implement decisions and peaceful settlement agreements shall be publicly announced in the website of the Authority.

The maximum amount for a financial penalty is EUR 34,754 (LT 120,000). The agency is however, not able to punish staff at a financial institution con a personal basis following a case of wrong-doing. The agency was not able to provide data on the number or size of sanctions it has taken with regard to breaches of consumer protection related rules.

### **16.2.3 Complaints handling**

A public financial ombudsman system exists in Lithuania. The State Consumer Rights Protection Authority is a state establishment under the Ministry of Justice, which implements the state policy in the sphere of the protection of consumer rights and guarantee the protection of consumer rights.

In 2010 the VVTAT received 194 complaints in writing, 219 via email, 357 via telephone, 32 verbally consults.

In case of a consumer complaint, the supervisor is able to make binding decisions for some (but not all) of the parties involved. According to the Law of Payments the decision regarding the prejudice is compulsory to the provider of payments services.

The supervising agency is able to do the following things with a consumer complaint: Register/record them; Respond to them; Directly assist in resolution of complaints; Indirectly assist in resolution by passing complaints on to the respective authorities; Publish statistics on them.

An annual Report is published for the both internal external purposes and use.<sup>54</sup> It contains information on its activities, operations, but also on procedures that financial institutions have in place for dealing with complaints, number and nature of complaints that have been brought to your attention, and contains statistics of consumer complaints, main problems, plans for the future etc.

Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework. At the moment the authority is preparing the National consumer rights protection strategy 2011-2014.

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<sup>54</sup> See <http://www.vvtat.lt/index.php?2267040817>.

In the past 2 years, the supervisor has been responsible for concrete legal or regulatory changes affecting consumers, e.g. the new Law on Payments, new Law on Consumer protection.

#### **16.2.4 Operational capacity and supervisor views**

The source of the agency's funding is solely from the government. No data was available or could be provided to the research concerning the importance of the funds needed to run the agency and its consumer protection units. The Authority at the moment deals with all financial services except insurance and investment services. In terms of staff, the Authority includes a Financial Services Supervision Division where 4 people are responsible for consumer protection in financial services field of work. Furthermore, the 4 persons deal with consumer complaints, all of which are in the consumer credit area as opposed to in the retail investment area. The employees are primarily all lawyers. In 2009, the advanced training received by the staff of the agency in the field of consumer protection was 30 number of trainings (hours/days) and 4 people trained. Issues covered in the sessions included consumer protection in the field of financial services - money savings, loans, consumer credit, retail financial services, indebtedness etc...

Consumer representation in the agency's work is served by a presence on the board of directors. In order to implement the functions specified in the Law on Consumer protection the director of the State Consumer Rights Protection Authority shall set up a collegiate body - commission from the heads of structural units of the State Consumer Rights Protection Authority.

In 2009, staff was involved in international activities which are very important e.g. the FIN-Net, International Financial Ombudsman Net where the Authority gets priceless experience, ideas how to improve regulation of financial services and practise how to solve some kinds of services.

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'. There are no current initiatives focused on the separation of prudential supervision from consumer protection tasks in Latvia. The Authority feels it should provide consumer protection in all fields of financial services. At the moment Authority does not deal with complaints in insurance and investment fields.

### **16.3 Insurance Supervisory Commission (DPK)**

#### **16.3.1 Basic data**

Status of supervisory authority	Stand-alone insurance supervisor
The supervisor is controlled by a governmental body	
Type of institutions supervised	Insurance firms only
Areas of supervision include	Macro-prudential; Micro-prudential; Conduct-of-business

#### **16.3.2 Institutional structure and objectives**

Consumer protection is an explicit goal of the agency. According to Article 8 of the Law on consumer protection of the Republic of Lithuania, the spheres of the

protection of consumer rights shall be purchase-sale of goods and the services related thereto, all repayable services when goods are acquired or services are supplied to consumers.

consumer protection an explicit goal of your agency

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	... the Insurance Supervisory Commission of the Republic of Lithuania in accordance with the out-of court procedures settles disputes between consumers and insurers, arising from the insurance contract or related to it, also determines such disputes settlement rules. (own definition)
2	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.

The DPK's supervisory objectives are shown below:

Elements of mandate		Legal Source
Protecting clients from misconduct and/or bad business practices	Fully	Law on insurance of the Republic of Lithuania (Article 207)
Promoting consumer awareness of the obligations of financial institutions	Fully	Law on Consumer Protection of the Republic of Lithuania (Article 7, paragraph 1)
Fostering an understanding of financial services and related issues	Fully	Law on Insurance of the Republic of Lithuania (Article 192, paragraph 11)
Monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial services	Fully	Law on Insurance of the Republic of Lithuania (Article 192, paragraph 11)
Ensuring compliance with consumer protection measures	Not fully	Law on insurance of the Republic of Lithuania (Article 207)
Ensuring comprehensive transparency of official decision making processes and access to documents	Not fully	Access to concrete case documents have only interested parties (consumer and insurer). This is in order to avoid the leak of personal data

According to article 192 of the Law on Insurance of the Republic of Lithuania, the Insurance Supervisory Commission (DPK) shall perform the following functions: 1) draft, approve, amend, and repeal legal acts regulating activities of insurance undertakings, insurance intermediaries, branches of non-member-country insurance undertakings and branches of companies of independent insurance intermediaries established in the Lithuania, including financial and statistical accounts; 2) grant and revoke licences to engage in insurance and insurance mediation activity; 3) grant and revoke other authorisations established by this Law as well as authorisations prescribed by other laws, the granting and revocation of which is assigned the competence of the DPK; 4) observe, analyse, check and supervise in other ways activities of insurance undertakings, insurance broker companies, branches of non-member-country insurance undertakings and branches of independent insurance intermediaries established in Lithuania, their compliance with laws and other legal acts; 5) apply sanctions provided for in this Law and other laws; 6) organise qualification examinations and performance re-

evaluation of insurance brokers; 7) lay down the procedure for the registration and record-keeping of insurance policies; 8) co-operate with competent authorities, financial and capital market supervisory institutions, competition and consumer rights' protection institutions of Lithuania, other European Union Member States and non-member states as well as with other institutions of Lithuania; 9) apply to the court for the institution of bankruptcy proceedings against insolvent insurance undertakings; 10) approve the estimate of expenditure of the DPK upon agreement of the estimate with the Government of Lithuania; 11) inform the public about fulfilment of the functions of the DPK, significant changes in the insurance system; 12) publish drafts of the DPK regulations on the Internet website of the DPK; 13) ensure that the public has access to the information, except for the information which constitutes official secret of the DPK, about cooperation of the DPK with competent authorities, financial and capital market supervision institutions, competition and consumers' rights protection institutions of Lithuania, other EU Member States and non-member states as well as with other institutions; 14) submit recommendations to the Chamber of Insurance Brokers, professional association of actuaries, insurance undertakings and branches of non-member-country insurance undertakings exercising control over the activities of dependent insurance intermediaries in order to ensure that the functions of the said associations and the functions of the insurance undertaking or a branch of the non-member-country insurance undertaking, related to the control of dependent insurance intermediaries, should be disclosed to the public and be transparent; 15) represent the interests of Lithuania at the institutions of the European Union and their working bodies within the remit of its competence; 16) perform other functions established by above mentioned law and other legal acts of Lithuania.

### 16.3.3 Complaints, activities and operational capacity

The DPK's remit with regards to consumer protection is solely for professional compliance to use of fair contract terms. Settlement of disputes between consumers and insurers, arising from the insurance contract or related to it, in accordance with the out-of-court procedure. There are approximately 390 complaints received per year, regarding insurance companies' decisions and actions.

Examples of specific monitoring tasks	Qty (2009)	Details
Tests on the accuracy, simplicity, comparability of information after purchase (ex-post)	6	Only if a complaint is received
Onsite inspections	17	3 - Life Assurance Companies, 3 - Non Life Insurance Companies, 11 - Insurance brokers
Own agency policy statements and opinions	2	1. Insurance Supervisory Commission position on the insurance indemnity payment terms. 2. Insurance Supervisory Commission position on the insurance contract conditions, providing the insurer to refuse paying insurance indemnity in cases of gross negligence of policyholder, insured person or beneficiary.
Market studies in relation to consumer protection issues		on demand in relation to concrete issue

The following table gives concrete examples for various activities which the DKP has been responsible for in the year 2009.

<b>Examples of functions fulfilled</b>	<b>Description</b>
Compliance with consumer protection laws and regulations	424 complaints, no sanctions imposed
Monitoring financial institution compliance with voluntary codes of conduct (and their own public commitments)	Insurance Supervisory Commission reviews and evaluates information on website and other public commitments of insurance undertakings. The following actions are fulfilled studying public information and during the onsite inspections.
Initiatives that have helped to improve the balance of power in the relationship between financial institutions and consumers	Informing the public about statistical data of consumer and insurer disputes and natural and legal persons claims settlement (published on agency website) and about Commissions' decisions that had not been enforced by the insurers (sending information to the State Consumer Rights Protection Authority for publishing on its website <a href="http://www.vtat.lt">www.vtat.lt</a> )
Consumer education and recourse	Methodological guidance for consumers are published on the agency website ( <a href="http://www.dpk.lt">www.dpk.lt</a> )

An annual report exists and concerns particular objectives, performance of principal functions and status of the country's insurance system.<sup>55</sup> The Insurance Supervisory Commission is state budget institution, accountable to government, therefore there is no legal act binding it to have a business plan.

According to article 198 (paragraph 2) of the Law on Insurance of the Republic of Lithuania, the Supervisory Commission shall choose a sanction having regard to the contents of the violation for which it is imposed, personal fault, proportionality of the violation and sanction, the consequences of the violation and the imposed sanction for the person on whom the sanction is imposed and for the security, stability and credibility of the system of insurance and insurance mediation.

The agency's 3 most effective sanctions in consumer protection are: 1) warning of the shortcomings or infringements discovered in work, and set the deadline for the elimination thereof; 2) monetary penalty; 3) administrative penalties.

As it is stated in article 201 (paragraph 3) of the Law on Insurance of the Republic of Lithuania, a penalty in the amount of up to EUR 100,000 may be imposed on an insurance undertaking, insurance intermediaries or a branch of a non-member-country insurance undertaking or of independent insurance intermediary, which committed gross violation of this Law or any other legal act regulating insurance and insurance mediation activity.

In terms of funding, both public and private funds are available. According to article 187 of the Law on Insurance, the Supervisory Commission shall be financed from deductions from the written insurance premiums (received or receivable insurance premiums, accounted according to procedure prescribed by laws) from

<sup>55</sup> See: <http://www.dpk.lt/en/apzvalga.metines.phtml>.

insurance undertakings and branches of non-member-country insurance undertakings in the Republic of Lithuania, except for the premiums of any compulsory insurance of any category, also from the state budget according to the procedure prescribed by legal acts.

Funds for all operations total EUR 1.9 million, of which approx.. 1 million is for consumer protection operations. All 53 employees of the agency are said to be working in areas related to consumer protection. Furthermore, 2 members of this staff received 1 day of training each in 2009. Training issues covered in the sessions included: 1. Presentation of the Consumer Rights Protection Committee of Committee of European Insurance and Occupational Pensions Supervisions (hereinafter - CEIOPS). 2. Investment products, attributable to different financial sectors. 3. Information that should be provided to consumers. 4. Insurance intermediaries directive and related issues. 5. Settlement of consumer's complaints.

## 17 Luxembourg

### 17.1 Summary

The Luxembourg supervision structure is on a sectoral basis with supervision of the banking system, and on the securities business concentrated in the hand of the Commission de Surveillance du Secteur Financier (CSSF), an independent agency with a wide remit. The Insurance supervision is exercised by the Commissariat aux Assurances, a public body placed under the overall supervision of the Ministry of Finance. The central Bank has certain supervisory competences on the settlement systems.

### 17.2 Commission de surveillance du secteur financier (CSSF)

#### 17.2.1 Basic data

Main Department that provided answers	General Secretary's office
Status of supervisory authority	Stand-alone integrated financial supervisor
The supervisor is controlled by a governmental body	Ministry of Finance is politically responsible
Type of institutions supervised	All firms (incl. Investment funds, other professionals of the financial sector, audit firms etc.) except insurance firms and real estate agents.
Type of institutions not supervised	Insurance firms
Areas of supervision	Micro-prudential and Conduct-of-business

#### 17.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the CSSF, provided for in Art 2 of the law of 23 December 1998 establishing a financial sector supervisory commission ('Commission de surveillance du secteur financier')

Its own definition of consumer protection is as follows: "Consumer protection consists of all the actions taken in order to protect consumers and investors from non-appropriate products and services".

It also selected and ranked suggested consumer protection definitions in the following way:

Rank	Consumer protection...
1	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
2	... provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
3	... secures for fair competition and functioning markets in financial services.

The CSSF describes its supervisory approach in consumer protection as follows:

- early detection of problems and intervention, through intensive supervision of the financial institutions
- working for a maximum of transparency in order to avoid problems
- fast intervention in case a problem has been detected
- analysing consumer complaints and trying to reach an amicable settlement of the claims
- promoting consumer education in order to allow consumers to understand the different products, to evaluate risks and to take the right decisions.

Elements of mandate	Legal Source
Protecting clients from misconduct and/or bad business practices	The national provisions implementing the Unfair Commercial Practices Directive (Loi du 29 avril 2009 relative aux pratiques commerciales déloyales)
Promoting supervisory cooperation and convergence of EU supervisory practices	The law of 5 April 1993 on the financial sector.
Ensuring compliance with consumer protection measures; Ensuring comprehensive transparency of official decision making processes and access to documents; Promoting consumer awareness of the obligations of financial institutions; Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures; Fostering an understanding of financial services	The law of 23 December 1998 establishing a financial sector supervisory commission
Monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial services	In the framework of the new EU ESAs

Other mandates such as financial stability, preventing financial crime etc.. are not shown above. However, ensuring institutional participation of consumer organisations and promoting access to banking services are not part of the CSSF responsibilities.

### 17.2.3 Activities, complaints, capacity and views

284 complaints were received in 2009 concerning, among others, wealth management and investment advice. Information on complaints are disclosed in its annual report<sup>56</sup>, though no business plan for supervision exists.

The CSSF does not make binding decisions regarding complaints. It acts as an intermediary in the settlement of conflicts between the professionals subject to our supervision and their customers. The law provides that the CSSF "shall be competent to receive complaints from clients of persons subject to its supervision and to mediate with those persons with a view to achieving an amicable settlement of such complaints".

Regarding activities actually carried out, no details were available for 2009 however the CSSF did specify that all kinds of testing, monitoring, investigating etc..

<sup>56</sup> See: [http://www.cssf.lu/fileadmin/files/Publications/Rapports\\_annuels/Rapport\\_2009/RA2009\\_eng.pdf](http://www.cssf.lu/fileadmin/files/Publications/Rapports_annuels/Rapport_2009/RA2009_eng.pdf).

are in setup at the current time and that this will be a greater element of supervisory activity in the future.

The 3 most effective sanctions in consumer protection according to the CSSF are: 1) The prohibition on the execution of any number of operations or activities; 2) The prohibition on participation in the profession by directors or senior management personnel; 3) A fine of between 250 and 250,000 euros (the maximum amount permissible).

The finances available for the CSSF to carry out consumer protection tasks is not known, though total activity of the CSSF is based on a budget of EUR 40 million in 2009. Of the approximately 360 staff members of the CSSF (mainly lawyers and economists), only 5 can be identified as allocated to specific consumer protection operations (namely the complaints handling team). These complaints are treated by dedicated staff and not by employees responsible for supervision of the financial institutions.

## 18 Malta

### 18.1 Summary

In Malta, by law all responsibilities for consumer protection within the financial services sector fall within the remit of the Malta Financial Services Authority as the single regulator for the financial sector. As such therefore the Central Bank of Malta has not taken part in our research. The MFSA is an independent authority set up by Act of Parliament but political responsibility for the Authority rests with the Minister of Finance.

Public agencies that look after consumer protection in the area of financial services in Malta depend on the activity in question. E.g. disputes relating to motor insurance and payment services (those falling under the Payment Services Directive) can be referred to the Malta Arbitration Centre (setup under the Malta Arbitration Centre Act). The Consumer and Competition Division (Ministry of Finance) handles consumer complaints relating to goods and services. Usually, complaints relating to financial services are referred to the MFSA's Consumer Complaints Unit.

### 18.2 Malta Financial Services Authority (MFSA)

#### 18.2.1 Basic data

Main Department that provided answers	Consumer Complaints manager / Deputy Director (Consumer Complaints Unit)
Status of supervisory authority	Stand-alone integrated financial supervisor
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers; plus Trusts, trustees
Type of institutions not supervised:	Real estate agents; Credit referencing agencies
Areas of supervision include	Micro-prudential; Conduct-of-business

#### 18.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

Own agency definition of consumer protection:

In terms of section 2 of the MFSA Act, the Authority is tasked with a number of objectives, including: 'to promote the general interests and legitimate expectations of consumers of financial services, and to promote fair competition practices and consumer choice in financial services', and 'to monitor and keep under review trading and business practices relating to the supply of financial services to private and other persons, and to provide relevant information and guidance to the public' and 'to investigate allegations of practices and activities detrimental to consumers of financial services, and generally to keep under review trading practices relating to the provision of financial services and to identify, and take measures to suppress and prevent, any practices which may be unfair, harmful or otherwise detrimental to consumers of financial services'.

The following table provides a ranking of the 3 matching consumer protection definitions established by the MFSA in the light of its supervisory functions.

<b>Rank</b>	<b>Consumer protection...</b>
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
1	...secures for fair competition and functioning markets in financial services.
3	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.

The agency's supervisory approach in consumer protection can be described as follows:

The Malta Financial Services Authority is statutory bound to regulate, monitor and supervise financial services in Malta.

The agency's role is not exclusively restricted to monitoring compliance.

The MFSA's role as a single regulatory and supervisory authority of financial services in Malta is naturally far more extensive than merely 'monitoring compliance'. It can licence a firm, and revoke or restrict such licence on specific grounds. It may also request documentation, enter premises of licensed firms, interview personnel (even after they have left a firm) and even fine firms.

The MFSA has a number of mandates stipulated by the MFSA Act (compliance with consumer protection laws, protecting clients from misconduct, promoting supervisory cooperation, monitoring industry codes of conduct, promoting financial education and monitoring trends as well as promoting competition). In addition it has regard to: Ensuring compliance with banking regulation, Ensuring compliance with securities regulation and preventing financial crime. The oversight function in the last point is conducted by the Financial Intelligence Analysis Unit (FIAU) with the MFSA acting as agent in terms of on-site inspections at licence holders in this area.

The agency's remit is for retail investment issues but does not deal with the supervision of consumer credit. In addition, the agency is responsible for the following consumer protection measures: Transaction transparency; Personal integrity of personnel; Prevention of criminal behaviour.

The Consumer Affairs Act contains provisions relating to unfair commercial practices and unfair contract terms. These aspects do not fall under the remit of the MFSA but nevertheless financial firms are required to abide by the provisions set therein.

The MFSA does not control for the professional compliance to fair commercial practices, nor the professional compliance to use of fair contract terms, nor with regard to methods of marketing (e.g. misleading advertising).

The MFSA may issue directives and guidelines as appropriate. However, there may be instances where the Minister of Finance issues Legal Notices in terms of respective legislative Act. This latter process may take more time to implement.

The MFSA has the following powers: address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, fine delinquents, and initiate and execute investigations. It cannot however, start a legal action in court, nor initiate criminal procedures.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; Seek a remedial commitment from the firm; With-

drawal of the license; Demand withdrawal of director; Prohibition of certain professional activities; and Impose a pecuniary sanction (monetary penalty). The MFSA cannot impose criminal sanctions nor direct orders for institute directors.

Sanctions and/or complaints are made public on a systematic basis<sup>57</sup>. The maximum authorised amount for a financial penalty will depend on the legislation under which the sanction is raised. The lowest and highest fines issued were EUR9K-EUR28K (in 2008) and EUR 1,160-EUR12K (in 2009). In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing.

### 18.2.3 Activities and supervision in practice

The Table below contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009.

Examples of specific monitoring tasks	Qty (2009)	Details
<b>Onsite inspections</b>	64	32 visits were carried out to insurance licence holders (four to insurance companies and 28 to intermediaries), 20 visits to investment intermediaries and nine visits to credit institutions (including two extensive credit risk reviews) and three to financial institutions.
Own agency <b>policy statements</b> and opinions	1	'Guidelines for the Promotion of Good Practice in the Funds Sector' were published during the last quarter of the year, in collaboration with the Data Protection Commission. The guidelines are intended to assist Collective Investment Schemes in complying with their obligations under the Data Protection Act (Chapter 440 of the Laws of Malta) and protecting client information held by funds or their services providers.
Checks for compliance with fair, non-misleading <b>advertising</b> practices	n.a.	As part of its off-site supervisory function, the MFSA also monitors media advertising issued by authorised persons and newspaper articles and media coverage dealing with companies which have their financial instruments traded on the Malta Stock Exchange.
Checks for compliance with fair, non-coercive and reasonable <b>selling practices</b>	n.a.	Such tests are usually carried out during on-site compliance visits and results are not published.
Tests of <b>suitability requirements</b> when advice or recommendations are offered	n.a.	Such tests are usually carried out during on-site compliance visits and results are not published.
<b>Mystery shopping</b>	n.a.	Details are confidential

<sup>57</sup> See: <http://www.mfsa.com.mt/pages/announcements/penalties/penalties%20units.asp>.

exercises		
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The following table gives concrete examples for various activities which the agency has been responsible for in the year 2009.

<b>Examples of functions fulfilled</b>	<b>Examples: Description, details, links etc.</b>
Product transparency, wrong advice, monitoring codes of conduct, and compliance	This is part of the role of the MFSA and is an integral part of the functions of the regulatory units. The MFSA does not publish data as to the actual tests it carries out.
<b>Overcharging:</b> e.g. extra fees and commissions, hidden fees on bank accounts etc.	As such, the MFSA does not have remit to approve (or refuse) charges and tariffs set by financial firms. The MFSA requires firms to ensure that their tariffs are transparent and communicated to a potential customer before a transaction is made. The MFSA may only intervene if it is clear that there is collusion or suspected collusion between firms as to price-fixing. In such cases, the MFSA will refer the matter to the Office of Fair Trading for any action deemed appropriate. To ensure transparency and comparability of tariffs and charges for a number of products and services offered by banks and investment firms in Malta, the MFSA's consumer portal <a href="http://mymoneybox.mfsa.com.mt">mymoneybox.mfsa.com.mt</a> provides a comprehensive list of tariffs of banks and investment firms.
<b>Consumer education</b> in the financial sector, and recourse	The MFSA invests substantial time and financial resources to ensure that consumers are continuously kept informed and educated about their rights and on various subjects relating to financial services. Television and radio air-time constitute an essential and effective way of disseminating information to as wide an audience as possible. Unit officials participate in live programmes where consumers are allowed to air their views and ask questions. During the year, a new website branded 'mymoneybox' <a href="http://mymoneybox.mfsa.com.mt">http://mymoneybox.mfsa.com.mt</a> was launched with the aim of providing impartial information to consumers about financial products and services. The information provided on the website is updated regularly and the website is continually enhanced with additional material to cater for all levels of society.

#### Complaints and publication of complaints

Malta is one of the few EU countries where there is no such agency as a financial ombudsman, neither private nor public. The MFSA's Consumer Complaints Manager acts as mediator. Data on enquiries and complaints received from consumers was not provided though can be found in the Annual Reports. In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved.<sup>58</sup>

<sup>58</sup> See <http://mymoney.mfsa.com.mt> (click on COMPLAINTS).

The supervising agency is able to do the following things with a consumer complaint: Register/record them; Respond to them; Directly assist in resolution of complaints; Indirectly assist in resolution by passing complaints on to the respective authorities, and Publish statistics on them.

An annual Report is published for the public and contains information on activities, operations, legislative framework for consumer protection, and on number and nature of complaints. The Annual Report may include comments relating to activities which the Unit may embark upon in the following year in respect to consumer education initiatives. The agency however, does not appear to produce a specific business plan outlining how it will develop and implement new initiatives to foster consumer protection alongside the annual report.

In the past 2 years, the supervisor does not appear to have been responsible for concrete legal or regulatory changes affecting consumers.

#### **18.2.4 Operational capacity of the supervisor and its views**

The source of the agency's funding is purely levied from the financial institutions that it monitors. No data was available or could be provided to the research concerning the importance of the funds needed to run the agency and its consumer protection units.<sup>59</sup> Data on staffing levels (found on page 70 of the MFSA's Annual Report 2009) show that 4 members of staff deal exclusively with consumer complaints relating to financial issues: A Consumer Complaints manager, 2 Managers and 1 Officer. In 2009, 5 persons received training relevant to consumer protection issues. More specifically to do with the Payment Services Directive, and application of MiFID for particular investors.

Consumer representation in the agency's work is served by a presence on the board of directors as well as on the supervisory council.

In 2009, staff was involved in international activities through the FIN-NET ([www.fin-net.eu](http://www.fin-net.eu)).

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'.

There is no great discussion about the separation of prudential and market supervision, however, there may be scope for consideration for integrating within the risk-based prudential supervisory tasks undertaken by the MFSA an orientation which takes into account issues that affect consumer protection.

When asked which additional powers could help them improve consumer protection in their country, supervisors have answered the following way: Enforcement of recommendations by the Consumer Complaints Manager on licence holders such as through the creation of an independent Financial Ombudsman would improve consumer protection.

Despite the EU initiative and consultation on collective redress, the level of discussion on the issue of class actions is seen as being low by the supervisor in this country.

Future improvements foreseen include, more resources will be employed by the Unit in 2011 to cater for a speedier resolution of complaints and more initiatives in respect of consumer education.

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<sup>59</sup> See <http://www.mfsa.com.mt/files/about%20us/mfsa%20act%20and%20annual%20reports/files/Abri%20Acc%202009.pdf>.

## 19 Netherlands

### 19.1 Summary

The financial supervisory system in the Netherlands is dual (supervision by objectives): a conduct-of-business supervisor (AFM) as well as a prudential supervisor (DNB). They have no restrictions to particular products, but supervise the whole array of products (lending, saving, investments, pension schemes, etc.) and providers (banks, insurance companies, pension funds, etc.).

In principle, the current supervisory model is preferable as it safeguards a better focus on both issues: conduct of business and prudence. But numerous dysfunctions have been observed. For instance, despite several research projects done by AFM in 2006 which made clear that the percentage of mis-selling in mortgages was unacceptably high, nothing really improved for consumers and new research from the same AFM proved the percentages remained at the same level in 2009.

In theory, the financial supervisor is endowed with necessary investigation and sanctioning powers to protect consumers, but in practice it is not the case. Financial penalties are low and most of the effect has to come from reputational repercussions. Also the person responsible for the wrong doing cannot be punished on a personal basis, nor is there a system of personalised permits which can be revoked for a period of time to prohibit that person to work within the financial sector.

Besides the AFM, other agencies that look after consumer protection and deal with complaints in the area of financial services in the country include: For prudential supervision DNB is the competent authority. Questions and complaints relating to other consumer issues, for example about energy suppliers or product guarantees, are referred to ConsuWijzer, an information service provided by the three regulators that fall under the Ministry of Economic Affairs. These are: the Consumer Authority [Consumentenautoriteit], the Netherlands Competition Authority [Nma] and the Independent Post and Telecommunication Authority [Onafhankelijke Post en Telecommunicatie Autoriteit, or OPTA].

### 19.2 Authority for Financial Markets (AFM)

AFM (the AFM is an administrative body in the legal sense, the authority for financial markets in a formal sense)

#### 19.2.1 Basic data

Status of supervisory authority	Stand-alone securities supervisor
	The supervisor is not controlled by a governmental body
Type of institutions supervised	Investment firms; Financial intermediaries; Financial advisers
Type of institutions not supervised	Credit institutions; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Real estate agents; and credit referencing agencies
Areas of supervision include	Conduct-of-business

### 19.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

The AFM promotes fair and transparent financial markets and is the independent supervisory authority for the savings, lending, investment and insurance markets. The AFM promotes the conscientious provision of financial services to consumers and supervises the honest and efficient operation of the capital markets. Its aim is to promote consumers' and the business sector's confidence in the financial markets, both in the Netherlands and abroad.

Its objective concerning consumer protection is laid down in the Act on Financial Supervision and the Consumer Protection Enforcement Act. Section 1:25 of the Act on Financial Supervision, 'Wft' 1. Conduct of business supervision shall focus on orderly and transparent financial market processes, integrity in relations between market parties and due care in the provision of services to clients. 2. Under this Act, the Authority for the Financial Markets shall be required to exercise the supervision of conduct of the financial markets and to decide on the admission of financial enterprises to those markets. Section 3.1 of the Dutch Consumer Protection Enforcement Act, "Whc" 1. The AFM is appointed as the competent authority for intra-Community breaches of the legal provisions (...) of this Act, insofar the breach concerns the financial service or activity. 2 (...).

Own agency definition of consumer protection:

"The AFM promotes the conscientious provision of financial services to consumers and supervises the honest and efficient operation of the capital markets. Its aim is to promote consumers' and the business sector's confidence in the financial markets, both in the Netherlands and abroad. The supervision of market conduct focuses on fair and equitable behaviour between market participants and towards consumers and clients, and on transparency and accuracy of information on financial products and services."

The AFM does not focus on fair competition but on the proper functioning of the financial markets. It did not attempt to establish a ranking and a broad hierarchy of each objective, because it believed that such a prioritisation depends on the risk (or problem) that is being faced. On the grounds of this supervisory approach, it in fact gave all objectives the same relevance, specifying that in a context one may prioritize. The AFM's supervisory approach in consumer protection can be described as supervision based on a risk-orientated and problem solving approach. Risk-orientated supervision means that the AFM conducts market analysis and uses its analysis to formulate 'themes' on the most important objectives for the exercise of its supervisory duties. The themes also include systemic risks. The AFM adjusts its priorities subsequently during the year on the basis of concrete evidence and experience. The problem solving approach means that the agency distinguishes between 'illegal' and 'harmful' behaviour. Naturally, supervisors focus on behaviour that is both illegal and harmful. Supervisory practice however deals with conduct that is only either harmful or illegal. In this approach supervisors focus on tackling harmful conduct, even if this is not illegal. This way the AFM can focus on behaviour where it harms the consumer.

The AFM monitors compliance with the Act of Financial Supervision. In terms of supervisory objectives shown in the table below, other than a mandate of the agency for ensuring compliance with securities regulation, it also plays a role in preventing financial crime.

Elements of mandate		Legal Source	Explanations
Ensuring compliance with consumer protection measures	Fully	Wft	Compliance rules are set out in the Wft and the AFM can take action if these provisions are breached
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	Fully	Wft	The Wft contains provisions concerning compliance in business operations, by way of licence requirements and on-going compliance
Protecting clients from misconduct and/or bad business practices	Fully	Wft	Legal enforcement measures
Ensuring comprehensive transparency of official decision making processes and access to documents	Fully	Wft	Disclosure requirements and the requirement to cooperate with the AFM if further disclosure is needed
Promoting access to banking services (e.g. by low income individuals)	Fully	Wft	Follows from the main objective of the AFM
Promoting supervisory cooperation and convergence of EU supervisory practices	Fully	MoU	MoU's set up with other supervisory authorities. Participation in international work groups and Task forces (ESMA, IOSCO,a.o.)
Promoting consumer awareness of the obligations of financial institutions	Fully	Wft	Our objective is to promote confidence in the financial markets
Fostering an understanding of financial services and related issues	Fully	Wft	Our objective is to promote confidence in the financial markets
Monitoring and evaluating trends and emerging issues	Fully	Wft	This is how it prioritizes risks in its supervision
Promoting competition	Not Fully		The competition authority (NMa) is responsible to promote completion on the financial markets
Ensuring institutional participation of consumer organisations in your decision making or advice received	<b>Not</b> AFM Mandate	Cooperation agreement with DNB	The AFM operates independently from other agencies or bodies, but in close cooperation with the Dutch Central Bank (DNB).
Monitoring if financial institutions follow their own voluntary codes of conduct	<b>Not</b> AFM Mandate		No legal duty, as these codes are voluntary, but we do bring it up in meetings with/investigations of supervised entities

The AFM promotes the honest and efficient operation of the capital markets, on which retail and professional investors can rely. It enforces the rules for participants in the markets for equities and other securities and derivative products. Market abuse - use of inside information, manipulation or misrepresentation - is

forbidden. Listed companies must publish price-sensitive information correctly and in a timely manner. It also enforces the rules for the issuance of securities and public offerings, for financial reporting, and for auditors responsible for auditing this reporting. The provisions derive from, amongst others, the MiFID and Market Abuse Directive. The Anti-Money Laundering and Anti-Terrorist Financing Act (Wwft) entered into force on 1 August 2008. The Wwft implements the EU's Third Anti-Money Laundering Directive and subsumes the pre-existing acts on Identification with regard to provision of services or disclosure of unusual transactions. The Wwft provides a comprehensive set of measures to prevent money laundering or terrorist financing.

However, the following are not included in its set of responsibilities: Professional compliance to fair commercial practices, professional compliance to use of fair contract terms, controls of methods of marketing (e.g. misleading advertising), transaction transparency, personal integrity of personnel and prevention of criminal behaviour.

### **19.2.2.1 Institutional powers behind the mandate**

Among the powers which the agency has, is an ability to address a complaint to the firm, refer a complaint to another agency, start a legal action in court, fine delinquents, initiate and execute investigations. However, this also means it is not able to address a complaint to the complainant, and the AFM cannot give criminal sanctions (as stipulated in the Wft).

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; Seek a remedial commitment from the firm; Orders for institute directors; Withdrawal of the license; Demand withdrawal of director; Prohibition of certain professional activities; Impose a pecuniary sanction (monetary penalty). In addition the AFM uses a variety of measures, both formal and informal. If it considers it appropriate, the AFM may use informal methods, such as the encouragement of certain initiatives in the market. One example of an informal supervisory measure is the general conveyance of standards. Naturally the AFM also continues to use formal supervisory measures such as orders subject to a penalty for non-compliance, and fines. Measures are always applied in order to achieve the desired effect: fair and transparent financial markets, in the interests of consumers and investors.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) Order for incremental penalty payments; 2) administrative fine; 3) general conveyance of standards depending on the situation (dialogue with the provider on what is bad and how things can be improved, and follow-up). It is not the AFM's job to impose as many fines as it can, its job is to influence market behaviour. The number of fines however is an indication of the supervisory and in particular the enforcement-related effectiveness of the AFM.

Sanctions and/or complaints are only made public in some cases and not on a systematic basis nor often on a named basis. In principle, all decisions to impose fines for grave violations, as well as for certain other violations, must be published by the AFM (section 1:97 of the Wft). This duty to publish is irrespective of whether an appeal has been instituted against such decision before the administrative courts. However, publication may be suspended if a preliminary court injunction against publication is obtained (section 1:97, subsection 3, and 1:98 of the Wft) or in case publication is or might be considered contrary to the objectives of Wft.

For light violations a maximum fine of €10,000 can be imposed; the maximum fine for medium violations, such as infringements of regulations governing consumer protection or non-compliance with integrity rules, amounts to € 1 million.

Grave violations can lead to fines up to a maximum amount of € 4 million. In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing.

On 7 July 2009, a new penalty regime (Penalty Scheme in Financial Legislation Act ("Penalty Act") and the Decree on Administrative Penalties in the Financial Sector") was adopted introducing substantial increases in administrative fines under the Wft and personal liability for directors. The Penalty Act entered into force on 1 August 2009. It provides inter alia for administrative fines up to € 4 million, allows for additional increases and for enforcement action against individual directors.

The agency has reported having taken the following number of sanctions relating to a breach of consumer protection related rules: 250 in 2008 and 454 in 2009. Among those sanctions, 20 (in 2008) and 52 (in 2009) were pecuniary sanctions (i.e. fines). The size of the maximum and minimum sanction is not known. Ratio of sanctions disclosed to the public over the total number of sanctions was 75/250 in 2008 and 72/454 in 2009. Of the more penalising non-pecuniary sanctions taken by the AFM, 560 were taken in 2008 and 1605 in 2009.

### 19.2.3 Activities and supervision in practice

The Table below contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009. No quantity was available, mainly because the numbers must be kept confidential. The following table gives concrete examples for various activities which the agency has been responsible for in the year 2009.

Examples of specific monitoring tasks	Details
Thematic <b>consultations</b>	(Internal) themes are selected on the basis of market analysis. No formal consultation process exists.
Tests on the accuracy, simplicity, comparability of pre-contractual information ( <b>ex-ante</b> )	On an on-going- risk based approach - basis, e.g. by way of self-assessments.
Tests on the accuracy, simplicity, comparability of information after purchase ( <b>ex-post</b> )	On an on-going- risk based approach - basis. E.g.: 1. self-assessments, 2. investigations on financial advice. The AFM assessed a large number of assurance reports internally and provided feedback where necessary. We also review the self-assessments of investment firms (market intermediaries).
Own agency <b>policy statements</b> and opinions	In the form of guidelines and press releases.
<b>Onsite inspections</b>	Since 2008, investigations have been performed at management companies and collective investment schemes and investment firms, including theme investigations and NAV investigations. In addition, the AFM conducts nursery visits" within 3 to 6 months of granting the licence."
<b>Market studies</b> in relation	On an on-going- risk based approach - basis. The

to consumer protection issues	AFM undertakes market studies to educate the market and consumers. An example is the HFT rapport (high frequency trading)
Checks for compliance with fair, non-misleading <b>advertising</b> practices	Approximately 15 to 20 communications on investments are assessed every week, of which approximately 5 related to collective investment schemes (fund managers). Communications which are harmful are prioritized for action.
Tests of <b>suitability requirements</b> when advice or recommendations are offered; checks for compliance with fair <b>selling practices</b> ; checks for responsible lending practices	On an on-going- risk based approach - basis
<b>Mystery shopping</b> exercises	not allowed

Furthermore, the AFM is not the competent authority for several tasks such as checking correct price disclosures in credit markets and credit referencing agencies. This may suggest that the AFM's competence may be excessively skewed towards investment market supervision at the expense of credit markets.

Examples of functions fulfilled	Description
<b>Sales practices:</b> e.g. aggressive sales techniques (door-to-door solicitations or limited-time offers)	AFM targets these parties when these practices are unlawful and act on harmful practices by influencing the market by giving warnings. E.g. we warned for teakwood investments (which were legal, but very harmful) and warned in newspapers and gave an interview in the newspaper.
<b>Initiatives</b> that have helped to improve the balance of power in the relationship between financial institutions and consumers	by way of education, financial hotline. See answers above.
<b>Overcharging:</b> e.g. extra fees and commissions, hidden fees on bank accounts etc.	commissions investigation project, as a result we published guidelines
Monitoring financial institution compliance with voluntary <b>codes of conduct</b> (and their own public commitments)	in investigations or inspections
Other: e.g. inadequate documentation (no copies of contracts), abusive debt collection etc.	more in the area of prudential information
<b>Qualitative assessments</b> on regulatory issues e.g. on mitigating conflicts of interest in man-	on an on-going basis

dates	
<b>Compliance</b> with consumer protection laws and regulations	review of self-assessments filled in by providers
<b>Product transparency:</b> e.g. deceptive advertisements, unfair contract terms, excessive small print, complicated terms, inadequately trained staff etc.	Pension advice project, reviewing the advice and as a result we published guidelines
<b>Wrong advice:</b> e.g. misselling of investment products	when found in self-assessments or signals from consumers we act on this by individual investigation
Fast <b>collection and dissemination</b> of information on consumer problems	Yes, market analysis by professional research and by picking up signals from the market
<b>Consumer education</b> in the financial sector: e.g. materials published by your agency (guides/tools to help consumers understand and shop around)	yes: The AFM has developed various digital tools in recent years to assist consumers to find their way when making financial choices. The AFM launched two new checklists in 2009: <a href="http://www.checklisthypotheekgesprek.nl">www.checklisthypotheekgesprek.nl</a> and <a href="http://www.financielechecklist.nl">www.financielechecklist.nl</a> . The mortgage consultation checklist is intended for consumers wishing to take out or transfer a mortgage. People can use this interactive questionnaire to see whether their mortgage adviser has mentioned all the considerations that should be raised during a mortgage consultation. The checklist does not give an evaluation of the mortgage advice provided. The other checklist <a href="http://www.financielechecklist.nl">www.financielechecklist.nl</a> contains financial information on various subjects, including mortgages, savings, insurance, investing and borrowing. The information has been prepared in cooperation with the National Institute for Family Finance Information [Nationaal Instituut voor Budgetvoorzichting, or Nibud"]. The AFM's website also explains the implications for consumers of its investigations and reports, in 2009 for example the guideline for proper advice on asset accumulation and the consultation regarding new guidelines for mortgages."

#### Complaints and publication of complaints

In case of a consumer complaint, the AFM is not able to make binding decisions for any of the parties involved.

While the public financial ombudsman is the Kifid, the AFM nevertheless receives complaints as well. Kifid is responsible for taking in complaints of consumers. The AFM may view a complaint as a signal to start investigations. It received

17,019 messages from consumers through the Financial Markets Hotline in 2009. In addition, 15,000 consumers contacted the AFM as a result of the television programme Kassa regarding a product offered by ING (bank). Consumers can contact the Hotline with complaints, comments and questions regarding a financial product or a provider of financial products. Approximately a third of the messages concerned questions, and just over a third involved a complaint about a financial enterprise. Most of the complaints related to insurance, mortgages and consumer credit.

The supervising agency is able to do the following things with a consumer complaint: Register/record them, Respond to them, Indirectly assist in resolution by passing complaints on to the respective authorities, and publish statistics on them. (However, there is no directly assistance offered in the process of resolution of complaints).

In 2009, the AFM placed 160 news messages on its website, and responded to more than 13 thousand messages (questions, tips, signals) from consumers. Messages received through the Hotline led to approximately 6,000 signals relating to supervision. The Financial Markets Hotline cooperates with the consumer contact points maintained by other regulators. The AFM does not itself mediate with regard to complaints, but it can explain to consumers how the complaints procedure works, for example via Internet at [www.afm.nl/klacht](http://www.afm.nl/klacht) and in the folder 'A financial complaint?' ['Een financiële klacht?']. The AFM encourages those making complaints to send a copy of their complaint to the Financial Markets Hotline. This allows the AFM to prevent duplication of complaints regarding a financial enterprise; approximately a third of consumer contacts lead to a signal for supervision.

An annual Report is published for the market and consumers, and it contains information on activities, operations, legislative framework for consumer protection, performance of financial institutions in complying with consumer protection provisions, procedures that financial institutions have in place for dealing with complaints, number and nature of complaints, as well as other information such as a risk statement (overview of the risks in the market that the AFM observes), consumer study of opinion (statistics on e.g. what they think of the performance of the AFM, the financial markets), internal governance and compliance by the AFM<sup>60</sup>.

Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework, but this is only for internal use.

In the past 2 years, the AFM has been responsible for a few initiatives. Although amending the law or regulatory powers remains with the Ministry of Finance, an important task for the AFM is to help the legislator to constantly bring the rules and regulations into line with the changing market conditions (for example new business models and launching of new products). Since 2010 the AFM can formally advise the Ministry to amend laws or regulations by way of a letter of legislation. One recent example that has affected consumers is that all financial enterprises are obligated to display a fixed warning sign in credit advertisements, which can be downloaded from the website of the AFM. This warning sign states: Watch out! Borrowing costs money.

#### **19.2.4 Operational capacity of the supervisor**

The source of the agency's funding for consumer protection activities is mostly from the market, but some funding from the government.

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<sup>60</sup> <http://www.afm.nl/layouts/afm/default.aspx~/media/files/jaarverslag/afm-2009.ashx>.

The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009, was EUR 80million all operations included. No estimate was available for the share of consumer protection related costs.

Likewise, in terms of human resources, the supervisor had 450 employees of which about 300 are linked to consumer protection in some way. All supervisor-employees do consumer protection related work. The direct employment level in this area is not known. Consumer and investor protection is one of the agency's key goals. However it doesn't have a role in the settlement of consumer complaints. The Netherlands Financial Services Complaints Board (Kifid) exclusively deals with the settlement of complaints in the financial services market in the Netherlands. The AFM encourages consumers to also send the complaint to the AFM, because it contributes to its risk analyses and helps it to prioritize its resource. The staff of the AFM is younger than the staff of the central bank and consists of lawyers, economists, administrative staff, scientists, and persons with experience in consumer advice from financial institutions (banks, funds etc.). Specialists have been hired because of their experience or specific skill set in the past. In 2009, 1 week of training (7 days) was dispensed to the staff. Every new employee receives training on consumer protection related issues. Topics include learning about the supervisory approach, harmful behaviour, strategy, problem solving.

Consumer participation and input into the work of the agency is enabled through an advisory council as well as through direct consultation with consumer organisations. Consumer organisations also participate in its advisory panel of representative organisations, which meets at least twice a year to question and advise it on its annual plan, budget and taxes, and the annual reporting of the AFM. The Dutch Consumers' Association (Consumentenbond, The National Association of House Owners (VEH) and the Dutch Association of Shareholders (VEB) are important stakeholders for the AFM. So, the AFM also has regular individual meetings with these organisations. All three participate actively in the policy debate in their respective fields of attention. In 2009, staff was involved in international network meetings on consumer protection issues e.g. within CESR (retail investor working group) and CEIOPS. This work is important as these working groups do anticipate possible new European regulation. For the AFM it is very important to assure that cross sectorial consistency is achieved to prevent any gaps or unfair level playing field.

### **19.2.5 Supervisor views and ideas**

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'.

In the Netherlands there is already a separation of prudential from market behaviour, in order to give more attention to the protection of the consumer. Additional powers which the AFM sees as being able to help improve its consumer protection mission is the power to make own rules and laws or the power to request more information than what the AFM is legally permitted to provide at present.

With the recent consultation on collective redress opened by the European Commission, the issue of class action lawsuits has generated a high level of discussion in the Netherlands. The discussion is not focused on provider considerations. The current debate deals with whether the AFM should have a role in the settlement of consumer complaints and whether the AFM should have the legal instruments to make sure financial institutions meet their obligations in settling disputes in case of mistreatment of consumers/investors.

When asked which fields of consumer protection they believe should be more extensively covered by the authorities in the future, the AFM gave the following

answers: mortgage / lending and pensions. The Wft (Financial Act on Supervision) in the NL regulates all financial services in a cross-sectoral fashion. Thus the requirements for intermediaries are in most respects identical with those for other distribution channels such as bank branches and direct distribution. This creates a level playing field between distribution channels. Further international harmonization of provisions between several areas is needed.

An example of conflict of interests: the prudential supervisor DNB knew already in August 2008 that there was something wrong with the Icelandic savings bank Icesave. Nothing happened and in October the bank went bankrupt. The predominant argument of the supervisor was stability in the financial system. But from the consumer's perspective, the negative effects of that were strongly felt. Another example: due to legislation AFM is not allowed to state the names of the financial service providers they have included in their researches. Even if the outcome of such research shows that 30% of providers do not meet the legal requirements. Thus, consumers are left in the dark as to which financial service provider is and which is not doing a proper job.

## 20 Poland

### 20.1 Summary

Since 2006, Poland has adopted an integrated supervisor model of supervision although initially the insurance and pension fund sector was supervised separately by the Pension Fund Supervisory Commission (KNUiFE). The Polish Financial Supervision Authority (KNF or Polish FSA) replied to the questionnaire through its Customer Protection Department, Market Practice Division and relevant Department for Client Protection. In addition, the Arbitration Court at the Polish FSA provides consumers with a service.

### 20.2 Polish Financial Supervision Agency (KNF)

#### 20.2.1 Basic data

Main Department that answered	Customer Protection Department
Status of supervisory authority	Stand-alone integrated financial supervisor
The supervisor is controlled by a governmental body	Supreme Audit Office is allowed to conduct controls. Prime Minister is responsible for choosing the President of the Polish FSA.
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; and Occupational Funds.
Type of institutions not supervised	Providers of money transmission services; Providers of currency exchange services; Financial advisers; Real estate agents and credit referencing agencies
Areas of supervision	Macro-prudential; Micro-prudential; Conduct-of-business

#### 20.2.2 Institutional structure and objectives

Consumer protection is one of the explicit goals of the agency.

The Polish FSA's own definition of consumer protection is "Protection of interests of participants of the financial market".

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
3	...secures for fair competition and functioning markets in financial services.
4	...provides equal opportunities to all consumers especially to the poor.
4	...prevents over-indebtedness, exclusion, old age poverty.
6	...limits economic power with regard to consumer needs

6	...guarantees a general framework in which others can provide individual consumer protection
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The agency's supervisory approach in consumer protection can be described as follows: non prudential and prudential supervision.

The agency can be described as having an exclusive role in monitoring compliance. Although it does have a mandate to resolve complaints for the pension market.

Areas where it has full responsibility include: Ensuring compliance with consumer protection measures; promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures; protecting clients from misconduct and/or bad business practices; promoting supervisory cooperation and convergence of EU supervisory practices; monitoring if financial institutions follow their own voluntary codes of conduct; promoting consumer awareness of the obligations of financial institutions and fostering an understanding of financial services and related issues.

While the Polish FSA also has partial responsibility over monitoring and evaluating trends and emerging issues, ensuring comprehensive transparency of official agency procedures, and promoting access to banking services, it has no mandate to ensure institutional participation of consumer organisations in its decision making processes. The legal source for its mandates is the Act of 21 July 2006 on financial market supervision.

The agency's remit is for both consumer credit and retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); and transaction transparency. It does not however control for the personal integrity of personnel nor does it aim to prevent criminal behaviour as stated above.

Among the powers which the agency has, is an ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, start a legal action in court, fine delinquents, However, this also means it is not able to initiate criminal procedures, nor initiate and execute investigations. In case of non-compliance with consumer protection legislation and rules, the PFSA is able to sanction the entity in question by notifying the firm of a violation, seeking a remedial commitment from the firm, withdrawing its license as well as imposing a monetary penalty. It cannot however impose criminal sanctions, give orders for institute directors, demand withdrawal of director, or prohibit certain professional activities.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) general letter; 2) recommendation 3) fine.

Sanctions and/or complaints are made public on a systematic basis. Furthermore, these sanctions and complaints are often on a named basis. The maximum amount for a financial penalty that the KNF can impose for breach of consumer protection rules depends on income of the entity in question. The KNF is not able to punish staff at a financial institution on a personal basis following a case of wrong-doing.

The Polish FSA was not able to provide data on the number of sanctions it has taken with regard to breaches of consumer protection related rules alone, however among those sanctions, 54 (in 2008) and 50 (in 2009) were financial penalties: the highest amount was PLN 800,000 in 2008 and PLN 100,000 PLN in 2009.

### 20.2.3 Activities and supervision in practice

The Table below contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009.

Examples of specific monitoring tasks carried out in 2009	Quantity
Tests on the accuracy, simplicity, comparability of information after purchase ( <b>ex-post</b> )	95
Own agency <b>policy statements</b> and opinions	95
Checks for <b>responsible lending</b> practices (i.e. analysis of repayment capacity in the extension of credit)	15
Checks for compliance with fair, non-misleading <b>advertising</b> practices	12
Checks for compliance with fair, non-coercive and reasonable <b>selling practices</b>	2

The following table gives concrete examples for various activities which the PFSA has been responsible for in the year 2009.

Examples of functions fulfilled	Examples: Description, details, links etc.
<b>Overcharging:</b> e.g. extra fees and commissions, hidden fees on bank accounts etc.	Analyses of the implementation of S (II) Recommendation in terms of the possibility of repaying loan instalments denominated in foreign currency to which the credit was denominated. The analysis carried out in 2009 showed that, despite the implementation of S (II) Recommendation by banks and the possibility to repay loan instalments denominated in foreign currency to which the credit was denominated, there are a number of circumstances that seriously impede the repayment of the loan in foreign currency, or make it economically unjustifiable. In the case of foreign transfers in other currencies than the euro, currently there is no - similar to EuroELIXIR - system of exchange payments settlement. This brings about the necessity of using by banks in realisation of also national foreign transfers (i.e. transfers of foreign currency from an account in a domestic bank to an account held in another national bank) the intermediation of foreign correspondent banks, which causes, inter alia, strong increase in the costs of such payments (the amount charged by the banks for the execution of a single national foreign transfer can reach up even to several hundred zlotys). The analysis also revealed that not all banks provided loan instalments repayment at the bank's box office. In addition, some banks, which - in principle - allowed to make payments in this form, introduced additional restrictions, in particular concerning the number of outposts in which the payments could be made, the kind of currency and the type of money accepted (not accepting coins or introduction of additional charges for accepting them).
<b>Product transparency:</b> e.g. deceptive advertisements, unfair contract terms, excessive	Supervision of the advertising messages reliability of financial market entities. In order to protect the interests of non-professional financial market participants against deceptive advertising information, the Polish FSA conducted monitoring of advertising messages that reviewed information and advertising

<p>small print, complicated terms, inadequately trained staff etc.</p>	<p>materials published, on order or in favour entities supervised by the PFSA. Evaluation of the advertising messages is to determine whether the examined content do not infringe the law or interests of non-professional financial market participants, in particular whether or not they mislead the recipients at the pre-contact stage. As the prospect of reliability assessment of the advertising messages, the model of average recipient of financial services was adopted. Reliability assessment of the advertising messages was made in a holistic manner, taking into account the context of the whole campaign and the manner and form of presentation of advertised information, affecting the reception of transmitted content. Conducted in 2009 monitoring showed significant improvements in the scale of irregularities in advertised information disseminated by financial market entities. To a large extent this is the result of the measures the Polish FSA has hitherto taken, in particular, the whole series of supervisory measures prohibiting the dissemination of misleading advertising information and resolutions approved in previous years, defining the rules for constructing messages in advertisements concerning the banking and insurance market and investment funds. In order to improve the quality of advertising messages concerning the financial market, the Polish FSA also conducted educational activities through meetings, workshops and presentations for financial market participants, during which expectations of the PFSA as to how to advertise financial market entities' services were presented. In the course of the educational meetings the crucial role of advertising information in communicating with potential customers was emphasized and the information obligations concerning the supervised entities were pointed out. Practices of banks with regard to the action taken towards clients (with the status of consumers) who do not regulate fully their obligations under the credit or loan agreements by the deadlines specified in the agreements, so called non-performing loans The results of the analysis indicated the occurrence of irregularities, mainly in the scope of so-called hard debt collection. In particular, these irregularities related to using by representatives of the bank unlawful threats, putting unlawful pressure or an infringement of personal interests. In the PFSA opinion, an effective way to prevent the occurrence of irregularities in debt collection practices conducted by banks is primarily the proper examination of the creditworthiness of people applying for a loan. Proper practice of the bank in this area should prevent the need of debt collection procedure, and thus prevent any irregularities in this regard. The practice of banks with regard to use debt collection procedures, functioning of the system of internal control as well as the practice of banks with regard to examining creditworthiness and adapting to the recommendation of the PFSA in this matter by them will be of further particular interest of the Polish FSA.</p>
<p><b>Compliance</b> with consumer protection laws and regulations</p>	<p>The problem of insurers' demands for submitting insurance certificates in order to receive damages. In 2009, the PFSA recognized insurers' practice of requiring from the insurers, insured or entitled to present (or provide) evidence of insurance contract (insurance policy) to receive damages. The practice was used by insurance companies from both section I and II, most commonly by introducing appropriate records to the general conditions of insurance. According to the PFSA such practice was detrimental to the interests of the insurers, insured and entitled, although it</p>

	<p>should be noted that in law there is no prohibition against requesting insurance certificates. In some cases, for example many years after conclusion of a contract, providing the insurance certificate can be a significant difficulty for the entitled. This can lead to delay or prevent the payment of damages. In order to eliminate this market practice, the PFSA called on all insurers to submit the information and clarification of the issue. Settlement of claims for reimbursement of rental costs of a replacement vehicle under the third party insurance of motor vehicles owners. The PFSA examined the practice of processing claims for reimbursement of rental costs of a replacement vehicle. The analysis revealed a discrepancy in the treatment of victims assigning such claims against the insurers. These related in particular to the principles of refunding costs associated with the replacement vehicle when the person assigning the claim did not conduct business activity. Limits in the scope of payments for the replacement vehicle that had no legal grounds were also noticeable. In order to systematize the market practice, the PFSA developed a standard model for the treatment of claims for reimbursement of rental costs of a replacement vehicle. In the form of a recommendation, this model was then devolved to insurers.</p>
<b>Consumer education</b>	Series of seminars for consumers and local ombudsman

#### Complaints and publication of complaints

In Poland, there is both a private and a public financial ombudsman system in place.

Insurance and pension sector: In Poland complaints against the IU, IM and IORPs are generally handled by: the Insurance Ombudsman, but they are also often addressed to the Polish FSA. The Insurance Ombudsman can settle a complaint and issue a non-binding opinion in each case. In practice very often those opinions are respected by the IU, IM or IORPs (but not always). The Polish FSA and the Insurance Ombudsman are cooperating and exchanging information. The Polish FSA accepts and handles complaints but it cannot settle complaints (IORPs are an exception). It is also possible to address complaint to the Arbitration Court at the Polish FSA.

Banking sector: Consumers can address their complaints to the Banking Arbitrator at the Polish Banking Association.

In 2009, a total of 8975 complaints were filed with the PFSA. Most of them were related to the banking sector (especially credits issues). In case of a consumer complaint, the supervisor is able to make binding decisions for some (but not all) of the parties involved. The Polish FSA accepts and handles complaints but it cannot settle complaints. The Polish FSA examines how regulated entities acted in the case brought by a complaining party. The information thus gathered on disputes between the regulated entities and their clients is a source of valuable knowledge of developments on the market. Upon considering a complaint, if regulated entity infringes the laws, the Polish FSA can decide to issue general recommendations or binding administrative decisions (fine is also possible). The Polish FSA will also inform the complaining party that a given dispute should be resolved pursuant to civil law provisions or by the Arbitration Court at the Polish FSA (because issuing administrative decision has an impact on the case brought by the consumer, but it does not necessarily settle given complaint).

The PFSA is able to do the following things with a consumer complaint: Register/record them, respond to them, indirectly assist in resolution by passing com-

plaints on to the respective authorities, and publish statistics on them. (However, it cannot Directly assist in the resolution of a complaint).

The Polish FSA accepts and handles complaints but it cannot settle complaints. The Polish FSA examines how regulated entities acted in the case brought by a complaining party. The information thus gathered on disputes between the regulated entities and their clients is a source of valuable knowledge of developments on the market. Upon considering a complaint, if the regulated entity infringes the laws, the Polish FSA can decide to issue general recommendations or binding administrative decisions (fine is also possible). The Polish FSA will also inform the complaining party that a given dispute should be resolved pursuant to civil law provisions or by the Arbitration Court at the Polish FSA (because issuing administrative decision has an impact on the case brought by the consumer, but it does not necessarily settle given complaint).

The Annual report<sup>61</sup> published contains information on its activities, operations, and number and nature of complaints. Likewise, the agency also produces a yearly action plan outlining how it will develop and implement new initiatives to further its consumer protection. Nevertheless, in the past 2 years, the supervisor does not appear to have been responsible for concrete legal or regulatory changes affecting consumers.

#### **20.2.4 Operational capacity of the supervisor and its views**

The source of the agency's funding is purely levied from the financial institutions that it monitors. No data was available or could be provided to the research concerning the importance of the funds needed to run the agency and its consumer protection units.

Likewise, in terms of human resources, the supervisor had 900 employees of which 27 members of staff were employed to conduct supervision of consumer protection operations only (i.e. 3% of total staff). There are around 900 staff members working in the PFSA. Around 20 of them are working in Consumer Protection Department and around 7 of them in the Educational Department. It is important to add that all other Departments are also actively participating in consumer protection projects. In general all kinds of financial supervision is made in interest of consumers. Furthermore, 12 members of staff deal exclusively with consumer complaints relating to financial issues (of which 5 for consumer credit operations and 5 for consumer investment operations). The staff is made up of lawyers, economists, and others. In 2009, the advanced training received by the staff of the agency in the field of consumer protection was 40 hours (8 day) and concerned 16 people.

This supervisory agency does not incorporate or involve consumers or consumer representatives in any way in its activities. However, the PFSA assesses the current supervisory system with respect to consumer protection in Poland as very satisfactory. There doesn't seem to be much of a discussion going on in Poland about a restructuring of the supervisory arrangements and structure in favour of separating prudential supervision from consumer protection tasks.

The PFSA did however point to additional powers which supervision would benefit from if improvements and changes were to be made e.g. the possibility to conduct mystery shopping and the power to be involved in the closer control of banking contracts. In addition, the issue of class action lawsuits has generated a high level of discussion in Poland and the Polish FSA gave its opinion about its draft of the legal act related to this issue.

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<sup>61</sup> [http://www.knf.gov.pl/en/About\\_us/Report\\_on\\_Activities/index.html](http://www.knf.gov.pl/en/About_us/Report_on_Activities/index.html).

## 21 Portugal

### 21.1 Summary

Portugal has a sectoral model of financial supervision. While the central bank (Banco de Portugal) is responsible for its central bank functions and prudential supervision of banks and assimilated financial institutions, and the Comissão do Mercado de Valores Mobiliários (CMVM, the Portuguese Securities Market Commission) supervises the Portuguese securities market in order to protect investors and guaranteeing the integrity and transparency of the markets, the Instituto de Seguros de Portugal (ISP, Insurance Institute of Portugal) is the independent Insurance supervision agency. Since 2000, these bodies are supported by the National Council of Financial Supervisors (NCFS) which serves as a coordination platform between the three sectoral supervisors and also has experience with the supervision of financial conglomerates, cross-sectoral and cross border subjects.

Organisations in charge of consumer complaints are the CMVM, Central Bank of Portugal, the Insurance Institute of Portugal, the Portuguese Competition Authority, the Directorate-General for Consumers (Ministry of Economy and Innovation) and the Euronext Compensation Fund.

### 21.2 Portuguese Securities Market Commission (CMVM)

#### 21.2.1 Basic data

Main Department that provided answers	Regulatory Policy and International Affairs Department
Status of supervisory authority	Stand-alone securities supervisor
	The supervisor is controlled by a governmental body
Type of institutions supervised	Credit institutions; Investment firms; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers; Real estate agents; and Credit referencing agencies
Type of institutions not supervised	Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services
Areas of supervision	Macro-prudential; Micro-prudential; Conduct-of-business

#### 21.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the CMVM and pursuant to the Portuguese Securities Code, consumer/investor protection is defined based on a functional approach (cf. Articles 358/a), 360 and 361 of the Portuguese Securities Code). Article 358/a) set forth that supervision carried out by the CMVM complies with a set of principles, namely the investor protection while articles 360 and 361 set forth the functions and procedures which allow the CMVM to foster investor protection.

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

<b>Rank</b>	<b>Consumer protection...</b>
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...secures for fair competition and functioning markets in financial services.
3	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
4	...guarantees a general framework in which others can provide individual consumer protection
5	...limits economic power with regard to consumer needs
6	...provides equal opportunities to all consumers especially to the poor.
7	...prevents over-indebtedness, exclusion, old age poverty.

The CMVM's supervisory approach in consumer protection can be described as follows: Please refer to Article 358 of the Portuguese Securities Code, pursuant to which the supervision carried out by the CMVM complies with the following principles: a) Investor protection, b) Efficient and orderly functioning of the markets in financial instruments, c) Information control, d) Systemic risk prevention, e) Prevention and repression of actions contrary to law or regulation, f) Independence before any entity, whether under its supervision or not.

The agency's role is not exclusively restricted to monitoring compliance. Based on Article 353 of the Portuguese Securities Code:

1. The CMVM's responsibilities in addition to those established in its legal framework are: a) The supervision of organised trading of financial instruments, public offers of securities, clearing and settlement of the transactions relating thereto, central securities depository, among others - b) The regulation of the markets in financial instruments, the public offers of securities, the activities carried out by entities subject to the CMVM's supervision and other issues envisaged in the Portuguese Securities Code and complementary legislation - c) The supervision and regulation of the conduct of business duties by entities that intend to conclude or act as an agent of assurances linked to investment funds or the marketing of individual subscription contract to open-end pension funds.

2. During its performance and within the scope of its responsibilities, the CMVM cooperates with other national and foreign authorities, that carry out supervisory and regulatory functions of the financial system, and international organisations of which the CMVM is a member.

The table below indicates which explicit mandates the agency has been given.

<b>Elements of mandate</b>	<b>Legal Source</b>
Ensuring compliance with consumer protection measures	Articles 353, 358 and 360 of the Portuguese Securities Code and Article 4 of the Statute of CMVM.
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	Articles 353 and 358 of the Portuguese Securities Code and Article 4 of the Statute of CMVM.
Protecting clients from misconduct and/or bad business practices	Articles 358 and 360 of the Portuguese Securities Code.
Ensuring institutional participation of consumer organisations in your decision making or advice received	Articles 32 and 370/2 of the Portuguese Securities Code.
Ensuring comprehensive transparency of official decision making processes and access to documents	Articles 358, 360 and 367 of the Portuguese Securities Code and Article 4 of the Statute of CMVM.
Promoting supervisory cooperation and convergence of EU supervisory practices	Articles 353 and 373 to 377-A of the Portuguese Securities Code and Article 4 of the Statute of CMVM.
Monitoring if financial institutions follow their own voluntary codes of conduct	Articles 353, 358, 360, 361, 362 and 372 of the Portuguese Securities Code and Article 4 of the Statute of CMVM.
Promoting consumer awareness of the obligations of financial institutions; Fostering an understanding of financial services and related issues	Articles 353, 358, 360, 361, 366, 367 of the Portuguese Securities Code and Articles 4 and 5 of the Statute of CMVM.
Monitoring and evaluating trends and emerging issues	Articles 353, 358, 360, 361, 366, 367 of the Portuguese Securities Code and Article 5 of the Statute of CMVM.
Promoting competition	Article 358 of the Portuguese Securities Code and Article 4 of the Statute of CMVM.

Ensuring compliance with securities regulation and preventing financial crime are mandates of CMVM not included in the table above. The agency's remit does not include the supervision of consumer credit. In addition, the agency is responsible for the following consumer protection measures: professional compliance to fair commercial practices; professional compliance to use of fair contract terms; controls of methods of marketing (e.g. misleading advertising); transaction transparency; personal integrity of personnel; and prevention of criminal behaviour.<sup>62</sup>

Articles 1 and 2 of the Statute of CMVM, states that CMVM is a legal person governed by public law, and endowed with administrative and financial independence and its own assets. CMVM is governed by its Statute, the Portuguese Securities Code and, with regard to matters not provided for or incompatible with the

<sup>62</sup> Please refer to Articles 353, 356, 358, 365 to 367 (on supervision principles and functions), and 378 to 422 (on criminal and administrative offences) of the Portuguese Securities Code, as well as Articles 4 and 5 (on roles and competences) of the Statute of CMVM.

provisions set out within its Statute, by the rules applying to public sector entities. Furthermore, on the governmental powers, Article 352 of the Portuguese Securities Code, states that, by the Ministry of Finance, the Government may: a) Establish policies relating to the markets in financial instruments and, generally, matters regulated by the Portuguese Securities Code and supplementary legislation, b) Carry out, in relation to the CMVM, the administrative supervision conferred by the bylaws of said entity, c) Coordinate the supervision and regulation relating to financial instruments when the competence belongs to more than one public entity. 2. When a disturbance in the markets in financial instruments leads the national economy to serious risk, the Government, may by means of a joint Ministerial Order by the Prime Minister and the Minister of Finance, impose the necessary measures, namely, the temporary suspension of the regulated markets or MTFs, certain categories of transactions or activities of the management entities of regulated markets, MTFs, settlement systems, clearing houses or central counterparty, and central securities depositories.

Please refer to Article 359 of the Portuguese Securities Code on the entities subject to the CMVM's supervision, which states that: 1. Within the scope of the activities relating to financial instruments, the following entities are subject to the CMVM's supervision, without prejudice to the powers conferred on other authorities: a) Management entities of regulated markets, MTFs, settlement systems, clearing house or central counterparty, and central securities depositories, b) Financial intermediaries and investment advisers, c) Security issuers, d) The qualified investors referred to paragraphs a) to f) of no. 1 of Article 30 and holders of qualifying holdings, e) Sinking funds and investor compensation schemes and their respective managing entities, f) Auditors and risk rating companies, registered with the CMVM, g) Securitisation Firms, h) Venture Capital Firms, i) Within the scope of said activities, the entities that intend to conclude or act as an agent of assurances linked to investment funds or the marketing of individual subscription contract to open-end pension funds, j) Other persons whose main or secondary activity, relates to the issue, distribution, trading, registration or deposit of financial instruments or, generally, with the organisation and functioning of the markets in financial instruments. 2. Individuals or entities that carry out transnational activities are subject to the CMVM's supervision provided said activities have some relevant connection to the regulated markets, MTFs, transactions or financial instruments subject to Portuguese law.

Please refer to the provisions of the Portuguese Securities Code, as well of the Statute of the CMVM aforementioned.

The CMVM has the full range of powers including an ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, start a legal action in court, initiate criminal procedures, fine delinquents, and initiate and execute investigations.

For detailed information on the powers of CMVM related with complaints as well as administrative and criminal procedures, please refer to Articles 382 to 387, 401 to 422 of the Portuguese Securities Code, as well as Article 4 of the Statute of CMVM.

In case of non-compliance with consumer protection legislation and rules, the CMVM is able to take the full range of actions except imposing criminal sanctions. These include the ability to notify the firm of a violation, seek a remedial commitment from the firm, issue orders for institute directors, withdrawal of the license, demand withdrawal of director, prohibition of certain professional activi-

ties, and impose a fine. For detailed information on two examples of complaints lodged by the clients of Banco Privado Português and Banco Português de Negócios, as well as the relevant mediation procedures, please refer to CMVM 2009 Annual Report, p. 272-279 and 280-283, respectively.

In the supervisor's eyes, the most effective sanctions in consumer protection are: Pecuniary sanctions and Warnings.

Pecuniary sanctions were the following: In 2008: 6 (highest amount: €3,000,000), In 2009: 4 (highest amount: €75,000); whereas only 2 Warnings were given in 2008 and only 1 in 2009.

Sanctions and/or complaints are made public on a systematic basis. Pursuant to Article 422 of the Portuguese Securities Code (on dissemination of decisions):

1. Upon expiry of the period to appeal of the judgement before the trial courts, a decision by the CMVM that convicts the perpetrator of one or more very serious offences shall be disseminated through the information system (cf. Article 367 of the Portuguese Securities Code), by means of an extract (issued by the CMVM) or in full, even if its annulment by the courts has occurred, in which case these circumstances shall be expressly mentioned within the publication announcement.
2. Any court decision that confirms alters or repeals a decision by the CMVM or the lower court in the sense of conviction shall be immediately notified to the CMVM and must be disclosed in the terms of the preceding paragraph.
3. Paragraphs #1 and #2 above shall not apply to fast-track summary proceedings where suspension of the sanction applies, the illegality of the acts or the fault of the perpetrator are reduced or when the CMVM considers that disclosure of the decision may be detrimental to investors' interests, severely affect the financial markets or cause actual damages to persons or entities involved, clearly disproportionate to the seriousness of the acts imputed.
4. Irrespective of a final judgement having already been obtained or not, any court decisions concerning crimes against the market shall be disclosed by the CMVM pursuant paragraphs #1 and #2 above.

In addition, statistical features on complaints are also subject to publication on the CMVM Annual Report (for an example, please refer to CMVM 2009 Annual Report, Table 70, p. 230).

Pursuant to Article 388/1 of the Portuguese Securities Code, administrative offences are punished as following: a) Between €25,000 and €5,000,000 when qualified as very serious, b) Between €12,500 and €2,500,000, when qualified as serious, c) Between €2,500 and €500,000, when qualified as less serious. As set forth by Article 388/2 of the Portuguese Securities Code, if the economic gain doubled is more than the maximum value of the fine applicable, then the highest value shall prevail.

Further to this, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing. Pursuant to Article 401 of the Portuguese Securities Code, liability on administrative offences is set forth as following:

1. Individuals, legal entities, independently of the regularity of their incorporation, companies and associations without a legal status may be liable for the offences set forth within the Portuguese Securities Code.

2. Legal individuals and entities described in the paragraph above are liable for the offences set forth within the Portuguese Securities Code when actions have been practised, in the exercise of their respective functions, or in their name, or on their behalf, by members of their management bodies, agents, representatives or employees.

3. The liability of the legal person is excluded when the agent acts against the express orders or instructions of said person.

4. Unless an even greater sanction is applicable to the individual by another legal provision, the sanction set out for the author of the act, especially mitigated, will be imposed on the members of the management bodies of companies and similar entities as well as those responsible for the management or supervision of areas of activity where the offence takes place, whenever such individuals, being aware or in a position where they should have been aware of the offence, do not adopt measures to end the same immediately.

5. The liability of companies and similar entities does not exclude the individual liability of the respective agents.

On liability on criminal offences, please refer to Articles 378 (insider trading), 379 (market manipulation), 381 (non-compliance of CMVM mandates), all of the Portuguese Securities Code.

The agency has reported having taken the following number of sanctions relating to a breach of consumer protection related rules: 8 in 2008 and 5 in 2009. Among those sanctions, 6 (in 2008) and 4 (in 2009) were financial penalties.

In 2008: The smallest fine was: €12,500. Motivation: non-compliance with rules regarding evaluation of properties held by investment funds and mandatory favourable resolution by the assembly of investment funds shareholders. Whereas the largest fine amounted to: €3,000.000 Motivation: non-compliance with rules regarding churning, conflicts of interests, storage of documents and records and quality of information to the regulator.

In 2009: The smallest fine was: €25,000 Motivation: non-compliance with rules regarding register of orders and operations. Whereas the largest fine amounted to: €75,000 Motivation: non-compliance with rules regarding delay in the payment of the redemption of collective investment undertaking units and mandatory audible records of the orders given by telephone.

Ratio of sanctions disclosed to the public over the total number of sanctions in 2008 and 2009 respectively: 1 of 8 (12,5%) in 2008 and 2 of 5 (40%) in 2009. Issuing of Warnings is the strictest non-pecuniary form of sanction taken.

### **21.2.3 Activities and supervision in practice**

The Table below contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009.

<b>Examples of specific monitoring tasks carried out</b>	<b>Qty (2009)</b>	<b>Details</b>
Checks for compliance with fair, non-misleading <b>advertising</b> practices	106	Authorization of advertising campaigns on highly complex structured products (of which 4 related to bank products, and 16 to unit linked). Of the 106 analysed campaigns the CMVM solicited amendments in 76 of these.
<b>Onsite inspections</b>	12	1 UCITS management company & 1 Real estate fund management company & 3 portfolio management companies & 7 credit institutions and broker/dealers.
Tests on the accuracy, simplicity, comparability of information after purchase ( <b>ex-post</b> )	5	4 Credit Institutions & 1 Portfolio Management Company.
Tests on the accuracy, simplicity, comparability of pre-contractual information ( <b>ex-ante</b> )	4	3 Credit Institutions & 1 Portfolio Management Company.
Checks for compliance with fair, non-coercive and reasonable <b>selling practices</b>	4	4 credit institutions were subject to analysis.
Tests of <b>suitability requirements</b> when advice or recommendations are offered	3	2 credit institutions & 1 portfolio management company.
Thematic <b>consultations</b>	3	Public Consultation on CMVM Regulation No. 1/2007 and for the Corporate Governance Code. Public Consultation on amendments to CMVM Regulation No. 2/2007 on the Pursuit of Financial Intermediation. Public Consultation on Regulation on the Registration.
Own agency <b>policy statements</b> and opinions	2	

Please note that assessments of lending practices are not included within the scope of competences of CMVM and therefore it does not undertake action in this domain.

The following table gives concrete examples for various activities which the CMVM has been responsible for in the year 2009.

<b>Examples of functions fulfilled</b>	<b>Examples: Description, details, links etc.</b>
<b>Compliance</b> with consumer protection laws and regulations	There is an overall an on-going compliance, e.g. handling of investors' complaints concerning adequacy of financial instruments to investors' knowledge and experience on investment, demonstration of the best execution of orders, provision of pre-contractual information, provision of complete, updated, clear and truthful information.
Fast <b>collection and dissemination</b> of	The internal reorganization conducted by the CMVM on consumers'/investors' assistance envisaged also the

information on consumer problems	improvement of information circulation on particular issues raised in consumers'/investors' complaints that are susceptible to conduct to a broader supervisory approach and eventually to onsite inspections. Whenever in the cases analysed a criminal notice is obtained, it is immediately reported to judicial authorities.
<b>Initiatives</b> that have helped to improve the balance of power in the relationship between financial institutions and consumers	In 2009, the CMVM organized a roundtable with financial intermediaries on the handling of complaints, envisaging more effective procedures on the relationship between the firms and the consumers. An internal reorganization has been conducted in order to adopt more effective procedures on investors' assistance, namely on complaints handling, envisaging faster responses.
Monitoring financial institution compliance with voluntary <b>codes of conduct</b> (and their own public commitments)	The CMVM does not monitor the compliance by financial institutions with voluntary codes of conduct (with the exception of the corporate governance exercises that are also targeted to some financial institutions; however, in this last case, supervision powers are based on their capacity as issuers).
<b>Overcharging:</b> e.g. extra fees and commissions, hidden fees on bank accounts etc.	Handling of complaints regarding the overcharging of commissions and taxes, namely in cases of disaggregated trading orders and management fees in investment funds.
<b>Product transparency:</b> e.g. deceptive advertisements, unfair contract terms, excessive small print, complicated terms, inadequately trained staff etc.	The CMVM plays particular attention to the content of messages conveyed to clients. Therefore, a significant number of amendments were proposed in order to establish that no misleading information is conveyed to the public. CMVM activities includes, among others: - Analysis of the information provided to investors regarding the legal quality requirements, namely in prospectuses, terms and conditions and publicity, - Analysis of situations concerning the effective delivery to subscribers of unit linked of documents which the law requires to be sent postal mail, - Analysis of the valuation of financial instruments and unit linked, in periodical statements of assets, - Periodical clipping of advertisements published on newspapers, online newswires, generalist websites and financial intermediaries websites.
<b>Qualitative assessments</b> on regulatory issues e.g. on mitigating conflicts of interest in mandates	The CMVM is implementing procedures in order to carry out regulatory impact assessment on a systematic basis. For further details on this issue, please refer to CMVM Principles on Regulation, available at <a href="http://www.cmvm.pt/CMVM/Documents/PlanoAnualCMVM2010.pdf">http://www.cmvm.pt/CMVM/Documents/PlanoAnualCMVM2010.pdf</a> , p. 44 (only Portuguese version).
<b>Sales practices:</b> e.g. aggressive sales techniques (door-to-	Handling of complaints regarding the conduct of agents, the provision of financial services by non-authorized entities, and the proposal of complex financial products

door solicitations or limited-time offers)	to illiterate clients.
<b>Wrong advice:</b> e.g. misselling of investment products	Analysis of the sale of complex financial products to illiterate clients and failure on adequacy evaluation. Handling of complaints concerning improper presentation in the subscription documents of waivers on the financial firms responsibility.
<b>Consumer education</b> in the financial sector: e.g. materials published by your agency (guides/tools to help consumers understand and shop around)	Publications aimed to help consumers/investors, such as: 1) Investors Guide, 2) Brochures describing the main securities types, 3) Replies to Frequently Asked Questions" of investors, including those referring to investors' rights, shareholders meetings, non-regulated markets, distribution of dividends, 4) Brochures on the reforms of the legal framework of capital markets, 5) Brochures on the main developments emerging from the transposition of the MiFID (Markets of Financial Instruments Directive), 6) The CMVM Annual Report, 7) Several studies and working papers, 8) Periodic statistics. All the above mentioned information is available at CMVM website, <a href="http://www.cmvm.pt">www.cmvm.pt</a> . "
<b>Recourse:</b> e.g. informing consumers about their rights to complain, how and where to complain and receive appropriate redress	The CMVM's website includes an area dedicated to consumers'/investors' assistance in which a specific webpage provides information on how to address a complaint. The same area includes answers to Frequently Asked Questions" among which those concerning the rights of non-professional consumers/investors, and provides access to the publications directed to investors, such as the "Investor's Guide". The CMVM provides a free phone line to answer queries from consumers/investors.
<b>Data privacy:</b> e.g. mistreatment of personal data	Issues on violation of professional secrecy on personal data have not been raised during 2009.

### Complaints and publication of complaints

A public financial ombudsman system exists in this country.

On mediation of conflicts/ombudsman system, Article 33 of the Portuguese Securities Code set forth as following: 1. The CMVM organises a service intended for the voluntary mediation of conflicts between retail investors, on the one hand, and financial intermediaries, investment advisers, management entities of regulated markets or MTFs or issuers, on the other. 2. The mediators/ombudsmen are designated by the CMVM's Executive Board, which may choose individuals from its own organisation or other individuals of recognised repute and competence. Pursuant to Article 34 of the Portuguese Securities Code, the system of mediation proceedings is set forth as following<sup>63</sup>:

<sup>63</sup> For further details on the mediation procedures, refer to the information available at the CMVM website <http://www.cmvm.pt/EN/Apoio%20Ao%20Investidor/Mediation/Pages/procedures.aspx>. Also refer to CMVM Regulation No. 23/2000 on voluntary mediation in disputes, available at [http://www.cmvm.pt/EN/Legislacao\\_Regulamentos/Regulamentos%20Da%20Cmvm/2000/Pages/Reg2000\\_23.aspx](http://www.cmvm.pt/EN/Legislacao_Regulamentos/Regulamentos%20Da%20Cmvm/2000/Pages/Reg2000_23.aspx).

1. Mediation proceedings are defined by the CMVM's regulations and should obey the principles of impartiality, speed and gratuitous;
2. When the conflict concerns homogeneous individuals or collective investor interests, the association for the defence of investors may initiate the mediation and participate in it, as principal or accessory;
3. The mediation proceeding is confidential and the mediator is bound to secrecy in relation to all information obtained during mediation, and the CMVM may not use in any process material knowledge which was acquired exclusively from the mediation proceedings;
4. The mediator may attempt conciliation or propose to the parties a solution that seems more adequate;
5. The agreement resulting from mediation, in writing, has the nature of an extrajudicial settlement.

Enquiries/complaints received from consumers amounted to 3,530 (of which 2,417 complaints) in 2009; 2,465 (of which 803 complaints) in 2008; and 2,064 (of which 279 complaints) in 2007. Complaints covered mainly: - Irregular or delayed execution of trading orders - Execution of operations with no previous authorization or awareness of the client - Irregular sale of financial products without previous assessment of the adequacy to the client's investment profile and neglecting the previous disclosure of information established by law on the risks involved (mainly capital and liquidity) - Failure on pre-contractual information on the costs of investment and penalties imposed for premature redemption - Failure on sending periodical statements of the client's assets and quality of the information included - Commissions charged on the transfer of securities between accounts in different financial intermediaries.

In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved. On receipt of each complaint, the CMVM contacts the entity in question and calls for explanations of the facts as set out by the investor. The CMVM may make recommendations to the parties involved and furthermore explain whether or not it considers the said entity had been acting in accordance with the rules and regulations of the securities markets. Regarding the complaints subject to mediation, please note that, pursuant to Article 34/5 of the Portuguese Securities Code, an agreement resulting from mediation, in writing, has the nature of an extrajudicial settlement.

The CMVM is able to register/record complaints, respond to them, directly assist in resolution of complaints, indirectly assist in resolution by passing complaints on to the respective authorities, and publish statistics on them. The CMVM receives, through the Investor Assistance and Communication Department (DAIC), complaints submitted by investors and other interested parties on the functioning of the securities markets. When the facts set out in the complaint relate to illegal acts carried out by entities subject to its supervision, the CMVM institutes the respective misdemeanour action or investigates them with the aim of informing the Public Prosecution Department. The claims and complaints received by the CMVM allow it to detect situations which require other forms of intervention such as investors' clarification or disclosure of information. The CMVM, in seeking to resolve complaints, has given priority to conciliation of all interested parties. On receipt of each complaint, the CMVM contacts the entity in question and calls for explanations of the facts as set out by the investor. The CMVM may make recommendations to both parties and furthermore, explain whether or not it

considers the said entity had been acting in accordance with the rules and regulations of the securities markets.

The CMVM annual report is published for the public in general and it contains information on its activities, operations, legislative framework for consumer protection, but also performance of financial institutions in complying with consumer protection provisions, procedures that financial institutions have in place for dealing with complaints, and the number and nature of complaints received by the authorities. For a full picture of the content of the annual report please refer to CMVM 2009 Annual Report<sup>64</sup>. Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework. Please refer to CMVM 2010 Action Plan.

For a comprehensive list of the main legal and regulatory changes on securities markets, please refer to Appendix 1 (Legislation published in 2009 relating to the Securities Market) of the CMVM 2009 Annual Report, p. 290 and CMVM 2008 Annual Report, p. 323.

#### **21.2.4 Operational capacity of the supervisor**

CMVM has no special budget to carry out operations in the specific field of consumer protection. The CMVM funding system is based mainly on the fees for the services provided. For instance, a €45,000/month fee is due to CMVM to provide an on-going supervision for operators of settlement systems of operations carried out in a regulated market or central depositories. An example of a fee for the granting or refusal of the initial registration payable to the CMVM, follows the operators of regulated markets or multilateral trading facilities, to the value of €7,500 (the operators of other markets are due to pay a fee of €2,500). For detailed information on the above information, please refer to the Ministerial Order nº 913-I/2003, of 30 August and CMVM Regulation nº 7/2003, of 30 August.

The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009, was EUR 52.1 million all operations included. It was not possible for the supervisor to estimate the costs associated with the running of the consumer protection operations. CMVM has no special budget to carry out operations in the specific field of consumer protection<sup>65</sup>.

Likewise, in terms of human resources, the supervisor had approximately 145 employees (administrative staff and executive board not included), all of which are linked to consumer protection in some way and of which 17 members of staff (Investor Assistance and Communication Department) were employed to conduct supervision of consumer protection operations only (i.e. 12% of total staff). In the financial sector and, in particular, the capital markets, the protection mechanisms have been reinforced for those that have the greatest difficulty in defending their rights - the investors. This is a requirement resulting from the technical sophistication and complexity that has followed the development of the markets. The CMVM protects investors/consumers both by on-going supervision and regulation conferred by law, as well as developing services in order to pro-

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<sup>64</sup> The CMVM 2009 Annual Report is available at <http://www.cmvm.pt/EN/Publicacoes/Relatorios/Rel2009/Documents/Annual%20Report%202009.Eng.19.11.2010.pdf>. e.g. for further information on complaints as referred to above p. 272 and Chart 56 on p. 273.

<sup>65</sup> See CMVM 2009 Management Financial Statement available at <http://www.cmvm.pt/CMVM/A%20CMVM/Relatorio%20Anual%20-%20Balanco/Balanco%20e%20Contas%20Anuais%20de%20Gerencia/Documents/Balanco2009.pdf>.

vide direct support to the general public and the consumers/investors in particular. Thus, all members of CMVM staff deal, directly or indirectly, with consumer protection; this is the reason why CMVM refers globally to its staff. Furthermore, 10 members of staff deal exclusively with consumer complaints relating to financial issues.

Please note that the feature above represents the staff within the Investor Assistance and Communication Department which is in charge of receiving and processing the preliminary step of consumer complaints relating to financial and investment services issues. However, depending on the development of the situation, the file can be handled by other units/staff (e.g. the Legal Affairs Department, the Conflict Mediation Service).

The staff working at the CMVM is comprised of 94 employees, many of which are specialists hired because of their experience or specific skill set. Their qualifications can be broken down as follows: Economists: 27, Legal advisers: 28, International relations: 1, Administrative staff: 38.

In 2009, the advanced training received by the staff of the agency in the field of consumer protection was 500/12 (hours/days) of training but the people having received the training is not known. Issues covered in the sessions included legal and regulatory issues on securities.

In the Annex of this report, agency organisational charts have been collated together (please see respective pages). The CMVM's reporting structure mitigates risk of conflicts of interest by excluding staff linked to the supplier side or that has any other conflict of interest in matters related to the activity carried out (see Article 14 of CMVM Code of Conduct).

The CMVM involves consumers and consumer representatives in all possible forms of consumer representation with the exception of them being seated on the board of directors (which is in any case a rare feature only present in Latvia, the UK and Malta), e.g. through its Advisory Council<sup>66</sup>, its Supervisory Council<sup>67</sup> and via its public consultations. Details of the public consultation process are given here:

The CMVM has a view to (i) making the regulation applicable to financial markets more compatible with that governing entities intervening in the markets, namely investors/consumers, (ii) facilitating the reaching of consensus through the active participation of the aforementioned parties in reflections and dialogue on the establishment or amendment of rules, and (iii) valuing the positive contribution made to regulation by the technical expertise and experience of professionals working in the markets, reinforced the mechanisms for transparency as regards the regulatory process, through public consultations.

**The Scope of Public Consultations:** In the exercise of its powers of regulation and cooperation, the CMVM can hold public consultations on the following matters: Draft legislative acts to be adopted in relation to the financial markets; Draft CMVM Regulations; or Documents issued by international organisations in which CMVM is represented or with which it collaborates, such as the Committee of European Securities Regulators (CESR) or the International Organisation of Securities Commissions (IOSCO).

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<sup>66</sup> A full description of the composition of the CMVM Advisory Board is available at <http://www.cmvm.pt/en/a%20cmvm/apresentacao/pages/advisory%20board.aspx>.

<sup>67</sup> For an overview of the CMVM Supervisory Board please refer to <http://www.cmvm.pt/en/a%20cmvm/apresentacao/pages/default.aspx>.

Stages in the Public Consultation Process: Each public consultation process may involve the following stages:

1. The disclosure of a summary in which the main ideas of the text which is the object of the consultation are summarised, as well as the aspects of these ideas which are innovative and the implications they could have for the securities market;
2. The posting on CMVM's website of the documents which are the object of the public consultation;
3. Direct communication, through meetings or conferences, with persons or entities interested in or to whom the matters dealt with in the text submitted to consultation apply;
4. Receipt, analysis and consolidation of responses submitted; and
5. Public disclosure of responses submitted and the analysis thereof.

Along the international meetings which it attends, the CMVM also advises the Ministry of Finance on the Proposal for a Directive of the European Parliament and of the Council on consumer rights. Cooperation between regulatory authorities is essential due to the huge interaction between different markets and financial instruments. In this way and in 2009, the CMVM contributed positively in international network meetings, particularly at the European Commission, CESR and IOSCO.

#### **21.2.5 Supervisor views and ideas**

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'. There are no current initiatives on the separation of prudential supervision from consumer protection tasks. The CMVM is committed to improve consumer protection enhancing the powers currently foreseen under its supervision competencies.

While discussion on the issue of class actions is not very topical at the moment in Portugal, pursuant to Article 31 of the Portuguese Securities Code, the legal framework on class actions is as follows: 1. The following have the right to class action for the protection of the homogeneous individual or collective interests of retail investors in financial instruments: a) Non-qualified investors, b) Associations for the defence of investors, c) Foundations that have as an objective the protection of investors in financial instruments. 2. The conviction obtained should indicate the entity in charge of the receipt and management of the indemnity due to those shareholders not individually identified, designating, according to the circumstances, sinking funds, associations for the defence of investors or one or various shareholders identified in the action. 3. Indemnities that are not paid, due to prescription or the impossibility of identifying the respective shareholders, should revert to: a) The sinking fund relating to the activity giving rise to the indemnity, b) In the absence of the sinking fund, the investors' compensation system. CMVM acknowledges that there was one class action lawsuit, as described within CMVM 2009 Annual Report, p.273.

The field of consumer protection which CMVM would like to see more extensively covered by its services is mainly in the area of transparency on information provided to consumer, particularly on complex financial instruments.

Interaction of cross-sector and cross-border operations was also seen as key with regard to consumer protection<sup>68</sup>.

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<sup>68</sup> For details on cross-sector operational coordination, please refer to <http://www.cmvn.pt/EN/Cooperacao%20Nacional/Acordos/Pages/acordos.aspx> and for cross-border operational coordination, please refer to <http://www.cmvn.pt/EN/Cooperacao%20Internacional/Acordos/Pages/acordos.aspx>.

## 22 Romania

Financial supervision in Romania is primarily the responsibility of the national bank of Romania supervising the banking system, and the National Securities Commission (CNVM) which was established in 2002 and supervises the securities business. Insurance activities are supervised by an independent Insurance Supervisory Commission, established in 2001.

Generally, the view of the country's consumer associations is that there is sufficient supervision of financial services for consumers in Romania. The particularity of the supervisory model is the prominent role played by the NACP a body with a broad consumer protection mandate to attend to all consumer goods and services including financial products and services as well. This alternative to having a specialised entity for financial services is often seen as a weakness because of the typical exceptionally large remit the agency has relative to its financial and human resources. Priorities may also lose out to more high profile public health issues and safety concerns (which are a form of conflict of interest within the organisation).

The following supervisory bodies are responsible for the following sectors:

Credit, savings, bank accounts:

- The National Bank of Romania, very active in raising bank awareness when offering consumer credit;
- The National Agency for Consumer Protection, very active in solving complaints presented by consumers. It also proposes regulations to the Parliament, such as the transposition of the Consumer Credit Directive;
- The Credit Bureau, a private body set-up by commercial banks in order to gather data about individuals behaviour when paying their instalments on a credit
- The Competition Council, a governmental body

Pensions:

- the private pensions market is supervised by the Commission for the supervision of private pensions, a body controlled by the Parliament;
- the state pensions are monitored by the National House of Pensions and other social services

Capital investment and securities:

- The investment market is regulated and supervised by the National Commission of Securities, a governmental body

Insurance:

- this market is supervised by the Commission for Insurance Surveillance, controlled by the Parliament

In Romania, the main problem with supervision is seen to be experienced by consumers having to pay a credit. In this sector and elsewhere, improvements would consist of the authorities extending the services for solving consumers' complaints in the field of financial services i.e. although there is no lack of supervising organisations, what is needed is a larger activity.

## 23 Slovakia

### 23.1 Summary

Public agencies that look after consumer protection in the area of financial services in the country include the Slovak Trade Inspection and the National bank of Slovakia. Since January 2006, the entire financial market supervision of the National Bank of Slovakia covering banking, capital market, insurance and pension saving has been integrated. As a part of the financial market supervision integration, the previous Financial Market Authority was dissolved by law and all its powers and responsibilities were transferred to the National Bank of Slovakia. The objective of the integrated financial market supervision is to contribute to the stability of the financial market as a whole, as well as to the secure and sound operation of the financial market in the interest of maintaining credibility of the financial market, protecting clients, and respecting the competition rules. The Central Bank acts as a separate agency with its own governance and financial means and is also able to respond to consumers with an answer when they complain about a provider.

### 23.2 Slovak Trade Inspection (SOI)

#### 23.2.1 Basic data

Status of supervisory authority	General consumer protection authority
	The supervisor is not controlled by a governmental body
Type of institutions supervised	Credit institutions; Providers of credit and store cards; Financial intermediaries
Type of institutions not supervised	Investment firms; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial advisers; Real estate agents; Credit referencing agencies
Areas of supervision	Micro-prudential

#### 23.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency through the legal framework - Act No. 250/2007 on consumer protection, Act No. 129/2010 on consumer credits and other credits. The SOI's own definition of consumer protection is:

“providing adequate, correct information needed for taking reasonable decision on making a purchase”

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.

3	...provides equal opportunities to all consumers especially to the poor.
4	...guarantees a general framework in which others can provide individual consumer protection
5	...prevents over-indebtedness, exclusion, old age poverty.
6	...limits economic power with regard to consumer needs
7	...secures for fair competition and functioning markets in financial services.

The SOI's supervisory approach in consumer protection can be described as follows: It carries out inspection on daily basis, it deals with complaints of consumers, it cooperates in executing inspections with other public administration bodies and with consumer associations as well. On the basis of results of an inspection, it takes on-site measures or imposes a fine on the inspected person. The agency can be described as having an exclusive role in monitoring compliance and it provides its inspectors with methodological guidance, organises regular training, and these inspectors execute inspections of creditors.

Supervisory objectives: The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate	Legal Source
Ensuring compliance with consumer protection measures	Act No. 250/2007 on consumer protection, Act No. 129/2010 on consumer credits and other credits, Act No. 128/2002 on State Inspection of internal market in consumer protection matters
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	Act No. 250/2007 on consumer protection, Act No. 129/2010 on consumer credits and other credits, Act No. 128/2002 on State Inspection of internal market in consumer protection matters
Protecting clients from misconduct and/or bad business practices; Ensuring transparency of official decision making processes; Monitoring if financial institutions follow codes of conduct; Promoting consumer awareness of the obligations of financial institutions	Act No. 250/2007 on consumer protection
Fostering an understanding of financial services and related issues	Act No. 250/2007 on consumer protection, Act No. 211/2000 on access to information

Examples of areas where the SOI does not have a mandate include: ensuring institutional participation of consumer organisations in its decision making; promoting supervisory cooperation; promoting access to banking services; monitoring and evaluating trends and emerging issues; and promoting competition.

The SOI's remit is for consumer credit issues but not for retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising). However, the following are not included in its set of responsibilities: Transaction transparency; Personal integrity of personnel; Prevention of criminal behaviour.

Among the powers which the agency has, is an ability to refer a complaint to another agency, fine delinquents, initiate and execute investigations. However, this also means it is not able to address a complaint to the complainant, address a complaint to the firm, start a legal action in court, initiate criminal procedures,

In case of breaching Act No. 129/2010 on consumer credits and Act No. 250/2007 on consumer protection, the SOI initiates an administrative proceeding.

In case of non-compliance with consumer protection legislation and rules, the SOI is able to take any of the following actions in the form of a sanction: Notify the firm of a violation, Prohibition of certain professional activities, Impose a pecuniary sanction (monetary penalty). However, the following set of sanctions cannot be currently imposed by the supervisor at present: Seek a remedial commitment from the firm, Impose criminal sanctions, Orders for institute directors, Withdrawal of the license, Demand withdrawal of director.

In the supervisor's eyes, the most effective sanctions in consumer protection are imposing a fine, and on-site measures.

Sanctions and/or complaints are made public on a systematic basis. Furthermore, these sanctions and complaints are often on a named basis. The SOI publishes all its decisions on its websites though business secrets of traders is protected.

The maximum authorised amount for a financial penalty is EUR 70,000 and in case of repeated breaching of law a maximum amount of EUR 140,000. The agency is however, not able to punish staff at a financial institution on a personal basis following a case of wrong-doing. A fine is imposed in any case of uncovering shortcomings. These amounted to 17 cases in 2008 and 8 in 2009. All of which were fines, the smallest amount was EUR 400 (in 2008) and EUR 600 (in 2009) while the largest amount reached was EUR 3,300 (in 2008) and EUR 2,500 (in 2009). All sanctions were made.

### **23.2.3 Activities and supervision in practice**

The Table below contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009.

<b>Examples of specific monitoring tasks carried out</b>	<b>Qty (2009)</b>	<b>Details</b>
<b>Onsite inspections</b>	53	18 non-banking creditors, 2 banks
Tests on the accuracy, simplicity, comparability of pre-contractual information ( <b>ex-ante</b> )	20	18 non-banking creditors, 2 banks
Tests on the accuracy, simplicity, comparability of information after purchase ( <b>ex-post</b> )	20	18 non-banking creditors, 2 banks
Checks for compliance with fair, non-misleading <b>advertising</b> practices	20	18 non-banking creditors, 2 banks
Tests of correct <b>APR</b> calculation in disclosure	10	10 non-banking creditors
Checks for compliance with fair, non-coercive and reasonable <b>selling practices</b>	1	1 non-banking creditor (2 inspections)

The following table gives concrete examples for various activities which the SOI has been responsible for in the year 2009.

<b>Examples of functions fulfilled</b>	<b>Examples: Description, details, links etc.</b>
Compliance with consumer protection laws and regulations	1) incorrect or missing APR in credit agreements, 2) incomplete information in credit agreements, 3) incomplete pre-contractual information, 4) using unfair commercial practices with refer to the availability of product
Initiatives that have helped to improve the balance of power in the relationship between financial institutions and consumers	initiating onsite inspections
Recourse: e.g. informing consumers about their rights to complain, how and where to complain and receive appropriate redress	only personal or written advices to the individual consumers

A public financial ombudsman system exists in Slovakia, and for the area of bank services it also has a private bank ombudsman (founded by the Slovak Bank Association).

Enquiries/complaints received from consumers: 40 per year, most of claimants were middle aged people, 10% of annual amount of complaints the SOI received from other Slovak state administration bodies. The SOI is able to make binding decisions for some of the parties involved in a consumer complaint, and on the basis of the results of an inspection, it can either take on-site measures or it can choose to impose a fine on the inspected person. Though the SOI does not pass

complaints on to the respective authorities, nor does it publish statistics on them, the SOI can nevertheless respond to the complaint and directly assist in resolution of the complaint by dealing with these by responding to consumers and demanding the elimination of all shortcomings. When it imposes measures, it checks if the measures were fulfilled.

An annual Report is produced for the Ministry of economy of Slovakia, but it is only available in the Slovak language and only available for internal purposes. It contains information on its activities, operations, legislative framework for consumer protection, and number and nature of complaints that have been brought to its attention. It also provides data and analysis on economic issues, information about staff and additional trainings- Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework.

#### **23.2.4 Operational capacity of the supervisor and its views**

The source of the agency's funding is solely from the state budget. The sum available for it to carry out its operations in the field of consumer protection in 2009, was EUR 5.2 million all operations included. Unfortunately the supervisor was unable to estimate the cost of the consumer protection operations. This is because there is no separated budget for activities in the area of consumer protection.

Likewise, in terms of human resources, the supervisor had approximately 316 employees of which 220 are linked to consumer protection and of which only 16 members of staff were employed to conduct supervision of financial consumer protection operations only (i.e. 5% of total staff). Slovak Trade Inspection is divided into 8 regional inspectorates; most of you employees are inspectors who are executing onsite inspections. Furthermore, 220 members of staff deal exclusively with consumer complaints (of which 24 for consumer credit operations and none for consumer investment operations). As regards financial services, the SOI has designated specialised inspectors who deal with this issue.

The broad distribution of employees in terms of qualifications is as follows:

6 people are economists, administrative staff, 22 lawyers, 10 people are experts in consumer advices, 20 methodologists, 20 people are administrative staff, 220 people are inspectors with specific qualification in different area of consumer protection. No specialists were hired specifically because of their experience or specific skill set. Furthermore, in 2009 agency employees were not trained in the area of financial services. Nevertheless codes of practice mean that SOI inspectors must be of impeccable character, and are obliged to keep secrecy of all facts they learnt in the course of the inspection.

This supervisory agency ensures that consumer interest and voice is represented in its work through direct consultation with individual consumers. This however is the only method of gathering the views of consumers and there is no reliance on gathering views from the specialists and advocates active in their country.

International meetings were attended by the SOI staff on the topic of unfair commercial practices, which helped the agency to be informed about attitudes of other EU supervisory agencies.

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory' and there are no

current initiatives to change the financial supervision structure or model of oversight.

The Trade Inspectorate did not mention any additional powers that it would deem useful in terms of delivering on their consumer protection mandate, and confirmed that class actions were not a theme of discussion in Slovakia. The main area subject to concern by the supervisors and deserving greater regulation and oversight are the firms and markets serving consumers of non-banking services.

### 23.3 Narodna Banka Slovenska (NBS)

#### 23.3.1 Basic data

Status of supervisory authority	National Central Bank
Type of institutions supervised	Credit institutions; Investment firms; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers; Payment services providers under PSD Directive, central depositories, pension funds, the Deposit Protection Fund, the Investment Guarantee Fund, the Slovak Bureau of Insurers etc.
Type of institutions not supervised	Providers of credit and store cards; Providers of money transmission services; Real estate agents; and credit referencing agencies
Areas of supervision	Macro-prudential; Micro-prudential

#### 23.3.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

Consumer protection is the explicit goal of Financial Clients Protection Section in NBS. In the area of the financial market, the National Bank of Slovakia shall contribute: 1) to the stability of the financial system as a whole, as well as to the secure and sound, 2) functioning of the financial market for the sake of maintaining its credibility, client protection, 3) and out of respect for the rules of economic competition - whereby the National Bank of Slovakia shall perform: a) financial market supervision pursuant to this Act and separate legal provisions, b) other activities in the area of the financial market pursuant to this Act and separate legal provisions.

Own agency definition of consumer protection:

Handling complaints from the consumers of financial institutions that are supervised by NBS. The complaints are investigated as a part of providing of supervision in line with the law. Financial market supervised entities cooperate with NBS, supply NBS with information about their consumer' complaints, respect the opinions of NBS and are willing to reach a compromise and in some cases, to reconsider their decisions (so-called remedy mediation). Another tasks are communications with public, providing information, warnings on website, collaboration by preparing the legal regulations within a competence of NBS. Complaints are a source of information about the methods the supervised entities use about

the methods the supervised entities use in conducting their activities. Monitoring some non-banking subjects.

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
2	...secures for fair competition and functioning markets in financial services.
3	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
4	...limits economic power with regard to consumer needs
5	...guarantees a general framework in which others can provide individual consumer protection
6	...prevents over-indebtedness, exclusion, old age poverty.
7	...provides equal opportunities to all consumers especially to the poor.

The Bank's supervisory approach in consumer protection is based on the acknowledgement that in the future, consumer protection will be even more important and that recording and analysis of complaints will be a strong source of information for supervisors. The Bank has an exclusive role in monitoring compliance and its mandate in respected areas is shown in the table below.

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures	Act No 492/2009 on payment services, Act No 250/2007 on consumer protection	handling of complaints/ in general
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	Act on consumer protection, Act on payment services	
Protecting clients from misconduct and/or bad business practices	Act on consumer protection, Civil Code	
Monitoring if financial institutions follow their own voluntary codes of conduct		by dealing with complaints
Promoting competition		Also responsibility of the Anti-trust Office

The Bank's remit is for both consumer credit and retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional

compliance to use of fair contract terms; Transaction transparency; and prevention of criminal behaviour.

The NBS does not however control the methods of marketing (e.g. misleading advertising) nor the personal integrity of personnel in financial institutions.

Among the powers which the agency enjoys, is an ability to initiate and execute investigations. Its powers with regard to complaints is however limited as it is not able to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, start a legal action in court, initiate criminal procedures or fine delinquents.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Withdrawal of the license and impose a pecuniary sanction (monetary penalty). In addition there are corrective measures and fines in general (responsibility of enforcement section of the central bank). Sanctions which are not open to the central bank are: Notify the firm of a violation; Seek a remedial commitment from the firm; Impose criminal sanctions; Orders for institute directors; Demand withdrawal of director; Prohibition of certain professional activities-

Sanctions and/or complaints are never made public. The maximum authorised amount for a financial penalty is approx. EUR 664,000 in general (responsibility of enforcement section). The NBS reported having taken no sanctions in 2008 and issued only 1 fine of EUR 3,319 in 2009. In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing. In general the NBS may impose a fine on a member of the statutory body of supervisory board of a bank, the chief executive officer of branch office or his deputy, procurator or officer of a bank or branch office or a forced administrator or his deputy etc.

### **23.3.3 Activities and supervision in practice**

In the Slovak national Bank, the task of onsite inspections falls under the responsibility of SECURITIES MARKET, INSURANCE AND PENSION SAVINGS SUPERVISION DEPARTMENT, BANKING AND PAYMENT SERVICES SUPERVISION DEPARTMENT; checking responsible lending standards the responsibility of BANKING AND PAYMENT SERVICES SUPERVISION DEPARTMENT, and checking compliance with fair, non-coercive and reasonable selling practices, the responsibility of SECURITIES MARKET, INSURANCE AND PENSION SAVINGS (SUPERVISION DEPARTMENT)

<b>Examples of functions fulfilled</b>	<b>Examples: Description, details, links etc.</b>
<b>Compliance</b> with consumer protection laws and regulations	901 complaints
Fast <b>collection and dissemination</b> of information on consumer problems	by dealing with complaints
<b>Sales practices:</b> e.g. aggressive sales techniques (door-to-door solicitations or limited-time offers)	by dealing with complaints (this statistic was not made)
<b>Wrong advice:</b> e.g. misselling of investment products	by dealing with complaints (this statistic was not made)
<b>Product transparency:</b> e.g. deceptive advertisements, unfair contract terms, excessive small print, complicated terms, inadequately trained staff etc.	by dealing with complaints (this statistic was not made)
<b>Overcharging:</b> e.g. extra fees and commissions, hidden fees on bank accounts etc.	in 2010 -area of cross-border payments
<b>Data privacy:</b> e.g. mistreatment of personal data	in the competence of the Office for Personal Data Protection of the SR

Enquiries received from consumers totalled 799 (2010) and 901 (2009). In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved, however it can directly assist in resolution of complaints and can publish statistics on them. This is done in the NBS annual Report<sup>69</sup>. The agency however, does not appear to produce a specific business plan outlining how it will develop and implement new initiatives to foster consumer protection alongside the annual report. Areas where changes were initiated by the Bank over the past 2 years includes during the implementation of Directive on payment services in the internal market in new Act on Payment services, Regulation (EC) No 924/2009 on cross-border payments in the Community.

### 23.3.4 Operational capacity of the supervisor and its views

The source of the agency's funding is from the financial institutions that it monitors as well as through other ways. No data was available or could be provided to the research concerning the importance of the funds needed to run the agency and its consumer protection units. Financial Clients Protection Section is part of REGULATION AND FINANCIAL ANALYSES DEPARTMENT (one budget).

The total staff from the agency working on consumer protection however is 7. Financial Clients Protection Section is one part of the Financial Market Supervision Unit (125 employees). Furthermore, 7 members of staff deal exclusively with consumer complaints relating to financial issues (of which 3 for consumer

<sup>69</sup> <http://www.nbs.sk/en/publications-issued-by-the-nbs/nbs-publications/annual-report>.

credit operations and 3 for consumer investment operations. Their skills are divided between 5 lawyers, and 2 economists.

This supervisory agency ensures that consumer interest and voice is represented in its work through direct consultation with individual consumers. This however is the only method of gathering the views of consumers and there is no reliance on gathering views from the specialists and advocates active in their country.

The Slovak national bank is the only entity that is honest enough to admit that supervision is less than satisfactory in its country and that more should be done to make markets safe for consumers. Regarding possible changes to the regulatory landscape and supervisory architecture in Slovakia, there is currently some discussion over the issue of separating prudential from conduct-of-business supervision. As a result the additional powers which the NBS would like to acquire in order to improve consumer protection in Slovakia would imply changes in legislation. As expressed by the Trade Inspectorate above, the central bank also finds little discussion about the issue of class actions in Slovakia.

## 24 Slovenia

### 24.1 Summary

In Slovenia there are three main national financial supervisory authorities: The Bank of Slovenia (responsible for bank institutions), Slovene Securities Market Agency (liable for investment firms) and Insurance Supervision Agency (controlling insurance companies, intermediates and agents).

These institutions are endowed with necessary investigation and sanctioning powers, but unfortunately not specifically for consumer protection issues. They cannot directly intervene in existing consumer contracts, but merely publish recommendations or directions for action on specific topics regarding consumer issues, in case these are also important for market stability.

Additional public agencies that look after consumer protection in the area of financial services in the country include the Consumer Protection Office of the Republic of Slovenia (as part of the Ministry of the Economy), the Market Inspectorate of Republic of Slovenia (as part of the Ministry of the Economy and in charge of supervision of non-bank credit institutions), the information Commissioner, and the Competition Protection Office.

### 24.2 Bank of Slovenia

#### 24.2.1 Basic data

Status of supervisory authority	National Central Bank
	The supervisor is not controlled by a governmental body
Type of institutions supervised	Credit institutions; Providers of money transmission services; Providers of currency exchange services
Type of institutions not supervised	Investment firms; Providers of credit and store cards; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers; Real estate agents; Credit referencing agencies
Areas of supervision	Macro-prudential; Micro-prudential

#### 24.2.2 Institutional structure and objectives

Consumer protection is not an explicit goal of the agency.

The tasks of Bank of Slovenia as the central bank in the Republic of Slovenia are thoroughly described in The Act of Bank of Slovenia.<sup>70</sup>

The Bank's own definition of consumer protection is:

"To ensure fair trade competition and the free flow of truthful information in the marketplace, to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors".

Although Bank of Slovenia is an authorised authority for the supervision of payment services providers, it is not authorised for enforcing any explicitly desig-

<sup>70</sup> See Official Gazette of RS, No. 72/06 (Official consolidated version), mostly in Articles 11, 12, 13 and 14, respectively. The Act of Bank of Slovenia is also available online: <http://www.bsi.si/library/includes/datoteka.asp?DatotekaId=2959>.

nated consumer protection laws in this sector, as it may act only as the supervisory authority of the respective system and not the market. Irrespective of that, some banking or banking related laws do however to some extent also cover consumer protection, such as for example the one concerning consumer credit or the one implementing the Payment Services Directive (PSD, 2007/64/EC), but still just from the systemic point of view, disregarding the market fluctuations. In addition to that, Bank of Slovenia is cooperating with the designated authorities and banks in Slovenia, mostly in the sense of information exchange and sometimes also by pointing out particular commercial bank's practices it deems inappropriate.

The agency's supervisory approach in consumer protection can be described as follows:

Although Bank of Slovenia is an authorised authority for the supervision of payment services providers, it is not authorised for enforcing any explicitly designated consumer protection laws in this sector, as it may act only as the supervisory authority of the respective system and not the market. Irrespective of that, some banking or banking related laws do however to some extent also cover consumer protection, such as for example the one concerning consumer credit or the one implementing the Payment Services Directive (PSD, 2007/64/EC), but still just from the systemic point of view, disregarding the market fluctuations. In addition to that, Bank of Slovenia is cooperating with the designated authorities and banks in Slovenia, mostly in the sense of information exchange and sometimes also by pointing out particular commercial bank's practices it deems inappropriate. The Bank of Slovenia is exclusively authorised to monitor compliance with the aforementioned banking or banking related laws in the Republic of Slovenia.

Supervisory objectives: The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate		Legal Source
Ensuring compliance with consumer protection measures	Full	Some banking or banking related laws to some extent also cover consumer protection, such as for example the one concerning consumer credit or the one implementing the Payment Services Directive (PSD, 2007/64/EC). Exclusively authorised to monitor compliance with the aforementioned banking or banking related laws in the Republic of Slovenia.
Promoting supervisory cooperation	Full	Regularly cooperates with other central banks and national supervisors and complies with the respective EU supervisory practices, but not explicitly in the field of consumer protection.
Promoting consumer awareness of the obligations of financial institutions	Full	All respective regulations are made public and sometimes also additional informing of the clients is enforced upon payment services providers.
Fostering an understanding of financial services and related issues	Full	Cooperation in legislative procedures, exchange of expert information with other authorities and payment services providers, public announcements via media and Bank's official internet website.
Monitoring and evaluating trends and emerging issues	Full	Yes, if it is in the field of banking or banking related legislative or related to it by substance.

Promoting the adoption by financial institutions of policies and procedures	Not fully	Payment services providers are obliged to comply with banking or banking related regulations and the Bank of Slovenia is the authorised authority in the Republic of Slovenia to enforce it. Other than that, the practice of the Bank of Slovenia is however, to also point out particular commercial bank's practices (in the market sense) it deems inappropriate, but it's recommendation is not binding.
Protecting clients from misconduct and/or bad business practices	Not fully	In the field of banking or banking related laws, Bank of Slovenia is the authorised authority to sanction certain misconducts, performed by payment services providers. Other than that, the practice of Bank of Slovenia is however, to also point out particular commercial bank's practices (in the market sense) it deems inappropriate, but it's recommendation here is not binding.
Ensuring comprehensive transparency of official processes and access to documents	Not fully	Access to decision making processes and documents is not public, but may sometimes be granted to competent authorities.

Areas where the Bank of Slovenia does not have a mandate includes: Ensuring institutional participation of consumer (it is not obliged to do so, but mostly for the reason of consistency of the practices, it does try to cooperate as much as possible); Promoting access to banking services (it does not interfere with business policies of payment services providers and even if it does deem some practices inappropriate, it's opinion is not legally binding); Checking adherence to codes of conduct (it does not interfere with business policies of payment services providers, unless they violate the respective banking or banking related regulations); Promoting competition (it does not interfere with business policies of payment services providers and even if it does deem some practices inappropriate, it's opinion is not legally binding).

The Bank also has all the usual mandates of a national central bank which includes maintaining financial stability, ensuring compliance with banking regulation; and preventing financial crime.

The agency's remit is for consumer credit issues but not for retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Transaction transparency; Personal integrity of personnel; and prevention of criminal behaviour. However, the following are not included in its set of responsibilities: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising).

Among the powers which the agency has, is an ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, fine delinquents, initiate and execute investigations. However, this also means it is not able to start a legal action in court and initiate criminal procedures.

The Bank of Slovenia does not have the powers to initiate criminal procedures, but it can press criminal charges. In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation, seek a remedial commitment from the firm, withdrawal of the license, prohibition of certain professional activities, impose a pecuniary sanction (monetary penalty).

These actions are taken when the respective banking or banking related regulations are violated. In relation to consumers last year there have been only three

cases, one concerning ATMs, one concerning disapproved withdrawals and one concerning Effective Annual Rate, but none of them resulting in withdrawal of the license.

However, the following set of sanctions cannot be currently imposed by the supervisor at present: Impose criminal sanctions; Orders for institute directors; Demand withdrawal of director.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) seek a remedial commitment from the firm; 2) impose a pecuniary sanction (monetary penalty); 3) notify the firm of a violation.

Sanctions and/or complaints are never made public as there is an obligation of professional secrecy.

The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is EUR 125,000. In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing. The agency was not able to provide data on the number of sanctions it has taken with regard to breaches of consumer protection related rules stating that data were simply not available.

### **24.2.3 Activities and supervision in practice**

Complaints and publication of complaints

A public financial ombudsman system exists in this country.

No explicitly financial ombudsman is present, but there is a Human Rights Ombudsman of the Republic of Slovenia as a constitutional category that does not fall under the executive, judicial or legislative branch of authority. The Ombudsman acts as an overseer of authority. Complaints over commercial institutions' behaviour may be given to three other institutions, the Consumer Protection Office of the Republic of Slovenia (as part of the Ministry of the Economy), the Market Inspectorate of Republic of Slovenia (as part of the Ministry of the Economy) and the Slovene Consumers' Association (as an independent, non-profit, internationally recognised non-governmental organization). In compliance with the Banking Act (Official Gazette of RS, No. 99/2010-UPB5), the Payment Services and Systems Act (Official Gazette of RS, No. 58/09, 34/10) and Financial Instruments Market Act (Official Gazette of RS, No. 108/2010-UPB3), the Slovenian banks passed the Act of the Establishment and Activities of the Settlement Council under the auspice of the Bank Association of Slovenia for out-of-court settlement of disputes arising between a customer and a bank. The objective of the Settlement Council is to arrive at an amicable resolution of the complaint, that arise from breaches of contractual relations, contraventions of general terms and conditions of banks, operations or best business practice. Settlement Council does not have a mandate to decide the disputes that arise out of customer dissatisfaction with bank's business policy.

The numbers of enquiries/complaints received from consumers per year varies, but no excesses are present. Dominating subjects are related to the provision of banking services (deposits and crediting) and other payment services, including the performance of ATMs. Complaints are reviewed by the suitable internal department in relation to the subject of the matter (i.e. Banking supervision, Payment systems and services, Legal department), but only if it is related to the regulations concerning the banking sector. In this sense the Bank stresses that although it is an authorised authority for the supervision of payment services providers, it is not authorised for enforcing any explicitly designated consumer protection laws in this sector, as it may act only as the supervisory authority of the respective system and not the market. The tasks of consumer protection in

the Republic of Slovenia were assigned mainly to specialised institutions other than Bank of Slovenia (Banka Slovenije) as the central bank of the Republic of Slovenia. These specialised institutions are primarily the Consumer Protection Office of the Republic of Slovenia (as part of the Ministry of the Economy), the Market Inspectorate of Republic of Slovenia (as part of the Ministry of the Economy) and the Slovene Consumers' Association (as an independent, non-profit, internationally recognised non-governmental organization).

In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved, and with regard to its dealing with consumer complaints it can register/record them, respond to them, directly assist in resolution of complaints, and indirectly assist in resolution by passing complaints on to the respective authorities. However, there is no publishing of statistics on complaints and no annual Report is published by the Bank of Slovenia.

There have been some initiatives to further strengthen Bank of Slovenia's framework for consumer protection, but such a move would require some major legislative changes in the terms of the mandate it is currently given for such tasks. International cooperation and legislative initiatives it was involved with includes cooperation with the legislative authority in the fields of banking or banking related legislature, such as the one concerning consumer credit or the one implementing the Payment Services Directive (PSD, 2007/64/EC) and similar.

#### **24.2.4 Operational capacity of the supervisor and its views**

There is no data available on sources of funding. No data was available or could be provided to the research concerning the importance of the funds needed to run the agency and its consumer protection units. Neither was specific information available on staffing levels, as these cases are handled by already existent not specifically consumer protection oriented departments. There is no operational unit dealing exclusively with consumer complaints. These cases are handled by already existent not specifically consumer protection oriented departments (i.e. Legal department, Banking supervision, Payment services and systems), within which some employees are however more exposed to handling consumer complaints than others. The number of such employees is almost impossible to determine exactly. Employees of the Bank working on related consumer protection issues are made up of lawyers, economists and administrative staff. Consumer protection cases are handled by employees not specifically dedicated to just consumer protection, and there was no data available as to the training these employees received. The Central Bank's website does not provide a graphic representation of the organisational units but only lists the departments within the Bank of Slovenia<sup>71</sup>.

The supervisor includes consumer views into its work through direct consultation with consumer organisations and the current level of supervision with respect to consumer protection in this country is assessed by the Bank of Slovenia as being 'satisfactory'. It has nevertheless been identified by the country authorities, that prudential supervision should be separated from consumer protection tasks, to avoid the risk of conflicts of interest. The Bank of Slovenia did not mention any additional powers that it would deem useful in terms of delivering on their consumer protection mandate. Despite the EU initiative and consultation on collective redress, class actions are not a theme of discussion in Slovenia. Considering the nature of the institution, additional supervisory and sanctioning powers seem, in the supervisor's eyes, to be more appropriate than class action lawsuits.

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<sup>71</sup> See <http://www.bsi.si/en/bank-of-slovenia.asp?MapaId=226>.

## 24.3 Insurance Supervision Agency (ISA)

### 24.3.1 Basic data

Status of supervisory authority	Stand-alone insurance supervisor
Type of institutions supervised	Insurance firms; Pension companies
Type of institutions not supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Financial intermediaries; Financial advisers; Real estate agents; Credit referencing agencies
Areas of supervision	Micro-prudential

### 24.3.2 Institutional structure and objectives

Consumer protection is not an explicit goal of the agency.

Explicit goal of the Insurance Supervision agency is the supervision of the insurance market. However with the stability of the insurance market indirectly the interests of the consumers (insured) are protected. See detailed explanation below.

Own agency definition of consumer protection:

There is no specific definition of the consumer protection provided in the Insurance Act (IA). However there are some provisions of the IA referring directly to the protection of the interests of the insured (dissolution of the insurance company, transfer of the insurance contracts, supervisory measures. Consequently, the closest definition of the consumer protection would be that the Insurance Supervision Agency (ISA) provides a general framework in which others can provide consumer protection.

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...guarantees a general framework in which others can provide individual consumer protection
2	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
3	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
4	...secures for fair competition and functioning markets in financial services.
5	...limits economic power with regard to consumer needs
6	...prevents over-indebtedness, exclusion, old age poverty.
7	...provides equal opportunities to all consumers especially to the poor.

The agency's supervisory approach in consumer protection can be described as follows:

The IA defines the role of the ISA as the supervisor of the insurance market. According to the IA the ISA shall conduct the supervision of insurance undertakings for the purpose of verifying whether the insurance undertakings follow the rules on risk management, other rules stipulated in this Act and the regulations issued on the basis thereof, or by other laws regulating the operation of an insurance undertaking and the regulations issued on the basis thereof. With the supervision of the players on the insurance market and hence the stability of the insurance market the ISA indirectly protects the insured as the category of the consumers. Consequently the spirit of the Insurance Act is also the protection of the insured.

The agency can be described as having an exclusive role in monitoring compliance. The ISA supervises compliance of the insurance companies, insurance brokerage companies and insurance brokers with provisions set in the IA.

An explicit mandate with full responsibility was identified only in these 2 areas:

- Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures: binding law since there is a provision in the IA obliging insurance companies to set up a scheme of an internal dispute resolution between the providers of insurance products and consumers;
- Promoting supervisory cooperation and convergence of EU supervisory practices: Specific provisions of the IA. On European level-General Protocol relating to the Collaboration of the Insurance Supervisory Authorities of the Member States of the European Union (Revised Siena Protocol).

Examples of mandates where the ISA has partial responsibility include:

- Ensuring compliance with consumer protection measures: Indirectly, since the ISA supervises if conditions set by the IA are observed (for example information provided to the insured by the insurance broker before the conclusion of the insurance contract).
- Protecting clients from misconduct and/or bad business practices: The ISA does not deal with individual cases concerning misconduct of business practices (civil law cases) as other institutions are set for this purpose (courts, mediation centre, insurance ombudsman...) However, the ISA can react on large scale breach of law when it can be suspected based on the individual complaint. For this reason insurance companies have to inform the ISA on the request for information.
- Monitoring and evaluating trends and emerging issues: The ISA has to prepare every year a report on the state of insurance market. Trends of financial services and their impact are observed in the report.

Other mandates include maintaining financial stability, and ensuring compliance with securities regulation. As insurance regulator, the agency's remit neither includes consumer credit issues nor retail investment ones. It does not carry out any of the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; Personal integrity of personnel; and Prevention of criminal behaviour.

Among the powers which the ISA has, is an ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, fine delinquents and initiate and execute investigations. However, this also means it is not able to start a legal action in court, nor initiate criminal procedures.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; Seek a remedial commitment from the firm; Withdrawal of the license; and impose a pecuniary sanction (monetary penalty).

Most of the violations were in respect of obligations of agents and responsibilities of insurance undertakings when informing clients with certain data in favour of consumer protection before the conclusion of the insurance contract. When insurance brokers do not respect these obligations set in the IA, the ISA can withdraw their licence or/and impose a pecuniary sanction.

However, the following set of sanctions cannot be currently imposed by the supervisor at present: Impose criminal sanctions, Orders for institute directors, demand withdrawal of director, prohibition of certain professional activities.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) withdrawal of the licence; 2) a pecuniary sanction (a fine); and 3) request for information imposed by the ISA.

Sanctions and/or complaints are never made public, however, the number of procedures of the ISA can be seen in the Annual Report of the ISA.

The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is EUR 25,000 for major violations by insurance undertakings. In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing. The agency has reported having taken the following number of sanctions relating to a breach of consumer protection related rules: 6 in 2008 and 4 in 2009. None of these were pecuniary sanctions. In 2010 the ISA Imposed a fine of EUR 12,520 on insurance brokerage company (decision is under appeal), the lowest sanction was imposed on insurance broker in amount of EUR 420. The more penalising non-pecuniary sanction to have been taken by the agency in 2009 was the withdrawal of licence for conducting insurance business imposed on the insurance brokerage company.

### 24.3.3 Activities and supervision in practice

The ISA conducts onsite inspection of insurance companies, insurance brokerage companies and insurer brokers based on a reason of suspect or regular checks. 10 cases where undertaken in 2009.

The following table gives concrete examples for various activities which the ISA has led in 2009.

Examples of functions fulfilled	Description
<b>Product transparency:</b> e.g. deceptive advertisements, unfair contract terms, excessive small print etc.	Cases of misleading by insurance brokers, insurance brokers not providing adequate or complete information set by the IA
<b>Recourse:</b> e.g. informing consumers about their rights	Information provided on the official site of the ISA ( <a href="http://www.a-zn.si/">http://www.a-zn.si/</a> )
<b>Wrong advice:</b> e.g. misselling of investment products	Misselling of investments products by insurance brokers or insurance brokerage companies
<b>Data privacy:</b> e.g. mistreatment of personal data	The ISA is not competent for dealing cases regarding data privacy. They are forwarded to Information Commissioner to be dealt

	by Personal Data Protection Act ( <a href="http://www.ip-rs.si/index.php?id=306">http://www.ip-rs.si/index.php?id=306</a> )
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#### Complaints and publication of complaints

A public financial ombudsman system exists in Slovenia. The insurance ombudsman acts under the auspices of the Slovenian Insurance Association and decides upon disputes among customers and insurance companies in cases of non-respect of the Insurance code or good business customs and fundamental standards of insurance.

Approximately 100 complaints are received per year, many of which are not under the ISA domain (dealing with civil law obligations stemming from the insurance contracts). When such a complaint is received, it is directed to the respective insurance companies that have to send the agency a copy of the answer to the consumer.

While complaints in the country are usually dealt with by the Consumer Protection Office and the Information Commissioner, in case of a consumer complaint, the supervisor is also able to make binding decisions for some (but not all) of the parties involved e.g. binding decisions can be imposed to insurance companies when established that they are not in compliance with the provisions of the Insurance Act. The ISA can do the following things with a consumer complaint: Register/record them, respond to them, indirectly assist in resolution by passing complaints on to the respective authorities, but does not have the ability to directly assist in resolution of complaints nor of publishing statistics on them. In practice the ISA provides the answer to the complainant and in case the ISA is not competent for dealing with a complaint (civil matters) it passes the complaint to the respective authorities.

An annual Report<sup>72</sup> is published giving details on business performance of the Insurance Industry, and it contains information on its activities and operations, and a part of the report deals with conducting the supervision of insurance companies. The agency however, does not appear to produce a specific business plan outlining how it will develop and implement new initiatives to foster consumer protection alongside the annual report.

#### 24.3.4 Operational capacity of the supervisor and its views

The source of the agency's funding is purely levied from the financial institutions that it monitors i.e. from the annual fees and lump-sum fees which legal entities are obliged to pay for the supervision performed by the ISA. The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009, was EUR2.5 million all operations included. Consumer protection operations received funding of EUR 70,000 (i.e. 3% of the budget). The annual budget of the ISA is approximately EUR 2.5 million annually, out of which approximately EUR 1.2 million goes for salaries of the employed.

Likewise, in terms of human resources, the supervisor had 30 employees of which only 1 is employed to conduct supervision of consumer protection operations only (a total of 6 persons if measured more broadly including those working indirectly and sporadically for consumer protection). There is no specific unit organized within the ISA for operations dealing with consumer complaints and the staff of the agency is comprised mostly of economists, mathematicians and lawyers. In 2009, the advanced training received by the staff of the agency in the field of consumer protection was 5 days per year of trainings. In 2009 1 person was trained. The issue was provisions from the insurance mediation directive.

<sup>72</sup> See <http://www.a-zn.si/Eng/Default.aspx?id=2>.

This supervisory agency ensures that consumer interest and voice is represented in its work through direct consultation with individual consumers. This however is the only method of gathering the views of consumers and there is no reliance on gathering views from the specialists and advocates active in their country.

The ISA respond individually to consumer complaints and direct them to insurance companies (internal complaint procedure) and inform about other possible procedures, such as Slovene Insurance Association (mediation), Insurance Ombudsman, Court.

In 2009, staff was involved in international activities and exchange between supervisors including useful consultations and guidance discussed at Committee on Consumer Protection within CEIOPS (now EIOPA).

The current level of supervision with respect to consumer protection in this country is assessed by the ISA itself as being 'satisfactory'. When asked which additional powers could help them improve consumer protection in their country, supervisors have answered the following way: it answered that consumer protection was not within ISA's competencies (only indirectly through financial position of insurance companies). The supervisory system as it is in Slovenia, was seen as adequate because there are other competent authorities in place to handle consumer protection issues. The topic of cross-border cross sector groups was seen as relevant because in case that foreign insurance companies offer insurance products on Slovene market, they need to provide Slovene translation of general terms and insurance contracts.

## 25 Spain

### 25.1 Summary

The supervisory model in Spain corresponds to the traditional institutional scheme with basically three entities in charge of supervision: the central bank takes care of banking supervision (Banco de España), a specialised office is in charge of insurance supervision (Insurance Directorate General or Dirección General de Seguros), while a specialised commission looks after the securities markets (Comision Nacional del Mercado de Valores (CNMV)).

No relevant consumer protection is ensured by financial supervisory authorities as these authorities do not have any capacity to sanction entities not complying with the orders issued by them. They are simply not binding! An example: in between 30-40% of decisions by the Bank of Spain favourable to consumers, banks did not follow the recommendation from the central bank.

### 25.2 Banco de Espana

#### 25.2.1 Basic data

Main Department that provided answers	Director of Financial Institutions Department, Directorate General Regulation
Status of supervisory authority:	National Central Bank
The supervisor is not really controlled by a governmental body.	The Banco de España as a central bank is autonomous, although it is accountable to Parliament. A representative of the Ministry of Economy and Finance is member of its board of directors
Type of institutions supervised	Credit institutions; Providers of money transmission services; Providers of currency exchange services; Other: Mutual guarantee and re-guarantee companies, Appraisal companies, Payment institutions
Type of institutions not supervised	Investment firms; providers of credit and store cards; foreign financial institution representative offices; insurance firms; financial intermediaries; financial advisers; real estate agents; credit referencing agencies
Areas of supervision include	Micro-prudential; Conduct-of-business

#### 25.2.2 Institutional structure and objectives

Consumer protection is not an explicit goal of the Bank of Spain.

Nevertheless, as banking supervisor, the agency supervises compliance with banking regulations, which include not only prudential regulation but also customer protection regulation, among others.

Own agency definition of consumer protection:

“Provide financial consumers with the tools that allow them to take informed decisions, thus mitigating asymmetries in information”

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
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1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...guarantees a general framework in which others can provide individual consumer protection
3	...limits economic power with regard to consumer needs
4	...secures for fair competition and functioning markets in financial services.
5	...provides equal opportunities to all consumers especially to the poor.
6	...prevents over-indebtedness, exclusion, old age poverty.
7	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.

The agency's supervisory approach in consumer protection can be described as follows:

Law and regulations provide the framework in terms of information to consumers. The Banco de España oversees compliance with the legal framework by supervised institutions.

The agency can be described as having an exclusive role in monitoring compliance.

Mainly yes, but the Banco de España also operates a Complaints Service (which is sometimes referred to as 'Claims Service' on its website) and also has access to policymakers in order to propose further regulatory developments in consumer protection.

Supervisory objectives: The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Elements of mandate		Legal Source
Ensuring compliance with consumer protection measures	Full	Regulation (see above)
Protecting clients from misconduct and/or bad business practices	Full	Regulation (via the Complaints Service)
Promoting supervisory cooperation and convergence of EU supervisory practices	Full	Non-binding
Promoting the adoption by financial institutions of policies and procedures designed to implement consumer protection measures	Not fully	

Other mandates of the agency not included in the table above include: maintaining financial stability and ensuring compliance with banking regulation. As a member of the ESCB, maintaining financial stability is one of the Banco de España's main objectives, while compliance with banking regulation is a key function as supervisory body.

The agency's remit neither includes consumer credit issues nor retail investment ones. However the agency is responsible for the following consumer protection measures: professional compliance to fair commercial practices; and transaction transparency. The main remit is transparency of information provided to cus-

tomers either before entering into a specific transaction or afterwards on the results or the performance of a given transaction (loan, mortgage, deposit, etc.). It is also worth mentioning its faculties regarding advertising: until very recently, all advertisements on banking products including a reference to cost or yield were subject to prior authorisation by the agency. This has changed by end 2010, when the prior authorisation system has been substituted by a mixed system (self-regulation, plus a cease and desist power given to the agency).

However, the following are not included in its set of responsibilities: professional compliance to use of fair contract terms, controls of methods of marketing (e.g. misleading advertising), personal integrity of personnel and prevention of criminal behaviour.

The Table below shows certain powers exercised by the Bank of Spain.

<b>Agency has the power to:</b>		<b>Details</b>
Make rules directly affecting consumer protection	Fully	Issue of banking circulars by delegation included in a Law or Royal Decree, in order to further develop legal provisions
Give individual advice to consumers	Fully	Individual advice is provided via the Complaints Service's responses to consumers' enquiries
Issue guidance	Not fully	Guidance is only possible in the prudential domain. In order to provide guidance on consumer protection issues, we use the "Bank Customer's Portal" and the Complaints Service website

Among the powers which the agency has, is an ability to refer a complaint to another agency, and initiate and execute investigations. However, this also means it is not able to address a complaint to the complainant, address a complaint to the firm, start a legal action in court, initiate criminal procedures, and impose a fine.

Complaints related to securities or to non-banking investment products are forwarded to the Spanish Securities Markets Commission (CNMV), whereas those related to insurance policies or to pension funds are forwarded to the Directorate General on Insurance and Pension Funds (within the Ministry of Economy and Finance).

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: notify the firm of a violation, seek a remedial commitment from the firm, demand withdrawal of a director and impose a financial penalty.

Although consumer protection is not an explicit goal of the Bank of Spain, under Spanish law it has the competence to exercise sanctioning power over the institutions supervised by it (basically credit institutions and other entities operating in the financial sector), in order to ensure maximum effectiveness in achieving compliance with the disciplinary regulations applicable to those institutions. The Banco de España's sanctioning power is regulated in Law 26/1988, of 29 July, on Discipline and Intervention of Credit Institutions.<sup>73</sup> It has to be noted that the most frequent sanctions that are imposed in case of non-compliance with consumer protection regulations are monetary penalties.

<sup>73</sup> See an unofficial English translation available at <http://www.bde.es/webbde/es/secciones/normativa/be/l2688.pdf>. More detailed information on this issue can be found in the 2009 Annual Report on Banking Supervision in Spain (see, in particular, 'Exercise of the sanctioning power' on p33), which is available (in English) at <http://www.bde.es/informes/be/supervi/supervie.htm>.

However, the following set of sanctions cannot be currently imposed by the supervisor at present: Impose criminal sanctions, orders for institute directors, withdrawal of the license, and prohibition of certain professional activities.

In the supervisor's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) License withdrawal; 2) Director's withdrawal; 3) Pecuniary sanction. It usually seems that the more penalising a sanction is, the higher its effectiveness, either for consumer protection purposes or for the enforcement of any other regulation; hence the (merely theoretical) ranking of top-effective sanctions shown above. However, the appropriateness of any sanctioning measure should always be assessed on a case-by-case basis, taking into account all concurring circumstances in the breach of consumer protection rules or misconduct that is appraised. If, depending on those circumstances, a monetary penalty's amount can be decided by the sanctioning authority within a broad range, the resulting pecuniary sanction will probably be effective in most cases, without further need of additional (non-pecuniary) measures.

Sanctions and/or complaints are only made public in some cases and not on a systematic basis. Furthermore, these sanctions and complaints are often on a named basis. The Banco de España's sanctioning power is regulated in Law 26/1988, of 29 July (see answer to question 18), which breaks down (article 3) the different violations of regulatory and disciplinary provisions into three different categories: 'very serious', 'serious' and 'minor' violations. According to article 18, although the proceedings are always conducted by the Banco de España, the Banco de España itself is only empowered to impose sanctions for 'serious' and 'minor' infractions, but not for 'very serious' offences. Sanctions that are imposed for the latter category (in most cases by the Minister of Economy and Finance) are always made public; the rest may be made public or not, usually depending on the type of sanction (e.g. a public reprimand is always published in the Official State Gazette). See article 27 of Law 26/1988 for further details. Please note that the answer to this question is restricted to sanctions and does not refer to complaints, which are -as a general rule- not made public. In certain cases an abstract of a specific complaint may be published in the Complaints Service's Annual Report (see answers to questions 14 and 15), always taking care to avoid naming the complainant, but not the financial service provider (who may or may not be named).

The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is €150,000, due to the fact that:

- The amount of a pecuniary sanction that is imposed for any 'serious' infraction (as explained in answer to the preceding question) may not exceed €150,000, according to article 10 of aforementioned Law 26/1988;
- In certain cases (Law 26/1988, article 5. n.), a breach of consumer protection rules may constitute a 'serious' violation of regulatory and disciplinary provisions.

The agency is however, not able to punish staff at a financial institution on a personal basis following a case of wrong-doing. Executive staff is the lowest level of staff that is accountable for pecuniary or administrative sanctions (including disqualification).

The agency has reported having taken the following number of sanctions relating to a breach of consumer protection related rules: 22 in 2008 and 16 in 2009. Among those sanctions, 13 (in 2008) and 14 (in 2009) were financial penalties. The lowest and highest amount was Min. EUR 1,000 - Max. EUR 8,000 in 2008, and Min. EUR 3,000 - Max. EUR 25,000, in 2009. The ratio of sanctions disclosed to the public over the total number of sanctions is usually about 50%. A public reprimand served as the most penalising non-pecuniary sanctions taken by the agency.

### 25.2.3 Activities and supervision in practice

The following table gives concrete examples for various activities which the Bank has been responsible for in the year 2009.

<b>Examples of functions fulfilled</b>	<b>Examples: Description, details, links etc.</b>
<b>Compliance</b> with consumer protection laws and regulations	Within its general supervisory programme, in 2009 the Banco de España issued 58 recommendation and requirement letters to credit and other institutions supervised by it, either as final addressees or as the heads of consolidated groups. These letters to supervised institutions contained a total of 278 observations on different matters (most of them on credit risk); however, 16 out of the 278 observations were specifically referred to the issue 'Failure to comply with rules on transparency and customer relations'.
<b>Product transparency:</b> e.g. deceptive advertisements etc.	Regarding product transparency, until recently the Banco de España was responsible for the authorisation, prior to their publication, of credit institutions' advertising projects that referred to cost or return to the public. This authorisation was intended to ensure only that advertising reflected clearly, accurately and in a manner respectful of competition, the features of financial offers, and that the cost or the return offered had been calculated in keeping with the rules regulating the annual percentage rate (APR). Such a measure's aim was to make different products' offers comparable to customers. In 2009, the total number of applications for authorisation of advertising projects that were submitted to the Banco de España amounted to 6,376. As previously mentioned (see answer to question 6), by end 2010 this prior-authorisation-system" was replaced by a "mixed system" (which comprises self-regulation and a cease-and-desist-power entrusted to our agency). See answer to question 13. "
Monitoring financial institution compliance with voluntary <b>codes of conduct</b> (and their own public commitments)	Among other functions related to transparency, the Banco de España is entrusted with the verification of each entity's customer protection rules regulating the activity of its Customer Service Department and, where applicable, of its ombudsman (except in the case of savings banks and local and regional credit cooperatives, where such verification is carried out by the competent body of the regional community in which their registered office is located). In any event, the Banco de España must be informed of the designation of the head of this service or department, as well as, where applicable, of the ombudsman.
<b>Overcharging:</b> e.g. extra fees and com-	The Banco de España is also responsible for checking and registering the brochure to be drawn up by institu-

missions, hidden fees on bank accounts etc.	tions setting out their prices for bank services and chargeable expenses, as well as the maximum charges applicable, the item to which they relate and the terms of their application. These verification tasks are restricted by law to checking that the brochure reflects maximum prices and the conditions governing their application in a clear and orderly fashion. A total of 964 proposals of this kind (usually modifications to previously registered price brochures) were processed in 2009. Please note that, from 2010 onwards, prices for payments services do no longer need to be included in these maximum price brochures that are subject to registration at the Banco de España.
<b>Recourse:</b> e.g. informing consumers about their rights	This specific information is provided on our website, in its section dealing with the Complaints Service (see answer to question 12). It is available in English, too, at <a href="http://www.bde.es/webbde/en/secciones/servicio/reclama/reclama.html">http://www.bde.es/webbde/en/secciones/servicio/reclama/reclama.html</a> .
<b>Consumer education</b> in the financial sector: e.g. materials published by your agency (guides/tools to help consumers understand and shop around)	Two main activities are currently carried out by the Banco de España on consumer education: A) The maintenance of the Bank Customer's Portal", a specific section of the Banco de España's website intended to provide information and guidance to non-business customers of credit institutions (total portal page viewings in 2009: 2,673,764). It is available, albeit only in Spanish, at <a href="http://www.bde.es/clientebanca/home.htm">http://www.bde.es/clientebanca/home.htm</a> . B) A financial education plan, jointly launched by the Banco de España and the Spanish Securities Markets Commission (CNMV) in 2010, with a broader scope than the latter. Its contents are available, also only in Spanish, at <a href="http://www.finanzasparatodos.es/">http://www.finanzasparatodos.es/</a> ."

#### Complaints and publication of complaints:

As far as credit institutions are concerned, each of them must have a specific Customer Service Department (CSD), responsible for dealing with customers' claims and complaints; on a voluntary basis, each credit institution may have, in addition, an institution's ombudsman. If the latter exists, the relationship between the CSD and the ombudsman should be determined internally by the credit institution itself. In any event, resolutions issued by the ombudsman are binding for the credit institution. The procedure for the complainant begins by submitting a claim, on his choice, to the institution's CSD or to its ombudsman. In a second stage, the complaint can only be filed with the Banco de España's Complaints Service if the complainant's claim or request was either previously rejected by the credit institution's CSD or ombudsman, or two months have elapsed since it was filed and it remains unresolved by either of them.

In 2009, the Banco de España's Complaints Service received 38,530 telephone enquiries, 4,837 written enquiries (mostly online) and 13,640 written complaints. The majority of them were referred to banking products and services (loans, mortgages, deposits, bank accounts, credit and debit cards, money transfers, etc.) provided by credit institutions (mainly banks, savings banks and credit co-operatives). The Banco de España's Complaints Service is the only organisation that deals at a national level with complaints related to banking prod-

ucts and services offered by credit institutions. In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved. The Complaints Service's decisions are not binding, but they are largely followed by institutions, and when not they are highly respected by tribunals when the cases are brought to Court by complainants.

The Bank is able to do the following things with a consumer complaint: Register/record them, respond to them and publish statistics on them. (However, neither direct or indirect methods of assisting in the resolution of a complaint is possible).<sup>74</sup> The procedure concludes with a final report issued by the Complaints Service, which in any event is not binding for either party.

The Annual Report issued by the Banco de España's Complaints Service contains comprehensive information on the various activities carried out by this Service and is aimed at the public in general.<sup>75</sup> It also contains information on activities and even details on the legislative framework for consumer protection and the number and nature of complaints recorded, including necessary explanations on good banking practices, as derived from the different criteria on which the Complaints Services' resolutions are grounded. The Bank however, does not appear to produce a specific business plan outlining how it will develop and implement new initiatives to foster consumer protection alongside the annual report.

Legal and regulatory changes affecting consumers is a faculty of Parliament and the Government. Thus the agency can only further develop Parliament or Government legislation/regulation when explicitly empowered to do so. In the past 2 years its only regulatory development has been banking circular 6/2010 developing the new regime on banking products advertising, where the Bank of Spain has provided the general principles for the minimum contents and the format of advertisements on banking products.

#### **25.2.4 Operational capacity of the supervisor**

The source of the agency's funding is neither from the government nor the individual providers that it monitors. No data was available or could be provided to the research concerning the importance of the funds needed to run the agency and its consumer protection units. Data on the finances specifically available for consumer related activities are not disclosed.

Likewise, in terms of human resources, the supervisor has 2,724 employees of which 42 members of staff were employed to conduct supervision of consumer protection operations or related work (i.e. 1.5% of total staff). As of December 31, 2009, the Banco de España's total staff amounted to 2,724 employees, whereas its Complaints Service's staff adds up to 42 people. The latter figure can be considered as a fair indicator of the number of employees that are actually involved full-time in dealing with operations linked to consumer protection, if the Bank takes the following two divergent considerations into account: a) As previously pointed out, consumer protection is not an explicit goal of the Banco de España, hence, its Complaints Service not only handles consumers' complaints and enquiries, but also those -albeit a minor part- that are submitted by non-consumers. This circumstance would approximately lead to a 10-15% deduction in the headcount, if it were to be adjusted to consumer related activities. b) On the other hand, however, a certain number of employees located in other departments are, to a greater or lesser extent, at least partially engaged in activities that are related to consumer protection (e.g. supervising compliance with

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<sup>74</sup> An abstract of the whole process can be found on the supervisor's website. It is available (in English) at <http://www.bde.es/webbde/en/secciones/servicio/reclama/reclama.html>.

<sup>75</sup> Available (only in Spanish) at [http://www.bde.es/webbde/es/secciones/informes/Publicaciones\\_an/Memoria\\_del\\_Serv/anoactu al/](http://www.bde.es/webbde/es/secciones/informes/Publicaciones_an/Memoria_del_Serv/anoactu al/).

overall banking regulations, conducting disciplinary proceedings, managing the "Bank Customer's Portal", etc.). Certainly difficult to be accurately assessed, the whole extent of these activities may nonetheless be roughly estimated as leading to some 10-20% increase in the number of full-time persons employed in this area, thus approximately offsetting the deduction explained in the preceding paragraph. The Banco de España's Complaints Service is responsible for dealing with complaints related to a subset of financial services (i.e. banking products and services), as explained elsewhere.

The breakdown of staff by qualifications was: 4 managers, 2 bank inspectors, 8 lawyers, 7 technical staff, 9 administrative staff, 4 fellowship holders, 8 technical support ('call centre'). Total: 42. In 2009, the advanced training received by the staff of the agency in the field of consumer protection was 5 hours of trainings (hours/days) and 20 people trained. Issues for training included regulation and practical issues on the transparency of banking transactions and customer protection. Staff is also subject to a work code. Conflicts of interest that may arise between staff and banking services providers are resolved in accordance with the provisions contained in its (internal) Code of conduct for the Banco de España's staff. It was passed in October 2002 and is not disclosed to the public.

This supervisory agency does not incorporate or involve consumers or consumer representatives in any way in its activities. The Banco de España's Complaints Service is a member of FIN-NET ([http://ec.europa.eu/internal\\_market/fin-net/index\\_en.htm](http://ec.europa.eu/internal_market/fin-net/index_en.htm)), and takes active part in its meetings on an on-going basis. This network enables EU citizens the resolution of financial disputes with financial services providers that are located in any member state.

#### **25.2.5 Supervisor views and ideas**

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'.

There was an initiative by the Government aimed at separating prudential supervision from consumer protection tasks, but that was postponed due to political reasons, (first) because of proximity of general elections, and due to the financial and economic crisis (afterwards), as the moment was considered not adequate. The Bank does not see the need of additional powers as being a priority at the present time. Furthermore, the discussion on class actions in Spain is non-existent as well. The Bank also provided examples of fields where consumer protection could be enhanced through its supervisory activity. For example, it is the Bank's judgement that the following two issues could be more extensively covered by the authorities:

- Financial education should be enhanced: Increasing consumers' financial literacy is probably one of the most effective means for achieving better standards in consumer protection.
- With regard to the most common banking products, there still seems to be room for improving (via harmonisation) the overall pre-contractual information that should be offered to prospective customers by financial services providers. This would enable consumers to better compare several offers from different providers and thus lead to a better consumer protection.

The issue of cross-border supervision was not seen as particularly relevant for consumer protection issues, as each jurisdiction has its own consumer protection rules (EU considered as a single jurisdiction in most aspects of consumer protection). However, issues of cross-sector supervision are of strong e.g. where there are no cross-sectoral consumer protection rules or harmonised sectoral rules (there can also be problems due to the existence of sectoral supervisors, instead of an integrated supervisor).

## 25.3 Dirección General de Seguros y Fondos de Pensiones

### 25.3.1 Basic data

Main Department that answered	Insurance Inspector
Status of supervisory authority	Government department
Supervisor is controlled by a governmental body	Ministry of Economy
Type of institutions supervised	Insurance firms; Pension Funds, Insurance intermediaries (agents, brokers)
Type of institutions not supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Financial intermediaries; Financial advisers; Real estate agents; Credit referencing agencies
Areas of supervision	Macro-prudential; Micro-prudential; Conduct-of-business

### 25.3.2 Institutional structure and objectives

Consumer protection is an explicit goal of the Dirección General de Seguros y Fondos de Pensiones (the DGSFP).

The Royal Decree 1127/2008 which develops the structure of the Ministry of Economy states that one of the functions of the Directorate-General of Insurance and Pension Funds is the administrative protection of insured people, beneficiaries or anyone who believes his interests have been damaged through the resolution of enquiries and complaints presented against the entities subject to its supervision, market transparency monitoring and the other functions relating to financial services clients protection foreseen in the regulation. Before 2008 my Authority has also been dealing with the resolution of enquiries and complaints. Therefore, it can be said that such task has been traditionally attached to my Directorate-General. Apart from that regulatory reference, there are plenty of other Spanish regulations in the insurance field that are also related with consumer protection, either by regulating consumer's rights or by describing the procedures to complain in case they are not respected.

The following table provides a ranking of different consumer protection definitions established by the DGSFB.

Rank	Consumer protection...
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...secures for fair competition and functioning markets in financial services.
3	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
4	...provides equal opportunities to all consumers especially to the poor.
5	...prevents over-indebtedness, exclusion, old age poverty.

6	...limits economic power with regard to consumer needs
7	...guarantees a general framework in which others can provide individual consumer protection

The agency's supervisory approach in consumer protection is to ensure that financial consumers are able to understand the products they are buying.

The table below lists some of the explicit mandates of the agency. The mentioned Royal Decree 1127/2008 compiles an array of competences that go far beyond monitoring compliance: Studies on insurance market, pension funds, and insurance intermediary market, regulatory work, resolve complaints of policyholders etc.

Elements of mandate	Legal Source and comments
Ensuring compliance with consumer protection measures	Law 6/2004, 29th October. (art.62)
Promoting the adoption by financial institutions of policies and procedures	Royal Decree 1127/2008 4th July (Art. 19).
Protecting clients from misconduct and/or bad business practices	Art. 62 Law 6/2004, 29th October (art.62) and Law 44/2002, 22 November
Ensuring institutional participation of consumer organisations; Ensuring comprehensive transparency of official decision making processes	Law 50/97,27 December (Art. 24)
Promoting supervisory cooperation and convergence of EU supervisory practices	Law 6/2004, 29th October (art.62). Title III
Monitoring if financial institutions follow their own voluntary codes of conduct	Not fully, and only for quoted undertakings
Promoting consumer awareness and understanding	Not binding <a href="http://www.dgsfp.meh.es/Gaspar.asp">http://www.dgsfp.meh.es/Gaspar.asp</a>
Monitoring and evaluating trends and emerging issues	Insurance Supervision Law 6/2004, 29th October (art.70,71). The Complaint Service Annual Report analyses some consumer trends, especially those which pose any kind of risk on consumers' rights. In this Report there is one chapter named "special interest files" where 23 real cases (in the 2009 report) are examined. Occasionally we conduct some ad hoc research. That was the case of a crop insurance report, after some complaints about its marketing had been received. Any hot issue with could put in danger our market deserves all our at

Promoting competition	This aim can be found in the spirit of Insurance Supervision Law 6/2004, 29th October (art.1, 70,71). Having said that, one should bear in mind that Spanish Competition Agency is the public agency in charge of preserving, guaranteeing and promoting effective competition in markets at the national level
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Other mandates of the agency not included in the table above include: Preventing financial crime including anti-money laundering/combating financing of terrorism. The DGSFP must report all infringements regarding this issue to the Spanish Agency for Prevention of Money Laundering.

The agency's remit is for retail investment issues and does not include consumer credit issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; Personal integrity of personnel.

Among the powers which the agency has, is an ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, start a legal action in court, and initiate and execute investigations. However, this also means it is neither able to initiate criminal procedures nor fine delinquents. In case of non-compliance with consumer protection legislation and rules, the agency can carry out all actions other than to impose criminal sanctions. In the supervisor's eyes, the 2 most effective sanctions in consumer protection are the following: 1) Fine and then 2) Publicity.

Sanctions and/or complaints are only made public in some cases and not on a systematic basis. The DGSFP has a strict obligation of professional secrecy stated in art. 75 of the Insurance Supervision Law (RDL 6/2004). However, one possible sanction against serious infringement is publicity (Art. 41 of that Law).

The maximum amount for a financial penalty depends on whether there is a minor (up to 30,000€), major (30,000 to 150,000) or serious (150,000 to 300,000) infraction. The agency is however, not able to punish staff at a financial institution on a personal basis following a case of wrong-doing. The agency has reported having taken the 1 sanction (in the form of a fine) in 2008 and 2 in 2009 (of which only one was in the form of a fine). Only half the sanctions in 2009 were disclosed to the public. The more penalising non-pecuniary sanctions are those of negative publicity.

### **25.3.2.1 Complaints and publication of complaints**

The ombudsman system in Spain is based on Royal Decree 303/2004 and Order ECO 734/2004 which regulates this issue in depth.<sup>76</sup>

A huge 10,000 complaints were received from consumers in 2009. These dealt with many different subjects. However, multi-risk residential insurance, health insurance and life insurance are the most prevalent subjects of a complaint.

In case of a consumer complaint, the DGSFP is not able to make binding decisions for any of the parties involved because the administrative resolution in this regard is not binding (RD 303/2004 20th February (Art. 5)). The agency is able to deal with complaints in any of the following ways: register/record them, respond to them, and publish statistics on them. However, it cannot directly assist

<sup>76</sup> Some practical information about how to complain can be found in <http://www.dgsfp.meh.es/reclamaciones/index.asp>.

in resolution of complaints, nor indirectly assist in resolution by passing complaints on to the respective authorities.

An annual Report is published for anybody interested<sup>77</sup> and it contains all various types of information ranging from the agency's activities, operations, legislative framework for consumer protection, and performance of firms with compliance of consumer protection rules, procedures for treating complaints and numbers and nature of these. A business plan is also drafted by the agency.

Examples of some of the activities the supervisor conducted in 2009 include:

<b>Examples of specific monitoring tasks</b>	<b>Qty (2009)</b>	<b>Details</b>
Own agency <b>policy statements</b> and opinions	25	The Insurance Spanish Authority makes public statements and emit opinions in order to clarify laws and administrative regulations. Such documents usually respond to a specific thematic consultation (see next point)
<b>Onsite inspections</b>	15	Our activity to protect consumer is carry out through on-site inspections, Department of Complaints and Punishment Procedure
<b>Market studies</b> in relation to consumer protection issues	1	Annual Report on consumer claims and enquiries

Every six months the DGSFP sets an onsite inspection plan whereby some insurance undertakings and intermediaries will be supervised in order to directly or indirectly strengthen consumer protection.

In the past 2 years, the supervisor has been involved in the work on the Insurance Contract Law, Insurance Supervision Law, and Sustainable Economy Law.

### **25.3.3 Operational capacity of the supervisor**

No data was available concerning the importance of the funds needed to run the agency and its consumer protection units, however, the finances available for all operations of the agency amounted to EUR 13,000,000.

In terms of human resources, the supervisor had 100 employees for all its operations. 33 of these are related to operations that are linked to consumer protection tasks. On-site inspections sometimes deal with consumer protection issues. For that reason, the 33 people exclusively attached to complaints handling, the remaining 67 employees can also possibly tackle consumer protection supervision as well.

In 2009, an average of 3 training courses (5 hours during 2 days) was dispensed to staff in total. This concerned 15 employees and involved training in complaints handling, market operations, and insurance contract issues. 33 people are employed to deal exclusively with consumer complaints in the financial services area.

The agency is fully independent from the supplier side. All professionals working in the agency are civil servants who are under strict secrecy obligation. Therefore, there should not be a risk of conflict of interest.

This supervisory agency ensures consumer representation into the operations of the agency through an advisory council, through direct consultation with individ-

<sup>77</sup> See [www.dgsfp.meh.es/reclamaciones/index.asp](http://www.dgsfp.meh.es/reclamaciones/index.asp).

ual consumers. Furthermore, in Spain there is a Consultative Board for Insurance and Pensions which is a body where different stakeholders are present to share their views when it comes to draft a new regulation. In such board there are representatives of the insurance undertakings, consumers, trade unions, insurance intermediaries and pension funds. Every regulation project needs to pass the filter of such Board. Apart from this specific involvement, this Board can be informally consulted on any other issue that demands a wide overview. That is the case of the policy statements prepared by the Complaints Service.

International meeting and exchange with peers takes place through FIN NET meetings (2 annually).

### 25.3.4 Supervisor views and ideas

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'.

There are no current initiatives focused on the separation of prudential supervision from consumer protection tasks in the country. The discussion on class actions is of low importance at the moment.

Regarding fields of consumer protection that could be targeted for improving supervision, from its point of view, it should concentrate its efforts to ensure that financial consumers are able to understand their investments and be fairly treated in the selling process. During the crisis, many products have underperformed compared to investors' reasonable expectations, and some of them have been exposed to risks which they were unaware. This has further undermined financial consumer confidence in the financial markets.

The issue of supervising groups with cross-sector and cross-border operations was seen as important for consumer protection. Consumer protection is intended to protect policyholders, insured, and beneficiaries' rights. Sometimes cross-border operations could endanger such rights e.g. unduly transfers of insurance portfolio.

## 25.4 Comision Nacional del Mercado de Valores (CNMV)

### 25.4.1 Basic data

Main Department that provided answers	International Affairs
Status of supervisory authority:	Stand-alone securities supervisor
Type of institutions supervised	Credit institutions; Investment firms; Financial intermediaries; Financial advisers
Type of institutions not supervised	Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Real estate agents; Credit referencing agencies
Areas of supervision include	Micro-prudential; Conduct-of-business

The National Securities Market Commission (CNMV) is Spain's financial supervisor for the securities market. Established in 1988, it is an independent public agency, in charge of the supervision of the securities markets and the protection of the investors. By imposing disclosure the CNMV aims at ensuring adequate

transparency in the market with a view of correct price formation and supervising the securities markets participants market issues.

The CNMV has an explicit goal to protect consumers (investors): Art. 13 of the Securities Market Law 24/1988 states in its 2nd paragraph that "The National Securities Market Commission shall seek to ensure the transparency of the securities markets, the correct formation of the prices on these markets and the protection of investors by promoting disclosure of any information necessary in order to attain these ends."

While the CNMV provided detailed answers to the questionnaire, it did so to help with the overall understanding of financial supervision of this sector in Spain and asked that individual answers not be reported. Therefore, no further details are provided here. Annual reports are published and can be found under the following link: <http://www.cnmv.es/portal/Publicaciones/Informes.aspx>.

## 26 Sweden

Three authorities - the Consumer Board, the Financial Services Authority and the Enforcement Agency cooperate in a consumer literacy and protection project initiated by government. They have good ideas, but insufficient financial resources. To some extent the financial supervisors have necessary investigation and sanctioning powers to protect consumers. Yet more personal and financial resources are needed and legislation needs to be improved.

Unfortunately, the Finansinspektionen (Swedish Financial Supervisory Authority) was not able to contribute written answers to our questionnaire, and like a few of the other authorities which did not participate, the reasons given for declining were due to "having to prioritise key tasks and economize resources".

Thankfully some detailed information on the Swedish supervisory system is available from other sources such as the vzbv commissioned study where it was one of the countries the German system was compared to.

The prudential and market conduct supervision takes place within the same operational unit. The FSA has conducted a number of mystery shopping exercises to some extent in the past, but not in the past few years. Conversations with staff at the FSA led to the idea that new times need new measures, but it is arguable that the testing of consumer markets through incognito purchasing procedures is a tool that is out of date in turns of active monitoring and checking of market conduct by participants.

## 27 UK

### 27.1 Summary

The UK has two very active bodies focussed on consumer protection namely the single integrated regulator, the Financial Services Authority (FSA) and the Office of Fair Trading (OFT) which regulates consumer credit and ensures consumer protection and fair market competition. Consumer protection is a statutory objective for the UK (FSA). It is enshrined in the legislation which set up the FSA. However, the same legislation also stipulates that the FSA has to maintain confidence in the financial system. The regulator is therefore hesitant to publish information that is damaging to firms but which would be beneficial for consumers to know.

Public agencies that look after consumer protection in the area of financial services in the country besides the Government, FSA and OFT are the Consumer Financial Education Body which has launched a recent health check initiative, the Financial Ombudsman Service (FOS) for complaints and redress, as well as the Local Authority Trading Standards Services.

The UK is undergoing an intense a fundamental reform of its regulatory and supervisory structure. Plans are explained in Chapter 3 of the Study's Main Report in some detail. One of the significant changes is to break up the FSA to create a separate Prudential Regulation Authority (the 'PRA') responsible for the 'micro-regulation' of financial institutions and a new specialist regulator, the Financial Conduct Authority (the 'FCA', previously referred to as the Consumer Protection and Markets Agency) which will have responsibility for conduct issues across the entire range of financial services. The reason for wanting to separate the prudential from the conduct-of-business supervision institutionally is linked to a number of reasons. One argument is that that despite a statutory requirement to protect consumers being in place, the regulator has frequently failed to prioritise consumer needs over the needs of regulated firms i.e. the FSA has the necessary powers but does not use them enough. Much of its supervisory and enforcement work happens behind closed doors and consumers are unaware that certain firms are being investigated for activities against the interests of consumers e.g. mis-selling of products and carry on buying products from these firms despite the fact that they are being investigated. Also, the levels of fines issued by the FSA are seen as too low especially for larger firms.

While some commentators have expressed the view that conduct-of-business may have trumped prudential supervisory attention, there is also evidence of a conflict of interest that has favoured the firms as suggested above. By excessively focussing on protecting firms' reputations, the FSA has on some occasions let this get in the way of protecting consumers from bad sales practices and bad products. An example of conflict of interest between consumers and financial institutions are mortgage arrears fees, where because of a pending investigation, it was not ready to reveal the names of the firms with bad practice, until it decided to take enforcement action. This potentially puts consumers at risk as they are continuing to take out products and services with these lenders throughout the period before the authority has decided to act.

## 27.2 Financial Services Authority (FSA)

### 27.2.1 Basic data

Main Department that answered	Conduct Policy Division
Status of supervisory authority	Stand-alone integrated financial supervisor
The supervisor is controlled by a governmental body	Overseen by the UK Treasury
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers; Real estate agents
Type of institutions not supervised	Credit referencing agencies
Areas of supervision include	Macro-prudential; Micro-prudential; Conduct-of-business and Other

### 27.2.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

The UK's Financial Services and Markets Act 2000 (FSMA) gives the Financial Services Authority four statutory objectives, including 'the protection of consumers - securing the appropriate degree of protection for consumers'. FSMA further prescribes that 'In considering what degree of protection may be appropriate, the Authority must have regard to - (a)the differing degrees of risk involved in different kinds of investment or other transaction, (b)the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity, (c)the needs that consumers may have for advice and accurate information, and (d)the general principle that consumers should take responsibility for their decisions.'

Own agency definition of consumer protection:

"It is difficult to define the concept in succinct and comprehensive terms, but a definition might include elements of our high-level Principles for regulated firms, possibly along the lines of: seeking to ensure that financial services providers conduct their business with integrity, due skill, care and diligence, paying due regard to the interests of their customers and treating them fairly; and seeking to ensure that consumers have fair, clear and not misleading information on which to base their decisions."

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...secures for fair competition and functioning markets in financial services.
2	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.

3	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
4	...guarantees a general framework in which others can provide individual consumer protection

The FSA's supervisory approach in consumer protection can be described as follows:

The FSA's overall approach, in accordance with the objectives above can be summarised as:

- seeking to make the retail market work better for consumers;
- seeking to avoid the crystallisation of conduct risks that exceed its risk tolerance; and
- delivering credible deterrence and prompt and effective redress for consumers.

This strategy will work alongside its prudential regime to provide appropriate consumer protection and deliver better outcomes for consumers. The FSA's Consumer Protection strategy involves: 1.Comprehensive risk analysis and research to identify earlier the sources and nature of conduct risks, 2.Sector-wide intervention to change incentives in the markets where necessary (either in a pre-emptive manner or where other interventions have failed), 3.Intervention further up the value chain, in scrutinising product, 4.Using intensive supervision in firms to identify and mitigate emerging conduct risks, 5.More aggressive use of enforcement tools to create credible deterrence in firms, 6.Improvement of the framework and delivery of redress to consumers, and 7.Early and effective influencing on conduct issues at the EU level.

The explicit mandate of the FSA in the relevant areas is shown below.

Elements of mandate	Legal Source	Explanations
Ensuring compliance with consumer protection measures; Promoting the adoption by financial institutions of policies and procedures; Protecting clients from misconduct and/or bad business practices	Financial Services and Markets Act 2000, EU Law, FSA Handbook	Binding
Ensuring institutional participation of consumer organisations in your decision making or advice received	Financial Services and Markets Act 2000	The FSA is required to establish and maintain an advisory Panel of consumer representatives, in addition to its other general obligations to consult stakeholders.
Ensuring comprehensive transparency of official decision making processes and access to documents		Binding.
Monitoring if financial institutions follow their own voluntary codes of conduct		Part of our general supervisory role.

Monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial services		Data we collect from a range of sources and our analysis of it helps us monitor and evaluate trends and developments. Some of this we publish periodically, including in our annual Financial Risk Outlook and forthcoming new Conduct Risk Outlook.
Promoting supervisory co-operation and convergence of EU supervisory practices	Not fully	Not binding but we engage closely with our EU counterparts on this.
Promoting consumer awareness of the obligations of financial institutions; Fostering an understanding of financial services and related issues	Not fully	An element of our approach, though formal responsibility now partly transferred to the UK's Consumer Financial Education Body (CFEB). However, the FSA still produces some documents <sup>78</sup>
Promoting competition	Not fully Financial Services and Markets Act 2000	Under FSMA, the principles of good regulation that we must have regard to when discharging our functions cover both competition and innovation.

Outside its mandate is the task of promoting access to banking services which is the role of the government. Other mandates of the FSA not included in the table above include maintaining financial stability, ensuring compliance with banking regulation, ensuring compliance with securities regulation, and preventing financial crime.

The agency's remit is for retail investment issues but does not deal with the supervision of consumer credit. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; Personal integrity of personnel; Prevention of criminal behaviour.<sup>79</sup>

Among the powers which the agency has, is an ability to address a complaint to the complainant, address a complaint to the firm, refer a complaint to another agency, start a legal action in court, initiate criminal procedures, fine delinquents, initiate and execute investigations. In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction, Notify the firm of a violation, Seek a remedial commitment from the firm, Withdrawal of the license, Demand withdrawal of director, Prohibition of certain professional activities, Impose financial penalties.<sup>80</sup> However in cannot impose criminal sanctions.

<sup>78</sup> E.g. its recent "Bank Accounts: Know Your Rights" booklet: [http://www.fsa.gov.uk/pubs/consumer\\_info/know\\_your\\_rights\\_guide.pdf](http://www.fsa.gov.uk/pubs/consumer_info/know_your_rights_guide.pdf).

<sup>79</sup> Please see the FSA website for a full explanation of how its roles cover the elements above: <http://www.fsa.gov.uk/Pages/About/index.shtml>.

<sup>80</sup> Please see the Enforcement Sourcebook at: <http://fsahandbook.info/FSA/extra/5409.pdf>. Recent examples have been made public through press releases at: <http://www.fsa.gov.uk/Pages/Library/Communication/pr/index.shtml>.

In the supervisor's eyes, different sanctions are appropriate for different abuses. Sanctions and/or complaints are only made public in some cases and not on a systematic basis. The supervisor will sometimes name the individual financial service provider subject to the breach but this is not always the case. See above for an explanation of why a combination of approaches applies. The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is unlimited.

In addition, FSA approval must be obtained before a person can perform a controlled function within a regulated firm. Action may be taken against approved persons.<sup>81</sup>

The Annual Reports for 2008 and 2009 contain detailed information including some data on the number of sanction relating to a breach of consumer protection related rules.<sup>82</sup>

### 27.2.3 Activities and supervision in practice

No inventory of activities carried out by the FSA were provided and the research did not have sufficient resources to report and analyse the many activities undertaken by the UK supervisor.

In terms of complaints and consumer redress, a private financial ombudsman system exists in this country established by the government. The FSA sets complaint handling requirements for the firms it regulates and supervises against them, but does not investigate individual complaints. This is the role of the Financial Ombudsman Service (FOS) which is operationally independent of the FSA.<sup>83</sup> It also deals with complaints about consumer credit firms, which are the regulatory responsibility of the Office of Fair Trading (OFT).

In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved. As mentioned above, the FSA does not investigate individual consumer complaints, although it will take action in response to some kinds of consumer complaints (e.g. concerning certain advertisements or contract terms). Complaints that cannot be resolved by a regulated firm may be referred by the consumer to the Financial Ombudsman Service (FOS) or to another relevant body if outside the scope of the FOS. Both FOS and the FSA (and the OFT) publish statistics about complaints. The FSA annual activity report also contains data such as operational and financial data. Likewise, the agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework.<sup>84</sup>

In the past 2 years, the supervisor has been responsible for many concrete legal or regulatory changes affecting consumers<sup>85</sup> though to highlight a few, one could include the implementation of its conduct of business regime for retail banking and payments in November 2009, the launch of a new Consumer Protection Strategy in March 2010 and the range of consumer information which it has continued to publish.

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<sup>81</sup> For further details, please see our website at:  
<http://www.fsa.gov.uk/Pages/Doing/Regulated/Approved/persons/index.shtml>.

<sup>82</sup> See [http://www.fsa.gov.uk/pages/Library/corporate/Annual/ar08\\_09.shtml](http://www.fsa.gov.uk/pages/Library/corporate/Annual/ar08_09.shtml) and [http://www.fsa.gov.uk/pages/Library/corporate/Annual/ar09\\_10.shtml](http://www.fsa.gov.uk/pages/Library/corporate/Annual/ar09_10.shtml).

<sup>83</sup> Please see details on the financial ombudsman Service under the FOS website at:  
<http://www.financial-ombudsman.org.uk>.

<sup>84</sup> The FSA publishes an annual Business Plan. Please see its website at:  
<http://www.fsa.gov.uk/Pages/Library/corporate/Plan/index.shtml>.

<sup>85</sup> See FSA Annual Reports for full information e.g.  
[http://www.fsa.gov.uk/pubs/annual/ar09\\_10/ar09\\_10.pdf](http://www.fsa.gov.uk/pubs/annual/ar09_10/ar09_10.pdf).

### 27.2.4 Operational capacity of the supervisor and its views

The source of the agency's funding is purely levied from the financial institutions that it monitors. These data are available from the Annual Report, which also contains data on staffing levels. The broad distribution of employees in terms of qualifications is however even in the FSA not available.

The FSA is one of the best examples of a supervisor that puts a number of valuable and well-funded structures in place to ensure consumer participation into the work of the FSA. Representation through the consumer panel allows the regulator to hear the views from highly recognised experts who are able to count on a professional secretariat facilitating production of materials and consultation feedbacks when needed. The FSA involves consumer views through presence on the board of directors, advisory council (the consumer Panel), as well as direct consultation with consumers and other consumer organisations besides the views of the Panel.

All aspects of effective regulation and co-operation have an international dimension, including specific consumer protection issues.

The FSA opted not to comment on the effectiveness of supervision. The fundamental changes and remaining uncertainties as to the final picture of responsibilities makes it difficult to evaluate the direction which supervision is taking. See the intra organisational chart of financial sector reform in the UK to see the multitude of bodies and linkages which are affected by the reforms. The FSA was long seen as the benchmark for quality financial supervision and its pronounced and mediatised change in approach to a more interventionist supervisory regime may give its peers certain ideas of their own.

The UK Government has decided to separate some prudential supervision and consumer protection and markets roles, from 2012 into two new agencies. Due to all the planned changes, the UK FSA did not comment on measures that could improve consumer protection. The creation of the CPMA in the UK is a bold move.

## 27.3 Office of Fair Trading (OFT)

### 27.3.1 Basic data

Status of supervisory authority	General consumer protection authority
Government control	The OFT is a non-Ministerial government department. While it has broad operational independence, control of the policy direction of financial services regulation sits with HM Treasury and the Department for Business, Innovation and Skills. Legislative change in the financial services sector would require sponsorship of one or other of these departments.
Type of institutions supervised	Credit institutions; Providers of credit and store cards; Providers of money transmission services; Financial intermediaries; Financial advisers; Real estate agents; Credit referencing agencies; Debt collection and advice agents
Type of institutions not supervised:	Investment firms; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms
Areas of supervision	Consumer protection

### 27.3.2 Institutional structure and objectives

Consumer protection is an explicit goal of the agency.

The central objective of the Consumer Credit Act 1974 (CCA 74), which provides the basis of its regulation of financial services, is consumer protection. However, as the UK's lead competition and consumer protection authority, with a wide brief to consider all aspects of the economy, the OFT's overarching objective is to make markets work well for consumers.

Own agency definition of consumer protection:

Consumer protection in financial services is about transparency, choice, fairness and suitable redress with a focus on the need to protect vulnerable consumers.

The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.
2	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
3	...provides equal opportunities to all consumers especially to the poor.
4	...guarantees a general framework in which others can provide individual consumer protection
5	...secures for fair competition and functioning markets in financial services.
6	...prevents over-indebtedness, exclusion, old age poverty.
7	...limits economic power with regard to consumer needs

The OFT's supervisory approach in consumer protection can be described as follows: In relation to the provision of unsecured credit, some mortgage lending and associated ancillary services, OFT is responsible for licensing firms before they can enter the market and for on-going supervision to ensure firms are 'fit' to remain in the market. This entails establishing their competence to operate in the relevant market and considering relevant matters of integrity such as any evidence of criminal convictions, bankruptcy, director disqualification and the like. The OFT utilises a risk based approach to regulation and supervision, focusing its resources on those activities/products which are more likely to cause consumer detriment and with a particular emphasis on vulnerable consumers.

The OFT's role is not exclusively restricted to monitoring compliance. Its role is broader than simply monitoring compliance with the relevant law/guidance (although these are important aspects of its work) and extends to the licensing function outlined above, enforcement action where necessary, writing industry guidance and so on.

Supervisory objectives: The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

<b>Elements of mandate</b>		<b>Legal Source and details</b>
Ensuring compliance with consumer protection measures; Promoting the adoption by financial institutions of policies and procedures; Protecting clients from misconduct and/or bad business practices	Fully	CCA 74
Ensuring institutional participation of consumer organisations in your decision making or advice received	Not fully	There are no legal requirements placed on us by CCA but we routinely and actively take account of the views and experience of consumer organisations. We also consult on our annual plan (which is a statutory requirement), which enables consumer bodies and others to input their views.
Ensuring comprehensive transparency of official decision making processes and access to documents	Not fully	We are subject to relevant UK law on Freedom of Information access requests and data protection. We seek to be as transparent as possible regarding our decision making but this is necessarily constrained in certain instances involving supervisory and enforcement action.
Promoting access to banking services (e.g. by low income individuals)	Not fully	There are no explicit legal requirements but some of our work, particularly where we have undertaken market studies (e.g., into high cost credit) and some of our information campaigns seek to provide consumers with greater awareness of credit and other financial products and to influence policy debates around such issues.
Monitoring if financial institutions follow their own voluntary codes of conduct and respect public commitments they have made to protect the interests of consumers	Not fully	We have no direct role in monitoring self-regulatory initiatives in the financial services sector but are aware of compliance issues through the relevant industry body and will take account of these in our supervisory and enforcement work.
Promoting consumer awareness of the obligations of financial institutions; fostering an understanding of financial services	Not fully	This is not explicit in our remit, and there are other bodies which have a clearer role here such as the Consumer Financial Education Body. We have, however, undertaken work to assist consumers in understanding certain aspects of financial services and in specific prod-

		uct areas such as savings clubs. We also provide an educational package for use by teachers as a resource to teach young people essential consumer skills.
Monitoring and evaluating trends and emerging issues	Not fully	The OFT has a broad remit to consider market developments and, under CCA 74, a specific role in monitoring credit market developments.
Promoting competition	Not fully	There is no requirement to promote competition in the credit market but, as the UK's competition authority, we believe that competitive markets are critical in ensuring consumers have access to suitable products. We undertake work on competitive markets via our market studies, for example into the barriers consumers face in switching banks.
Preventing financial crime		We have responsibility for anti-money laundering supervision in relation to certain parts of the financial services and estate agency sectors.

Promoting supervisory cooperation in the EU is not part of its mandate.

The OFT's remit is for consumer credit issues but not for retail investment issues. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Transaction transparency; Personal integrity of personnel; and Prevention of criminal behaviour. All these aspects are covered by the consumer credit licensing regime, specific provisions under consumer credit law and more general consumer protection legislation.

### 27.3.2.1 Institutional powers behind the mandate

The Table below shows how certain powers are exercised by the OFT in the UK.

Agency has the power to:	Details
Issue guidance	Where the OFT considers that guidance is needed to provide clarity on the standards and behaviour expected of the industry.
Allow for a range of swift regulatory responses to on-going situations and can mount and fund substantial legal actions	As an example, the OFT undertook a major legal action in relation to the fairness of charges for unauthorised overdrafts in an attempt to establish how consumer protection law applied in this area. <sup>86</sup>

It cannot give consumers individual advice and it does not make rules directly affecting consumer protection (the Department for Business Innovation and Skills does)

Because of the nature of the regulatory regime the OFT has no rule, making powers itself. However the OFT does issue industry guidance which sets minimum standards. Breaches of these standards may lead to the licensee putting their authorisation at risk or incurring other regulatory sanctions. The injunctive powers available under the Consumer Protection Regulations provide for a rela-

<sup>86</sup> See: <http://www.offt.gov.uk/OFTwork/markets-work/completed/personal/personal-test-case/personal-documents>.

tively swift means of addressing urgent concerns whether they are emerging or established. The OFT also undertakes significant legal actions (for example, in connection with the fairness of certain bank charges) but in circumstances where these are justified by the nature of the concerns.

Among the powers which the agency has, is an ability to start a legal action in court, initiate criminal procedures, fine delinquents, initiate and execute investigations. However, this also means it is not able to address a complaint to the complainant, address a complaint to the firm, and refer a complaint to another agency.

The OFT is not responsible for resolving individual consumer complaints but is interested in complaints data where this affects its view of the fitness of firms to hold a consumer credit licence. As the credit regulator, OFT has access to the range of sanctions and powers indicated above.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; Withdrawal of the license; Prohibition of certain professional activities; Impose a pecuniary sanction (monetary penalty).

It takes a number of licensing actions (up to and including revoking licences) in any given year. The following provides a link to an example of a recent case in which it initiated criminal action against an unlicensed trader and secured, through the courts, compensation for consumers. <http://www.offt.gov.uk/news-and-updates/press/2010/140-1> However, the following set of sanctions cannot be currently imposed by the supervisor at present: Seek a remedial commitment from the firm; Impose criminal sanctions; Orders for institute directors; and demand withdrawal of director.

The majority of OFT enforcement actions are made public (once all appeal mechanisms have been exhausted) on its public register or, in some instances, via press announcements.

The maximum amount for a pecuniary sanction that the agency is allowed to impose for breach of consumer protection rules is currently EUR 58,000. In addition, staff at a financial institution can be punishable on a personal basis following a case of wrong-doing. As in the case highlighted above, the individual concerned could have faced imprisonment and or a fine and risks doing so if he breaches the undertaking provided to the court. In 2008/09 the OFT instigated 62 formal (revocation, refusal etc.) licensing actions. In 2009/10 the OFT instigated 84 formal (revocation, refusal etc.) licensing actions. Details on the split between pecuniary and non-pecuniary sanctions was not available.

Revocation of consumer credit licences was among the most penalising non-pecuniary sanction to have been taken by the agency.

### **27.3.3 Activities and supervision in practice**

The following Table contains numerical data for the specific activities and market intelligence gathering initiatives the agency has conducted in the year 2009.

Examples of specific monitoring tasks carried out	Qty (2009)	Details
<b>Onsite inspections</b>	132	Onsite inspections are related to our assessment of the likely risk of consumer detriment. Inevitably such an intensive approach to supervision will be limited by resource constraints.
Checks for compliance with fair, non-misleading <b>advertising</b> practices	100	Standard aspect of its investigatory/applications work
Checks for responsible lending practices	100	Standard aspect of its investigatory/applications work
Tests on the accuracy, simplicity, comparability of pre-contractual information ( <b>ex-ante</b> )	50	Standard aspect of its investigatory/applications work
Tests on the accuracy, simplicity, comparability of information after purchase ( <b>ex-post</b> )	50	Standard aspect of its investigatory/applications work
Checks for compliance with fair, non-coercive and reasonable <b>selling practices</b>	50	Standard aspect of its investigatory/applications work
Tests of <b>suitability requirements</b> when advice or recommendations are offered	10	Standard aspect of its investigatory/applications work
Own agency <b>policy statements</b> and opinions	10	
Tests of correct <b>APR</b> calculation in disclosure	10	
<b>Mystery shopping</b> exercises	1	
<b>Market studies</b> in relation to consumer protection issues	some	In relation to credit, OFT launched its study into the high cost credit market and a review of the debt management sector.

The respondent from the OFT characterises most of the activities listed above as part of its standard investigatory and applications work, details of which are provided in the OFT annual report.<sup>87</sup> The number of enquiries and complaints received from consumers was not provided for the research.

The OFT does not have a direct role in resolving consumer complaints but it will provide advice to consumers who contact it and will refer complainants to other bodies where appropriate (e.g., the Financial Ombudsman Service, Local Authority Trading Standards Service, charitable advice organisations such as Citizens Advice). In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved. It is however able to reg-

<sup>87</sup> Specifically the consumer credit act statistics. at: [http://www.ofc.gov.uk/shared\\_ofc/annual\\_report/2009/hc301-annual-report2009-10b.pdf](http://www.ofc.gov.uk/shared_ofc/annual_report/2009/hc301-annual-report2009-10b.pdf).

ister/record complaints, respond to them, indirectly assist in resolution by passing complaints on to the respective authorities, and publish statistics on them. However, there is no direct assistance offered in the process of resolution of complaints.

The annual report is part of the OFT's formal governance arrangements and is submitted to the UK Parliament. Also details on some of its regulatory actions and other activities in the financial services sector is provided in its annual plan.<sup>88</sup>

In the past 2 years, the supervisor has been responsible for concrete legal or regulatory changes affecting consumers.

The OFT has published guidance on Irresponsible Lending, Second Charge lending which set out minimum standards of behaviour and practice for lenders.

#### **27.3.4 Operational capacity of the supervisor**

The source of the agency's funding for consumer protection activities is from both the financial institutions that it monitors and the government.

Funding for the consumer credit regime is provided by the industry through fees for licences and certain other services. Other OFT consumer protection activities relating to financial services are funded by from Government.

The funds available for the supervisor to carry out its operations in the field of consumer protection in 2009, was EUR73 million all operations included. Consumer protection operations received funding of EUR12million (i.e. 16% of the budget - the approximate cost of administering the consumer credit licensing regime which is funded through fees collected from the industry). The larger figure is the budget for all OFT's functions for 2009/10 including its competition and general consumer protection responsibilities, some of which will relate to financial services.

In terms of staff resources, 109 persons are dedicated to consumer protection. These figures relate to staff working in OFT's credit group, and directly therefore on financial services. They do not include those working in other areas of the OFT who may also do work on financial services issues. The majority of staff are civil service administrators with support from lawyers, economists and others as required. No data were provided. The OFT also applies the standard civil service rules regarding conflicts of interest.<sup>89</sup> The supervisor includes consumer views into its work through direct consultation with consumer organisations and individual consumers.

#### **27.3.5 Supervisor views and ideas**

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'.

The current proposals in the UK suggest a separation of prudential regulation and consumer protection for those firms who pose a systemic risk to financial stability. For smaller firms, who present little or no systemic risk, prudential and consumer protection regulation is likely to be undertaken by one regulatory body.

<sup>88</sup> <http://www.of.gov.uk/about-the-oft/annual-plan-and-report/>. Also, see draft business plan for 2011-12, for details of its priorities of the coming year.  
<http://www.of.gov.uk/OFTwork/consultations/current/of-annual-plan-1112>.

<sup>89</sup> see link below:  
[http://www.google.co.uk/url?q=http://www.civilservice.gov.uk/about/values/cscod/index.aspx&sa=U&ei=17RCTdOeNoiK4gaez5ET&ved=0CBUQFjAA&usg=AFQjCNGr5\\_NAgyD\\_TJyzWHjvkAcJc eUNOQ](http://www.google.co.uk/url?q=http://www.civilservice.gov.uk/about/values/cscod/index.aspx&sa=U&ei=17RCTdOeNoiK4gaez5ET&ved=0CBUQFjAA&usg=AFQjCNGr5_NAgyD_TJyzWHjvkAcJc eUNOQ).

Despite being analysed as part of the wide UK regulatory reforms, the OFT would welcome powers to suspend a consumer credit licence in cases where there is evidence of particularly bad detriment being caused by the licensee. In addition the OFT reports that the issue of class actions is seen as being low. Proposals for a legislative basis for class actions in financial services cases failed to pass through the UK Parliament in 2010. The OFT was unaware of any current initiative to reintroduce such proposals.

In its view, there are inevitably aspects of the financial services world where greater levels of intervention would be helpful. OFT continues to prioritise its work to ensure that its focus is on those activities and areas which lead to the greatest consumer harm. The respondent from the OFT also agreed that with the increasing availability of financial services across borders, there is a corresponding need to ensure consumer protection measures operate effectively across borders too.

## 28 Norway

### 28.1 Summary

In Norway, there is a long established integrated financial supervisor (Finanstilsynet) which covers credit markets; savings; capital investment and securities; pensions; insurance; payment systems including bank accounts. It also has a significant role in conducting supervision on marketing. The most common view amongst stakeholders is that there is sufficient supervision, still the consumer organisations require more focus on consumer protection supervision and has launched a proposal on establishing a supervision body specialized on market conduct / consumer protection, with a separate authority to be in charge of the more traditional prudential based supervision which supervisors tend to emphasize. The other public agencies that look after consumer protection in the area of financial services in Norway are the Consumer Ombudsman and the Consumer Market Council.

### 28.2 Financial Supervisory Authority (Finanstilsynet)

#### 28.2.1 Basic data

Main Department that provided answers	n.a. special Adviser
Status of supervisory authority	Stand-alone integrated financial supervisor
The supervisor is controlled by a governmental body	The Ministry of Finance
Type of institutions supervised	Credit institutions; Investment firms; Providers of credit and store cards; Providers of money transmission services; Providers of currency exchange services; Foreign financial institution representative offices; Insurance firms; Financial intermediaries; Financial advisers; Real estate agents; Auditors, Stock Exchanges, Accountants, Debt collectors
Type of institutions not supervised	Credit referencing agencies
Areas of supervision	Macro-prudential; Micro-prudential; Conduct-of-business

### 28.2.2 Institutional structure and objectives

As from 2010 Consumer protection is a main and explicit goal of the agency. The following table provides a ranking of different consumer protection definitions established by the supervisor in the light of its supervisory functions.

Rank	Consumer protection...
1	...provides transparent, exhaustive and correct information to consumers to be able to make their own informed decisions.
2	...secures for fair competition and functioning markets in financial services.
3	...guarantees a general framework in which others can provide individual consumer protection
4	...prevents over-indebtedness, exclusion, old age poverty.
5	...provides equal opportunities to all consumers especially to the poor.
6	...limits economic power with regard to consumer needs
7	...regulates products and marketing strategies to prevent unsafe and damaging effects to consumers in financial markets.

The agency's supervisory approach in consumer protection can be described as follows:

Through its supervision of enterprises and markets, Finanstilsynet strives to promote financial stability and orderly market conditions and to instil confidence that financial contracts will be honoured and services performed as intended. In addition to its preventative work, Finanstilsynet maintains a preparedness for dealing with concrete problems that may arise. The Norwegian agency is responsible for the supervision of banks, finance companies, mortgage companies, insurance companies, pension funds, investment firms, securities fund management and market conduct in the securities market, stock exchanges and authorised market places, settlement centres and securities registers, estate agencies, debt collection agencies, external accountants and auditors.

The Finanstilsynet's role is not exclusively restricted to monitoring compliance. The table below indicates which explicit mandates the agency has and identifies the legal or regulatory source for each, including details on whether it is binding or not.

Other mandates of the agency not included in the table above include maintaining financial stability, ensuring compliance with banking regulation, ensuring compliance with securities regulation, and preventing financial crime including anti-money laundering/combating financing of terrorism. All of these areas are part of the agency's responsibilities and they apply to both consumer credit and retail investment services. In addition, the agency is responsible for the following consumer protection measures: Professional compliance to fair commercial practices; Professional compliance to use of fair contract terms; Controls of methods of marketing (e.g. misleading advertising); Personal integrity of personnel; Prevention of criminal behaviour. The only area where the Finanstilsynet does not have responsibilities is in supervising and regulating the level of transaction transparency between the providers and the consumers.

Among Finanstilsynet's powers is an ability to refer a complaint to another agency, and initiate and execute investigations. The agency does not handle individual complaints from consumers. Therefore the Finanstilsynet is not able to address a complaint to the complainant, address a complaint to the firm, start a legal action in court, initiate criminal procedures, nor fine delinquents.

In case of non-compliance with consumer protection legislation and rules, the agency is able to take any of the following actions in the form of a sanction: Notify the firm of a violation; Impose criminal sanctions; Orders for institute directors; Withdrawal of the license; and prohibition of certain professional activities.

The Financial Supervision Act give powers to the agency, but usually, when non-compliance is indicated to it, the institution will alter its practice.

In Finanstilsynet's eyes, the 3 most effective sanctions in consumer protection are the following (in descending order): 1) to order an institution to alter its practice; 2) withdrawal of the license; and 3) impose criminal sanctions.

Sanctions and/or complaints are made public on a systematic basis. Furthermore, these sanctions and complaints are often on a named basis. All consecutive reports after onsite inspections are made public.

As a sanction, staff at financial institutions can be punishable on a personal basis following a case of wrong-doing. This is regulated in the Financial Supervision Act § 1. Due to the agency having only received a consumer protection mandate in 2010, no historical data is yet available on the number of sanctions taken.

### **28.2.3 Complaints**

A public financial ombudsman system exists in this country called the Consumer Ombudsman. While the Finanstilsynet does not report on enquiries and complaints yet, the Financial Complaints Board is the body in Norway that handles complaints.

In case of a consumer complaint, the supervisor is not able to make binding decisions for any of the parties involved. The supervising agency is only able to indirectly assist in the resolution of a complaint by passing these on to the respective authorities. No other measure is available.

The Finanstilsynet publishes an annual Report<sup>90</sup> which contains information on its activities, operations etc. The agency also produces a business plan outlining how it will develop and implement new initiatives to further its consumer protection framework. This operating plan for the next year is produced on a yearly basis. In the past 2 years, the supervisor has been responsible for concrete legal or regulatory changes affecting consumers. It was decided in 2010 that Finanstilsynet should increase the activity in the consumer division.

### **28.2.4 Operational capacity of the supervisor and its views**

The source of the agency's funding is purely levied from the financial institutions that it monitors. The cost of supervision is allocated to all supervised institutions. The costs are distributed among the various groups of institutions according to the extent of the supervision. The funds available for the supervisor to carry out its operations in the field of consumer protection are not known. Finances available are not specified to consumer protection.

The Agency has in all 270 employees, most can set to work with consumer protection, but normally only a few work with these tasks. Exact number of staff resources was not available, though only a few deal exclusively with consumer protection duties.

Finanstilsynet does not incorporate or involve consumers or consumer representatives in any way in its activities. In 2009, staff was involved in meetings in the FinCoNet.

The current level of supervision with respect to consumer protection in this country is assessed by the supervisor itself as being 'satisfactory'. Though Finanstil-

<sup>90</sup> <http://www.finanstilsynet.no/en/Secondary-menu/Annual-Report/>.

synet does plan to increase its resources used on consumer protection tasks, there are however no plans of separation between prudential and conduct-of-business tasks along institutional lines. More specific regulation in the consumer protection area would be a positive improvement as seen by Finanstilsynet who also does not see much discussion on class actions in Norway at the current time.

## Annex 1: Supervisors and their organisational chart

Figure 1: Denmark (Finanstilsynet)

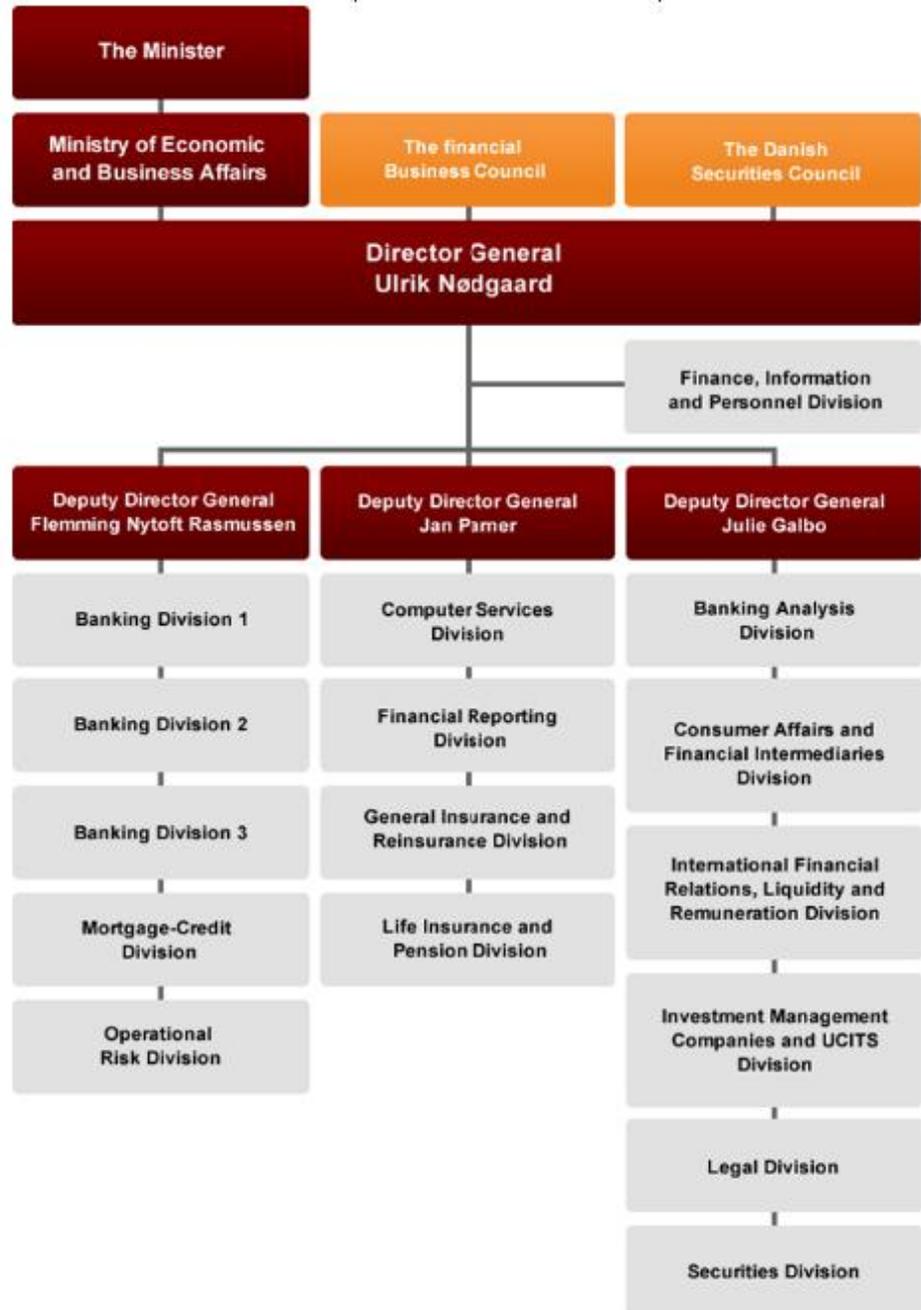


Figure 2: Estonia (EFSA)

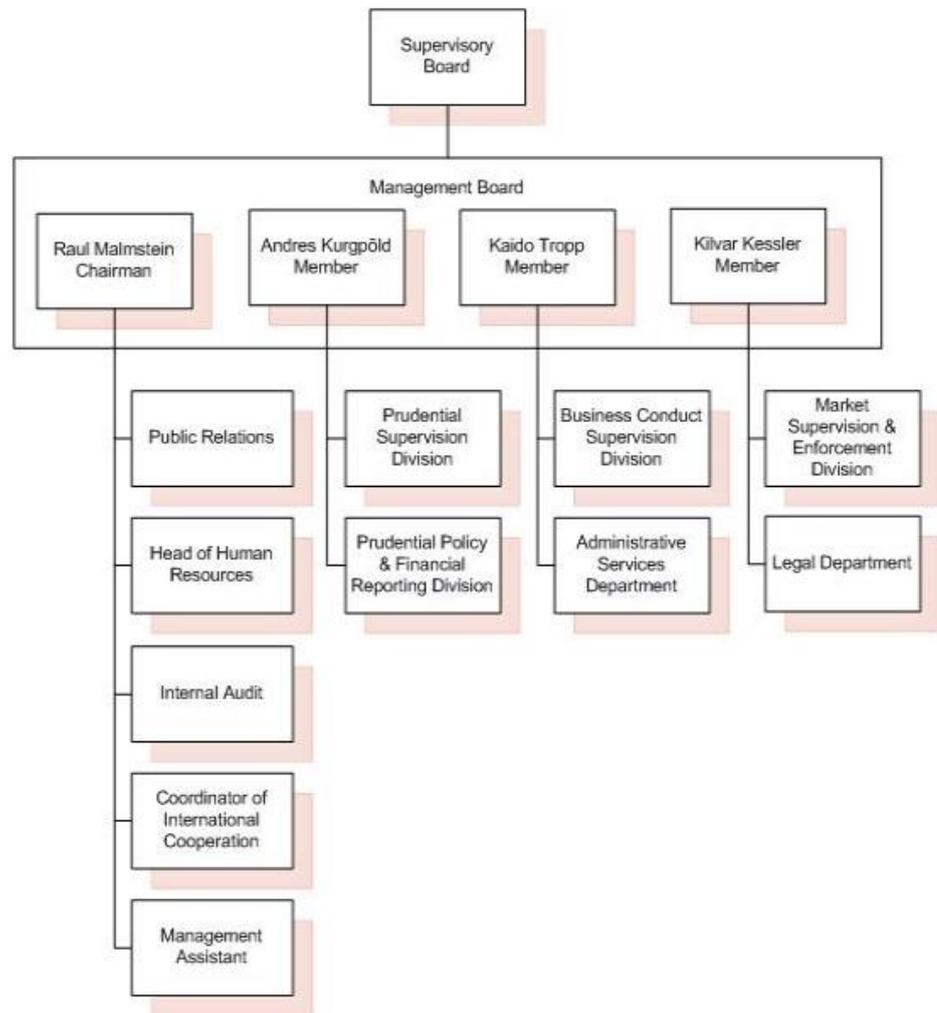
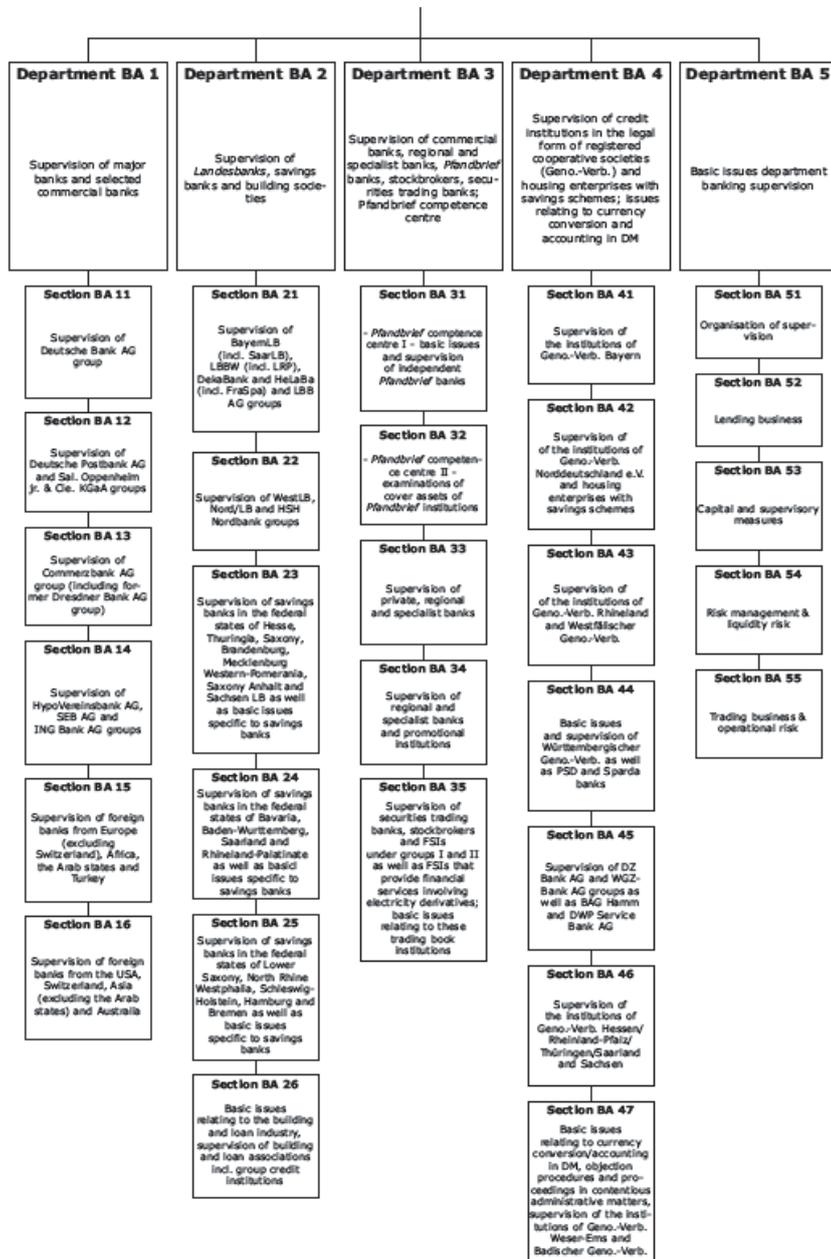




Figure 5: Germany (BaFin - Banking only)



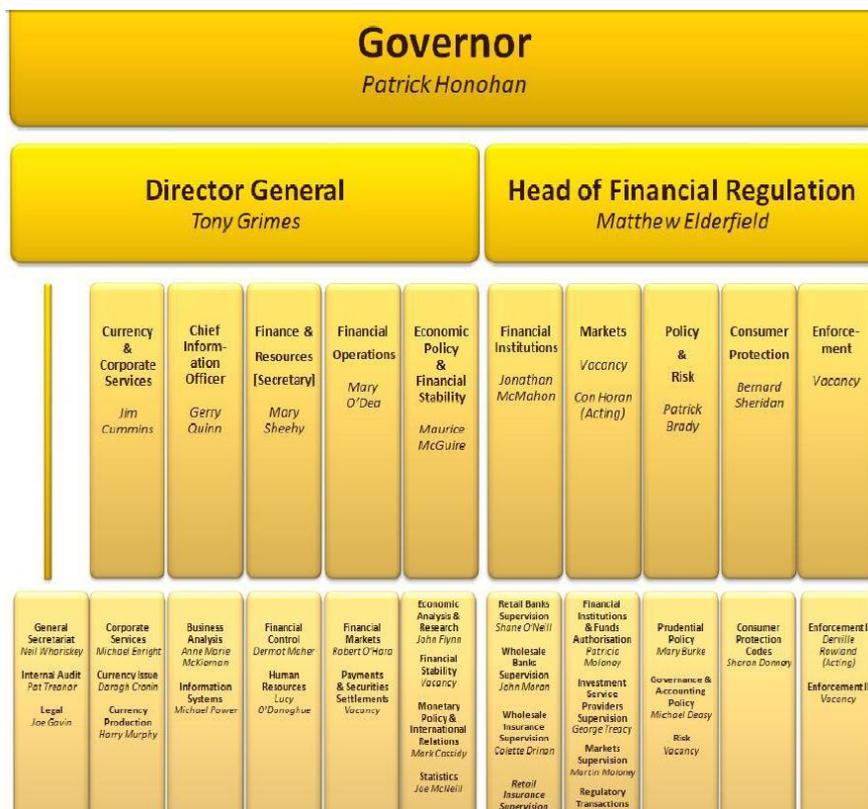
Note: See original website for more readable details of the entire organisational chart: [http://www.bafin.de/cIn\\_161/SharedDocs/Downloads/EN/BaFin/Organisation/Organigramm/organigramm,templateId=raw,property=publicationFile.pdf/organigramm.pdf](http://www.bafin.de/cIn_161/SharedDocs/Downloads/EN/BaFin/Organisation/Organigramm/organigramm,templateId=raw,property=publicationFile.pdf/organigramm.pdf).

Figure 6: Greece (HCMC)

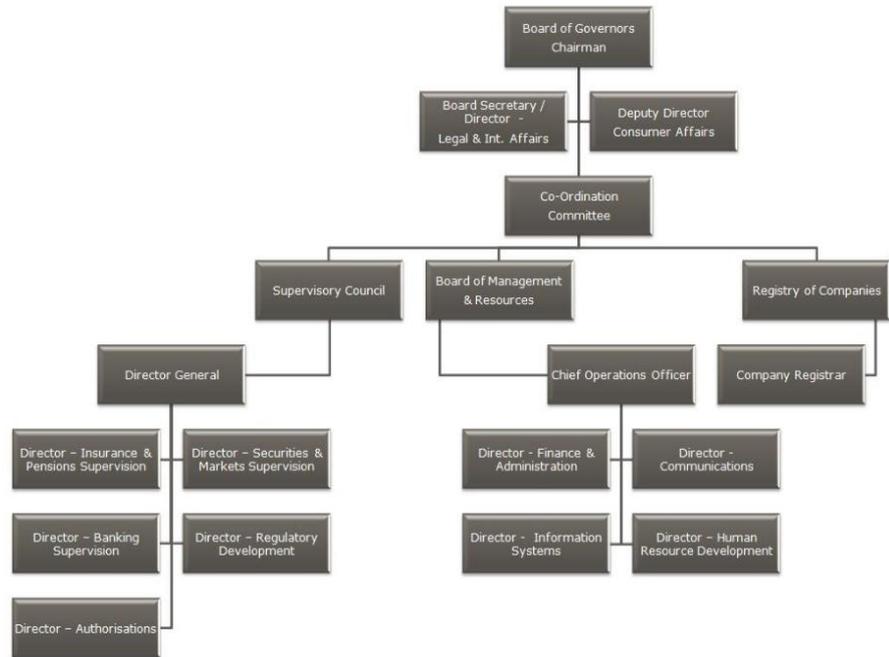
FIGURE 1. The Organization Chart of the Hellenic Capital Market Commission

BOARD OF DIRECTORS			
First Vice-Chairman	CHAIRMAN	SECOND VICE-CHAIRMAN	
MEMBERS			
Secretariat of the Chairman, and Vice Chairmen		INTERNAL AUDIT OFFICE	
Press Office			
GENERAL DIRECTOR			
Secretariat of the Board of Directors, Executive Committee Gen Director			
SPECIAL ANTI-MONEY LAUNDERING UNIT		THESSALONIKI REGIONAL OFFICE	
DIRECTORATE OF CAPITAL MARKET INTERMEDIARIES		DIRECTORATE OF LISTED COMPANIES	
Department of Licensing of Investment Firms	Department of Licensing of Collective Investment Schemes	Public Offerings Department	Department of Continuous Information
Department of Supervision of Investment Firms	Department of Supervision of Collective Investment Schemes	Department of Periodic Information	Department of Supervision of Listed Companies
Department of Markets and Information Systems			
DIRECTORATE OF MARKETS SURVEILLANCE		DIRECTORATE OF INTERNATIONAL RELATIONS	
Department of Monitoring	Department of Transactions Auditing	Department of International Relations	Department of European Affairs
Department of Citizen Information			
DIRECTORATE OF RESEARCH AND TRAINING		DIRECTORATE OF ADMINISTRATION	
Department of Research	Department of Training	Department of Protocol	Department of Information Systems
Human Resources Department			
DIRECTORATE OF ACCOUNTING		DIRECTORATE OF LEGAL SERVICES	
Accounting Department	Procurement Department		

Figure 7: Ireland (Central Bank)



**Figure 8 : Malta (MFS)**



**Figure 9: Poland (Polish FSA)**

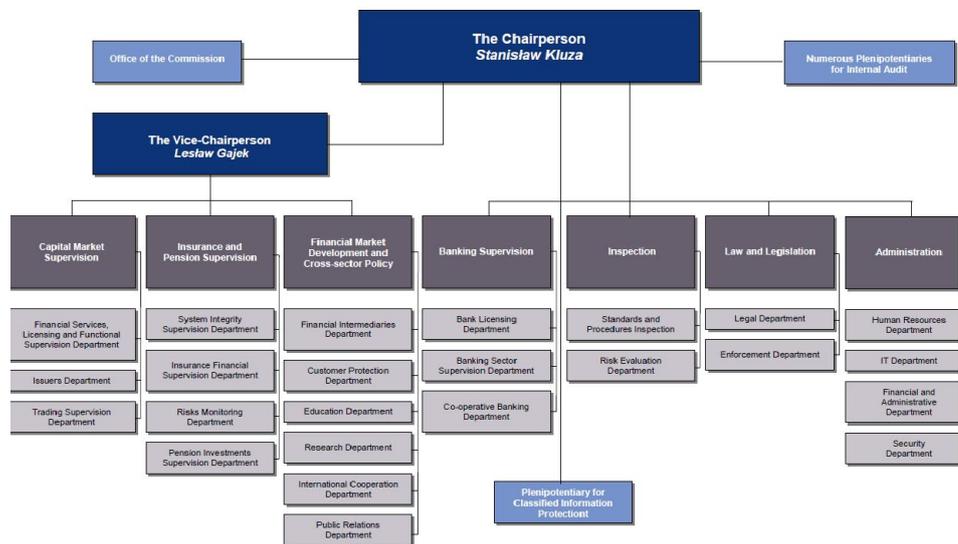


Figure 10: Slovakia (National Bank of Slovakia)

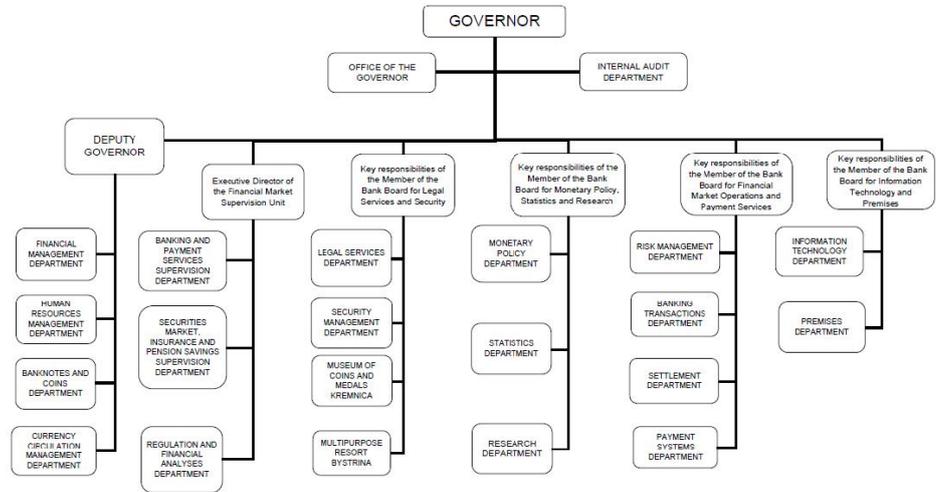


Figure 11: UK (OFT)

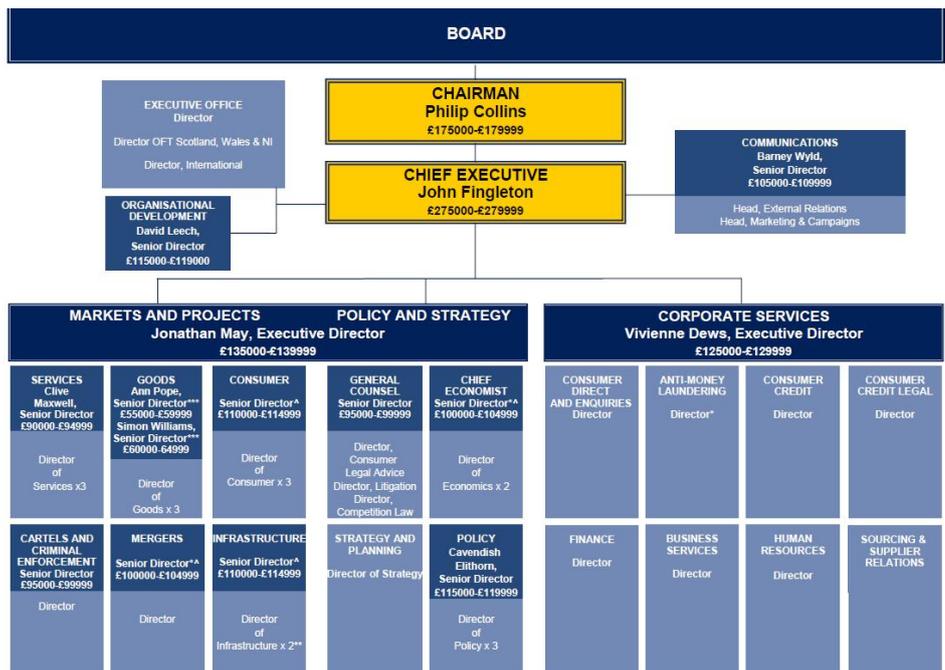
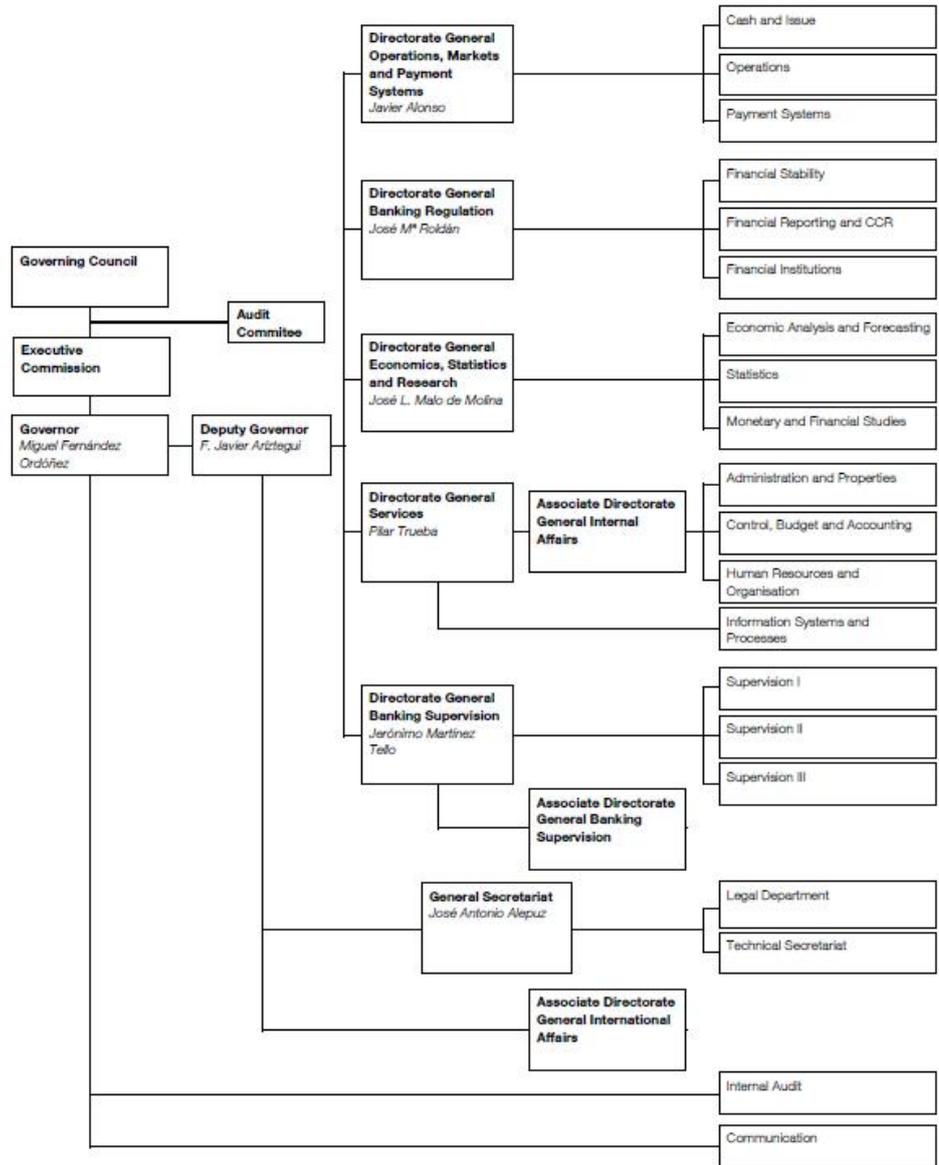


Figure 12: Spain (Banco de España)



Note: the Complaints Service, although not shown in this 'Organisation chart', should be comprised within the 'General Secretariat'

## **Annex 2: List of Supervisors involved in the study**

AUSTRIA	Austrian Financial Market Authority (FMA)
BELGIUM	Banking, Finance and Insurance Commission (CBFA)
BULGARIA	Financial Supervision Commission (FSC)
DENMARK	Danish Mortgage Credit Complaint Board* (answers provided on the Danish FSA)
ESTONIA	Estonian Financial Supervision Authority (EFSA)
FINLAND	Finanssivalvonta (FIN-FSA)
FRANCE	Autorité de contrôle prudentiel (ACP), DG Competition Policy, Consumer affairs & Fraud (DGCCRF)*
GERMANY	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)
GREECE	Bank of Greece, Hellenic Capital Market Commission (CMC)
HUNGARY	Hungarian Financial Supervisory Authority (HFSA)
IRELAND	Central Bank of Ireland
ITALY	Banca d'Italia, Commissione Nazionale per le Società de la Borsa (Consob)
LITHUANIA	State Consumer Rights Protection Board (VVTAT), Insurance Supervisory Commission (DPK)
LUXEMBURG	Commission de surveillance du secteur financier (CSSF)
MALTA	Malta Financial Services Authority (MFSA)
NETHERLANDS	Authority for Financial Markets (AFM)
POLAND	Polish Financial Supervision Agency (KNF)
PORTUGAL	Portuguese Securities Market Commission (CMVM)
SLOVAKIA	Slovak Trade Inspection (SOI), Narodna Banka Slovenska (NBS)
SLOVENIA	Bank of Slovenia, Insurance Supervision Agency (ISA)
SPAIN	Banco de España, Dirección General de Seguros y Fondos de Pensiones (DGSFP)*, Comisión Nacional del Mercado de Valores (CNMV)
UK	Financial Services Authority (FSA), Office of Fair Trading (OFT)*

### Non-EU Member State:

NORWAY Financial Supervisory Authority (Finanstilsynet)

### Member States where no supervisor participated in the survey:

CYPRUS, CZECH REPUBLIC, LATVIA, ROMANIA, SWEDEN

\*not strictly financial supervisors