2019

Annual Report

Federal Financial
Supervisory Authority

BaFin

Bundesanstalt für
Finanzdienstleistungsaufsicht

Annual report 2019

Federal Financial Supervisory Authority
(Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin)

Contents

III. Supervision 58

Opinion

BaFin President Felix Hufeld on supervisory priorities in 2020[1]

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1 This Opinion reflects BaFin's planning as of December 2019. In order to mitigate the impacts of the coronavirus crisis, BaFin is continually adapting its supervisory practice and measures according to the current situation in a risk-oriented manner.

People tend to regard the period in which they are living as the fastest-moving of all times. This is why we do not want to claim that the financial sector has never undergone faster or more fundamental change than at present. But it cannot be denied that the industry is under immense pressure to change, and things are changing fast. Even in times like these, BaFin must be able to fulfil its legal mandate.

One thing that BaFin can put to good account is that it is in many respects an integrated authority. It supervises banks, insurers, investment firms and financial services institutions, combining solvency supervision, conduct supervision, resolution function and macro-prudential mandate under one roof. This helps to identify risks and interconnected issues more easily and to make balanced decisions. It is also helpful to capture and assess changes in the market and new developments as soon as possible and to determine priority areas for the annual supervision and inspection schedule on this basis.

Four BaFin-wide supervisory priorities

For 2020, BaFin has identified four priority areas that are of major significance to all of its Sectors: 1) digitalisation, IT risk and cyber risks, 2) the integrity of the financial system and the fight against financial crime, 3) sustainable business models and 4) sustainable finance. More on this and on BaFin's other priority areas can be found in the brochure entitled "Supervisory priorities for 2020", which can be accessed at www.bafin.de.

Digitalisation

There is good reason why the range of issues around digitalisation tops the list. The financial industry is increasingly saturated by digital technology. Processes, products, services, marketing, entire business models –

digitalisation does not stop at anything or anyone, and the financial sector is no exception. The speed and intensity of digital transformation are even set to increase further.

BaFin is ready for this. Firstly, because it conducts technology-neutral supervision guided by two principles. One: "same business, same risk, same rules". And two: an appropriate sense of proportion. Secondly, because it regularly tests its supervisory know-how and the underlying rules. Take big data and artificial intelligence, for example: one of the aims here is to find out whether, given the presence of tech companies in the market, the responsibilities of financial supervision should be expanded. Another aim is to create greater legal certainty. The same applies to how we deal with distributed ledger technology, virtual currencies and initial coin offerings.

In a financial world that is fast approaching full digitalisation, IT and cyber security of the supervised undertakings must be one of BaFin's supervisory priorities. The Financial Stability Board (FSB) classifies cybercrime as a global threat and promotes a common understanding of the problem worldwide. In 2020, BaFin will again be an active and committed participant in the international security debate and will to this end engage in regular exchanges with the supervisory authorities of other countries. In Germany, too, BaFin maintains contact with the relevant authorities. What is remarkable in this context is that still the vast majority of IT security incidents at financial market participants are attributable to internal vulnerabilities – and only a relatively small proportion to external attacks.

Fight against financial crime

The integrity, soundness and stability of the financial system can come to serious harm as a result of financial crime, especially money laundering and terrorist financing. This is why BaFin has made this a priority area as well. Crypto assets, for example, are expected to bring exposure to significant money laundering risks in future. It is therefore a logical conclusion that BaFin is performing in-depth analyses to determine the extent to which and the type of business that is being conducted with crypto assets. In 2020, BaFin will also give particular attention to the authorisation requirement for new business models – especially those involving the issue of tokens based on distributed ledger technology, such as the crypto custody business.

To ensure legal certainty, BaFin nominates contacts early on in the process and also makes the requirements transparent that market participants have to meet in order to get authorisation. BaFin intervenes in cases where business that normally requires authorisation is conducted without it.

In 2020, BaFin will continue to develop its money laundering prevention activities in line with the Financial Action Task Force's (FATF) standards. In addition, BaFin supports the Anti Financial Crime Alliance (AFCA), a public-private partnership that is likewise aimed at preventing and combating money laundering and terrorist financing. Together with the Financial Intelligence Unit (FIU) BaFin represents the public sector on AFCA's Board.

Sustainable business models

Interest rates at historic lows, economic slowdown, digital transformation – each of these is a challenge in its own right. Companies in the financial market are right now facing the combined onslaught of all three. High time for every market participant to think about the sustainability of its business model. This is exactly where BaFin has set itself another priority. It will closely analyse in 2020 how sustainable the business models are in the different segments of the financial market.

For this purpose, BaFin will examine the impact of the persistently low interest rates on credit standards as well as on investment strategies and practices. Throughout BaFin, there will be a focus in 2020 on the risk management practised by the undertakings, which must be adequate to ensure that internal capital adequacy requirements are met.

Sustainable finance

Another supervisory priority for the whole of BaFin is sustainability – this time with a focus on the protection of the environment, among other objectives. Financial supervisors cannot help but look at this all-important issue through risk-tinted glasses. In terms of sustainability, BaFin put itself at the helm of the supervisory movement when it published a Guidance Notice on Dealing with Sustainability Risks at the end of 2019. The declared aim is that credit institutions, insurance undertakings and asset management companies systematically incorporate sustainability risks into their risk management systems. BaFin has set itself further ambitious targets and is planning to expand on its ideas about managing sustainability risks in 2020. From 2021 onwards, these risks are to be systematically captured and addressed using existing supervisory tools.

What is and what is not sustainable can only be determined internationally – using a taxonomy, for example, on which European Union bodies have worked intensively and which is to be published in summer 2020.

BaFin remains fully committed to taking part in the debates being held at the European and global level with the aim of developing robust standards – without straying from the principle of risk orientation. No matter how important sustainability is in terms of climate change alone: if you promote investment euphoria that makes investors overlook risks, if you indiscriminately give preferential treatment to green investments and loans regardless of risk, for example by granting a capital requirement bonus, we may sleepwalk into the next crisis – and harm the cause of sustainability in the process. Green does not automatically mean low risk.

Note

Notice regarding the effects of the coronavirus pandemic

This annual report is based on data from 2019; it therefore does not cover the effects of the coronavirus pandemic on the financial markets or the corresponding measures taken by BaFin. Current information on this can be found at www.bafin.de.

BaFin: integrated supervisory and national resolution authority

BaFin in brief

1 Responsibilities

Undertakings overseen by BaFin
In 2019[1], the Federal Financial Supervisory Authority (BaFin) had the following entities under its supervision as integrated supervisor:

- 1,555 directly supervised credit institutions,
- 1,189 financial services institutions,
- 51 payment institutions and 8 e-money institutions
- 12 account information service providers,
- 94 German branches of foreign credit institutions from the European Economic Area,
- 20 third-country branches,
- 551 insurers and 33 *Pensionsfonds*,
- 547 asset management companies and
- 6,898 domestic funds.

BaFin's functions
- **Solvent undertakings:** With its solvency supervision, BaFin contributes to ensuring that credit institutions, insurers and financial services providers are able to meet their payment obligations.
- **Fair conditions:** BaFin's supervision of the market aims to safeguard fair and transparent conditions in the markets and furthermore to ensure collective consumer protection.
- **Combating money laundering:** BaFin is also tasked with preventing the financial system from being abused for the purposes of money laundering or terrorist financing. To this end, BaFin ensures, for example, that the companies it supervises comply with the applicable requirements for the prevention of money laundering and terrorist financing.
- **Authorised business only**: Furthermore, in Germany, banking, financial services, investment and insurance business, payment services and e-money business may not be conducted without official authorisation. BaFin oversees this prohibition and possesses far-reaching powers of investigation and intervention for this purpose.
- **Resolution in case of emergency:** In addition, BaFin is the national resolution authority (NRA) for banks, investment firms and financial market infrastructures.
- **International activities:** BaFin is represented in numerous European bodies and thus engaged in the creation of a single European financial market. Furthermore, through its participation in international bodies, BaFin is involved in the formation of global supervisory and resolution standards.

BaFin's mission
BaFin's mission is to ensure the functioning, stability and integrity of the German financial market. Bank customers, insurance policyholders and investors should be able to trust the financial system. For that reason, BaFin seeks to ensure that market participants comply with the relevant laws.

BaFin's management
BaFin is managed by its Executive Board consisting of President Felix Hufeld and the Chief Executive Directors of each of BaFin's five sectors: Banking Supervision (Raimund Röseler), Insurance and Pension Funds Supervision (Dr Frank Grund), Securities Supervision/Asset Management (Elisabeth

1 As at 31 December 2019.

Roegele), Resolution (Dr Thorsten Pötzsch) and Internal Administration and Legal Affairs (Béatrice Freiwald).

How BaFin is funded
BaFin is a public-law institution with legal capacity. It is funded solely by fees and contributions from the institutions and businesses that it supervises and is thus independent of the federal budget.

2 BaFin's sectors

2.1 Banking supervision

Only a stable financial system can provide the financial resources that a national economy requires. Banking supervision makes a major contribution in this regard.

BaFin as part of European banking supervision
Since 4 November 2014, BaFin has been part of the Single Supervisory Mechanism (SSM), which is led by the European Central Bank (ECB). BaFin employees are involved at all levels of the SSM.

The SSM directly supervises the eurozone's 117 groups of significant institutions (SIs)[2]. This is done in Joint Supervisory Teams, in which BaFin staff work side by side with supervisors from throughout the eurozone. 57 German institutions were classified as significant in 2019 and were subject to the SSM under the direct supervision of the ECB.

The eurozone's less significant institutions (LSIs) are supervised by the SSM indirectly and continue to be subject to national supervision. In Germany, 1,352 CRR credit institutions[3] were classified as less significant in 2019; they were supervised directly by BaFin. In the supervision of less significant institutions, BaFin cooperates with the Deutsche Bundesbank.

BaFin seeks to ensure that
- only authorised institutions offer their services on the market and that these institutions are managed by directors who have proved that they have the necessary professional qualifications and are fit and proper,
- the institutions conduct their business in a proper manner and comply with all relevant legal and supervisory provisions. One of the most important principles is that banks must have an adequate capital buffer to cover the risks that they assume.

Banking supervision is not responsible for preventing each and every bank failure. If a bank becomes insolvent, the statutory deposit guarantee schemes ensure that customers do not lose all of their deposits. These schemes are also supervised by BaFin. Once BaFin determines that a compensation event has occurred, the compensation procedure can begin. The question of whether and to what extent claims exist, however, is not determined by BaFin, but by the relevant guarantee scheme.

2.2 Resolution

What happens if a bank, investment firm or financial market infrastructure (FMI) with a banking licence is failing or likely to fail, and this threat cannot be averted by private-sector intervention or supervisory means?

2 As at 31 December 2019.

3 As at 31 December 2019. CRR stands for European Capital Requirements Regulation.

If the institution cannot be allowed to become insolvent, because this would be a threat to financial stability, then BaFin, as national resolution authority (NRA), is required to take action. Using a number of resolution tools, it can resolve the bank in an orderly manner without putting the stability of the financial market at risk – under its own responsibility or at the instruction of the Single Resolution Board (SRB).

This Board heads the European Single Resolution Mechanism (SRM), of which BaFin is also a member by virtue of being an NRA. In the SRM, BaFin is responsible for the institutions that are classified as less significant in the SSM and do not have cross-border operations. These also include financial market infrastructures with a banking licence.

The SRB, on the other hand, is responsible for the significant institutions and less significant institutions with cross-border activities (including a total of 36 German institutions in 2019). Similar to the arrangement in the SSM, there are Internal Resolution Teams (IRTs) in which BaFin employees cooperate with representatives of the SRB and, if appropriate, other NRAs.

However, BaFin does not wait until there is an emergency before it takes action as an NRA. It continuously engages in comprehensive resolution planning for each institution. The aim is to be ready for an emergency.

2.3 Insurance supervision

In the insurance business, trust is of particular importance as the basis for business. Customers expect their private insurer to be a reliable contractual partner – often over a very long period of time.

BaFin seeks to ensure that the interests of policyholders remain protected and that insurers can meet their contractual obligations at all times. It therefore fulfils an important economic and social function.

BaFin ensures that

- only authorised insurers operate in the market and that these undertakings are managed by directors who have proven that they have the necessary professional qualifications and are fit and proper,
- the insurers conduct their business in a proper manner and comply with all relevant legal and supervisory provisions. In particular, undertakings have to invest their capital in a manner appropriate to the risks they assume, i.e. safely and profitably.

2.4 Securities supervision

Securities trading can only run smoothly, if all market participants can rely on fair and transparent market conditions being in place. If market manipulation or insider trading is suspected, BaFin investigates the matter. In addition, it monitors listed stock corporations and their shareholders to ensure they comply with their publication requirements. Among other things, companies must publish ad hoc disclosures, managers' transactions and financial reports. Shareholders are required to report if they hold significant percentages of the voting rights in a listed company. Anyone who holds 30 % or more of the voting rights must make an offer to the other shareholders to buy their shares.

In addition, in performing its securities supervision function, BaFin monitors financial services providers, asset management companies and the investment funds that they launch.

BaFin also examines prospectuses, including listing prospectuses, and checks whether they contain the minimum information required. However, legislators have not given BaFin responsibility for examining the factual correctness of the prospectuses' content.

Together with the Financial Reporting Enforcement Panel (*Deutsche Prüfstelle für Rechnungslegung*), BaFin also examines the financial reporting of publicly traded companies, of which there were 549 in 2019 (previous year: 552 companies). This enforcement of financial reporting requirements complements internal audits by the supervisory board and the work of the external auditor.

2.5 Collective consumer protection

Collective consumer protection is another of BaFin's core tasks and extends to all the financial products and services that it deals with in its supervisory capacity.

The objective here is the protection of consumers as a whole. When it comes to the enforcement of claims by individual consumers, however, BaFin has to refer them to the competent ombudspersons, arbitration bodies and courts. There is only one exception: if a consumer has the right to open a basic payment account, BaFin can enforce such claims individually.

Within the context of collective consumer protection, BaFin monitors market developments and analyses what consequences they might have for consumers. It endeavours to ensure, amongst other things, that the range of financial products, insurance products and financial services on offer is transparent and comprehensible. In addition, BaFin can issue orders to prevent or remedy deficiencies related to consumer protection if general clarification is called for in the interest of consumer protection. In serious cases, it can even restrict or altogether prohibit the distribution of products.

On its website, BaFin provides regular information to consumers, warning them for example of providers that operate without authorisation. In 2019, it answered 20,391 enquiries from citizens on its consumer helpline (phone: +49 (0) 800 2 100 500). In addition, BaFin received more than 17,200 written enquiries and complaints about banks, insurance undertakings and financial services providers. BaFin intervenes if the investigation of a complaint shows that there is an irregularity beyond the specific case.

Key figures at a glance

Key indicators at a glance

	2015	2016	2017	2018	2019
Credit institutions[1, 2]					
Capital resources[3]					
Tier 1 capital (€ billion)	473.1	489.6	491.2	514.7	511.7
Own funds (€ billion)	544.6	562.0	559.7	580.5	573.0
Tier 1 capital (%, ratio)	15.3%	15.7%	16.6%	16.8%	16.6%
Own funds (%, ratio)	17.7%	18.0%	18.9%	18.9%	18.6%
Asset structure and portfolio quality					
Total assets (€ billion)[4]	8,000.7	8,024.3	8,411.2	8,329.8	8,755.1
Total assets (€ billion)[5]	7,975.9	7,995.3	8,379.5	8,303.3	8,826.8
Structure of loans and advances to banks and non-banks (%)[6]					
Domestic banks	15.9%	16.5%	21.4%	19.8%	18.3%
Foreign banks	12.3%	10.9%	9.3%	9.2%	9.0%
Non-banks – other financial institutions	2.4%	2.5%	2.6%	2.7%	2.9%
Non-financial companies	15.9%	16.2%	15.8%	16.7%	17.3%
Private households	30.0%	30.7%	29.3%	30.2%	31.0%
Private non-profit organisations	0.3%	0.3%	0.3%	0.3%	0.3%
Public sector	5.8%	5.5%	5.2%	4.8%	4.5%
Foreign non-banks	17.4%	17.4%	16.0%	16.2%	16.5%
Amounts due to non-banks as a proportion of loans and advances to non-banks (%)[7]	103.4%	104.3%	104.3%	103.0%	102.0%
Proportion of foreign-currency loans to private households (%)[8]	0.5%	0.4%	0.3%	0.2%	0.2%
Loans in default plus loans on which specific allowances have been recognised before deducting specific allowances as a proportion of loans and advances to banks and non-banks[9]	2.4%	2.2%	1.6%	1.1%	1.2%
Structure of equity and liabilities (proportion in %)[10]					
Amounts due to domestic banks	13.4%	13.0%	12.6%	12.3%	12.4%
Amounts due to foreign banks	7.6%	8.2%	7.5%	6.8%	7.0%
Deposits from domestic non-banks	40.3%	41.5%	40.9%	42.2%	39.7%
Deposits from foreign non-banks	6.4%	6.5%	6.4%	6.0%	5.6%
Securitised debt incl. subordinated capital	11.7%	11.3%	15.3%	11.8%	15.2%
Income statement structure (in % of average total assets)[11]					
Net interest income	1.11%	1.09%	1.04%	1.08%	1.06%
Net commissions received	0.35%	0.36%	0.37%	0.37%	0.40%
General administrative expenses	1.05%	1.06%	1.07%	1.09%	1.18%
Net trading income	0.04%	0.04%	0.07%	0.04%	0.04%
Operating profit/loss before measurement gains/losses	0.44%	0.47%	0.42%	0.40%	0.32%
Measurement gains/losses	–0.04%	–0.10%	–0.04%	–0.08%	–0.02%
Operating profit/loss	0.40%	0.37%	0.37%	0.32%	0.30%
Net amount of other and extraordinary income and expense	–0.09%	–0.03%	–0.04%	–0.09%	n/a

	2015	2016	2017	2018	2019
Profit for the year before tax	0.31%	0.33%	0.33%	0.23%	n/a
Profit for the year after tax	0.21%	0.24%	0.24%	0.15%	n/a

1 For the number of undertakings under supervision, see chapter III.1 1.3.
2 For further information on credit institutions in Germany, see chapter III.1 1.3.
3 Including financial services institutions.
4 Assets based on balance sheet statistics (BISTA) and data provided under FinaRisikoV (including financial services institutions).
5 Assets based on BISTA.
6 Structure in accordance with BISTA.
7 Based on BISTA and FinaRisikoV data (including financial services institutions).
8 Information based on external status.
9 Based on FinaRisikoV data.
10 Based on BISTA only. The "Securitised debt incl. subordinated capital" item also includes the FinaRisikoV data (financial services institutions etc.).
11 For the years 2013 to 2018, the data has been taken from publications of the Deutsche Bundesbank (monthly report on the performance of German credit institutions). The data in the 2019 annual financial statements is not yet available in full, so the figures have been based on the preliminary FinaRisikoV notifications and an approximate income statement structure has been shown.

Insurance undertakings and *Pensionsfonds*[1, 7]

		Life insurers				Private health insurers				Property/casualty insurers			
		2016	2017	2018	2019[2]	2016	2017	2018	2019[2]	2016	2017	2018	2019[2]
Gross premiums written	(€ billion)	85.7	85.6	87.4	97.6	37.2	39.0	39.7	40.9	71.0	76.0	78.2	83.3
Investments	(€ billion)[3]	877.7	906.1	949.2	985.4	260.1	272.9	287.7	302.3	164.9	171.2	175.8	182.3
Average SCR coverage	(%)[4, 5]	316.3	382.1	448.3	382.0	418.6	495.5	430.3	440.5	288.3	284.0	283.1	283.5

Pensionskassen

		2016	2017	2018	2019[2]
Gross premiums earned	(€ billion)	6.9	7.3	7.2	6.7
Investments	(€ billion)[3]	154.1	162.2	168.5	180.4
Average solvency	(%)	131.2	133.7	132.1	137.7

Pensionsfonds

		2016	2017	2018	2019[2]
Gross premiums written	(€ billion)	2.7	2.4	10.2	2.6
Investments	(€ billion)[3, 6]	35.4	36.9	42.7	48.7
Beneficiaries		924,074	942,782	1,058,215	1,112,677
Benefit recipients		297,370	291,165	373,134	370,857

1 For information on key figures of the Insurance and Pension Funds Supervision Directorate, see also chapter III.2.
2 The data provided is only preliminary, because it is based on interim reports and forecasts.
3 Carrying amounts in accordance with the German Commercial Code.
4 Fourth-quarter figure.
5 Up until and including 2018, a few undertakings were exempt from the interim reporting requirements on SCR coverage in accordance with section 45 of the Insurance Supervision Act.
6 Total investments.
7 The figures provided here have been determined on the basis of the Solvency II supervisory regime, which entered into force on 1 January 2016. Due to the associated fundamental change in the system, comparable figures are not always available for the years up to 2016.

	2015	2016	2017	2018	2019
Capital market companies[1, 3, 4]					
Supervised financial services institutions	674	708	722	722	694
Supervised branches	86	94	106	110	94
Total number of approvals[1]	1,682	1,652	1,405	1,174	1,097
of which prospectuses	399	348	301	303	291
of which registration documents	32	33	38	35	41
of which supplements	1,251	1,271	1,066	836	765
German asset management companies with authorisation[2]	138	136	142	146	143
Registered German asset management companies[2]	218	260	309	379	404
Number of investment funds[2]	5,649	6,122	5,752	5,932	6,082
Assets managed by those funds (€ billion)[2]	1,743	1,908	2,062	2,062	2,391

1 Due to a change in the data collection method during the period under review, there is only limited comparability between different periods.

2 "German asset management company" (*Kapitalverwaltungsgesellschaft*) has only been a defined term in accordance with section 17 of the German Investment Code (*Kapitalanlagegesetzbuch*) since 2013, when the German Investment Act (*Investmentgesetz*) expired. Due to the resulting fundamental change of system, comparable figures are not available for the years up to 2013.

3 For the number of undertakings under supervision, see chapter III.3 3.5.

4 For information on key figures of the Securities Supervision/Asset Management Sector, see also chapter III.3 3.5.

Legend:

n/A: not available
Tier 1: highest category of own funds
KVG: German asset management company (Kapitalverwaltungsgesellschaft)
SCR: solvency capital requirement)
FinaRisikoV: German Regulation on the Submission of Financial and Risk-Bearing Capacity Information under the Banking Act (Verordnung zur Einreichung von Finanz- und Risikotragfähigkeitsinformationen nach dem Kreditwesengesetz)

I

Spotlights

1 Federal Constitutional Court on BaFin's role within the SSM and SRM

One indispensable component helping to shape something bigger, and at the same time an irreplaceable player in its own right – this is how, at the BaFin's New Year Press Conference in January 2020, BaFin President Felix Hufeld described the role played by BaFin in the orchestra of European supervision.[1]

In its judgement on the banking union in the summer of 2019[2], Hufeld continued, Germany's Federal Constitutional Court had not used quite the same wording, but the message was the same: "The court gave its blessing to the competencies of the SSM and the SRM[3], i.e. supervision and resolution, as part of the European banking union. I very much welcome this." The Senate had, however, also emphasised that the national authorities continued to have their own responsibilities and acted on the basis of their own national sovereignty and not merely through delegated powers. That was also something he welcomed. This calibration of union and national law showed how a beneficial balance between European and national supervision could be achieved. "This provides an interesting lesson, and a potential point of reference for the further development of union law in other areas", concluded Hufeld.

1 www.bafin.de/dok/13490784.
2 www.bundesverfassungsgericht.de/e/rs20190730_2bvr168514.html.
3 Single Supervisory Mechanism (SSM) and Single Resolution Mechanism (SRM).

2 Brexit

After the UK's exit: EU law continues to apply until the end of the year

Three-and-a-half years after the British people's narrow vote in favour of Brexit and following intensive political negotiations in Brussels, the United Kingdom exited the European Union (EU) on 31 January. Prior to that, the parties involved in the withdrawal process had ratified the Withdrawal Agreement (see info box on page 26) in stages, with the European Parliament being the last to do so. Internal political differences in the UK meant that Brexit could not happen in March 2019, as planned originally, but had to be postponed several times.

At a glance

Withdrawal Agreement

Following the ratification of the Withdrawal Agreement by the EU and the UK, nothing will fundamentally change, for now, for citizens or companies. This is because a transition period has been agreed as part of the Withdrawal Agreement during which EU law will in principle continue to apply, although the UK is no longer represented in EU bodies. The transition period ends on 31 December 2020. It may be extended by up to two years if mutually agreed by 30 June 2020.

The ratification of the Withdrawal Agreement rendered ineffective the national emergency measures that BaFin had prepared on the basis of the German Tax Act relating to Brexit (*Brexit-Steuerbegleitgesetz*) to cushion the negative impact of a disorderly exit. However, the transition period is significantly shorter than the 21 months from the withdrawal date originally planned, because Brexit was postponed several times. After the end of the transition period, the UK will become a third country from the European Union's perspective. This means that relations with the former EU member will have to be reorganised, including with regard to financial services and supervisory issues. If no extension is applied for and the EU and the UK have not entered into any agreements on the future relationship by the end of 2020, undertakings from the UK that have in the past notified BaFin of the cross-border conduct of banking business, financial services, investment fund business or insurance business under European passporting rules would lose their existing right to market access.

Equivalence decisions required

Unlike the rules for many other aspects that will have to be revised in connection with Brexit, the right to market access for financial services is not expected to be covered by entry into a free trade agreement.[4] The European Commission will therefore have to decide – in the same way as for other third countries – individually for each segment whether the UK's supervisory regime is equivalent to that of the EU. The Commission estimates that it will have to take approximately 40 such equivalence decisions. It is regarded as a certainty that clearing houses will be given a key role in safeguarding financial stability in this regard. The work is likely to be carried out under great time pressure, and it will presumably not be possible to resolve all the issues by the end of 2020.

BaFin President Felix Hufeld is now appealing to undertakings to use the transition period to the end of the year to get the required transition work done: "The UK has left the European Union, a step I still very much regret. But now we have to look ahead and deal with the new status quo as best we can. This also means that we have to find lasting, mutually acceptable ways of working together with our partners in the UK's supervisory authority." It should in turn be clear to undertakings that they would have to do their homework in the remaining time.

Strong pull towards Frankfurt

In 2019, further financial undertakings moved their business activities from the UK to Germany or expanded existing locations there in preparation for Brexit. This has turned into a steady trend in recent years, and Frankfurt am Main is one of the locations in the EU to have attracted the most new business from the UK. BaFin provided support and advice to these undertakings during this phase.

3 Reform of the three European Supervisory Authorities

The European Parliament and the Council of the European Union agreed at the end of 2019 to reform the three European Supervisory Authorities (ESAs), the EBA, EIOPA and ESMA[5].

In September 2017, the European Commission had published a comprehensive legislative proposal in this regard, but many of its ideas did not prevail. The existing funding of the ESAs, for example, will be maintained. This means that the EU will continue to carry 40 % of the cost, and the national competent authorities such as

4 For more on Brexit, see chapters III.1 and III.3.

5 European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA). Together with the European Systemic Risk Board (ESRB), the three authorities form the European System of Financial Supervision (ESFS). For information on the ESFS and the responsibilities of the three supervisory authorities, see chapter II 1.

At a glance

BaFin reviews models of Brexit banks

The relocation of credit institutions and securities trading banks to Germany involves a number of highly complex issues, which fall under the heading of "model review".

By the end of 2019, five institutions, referred to as Brexit institutions, had applied to BaFin for approval of IRBA rating systems for their respective German subsidiaries. The Internal Ratings-Based Approach (IRBA) is a methodology for determining the regulatory capital requirement for credit risk based on the institution's own internal ratings process. There are two variants of IRBA: under the basic approach, the institution estimates only the probability of default outside of the retail business. Under the advanced approach, it also estimates the loss given default and the conversion factor.

Six institutions want to use an internal risk model for the market risk exposure of their trading book, and seven are planning to use an internal model for counterparty risk. Applications in this regard have already been submitted.

Two-step review process

Like all affected supervisory authorities in the Single Supervisory Mechanism (SSM), BaFin uses a two-step approval process. With a time limit of 30 June 2022, it will tolerate internal models already approved by the UK's supervisory authority. Once BaFin has thoroughly examined the model or rating system on site and considered it sound, it will be able to issue regular approval.

First approval issued

Deutsche Bundesbank reviewed the internal models for counterparty risk of three Brexit institutions in 2019. After analysing the review results, BaFin granted its first regular model approval in February 2020. An initial on-site review visit for IRBA approval began in the fourth quarter of 2019; other reviews will follow in 2020 and 2021.

However, in 2019, responsibility for supervising some of the institutions that had applied for model approval was transferred to the European Central Bank (ECB) within the SSM, and this meant that the processes in progress had to be migrated to SSM processes. Because of the accompanying coordination among the model experts of BaFin, Deutsche Bundesbank and the ECB, who cooperate closely in the SSM, the transition was completed without any problems.

BaFin will be responsible for 60 %. Direct industry participation was rejected.

The organisational structure of the decision-making bodies, such as the Board of Supervisors and the Management Board, will also be fundamentally retained. The roles of the chairpersons of the EBA, ESMA and EIOPA have in a way been reinforced – for example by giving them a vote on the Board of Supervisors, in which all heads of national competent authorities are represented. But they do not have this right when it comes to voting on technical standards and guidelines. The powers of committees below the management bodies have been boosted – they are responsible, for example, for violations of Union law and for mediation proceedings.

Contrary to the original plans, there will be no binding strategic supervisory plans. Instead, supervisory convergence is to be promoted by the EBA, ESMA and EIOPA and the national competent authorities defining two EU-wide priorities every three years, which will then have to be added to the national working programmes.

The powers of ESMA in particular are to be expanded selectively. From 1 January 2022 onward, it will directly oversee certain data reporting services providers, administrators of critical benchmarks and benchmarks

from third countries.[6] EIOPA can, on request, provide technical assistance to national competent authorities in approval processes of internal models.

Balanced supervision
For BaFin's President, the objective of the reform was to strike an appropriate balance between European and national supervision. Hufeld is satisfied: "The result is in the main consistent with our position." Contrary to initial plans, he said, it had been possible to resist the temptation to transform the EBA, ESMA and EIOPA into supervisory-regulatory hybrids, which would have resulted in considerable bureaucratic expense. Instead – long live the subsidiarity principle! – the ESAs had been strengthened in those areas where they were better placed to act than the national authorities, for example in fostering supervisory convergence and assessing third-country equivalence. That was the right way to go.

The European Commission has to submit the next report for reviewing the three ESAs as at 1 January 2022.

4 Digitalisation

4.1 BaFin to continue its focus on IT and cyber security

Digital transformation in the financial industry was again a major aspect of BaFin's work in 2019. The focus was in particular on issues of IT and cyber security – not only because of the continued high risk of supervised undertakings falling victim to a cyber attack. For financial undertakings, operational constraints of the IT infrastructure also represent a significant risk, with banks and insurers notifying BaFin of around 270 IT incidents for payment transactions alone in 2019.[7]

Leading the way in Europe with BAIT and companion documents
In its on-site inspections, BaFin found in 2019 that undertakings are implementing its requirements for IT.

Between 2017 and 2019, BaFin set out specific requirements for IT security for undertakings in the different sectors: the Supervisory Requirements for IT in Financial Institutions (*Bankaufsichtliche Anforderungen an die IT* – BAIT) were published in 2017; the Supervisory Requirements for IT in Insurance Undertakings (*Versicherungsaufsichtlichen Anforderungen an die IT* – VAIT) followed in 2018, and finally the Supervisory Requirements for IT in Asset Management Companies (*Kapitalverwaltungsaufsichtlichen Anforderungen an die IT* – KAIT) in 2019. In BAIT, VAIT and KAIT, BaFin has largely harmonised its requirements, thus reflecting the fact that IT security at banks, insurers, pension funds and asset management companies is broadly comparable.[8]

By taking this approach, BaFin has taken a leading role on Europe's supervisory stage and is now involved to a significant extent in shaping the EU's current harmonisation efforts in the area of IT risk management and IT supervision.

Better crisis management
With the aim of improving crisis management at banks and insurance undertakings, BaFin worked in 2019 on, among other things, a new module to cover this issue in BAIT and VAIT. The focus is in particular on emergency management, not least because there are new European requirements in this regard. In 2020, the module is scheduled for discussion in professional and expert bodies; the revised circulars are to be published in the same year. A module on critical infrastructure was added to VAIT back in March 2019.

In addition, during an international cyber crisis exercise of the G7 countries held in summer 2019, BaFin tested its own crisis management and the interaction of all relevant players in case of crisis. The importance of international cooperation in this area was emphasised by BaFin President Felix Hufeld: "I am pleased that there is awareness of the problems, both in European Union bodies and at the level of the G7 countries."[9]

4.2 PSD 2 fully in force

Cyber security is, however, only one aspect of digital transformation. Another aspect is that the roll-out of modern technology in financial undertakings is increasingly impacting on their processes and business models. The Second Payment Services Directive (PSD 2) could be a major catalyst of this development; its provisions applicable to supervisory law have been implemented in Germany by way of the amended

6 See chapter III.3 3.1.4.3.
7 Since 13 January 2018, there has been a requirement under section 54 (1) sentence 1 of the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*) to report serious IT security incidents to BaFin.
8 See chapter III.3 3.5.1.
9 See chapter III.1 1.2 and www.bafin.de/dok/13156842.

Payment Services Supervision Act. Most of the provisions of the act entered into force on 13 January 2018, but some of them have only applied since 14 September 2019. They include the requirement to practice strong customer authentication and the provision of technical access interfaces for payment initiation and account information service providers. Both sets of rules pose challenges for undertakings, especially in the implementation of detailed provisions[10] affecting their IT systems.

Migration phase for strong customer authentication
For this reason, BaFin – in consultation with the EBA – has allowed an additional migration phase: it will not raise objections if payment service providers whose registered office is in Germany initially process Internet card payments after 14 September 2019 without strong customer authentication. The expedient applies for a limited period only and, in accordance with the EBA's relevant decision, will expire on 31 December 2020. In the meantime, BaFin expects all involved parties to adapt their infrastructures as soon as possible so that they can handle strong customer authentication in the cases where this is required by law.

Migration to access interfaces
Even before PSD 2 entered into force, many payment initiation and account information service providers already had activities in a hitherto unregulated market. BaFin is very keen to ensure that migration to the new PSD 2 interfaces is completed without major disruption, and held intensive discussions on the subject with banks and payment initiation and account information service providers in 2019, for example at its five workshops on the topic.[11]

4.3 Dealing with crypto assets

How should crypto assets be dealt with? This was another key issue for BaFin in 2019 – especially in view of the German Act Implementing the Fourth EU Anti-Money Laundering Directive (*Gesetz zur Umsetzung der Änderungsrichtlinie zur vierten EU-Geldwäscherichtlinie*), which entered into force on 1 January 2020. The act provides for including crypto custody business as a new financial service in the German Banking Act (*Kreditwesengesetz*) and defining crypto assets (see info box) as financial instruments.

Definition

Inclusion of crypto assets in the Banking Act

In accordance with section 1 (11) sentence 4 of the Banking Act, a crypto asset is a digital representation of value that is not issued or guaranteed by a central bank or a public authority and does not possess a legal status of currency or money, but is accepted, on the basis of an agreement or actual practice, by natural or legal persons as a means of exchange or payment, or serves investment purposes, and which can be transferred, stored and traded electronically.

Authorisation requirement and transitional provision
Undertakings wishing to conduct crypto custody business now require written authorisation from BaFin. For undertakings that became subject to the authorisation requirement as at 1 January 2020 temporary authorisation is deemed to have been granted. However, these undertakings had to notify BaFin by 31 March 2020 of their intention to submit an application for authorisation. This application will then have to be submitted by 30 November 2020. The same applies to undertakings that now require authorisation under section 32 (1) sentence 1 of the Banking Act, because, as a result of the above-mentioned amendment to the Banking Act, the crypto asset business they conduct is now considered to be banking business or a financial service.

To ensure the required legal certainty, BaFin nominated contacts at an early stage and published a guidance notice on the new legal position for market participants[12].

4.4 Follow-up on BaFin report "Big data meets artificial intelligence"

In 2019, BaFin analysed the numerous suggestions and comments it had received from associations, authorities and undertakings during the consultation process on its report on big data and artificial intelligence (BDAI)[13] in

10 Delegated Regulation (EU) 2018/389.
11 See chapter III.1 1.3.2.

12 www.bafin.de/dok/13886598.
13 Big data meets artificial intelligence – Challenges and implications for the supervision and regulation of financial services, www.bafin.de/dok/11250046. BaFin prepared the report in collaboration with PD – Berater der öffentlichen Hand GmbH, Boston Consulting Group GmbH and the Fraunhofer Institute for Intelligent Analysis and Information Systems. See BaFinPerspectives issue 1/2018, www.bafin.de/dok/11507614.

September 2018. BaFin had published the report in summer 2018. The comments helped BaFin to review core statements of the report and add additional detail. To facilitate further processing, BaFin divided the most important issues into five blocks:

- **Market analyses:** BaFin continuously examines the use of BDAI technology in the financial sector and also compares it to other markets. There are plans also to analyse new players along value chains that are increasingly becoming more fragmented.
- **Supervision of algorithm-based decision-making processes:** The responses to the consultation suggest that the existing regulation is fundamentally considered adequate, although there is a need to clarify in some instances how existing rules should be applied or interpreted with respect to BDAI.
- **Data and competition**: In particular data and platform-driven business models extend beyond industry boundaries; this has to be mirrored by maintaining stable communication channels between the supervisory authorities involved.
- **Examining limits of financial supervision:** It has been observed that data or platform providers make identical or very similar structures for processes or algorithms available for a whole variety of market participants. Discussions are currently taking place at the European level about a suitable legal framework for monitoring such service providers. BaFin is involved in these discussions.
- **BDAI in money laundering detection:** BDAI can help to make compliance processes such as money laundering detection and fraud prevention more effective and efficient. BaFin is looking at this issue closely.

Overall, BaFin's future work in connection with BDAI will be conducted with the aim of readying supervisory practice in good time for the far-reaching and varied effects of digitalisation in the financial market. BaFin President Felix Hufeld, too, underscored the significance of this analytical groundwork: "More and more users are generating increasing amounts of data, which are constantly opening up new opportunities for both established undertakings in the financial industry and new market players to use big data and artificial intelligence to their advantage. We at BaFin want to investigate these issues of the future at the earliest opportunity."

4.5 BaFin appoints its first Chief Digital Officer

Silke Deppmeyer became BaFin's Chief Digital Officer (CDO) at the beginning of July 2019. The CDO takes on an important role in implementing the digitalisation strategy that BaFin adopted in August 2018.[14] Her main task will be, jointly with the newly created Digital Office, to bundle BaFin's digitalisation activities and continue to improve supervisory and support processes in relation to digitalisation.

5 Low interest rate environment

2019 stress test: profitability of banks under pressure
Interest rates at historic lows continued to cause concern for German credit institutions and insurance undertakings in 2019. The prospect of persistently low interest rates makes it very likely that the profitability of small and medium-sized German banks and savings banks will decline further; these institutions are classified as less significant institutions (LSIs) and are therefore directly supervised by BaFin[15]. That was found by a survey on the banks' current and future earnings and their resilience, which BaFin conducted jointly with the Deutsche Bundesbank[16] in 2019. 1,400 LSIs, i.e. 89 % of all credit institutions in Germany, took part in this stress test. The survey was also aimed at encouraging banks and savings banks to consider different stress scenarios in their plans.[17]

"The 2019 LSI stress test confirmed our assessment that the phase of low interest rates presents a considerable challenge for banks", recapped Raimund Röseler, BaFin's Chief Executive Director of Banking Supervision, at the presentation of the stress test results. For example, in the stress scenario, the CET1 ratio – the most important indicator of a bank's resilience – deteriorated by 3.5 percentage points. "On average, the German institutions nevertheless have a sound capital backing even under stress", emphasised Röseler.

Röseler: Scrutinising business models
Röseler believes that bank directors have a duty to take action, saying that Germany's banks are still overly reliant on income from the interest rate business, which accounts for approximately 70 % of total revenue on average. This compares with only a quarter of revenue

14 www.bafin.de/dok/13477846.
15 For information on the supervision of banks, financial services providers and payment institutions, see chapter III.1.
16 www.bafin.de/dok/13030456.
17 For information on the impact of the low interest rate environment on credit institutions, see chapter III.1.

attributable to commission income. "The German credit institutions will not be able to avoid looking very closely at new concepts and business models", said the Chief Executive Director. While he acknowledged that this was already being done, Röseler warned that some institutions could get into trouble if interest rates remained low and the economy weakened at the same time. As a precaution, BaFin had already set up an intensive care unit for banks that got into serious difficulty. "That's where we have pooled much of our crisis know-how", explained Röseler.

Life insurers and *Pensionskassen* need stamina

The economic situation also continued to deteriorate for life insurers and *Pensionskassen* in 2019. In November, BaFin's Chief Executive Director Dr Frank Grund commented as follows[18]: "The ECB's latest interest rate cut has cemented the low interest rate environment. And the longer the phase of low interest rates persists, the longer the affected undertakings will have to endure it."[19]

Although the German Premium Reserve Regulation (*Deckungsrückstellungsverordnung*), which was amended in 2018, has ensured that life insurers and some of the *Pensionskassen* can take longer to build up their additional interest reserves (*Zinszusatzreserven*), the fundamental problems of the industry persist. And this despite the fact that many life insurers have already reduced their administrative costs, boosted their own funds and reduced profit participation. Products with more flexible forms of interest guarantee have also been developed. But if the phase of low interest rates continues, the undertakings will not be able to make ends meet without further work on their costs and own funds. Some undertakings have already had to withdraw from new business and are now running off their insurance portfolios. This is done either internally or externally – by selling the portfolios to a run-off platform. Three of these platforms have established themselves in the German life insurance market. By the end of 2019, seven life insurance portfolios and three *Pensionskassen* portfolios had been transferred to these platforms. There were, however, no signs of a persistent run-off business trend in 2019.

Pensionskassen were once again hit particularly hard by the low interest rates in 2019. They responded, for example, by strengthening their premium reserves or by modifying their investment policies. An important contribution would be for sponsoring undertakings or major shareholders to provide additional funds to the *Pensionskassen*. All parties involved are called upon to investigate this way of providing support. BaFin welcomes the fact that this has already happened in some cases.

"The higher the risks of the individual insurers and *Pensionskassen*, the more closely we supervise them," explained BaFin President Felix Hufeld. Undertakings that are particularly deeply affected by the interest rate squeeze have to provide an all the more detailed account to BaFin of how they are planning to improve their situation and – most importantly – how they are planning to ensure that they can continue in future to fulfil the promises they have made to their customers.[20]

6 Money laundering prevention

Formal and informal measures

BaFin generally uses a wide range of measures and tools to remedy deficiencies and punish violations of the German Money Laundering Act (*Geldwäschegesetz*) and other relevant laws. It eliminates deficiencies by applying formal and informal supervisory and coercive measures. Informal measures include discussions and letters. BaFin can use its formal and informal tools flexibly as required in the particular situation to restore proper order or avert danger.[21]

6.1 Order against Deutsche Bank AG

A formal order issued by BaFin against Deutsche Bank AG on 21 September 2018 was aimed at addressing shortcomings in money laundering prevention.

To monitor progress in the implementation of the points specified in the order, BaFin for the first time appointed an auditing firm as the special representative for money laundering prevention in accordance with section 45c (2) no. 6 of the German Banking Act (*Kreditwesengesetz*). This firm regularly reported to BaFin on the progress of the implementation.

18 www.bafin.de/dok/13177558.

19 For information on the supervision of insurance undertakings and *Pensionsfonds*, see chapter III.2.

20 For information on the impact of the low interest rate environment on insurers and *Pensionskassen*, see chapter III.2.

21 See chapter III.5.

BaFin expands order
On 15 February 2019, BaFin expanded its order, requiring the institution to appropriately manage its money laundering risks in the area of correspondent banking.

Alongside its formal measures, BaFin held many discussions with Deutsche Bank at both expert level and the highest executive level. That was another element in BaFin's endeavours to ensure that the institution really makes sufficient progress in eliminating shortcomings in money laundering prevention.[22]

6.2 Order against N26 Bank GmbH

On 20 May 2019, BaFin issued a formal order against N26 Bank GmbH on the basis of section 6 (8) and section 51 (2) sentence 1 of the Money Laundering Act. The reasons were a number of deficiencies in the prevention of money laundering and terrorist financing and other criminal offences.

In addition to the order to clear backlogs in IT monitoring, BaFin instructed the institution, among other things, to re-identify a specified number of existing customers. In addition, N26 Bank was required to ensure adequate personnel, technical and organisational resources so it can comply with its obligations under anti-money laundering law.

6.3 Joint efforts against money laundering

In the view of Chief Executive Director Dr Thorsten Pötzsch, the Fifth European Anti-Money Laundering Directive, which had to be transposed into national law by 10 January 2019, brings significant improvements in combating money laundering and terrorist financing. One example he quotes is that the FIU has been granted more far reaching rights to access police data retrieval systems. However, according to Pötzsch, cooperation on money laundering prevention in Europe needs to be intensified further. Pötzsch also welcomed the EU finance ministers' initiative to pool competencies in a central EU authority.

Pooling competencies
BaFin President Felix Hufeld shares the opinion that increasingly moving anti-money laundering supervision "to the European level will be unavoidable".[23] The best solution in his view would be a "new separate European authority that operates as part of a close network with the national authorities". Hufeld thinks it would be wrong to transfer anti-money laundering supervision to the European Banking Authority (EBA) or the European Central Bank (ECB). However, he also believes in the importance of a European regime that is harmonised in terms of substantive law. He would prefer a regulation, which would be directly applicable, rather than a directive, which would give countries flexibility in its implementation – or which they might not implement at all.

Public-private partnership
In the prevention and combat of money laundering and terrorist financing, BaFin cooperates not only with partner authorities. Since 24 September 2019, it has also been involved in the Anti Financial Crime Alliance (AFCA), a public-private partnership with undertakings in the financial industry. Together with the FIU, under whose lead the alliance is organised, and the Federal Criminal Police Office (*Bundeskriminalamt*), BaFin represents the public sector in AFCA's Management Board. Representatives of three credit institutions are also members of this body.

AFCA has been created to establish a permanent strategic cooperation in the fight against money laundering and terrorist financing. Working groups are intended to jointly develop possible solutions to make the exchange of strategic information between authorities and undertakings more efficient. Together with Commerzbank AG, BaFin heads the working group on "Risks and trends in the area of money laundering and terrorist financing in the financial sector". Chief Executive Director Pötzsch is confident: "I am sure that this kind of partnership of supervisory authorities and undertakings is not only expedient, but can also work well in practice. All it requires is that the preparations for it are strategic and well considered and that is subsequently assessed regularly."

6.4 National Risk Analysis

On 21 October 2019, the Federal Ministry of Finance (*Bundesministerium der Finanzen*) published its first National Risk Assessment (NRA) to combat money laundering and terrorist financing. The result: Germany's risk of being abused for money laundering and terrorist financing is medium-high, corresponding to level 4 on the five-level scale from low to high. The Federal Ministry of Finance identified anonymous and cross-border transactions as well as the money remittance business and the real estate sector as risk pillars. Fintech companies and major banks in certain constellations

22 See chapter III.5.
23 www.bafin.de/dok/13490784.

were susceptible to becoming a vehicle for money laundering and terrorist financing.

The NRA is the core element of the risk-based supervision approach of the Financial Action Task Force (FATF) and the Fourth EU Money Laundering Directive. It provides important indicators to BaFin and undertakings on country, product and sector-specific risks. Since the end of 2017, 35 federal and federal state authorities – including BaFin – have taken part in the development of the NRA under the leadership of the Federal Ministry of Finance. BaFin headed the working group responsible for analysing the financial market, among other things.

Sub-National Risk Analysis
Alongside the Federal Ministry of Finance's National Risk Assessment, BaFin regularly conducts internal Sub-National Risk Assessments (SRA) for the financial sector. The aim of the SRA is to identify the current money laundering risks in the financial sector and to deploy the personnel resources according to the risks identified, following the principle of "risk-based supervision".[24]

7 Sustainable finance

The issue of sustainable finance has had the status of "strategically important" for BaFin since the beginning of 2018. In 2020, it was made one of BaFin's supervisory priorities. This is also attributable to the relevance of the issue of sustainability, which affects every individual. The critical factor is, however, that the finance industry is given an increasingly important role with regard to issues of sustainability. From the perspective of a risk-based supervisory approach, the familiar sustainability trio of "environmental/social/governance"[25] thus automatically becomes the "environmental risks/social risks/governance risks" trio.

An international network of supervisory authorities and central banks (Network for Greening the Financial System – NGFS), of which BaFin is also a member, said in no uncertain terms in its first report of April 2019 that climate change was a source of financial risks. The network recommends, among other things, that climate-related risks should be included in micro-prudential supervision. Two types of climate-related risks have been defined: physical risks and transition risks. Physical risks involve extreme weather events and the long-term deterioration of climatic conditions. Transition risks are the decarbonisation of the economy, alternative technologies and changes in demand behaviour.

Keeping an eye on risks
In the opinion of BaFin's President Felix Hufeld, voiced, for example, at BaFin's New Year Press Conference at the beginning of 2020, we must keep an eye on these risks. Hufeld also warned against stirring up excessive enthusiasm for investment, and thereby blinding investors to the risks, or to privilege green investments and loans across the board without regard for their risks, for example by granting a capital requirement bonus. He emphasised that doing so "is choosing a path that will lead straight to the next crisis – and that would damage sustainability. Green does not automatically mean low risk."[26] (see info box).

At a glance

Risk of sustainable investments

No evidence has been provided as yet that sustainable investments have a different or lower risk profile than the profile that would have to be used in the market risk module of the Solvency II framework when calculating the solvency capital requirement (SCR). That is the conclusion the European Insurance and Occupational Pensions Authority (EIOPA) draws in its opinion presented to the European Commission on 30 September 2019. EIOPA also said, however, that it would test regularly whether the natural catastrophe risk module was correctly calibrated.

BaFin Guidance Notice
In Hufeld's opinion, in terms of sustainability, BaFin has given itself a pioneering role when it comes to the financial supervision of sustainable investments when it published a Guidance Notice on Dealing with Sustainability Risks on its website (www.bafin.de) just before Christmas. Hufeld is aware that the question of how to deal with sustainability risks requires international answers. "BaFin is no solo artist: as Germany's supervisor we cannot decide alone what can be regarded as sustainable and what not." That is a task for the EU and its taxonomy.

24 For information on money laundering prevention, see chapter III.5.
25 Commonly abbreviated to ESG.
26 www.bafin.de/dok/13490784.

This is why BaFin's objective was also to offer guidance on dealing with sustainability risks. "It was our aim that the companies under our supervision learn how to assess and appropriately manage their sustainability risks now. And that they are able even now to make use of the opportunities this development brings", explained Hufeld. A look at the EBA's Sustainable Finance Action Plan of December 2019 shows that BaFin's approach has allowed it to dovetail successfully into developments at the European level.

As many questions remain unanswered, BaFin has defined the concept of "sustainability" very widely and has not made its Guidance Notice legally binding. BaFin did not have to reinvent the wheel either: all risk types previously considered – in particular credit, market, operational and liquidity risk – may be sustainability-relevant.

European work

In 2019, BaFin was directly involved in the European legislators' work on the taxonomy. BaFin President Felix Hufeld singled out one aspect in this regard: "I think it's important not to set such a taxonomy in stone to the last detail, whatever form it might take in the end. It is in the very nature of things that we need to review certain aspects time and again. This is why I think a principles-based supervisory approach would be a good decision in this case, too."

Of particular importance for institutional investors and asset managers is the new regulation of 27 November 2019 on sustainability-related disclosures. Since June 2019, BaFin is involved in the development of draft regulatory technical standards, which are intended to provide detailed guidance.

In addition, BaFin actively contributed to this topic in a number of working groups and networks of the three ESAs and the ECB in 2019. Among other issues, their deliberations centred on whether and how sustainability risks can be integrated into the system of governance, risk management, underwriting of insurance undertakings, product approval and capital requirements for sustainable exposures. The EBA's work on the integration of ESG risks into Pillar 2 of the regulatory framework will take until June 2021.

BaFin appoints Chief Sustainable Finance Officer

In order to embed the concept of sustainability even more firmly in its own organisation, BaFin appointed Frank Pierschel as Chief Sustainable Finance Officer in May 2019. The first conference on "sustainable finance" took place in the same month; the event, which was

At a glance

Sustainability: BaFin's involvement

End of 2017 – BaFin is founding member of the international Network for Greening the Financial System (NGFS)

March 2018 – BaFin›s Executive Board declares sustainability a strategically important objective: involvement in international regulation, transparency and integration into the risk management of supervised undertakings

April 2018 – BaFin forms internal cross-sector sustainable finance network that implements the strategic requirements set by the Executive Board and deals with corresponding draft regulations of the European Commission

Since 2018 – BaFin supports the integration of sustainability aspects at the European Supervisory Authorities, especially as a member of the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA); in addition, it advises the ECB and – as part of ongoing legislative initiatives – the Federal Ministry of Finance

May 2019 – BaFin appoints Chief Sustainable Finance Officer; first BaFin conference on "sustainable finance", issue in BaFinPerspectives series

June 2019 – BaFin becomes permanent observer on the federal government›s Sustainable Finance Advisory Board

December 2019 – BaFin publishes Guidance Notice on dealing with sustainability risks

organised by BaFin, was attended by approximately 350 experts. On the day of the conference, BaFin also published an issue of its BaFinPerspectives[27] series, which deals exclusively with sustainable finance. It contains in-depth contributions from speakers at the conference, members of BaFin's Executive Board and Chief Sustainable Finance Officer Frank Pierschel.

8 Reform of European banking regulation

An issue to which BaFin gave detailed attention in 2019 was the comprehensive reform package on which the EU member states finally agreed in May 2019. It includes, among other things, amendments to the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD). CRR II and CRD V were published in the Official Journal of the European Union on 7 June 2019.

Proportionality

There was one critical aspect in the revision of the CRR and CRD from BaFin's point of view: supervisory requirements should in future reflect the principle of proportionality to a greater extent, which means the requirements should vary, depending on the size or risks assumed by an institution. In addition, the own funds to be held and the available distributable items have been redefined. Development banks will be exempt from the direct application of the CRR and CRD, while certain financial holding companies will become subject to an authorisation requirement. To calculate the capital requirements for operational risk, lease income is now included in the interest rate business rather than other operating income. This means that lending and leasing transactions will be treated in the same way across all EU countries, a change which BaFin welcomes.

BaFin had campaigned for regulatory relief

BaFin had campaigned at the European level for relief to be introduced for small, non-complex institutions. It therefore welcomed the decision to classify institutions with total assets of up to €5 billion as small institutions. The European Commission had originally proposed a €1.5 billion threshold. The €5 billion threshold that has now been defined may be set at a lower level at the option of the member states. In Germany, the threshold is to be applied in full, which would mean that almost 90 % of German institutions are considered small. They can expect to see considerable regulatory relief, especially for requirements relating to remuneration, reporting and disclosure.

BaFin President Felix Hufeld welcomed the new rules, which give supervisors greater flexibility for proportionality, saying that, for the first time, a clear Definition of "small, non-complex institutions" had been specified in a regulation. "In the years to come we will have a reliable foundation on which institutions can be granted specific relief in the future. As much as we are opposed to deregulation, it is also true that for small and medium-sized institutions, too, the level of supervisory requirements needs to be based on the respective risk."

Better conditions for bank resolution

The new banking package will also bring important new rules for BaFin's Resolution Sector. At the centre is the basis for calculating the amount and extent of the minimum requirement for own funds and eligible liabilities (MREL). This is intended to further improve the effectiveness of a bail-in process. The overarching objective is to ensure the resolvability of institutions – especially with regard to the extent and quality of subordination of liabilities. Moreover, resolution authorities will have an additional moratorium tool at their disposal, which will give them the option in future to prevent pre-resolution liquidity outflows.

Changes have also been made to the rules of cooperation and information exchange among the different authorities that are responsible for supervising or resolving groups of banks with cross-border operations.[28]

BaFin general administrative act

Most of the new rules from the banking package will apply at European and national level from the end of 2020. However, institutions have been required, since CRR II entered into force, to obtain authorisation from the resolution authority for the redemption of liabilities eligible for MREL. In a general administrative act on this issue, BaFin clarified that a general authorisation for redemption will be granted – namely for institutions that do not fall under the responsibility of the Single Resolution Board (SRB) and for which no MREL requirements have been specified, or an MREL

27 See BaFinPerspectives issue 2/2019, www.bafin.de/dok/12377482.

28 See chapter IV 2.

requirement has been set that does not exceed the own funds requirements.

Proportionality to be applied to further implementation of Basel III

The next revision of the regulatory framework is currently being prepared at the European level. After the Basel Committee on Banking Supervision (BCBS) had finalised the Basel III reform package, the European Commission issued a call for advice to the European Banking Authority (EBA) at the beginning of May 2018 to request support in the EU's implementation of the Basel III finalisation package. This mainly involved new guidance on credit risk, operational risk and the output floor. The new guidance on market risk and counterparty credit risk had already been implemented in CRR II.

The EBA presented its response to the call for advice, on which BaFin also collaborated, to the Commission in 2019. On this basis, the Commission is now preparing a legislative proposal for implementing the final part of Basel III.

BaFin President Felix Hufeld announced at the beginning of 2020 that he would rigorously call for proportionality in this process as well: "Around two years ago, after countless negotiations in the GHOS[29], the steering committee of the Basel Committee on Banking Supervision, we made a promise: the compromise regarding the reform package finalising Basel III should be implemented globally – and in full." To properly reflect the specific situation in Europe that the implementation affects smaller banks that are not internationally active, this also demands proportionality. He said that Germany had a special responsibility in this respect, because it would assume the Presidency of the European Council in the second half of 2020.

29 Group of Governors and Heads of Supervision.

9 Solvency II review

The review of Solvency II continued in 2019. As part of the 2020 review, the European Commission has asked for a review of selected provisions of the framework directive. A key aspect of the review is an examination of the long-term guarantee (LTG) measures, which are primarily aimed at reducing artificial volatility. But the review also includes parts of the standard formula, the minimum capital requirement (MCR), as well as the issues of macro-prudential tools, restructuring and resolution plans, group-wide supervision, own funds, the reporting system and proportionality.

At a glance

SCR reform implemented

The European Commission has specified new requirements for the SCR, a core element of the Solvency II framework and to this end published Delegated Regulation (EU) 2019/981 in the Official Journal of the European Union on 18 June 2019.

The amendment is based on the 2018 SCR review, which had as its main objective the simplification of the standard formula that undertakings use to calculate their SCR. In the context of this work, EIOPA took the initiative to submit a proposal on how the standard formula could in future take account of negative interest rates. Chief Executive Director Grund has always attached great importance to this aspect. Unlike the internal models, which insurers are also allowed to use to calculate their solvency capital requirement, the standard formula has to date not been able to take negative interest rates into account. That is why Grund believes it is only logical to change it in such a way that this aspect of interest rate reality can be accommodated in future.

The Commission accepted most of EIOPA's recommendations, which BaFin had also helped to formulate. It did not, however, accept the proposal on interest rate risk but asked EIOPA to revisit this item during the 2020 Solvency II review. BaFin still believes that an adjustment to the interest rate risk is urgently required and will continue to support the approach that EIOPA has developed.

BaFin closely involved
The European Insurance and Occupational Pensions Authority (EIOPA) has been and still is closely involved in the Solvency II review project. This means that BaFin is also part of this process: it is represented in all relevant working groups, where it campaigns for, among other things, comprehensive enhancements to the proportionality concept – especially with regard to the reporting requirements. Moreover, BaFin pursues the aim of amending the requirements for products with long-term guarantees in a way that more accurately reflects the associated risks.

Opportunity for fine-tuning
Dr Frank Grund, BaFin Chief Executive Director of Insurance and Pension Funds Supervision, regards the Solvency II review as an opportunity to fine-tune this tried and tested framework, which has improved the risk management of insurers: "Three points are of particular concern to me", he explained, "the standard formula, long-term business and the reporting system".

Among other things, in support of the concept of proportionality, EIOPA also argued in favour of introducing risk-based thresholds for reporting templates classified as non-central. Undertakings that fall below such a threshold are to be exempted from certain reporting requirements. This widens the group of undertakings that will benefit from possible relief measures following the Solvency II review and will make it easier for undertakings to know what to expect from supervisory practice.

10 MiFID II and MiFIR – two years on

In 2019, the second year after entering into force on 3 January 2018, the second Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR) continued to pose challenges for market participants and BaFin. It was not always easy to handle all the requirements appropriately and pragmatically – especially since issues of application and interpretation always have a European dimension. In order to find a solution that is acceptable in the long term, BaFin is cooperating closely with ESMA, other national competent authorities and the German stock exchange supervisory authorities. This cooperation is particularly significant given the review scheduled for 2020. This review process will take a closer look at some of the regulatory areas of MiFID II and MiFIR[30].

Two years after MiFID II and MiFIR entered into force, Elisabeth Roegele, Chief Executive Director of Securities Supervision and Asset Management, took stock: "Considering the large number and complexity of the new requirements, we can say that, in the vast majority of undertakings, the processes have been adopted much more seamlessly than we had hoped to expect." But it was not surprising either "that regulatory frameworks of such fundamental importance will require fine-tuning here and there". That was exactly the purpose of reviews.

Spotlight on share trading obligation
The MiFID II review provides an excellent opportunity to examine, for example, the obligation to trade shares in accordance with Article 23 of MiFIR. In principle, all shares admitted to trading on a regulated market in the EU or on another EU trading venue are subject to the share trading obligation (STO). This also applies to non-EU (third country) shares if they are traded on a trading venue in the EU.

Investment firms have to execute their trades in these third country shares via EU trading venues or systematic internalisers (SIs) within the EU. Trading on a third country trading venue is only allowed if the European Commission determines that the legal and regulatory framework in that country is equivalent to the regime under MiFID II and MiFIR. If not, the share trading obligation requires third country shares to be traded on an EU trading venue, even if liquidity is concentrated on a trading venue outside the EU.

As a result of the UK's exit from the EU as at 31 January 2020, the former EU member became a third country. For European investment firms to have continued access to UK trading venues, the European Commission would have to determine the equivalence of the trading venues. At the time of going to press, that had not happened. ESMA is planning transitional provisions for the period of transition during which no equivalence decision is available. Since the UK has its own STO, which is equivalent to that of the EU, investment firms with activities in both the UK and the EU may in future be subject to two STO regimes. To avoid a situation where individual shares are simultaneously subject to the EU's and the UK's STO, ESMA issued a statement on 29 May 2019 specifying that all securities with a "GB" International Securities

30 See chapter III.4 4.3.

Identification Number (ISIN) are to be exempt from the EU STO (ISIN-only approach). Securities with ISINs of any of the remaining 27 EU member states (EU27 ISINs) will, however, be subject to the EU STO. The ISIN-only approach is intended to enable investment firms to allocate the affected shares to the EU's or the UK's STO.

First adjustments to tick size regime

Amendments to the tick size regime of MiFID II entered into force in 2019 (see info box). Immediately after the directive went live on 3 January 2018, ESMA and the national competent authorities – in Germany these are BaFin and the stock exchange supervisory authorities of the federal states – made adjustments to the tick size regime.[31] Some of the adjustments now entered into force in 2019 by way of a delegated regulation.

Definition

Tick size

The tick size is the minimum price change that has to be taken into account when submitting orders or quotes in trading shares, certificates representing shares and exchange-traded funds (ETFs). The tick size depends on the order price and – except for ETFs – on the liquidity.

Background: There had been problems with shares traded in the EU whose highest liquidity was, however, on a trading venue in a third country, in most cases the home market of the shares. In these cases, it proved inappropriate to base the tick size on the shares' liquidity in the EU, which was significantly lower than in the home market. The fact that spreads were larger than in the home market caused liquidity to migrate from EU to third country trading venues.

To remedy these disadvantages of trading in third country shares, the national competent authorities throughout the EU coordinated their approach among each other as well as with ESMA. In 2018, ESMA submitted a proposal to the European Commission to amend the original delegated regulation. This amendment entered into force on 13 February 2019. The corresponding liquidity profile of the shares traded outside the EU can now be included in the calculation of the tick size – even during the course of the year.

Another adjustment to the tick size regime had already entered into force in 2018. It applied to institutions classified as significant institutions in the SSM. They had initially not been equivalent to the trading venues and had been exempt from the requirements of the tick size regime.

11 Bank levy in 2019

In 2019, institutions from Germany paid around €2 billion into the Single Resolution Fund (SRF, see info box). Germany's contribution (26%) was the second highest after France (31%). Germany's share of the SRF now stands at approximately €9 billion (27%). In total, the fund grew to €33 billion in 2019, thus reaching over half of its target volume of €60 billion.

Definition

Single Resolution Fund

Established as at 1 January 2016, the Single Resolution Fund (SRF) supports the Single Resolution Mechanism (SRM), allowing it, for example, to grant liquidity assistance under certain circumstances to an institution being resolved. The SRF is administered by the Single Resolution Board (SRB) and funded by the bank levy.

Bank levy

Since 2015, the bank levy has been calculated and levied under European regulations. Every member state of the banking union collects this levy from the institutions liable to pay contributions. Apart from the size of the institution, the risk profile as compared with other eurozone institutions plays an important part in the calculation of the bank levy. The bank levy therefore also reflects the many different business models.

The SRF is essential in ensuring the resolution mechanism functions properly. This was also highlighted by the Federal Constitutional Court in the above-mentioned fundamental decision on the banking union handed down in July 2019. "If there is a crisis, the SRF must be able to react quickly and forcefully", explained BaFin Chief Executive Director Dr Thorsten Pötzsch. That

31 See 2018 Annual Report, page 128.

would ensure the European resolution regime was responsive and inspire confidence in the markets. In this way, the SRF would be able to protect not only financial groups with cross-border operations, but also smaller institutions.

12 Cooperation with law enforcement agencies

12.1 Cum/ex

In what is probably one of the biggest tax scandals in Germany's more recent history, cum/ex trades (see info box) are said to have been used to rob taxpayers of several billions of euros. The aim of cum/ex trades is to get investment income tax that has been paid once to be refunded at least twice by the tax authorities.

Definition

Cum/ex trades

In cum/ex trades, short sales around the dividend record date were used to create the impression that investment income tax on the dividends paid had been withheld from the buyer of the shares and paid over to the authorities, even though that had in fact not happened. By getting a refund of the tax that had not been paid over, the parties involved made a profit, which they shared. Following a change in the law in 2012, transactions of this kind are no longer possible in Germany.

High-profile criminal proceedings in Bonn on cum/ex trades

The issue of cum/ex trades has drawn attention, especially since criminal proceedings commenced against two individuals involved in such trades before the Regional Court (*Landgericht*) of Bonn. In the judgement handed down on 18 March, the court sentenced one of the defendants to a suspended prison term of 1 year and 10 months. In addition, it was ordered that the proceeds of crime in an amount of €14 million be confiscated from the defendant. The other defendant was sentenced to a suspended prison term of 1 year. In relation to the remaining party to confiscation proceedings, it was ordered that the proceeds of crime in an amount of approximately €176 million be confiscated. An appeal against the judgement can be lodged in the Federal Court of Justice (*Bundesgerichtshof*). Clarification at high court level is expected to be provided by the Federal Court of Justice.

The Regional Court of Bonn is thus the first court to have ruled at all that cum/ex trades can constitute a serious tax evasion offence. The ruling settled years of dispute over the principle of whether such trades are merely morally reprehensible or punishable under criminal law. The charges involved 34 cases with a loss amount of more than €400 million. The ruling is considered a landmark for a large number of pending and future criminal proceedings.

The court also used its orally delivered opinion for general comments, making clear that at no time had there been a legal loophole. The law stated clearly and unambiguously under which circumstances tax would have to be refunded or a refund could be applied for. In the cases at hand, these circumstances had not applied. Likewise, to refer to the trades as taking advantage of market inefficiencies was "absolute nonsense". During the oral hearing, the court countered the argument that those kinds of trades had been common at the time: "If you join a circle of crooks, you cannot subsequently claim that you were surrounded by crooks and that everybody was doing it." On the other hand, the court acknowledged the help provided by the two defendants in investigating the matter, including with regard to other proceedings.

BaFin uses supervisory measures

What is BaFin's role in all this? BaFin is not a revenue or tax authority and does not have the power to investigate tax matters. Although BaFin's Central Legal Department deals with administrative offence proceedings; tax offences do not fall within its area of responsibility. Such matters are nevertheless highly significant to BaFin. If senior managers or employees of supervised undertakings play a part in tax offences, this may prompt BaFin to take supervisory measures.

The difficulty is that proof of a tax offence is exclusively a matter for the law enforcement agencies, and it can in some cases take years before a final sentence is handed down to the defendants. It is therefore often difficult for BaFin to assess whether the conduct of individuals or a violation of organisational requirements is sufficient grounds to justify severe supervisory measures. If, however, a court confiscates money from a bank as a way of asset forfeiture, this is always relevant to BaFin from a supervisory perspective. This is because it has to verify whether an institution holds the regulatory

minimum capital and appropriately handles risks at all times.

Important cooperation
For this reason, BaFin cooperates closely with law enforcement agencies, such as public prosecutor's offices, tax investigation authorities, the Federal Central Tax Office (*Bundeszentralamt für Steuern*) and the police. BaFin normally does this by making a notification in accordance with section 116 of the German Fiscal Code (*Abgabenordnung*) in response to a suspected tax offence, or by responding to a request for information and documentation from the law enforcement agencies. If BaFin needs to pass on information, it also always has to comply with its legal secrecy requirements.

However, until the currently applicable version entered into force in November 2015, BaFin's professional secrecy requirement, which is laid down in section 9 of the Banking Act, only provided for a notification in accordance with section 116 of the Fiscal Code if there was an "overriding public interest in the prosecution". This could only be considered as a possibility under the narrowly defined requirements of section 30 (4) no. 5 of the Fiscal Code. Only since the legislation was amended has BaFin – subject to the constraints of section 9 (5) of the Banking Act – been subject to the comprehensive notification requirement in accordance with section 116 of the Fiscal Code, which is comparable to that of other authorities.

13 Sanctions

In 2019, BaFin initiated a total of 319 administrative fine proceedings[32] (see info box on page 41).[33] The proceedings related to natural persons, payment agents, credit institutions, insurance undertakings, payment institutions and institutions engaged in finance leasing and/or factoring[34], and, where applicable, also against their responsible persons. They were triggered by violations of provisions subject to an administrative fine laid down in the following German acts: Money Laundering Act, Banking Act, Insurance Supervision Act (*Versicherungsaufsichtsgesetz*), Capital Investment Act (*Vermögensanlagengesetz*), Securities Trading Act (*Wertpapierhandelsgesetz*), Securities Prospectus Act (*Wertpapierprospektgesetz*) and Payment Services Supervision Act.

Definition

Measures or sanctions?

BaFin has a large number of measures at its disposal to protect the integrity of the financial market and collective consumer interests, which are defined in various specialised pieces of legislation. This catalogue of measures enables BaFin to take action against both legal entities, i.e. undertakings, and natural persons. In addition to classic measures under supervisory law, BaFin can, however, also pursue breaches of the law – by imposing administrative fines.

The two options for taking action differ in terms of their objectives. Supervisory measures are intended to avert threats. They should be seen as preventive administrative actions that do not necessarily have to be prompted by a legal violation. Administrative fines, by contrast, are sanctions, i.e. repressive administrative action. They are referred to as repressive, because the intention of laws dealing with breaches of administrative regulations is to sanction breaches of the law by imposing fines. Another purpose is to persuade the perpetrators to comply with the legal provisions in future.

Amount of the administrative fines
Administrative fines totalling **€9,625,900** were imposed across all of BaFin's sectors in 2019 (see info box).

At a glance

Administrative fines imposed by BaFin

In 2019, BaFin imposed administrative fines totalling **€9,625,900**.

- Administrative fines totalling **€125,900** were attributable to Banking Supervision, Prevention of Money Laundering and Insurance Supervision.
- The Securities Supervision/Asset Management Directorate imposed a total of **€9,500,000** in administrative fines.

32 Proceedings under the German Act on Breaches of Administrative Regulations (*Ordnungswidrigkeitengesetz*).
33 For information on the distinction between sanctions and measures, see info box and 2016 Annual Report, page 55 ff.
34 Section 1 (1a) sentence 2 nos. 9 and 10 of the Banking Act.

At a glance

New administrative fine proceedings initiated by BaFin

BaFin initiated 319 administrative fine proceedings in 2019.

- 77 of them were attributable to Banking Supervision, Prevention of Money Laundering and Insurance Supervision[35].
- 242[36] were attributable to the Securities Supervision/Asset Management Sector.

Administrative fine proceedings initiated by Securities Supervision

In 2019, BaFin's Securities Supervision/Asset Management Sector imposed administrative fines totalling €9.5 million[37] for violations of capital markets law[38] (see info box). A total of 682 proceedings were pending from the previous year, and 242 new proceedings[39] were initiated by the Sector. It concluded a total of 407 proceedings, 98 of them by imposing an administrative fine. This translates into a prosecution ratio of 24 %.[40]

Administrative fine proceedings initiated by Banking and Insurance Supervision

In the area of supervision of undertakings[41], BaFin in 2019 initiated 77 proceedings[42] relating to violations of provisions of the Money Laundering Act, the Payment Services Supervision Act, the Banking Act and the Insurance Supervision Act that are punishable by a fine against legal entities, including credit institutions, insurance undertakings, payment institutions and institutions that engage in finance leasing and/or factoring. They also involved proceedings against management personnel of the undertakings concerned, such as managing directors and money laundering officers, as well as against other natural persons who are subject to professional supervision requirements.[43] BaFin issued 23 administrative orders imposing a fine in these proceedings and other administrative fine proceedings pending from previous years.

10 of these administrative orders imposing a fine became final in 2019 because no appeal was lodged. One appeal pending from the previous year was withdrawn.

In another case, the decision of the court of first instance was overturned by the Higher Regional Court (*Oberlandesgericht*) of Frankfurt am Main following an appeal by the party concerned and the interested parties; the case was referred back to the Local Court (*Amtsgericht*) of Frankfurt am Main, which then ordered the confiscation of an amount of €50,000 from the parties concerned.

BaFin[44] issued 11 administrative orders imposing fines against agents within the meaning of section 1 (9) of the Payment Services Supervision Act in the year under review. Out of this total, 10 administrative orders imposing a fine became final in 2019, including 4 in a preliminary hearing following an ordinary appeal. Due to appeals lodged in the previous year, another 3 administrative orders imposing a fine were the subject of decisions in the first instance by the Local Court of Frankfurt am Main, which fully upheld the administrative orders imposing a fine on their merits.

Another 2 appeals from the previous year were dealt with by way of dismissal notice or withdrawal of the appeal. At the time of going to press, another case of administrative fine proceedings against an agent was pending a preliminary hearing following a permissible appeal.

A total of 47 proceedings were discontinued in 2019, including some still pending from previous years, 10 of them for discretionary reasons.[45] 37 proceedings were terminated in other ways, for example by discontinuing proceedings in accordance with section 46 (1) of the Act on Breaches of Administrative Regulations, normally in

35 These proceedings were initiated by the Internal Administration and Legal Affairs Sector. Since the beginning of 2018, Prevention of Money Laundering has come under the Resolution Sector.
36 These include the figures stated in chapter III.3 3.6.
37 The total includes the administrative fines stated in chapter III.3 3.6.
38 This total includes violations of the Securities Trading Act, the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) and the Capital Investment Act. In 2018, 5 new proceedings were initiated in this segment.
39 These include the figures stated in chapter III.3 3.6.
40 The statistical data include the administrative fine proceedings stated in chapter III.3 3.6.
41 These proceedings were initiated by the Internal Administration and Legal Affairs Sector. For a summary of administrative fine proceedings from the area of market supervision, see page 113.
42 Proceedings in accordance with the Act on Breaches of Administrative Regulations.
43 Or against their responsible persons.
44 These proceedings were initiated by the Internal Administration and Legal Affairs Sector.
45 Section 47 (1) of the Act on Breaches of Administrative Regulations.

conjunction with section 170 (2) of the German Code of Criminal Procedure (*Strafprozessordnung*).

Amount of the administrative fines

BaFin imposed a total of 69 individual administrative fines relating to violations of provisions of the Money Laundering Act, the Banking Act and the Payment Services Supervision Act in 2019; they amounted to €125,900 in total. The fines were imposed on credit institutions, insurance undertakings, payment institutions and institutions engaged in finance leasing and/or factoring, and – depending on the specific facts of the case – also against their responsible persons.

Compared to previous years[46], the total amount of administrative fines was lower because in 2019 BaFin put the focus of its prosecution practice on pursuing administrative offences at institutions rather than at agents. In 2019, BaFin initiated 110% more proceedings against institutions than in 2018. Compared with proceedings against agents, the investigative work is significantly more complex and the proceedings therefore take longer. Furthermore, two investigations were launched in 2019 that turned out to be very comprehensive. The scale of evidence generated during the investigations far exceeded the average. The evidence was still being examined at the time of going to press.

Other comprehensive and time-consuming proceedings were the issue of two confiscation orders against a credit institution and a payment institution, where BaFin determined the economic benefit obtained from the administrative offence at a total amount of €90,000. Since then, BaFin has used the insights gained in these proceedings in its prosecution practice.

46 See, among others, 2018 Annual Report, page 50 and 2017 Annual Report, page 56.

14 Timeline of important events in 2019

January	▪ On 15 January 2019, BaFin forms the **Intensified Supervision division** within Banking Supervision.
February	▪ On 11 February 2019, the European Commission issues a **call for advice** to the European Insurance and Occupational Pensions Authority (EIOPA), requesting the review of certain aspects of the Solvency II framework (Solvency II Review 2020). Responses to this call for advice must be submitted by 30 June 2020. BaFin is involved in this work.
March	▪ On 20 March 2019, BaFin adds a special module on critical infrastructures (KRITIS) to its Supervisory Requirements for IT in Insurance Undertakings (*Versicherungsaufsichtliche Anforderungen an die IT* – **VAIT**).
April	▪ On 16 April 2019, BaFin publishes **Circular** 3/2019 (BA). In doing so, it adopts into its administrative practice the guidelines of the European Banking Authority (EBA) on the **Definition of default and estimation of risk parameters**. ▪ The Second Regulation Amending the Remuneration Regulation for Institutions (*Institutsvergütungsverordnung* – **InstitutsVergV**) enters into force on 26 April 2019.
May	▪ On 2 May 2019, BaFin publishes its guidance notice on the **treatment of certain liabilities** of CRR credit institutions **under insolvency law**. ▪ On 9 May 2019, BaFin hosts its inaugural "**Sustainable Finance**" conference. Approximately 350 participants from supervised undertakings, industry associations, non-governmental organisations, public administrations and academia exchanged views with BaFin concerning the financial risks as well as the opportunities afforded by climate change and other ecological and social changes. On that same day, BaFin also publishes an issue of its **BaFinPerspectives** series on that topic. It is available at www.bafin.de.
June	▪ On 6 June 2019, the federal government's **Sustainable Finance Advisory Board** meets for the first time. BaFin participates as an observer. ▪ Regulation (EU) No 2019/834 (**EMIR REFIT**) enters into force on 17 June 2019. This Regulation introduces certain improvements to the European Market Infrastructure Regulation (EMIR). For instance, the clearing obligation in particular no longer applies to small financial counterparties. In addition, the reporting of derivatives transactions is less complex for companies operating in the real economy. ▪ On 28 June 2019, the Regulation on Information Obligations pursuant to the German Insurance Supervision Act (*VAG-Informationspflichtenverordnung* – **VAG-InfoV**) enters into force. It specifies in greater detail the information obligations of institutions for occupational retirement provision (IORP) vis-à-vis current and future beneficiaries. ▪ The **European banking package** enters into force on 27 June 2019. It contains amendments to the CRR and the Capital Requirements Directive IV (CRD IV) as well as to the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR). The amendment to the CRD V removed further German development banks from the scope of application of the CRD. BaFin is now responsible for the supervision of three development banks previously classified as "significant institutions" (Landwirtschaftliche Rentenbank, NRW.BANK and L-Bank). The European Central Bank (ECB) is no longer responsible for indirectly supervising nine state development banks previously classified as "less significant institutions".

July	▪ With effect from 1 July 2019, the domestic **countercyclical capital buffer** is raised to 0.25 % – a first, as the buffer had previously always been nil. ▪ On 1 July 2019, BaFin prohibits the marketing, distribution and sale of **binary options** to retail investors. ▪ In its Circular 4/2019 (BA) setting out the detailed criteria for simple, transparent and standardised securitisations (**STS**), BaFin adopts the relevant standards of the EBA into its administrative practice with effect from 1 July 2019. ▪ On 4 July 2019, BaFin publishes its Circular 05/2019 on the minimum requirements for implementing a bail-in (*Mindestanforderungen zur Umsetzbarkeit eines Bail-in* – **MaBail-in**). ▪ **Delegated Regulation (EU) 2019/981** enters into force on 8 July 2019. It amends Delegated Regulation (EU) 2015/35 and simplifies in particular the standard formula for calculating the solvency capital requirement (SCR). ▪ On 15 July 2019, German legislators promulgate the **German Act Implementing Further Aspects of the EU Prospectus Regulation and Amending Financial Market Laws** (*Gesetz zur weiteren Ausführung der EU-Prospektverordnung und zur Änderung von Finanzmarktgesetzen*). As a result, the German Securities Prospectus Act (*Wertpapierprospektgesetz* – WpPG) is amended to reflect the new Prospectus Regulation (EU) 2017/1129, which fully entered into force on 21 July 2019. The Act clarifies, among other things, that the rescission, termination or cancellation of a profit and loss transfer agreement must also be approved by BaFin before it is allowed to take effect if a primary insurer is involved. ▪ On 23 July 2019, BaFin prohibits the marketing, distribution and sale of contracts for difference (**CFDs**) to retail clients. CFDs may only be offered to retail clients if certain investor protection standards are complied with. ▪ In its decision dated 30 July 2019, Germany's Federal Constitutional Court (*Bundesverfassungsgericht* – **BVerfG**) rules on the constitutional complaints regarding the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). It holds that under a strict interpretation, the provisions regarding the European Banking Union are not in violation of competences. In addition, the Court also emphasises that the national authorities continue to act on the basis of their own national sovereignty.
August	▪ On 12 August 2019, BaFin publishes Circular 06/2019 (BA) – **Interest rate risks in the banking book**. ▪ On 12 August 2019, BaFin publishes an information sheet on **settlement procedures in cases concerning administrative fines**. ▪ On 16 August 2019, BaFin Circular 07/2019 on minimum requirements for the safe custody business (**MaDepot**) is published, providing investment firms with an overview of supervisory provisions regarding duties of conduct and organisation in the safe custody business. ▪ On 20 August 2019, BaFin publishes Circular 12/2019 (A) concerning the determination of the **minimum amount of own funds and eligible liabilities** for institutions for which the implementation of insolvency proceedings as a resolution strategy is credible and feasible. ▪ On 30 August 2019, BaFin issues its Circular 9/2019 (A) on the reporting of information for resolution planning (*Meldung von Informationen für die Abwicklungsplanung* – **MIA**).

September	▪ On 11 September 2019, BaFin approves the securities prospectus for TeamViewer AG and thus **the first prospectus** for an initial public offering after the entry into effect of the new Prospectus Regulation (EU) 2017/1129 and the Delegated Regulation (EU) 2019/980. ▪ On 14 September 2019 the transition period for Delegated Regulation (EU) 2018/389 on the Second Payment Service Directive (PSD 2) ends. Henceforth, **strong customer authentication** is mandatory in particular to initiate electronic payments. ▪ On 23 September 2019, BaFin and Deutsche Bundesbank publish in a joint press conference the **results of the 2019 LSI stress tests** and the surveys on real estate financing and credit standards in the field of corporate financing. The less significant institutions (LSIs) which are directly supervised by BaFin took part. ▪ On 24 September 2019, BaFin, the Financial Intelligence Unit (FIU), the Federal Criminal Police Office (*Bundeskriminalamt*) and 14 banks inaugurate the **Anti Financial Crime Alliance** (AFCA). As a public-private partnership, the authorities and banks, led by the FIU, seek to strengthen and coordinate the fight against money laundering and terrorist financing.
October	▪ On 2 October 2019, BaFin publishes a Circular on the Supervisory Requirements for IT in Asset Management Companies (*Kapitalverwaltungsaufsichtlichen Anforderungen an die IT* – **KAIT**). ▪ On 7 October 2019, BaFin announces that it will **not implement** the EBA's **guidelines** on the disclosure of the liquidity coverage ratio (GL/2017/01). It withdraws a draft circular in that connection (Consultation 14/2018). ▪ On 11 October 2019, BaFin meets with high-level representatives of the German Banking Industry Committee and representatives from four major payment initiation and account information service providers. A joint declaration regarding the quickest-possible **migration to PSD-2-compatible account access interfaces** is formulated. ▪ On 21 October 2019, the Federal Ministry of Finance (*Bundesministerium der Finanzen* – BMF) publishes the first **national risk assessment (NRA) for the purposes of combating money laundering** and terrorist financing. In it, Germany's risk of being abused for money laundering and terrorist financing is classified as medium- high, corresponding to level 4 on the five-level scale from low to high.
November	▪ On 8 November 2019, BaFin publishes Circular 13/2019 (BA) regarding the Definition of high-risk **exposure types** pursuant to Article 128(3) of the Capital Requirements Regulation. ▪ On 14 November 2019, BaFin participates in the ECB's first **SSM financial conglomerates college**. This college is conducted for a German systemically important group of institutions with the participation of various supervisory pillars of BaFin, ESAs and the Bundesbank. ▪ On 28 November 2019, the European General Court rules that the decision taken by the Single Resolution Board (SRB) concerning the calculation of ex ante contributions to the Single Resolution Fund (**SRF**) for the year 2016 is null and void due to violations of form and procedural rules (form, procedure, transparency of grounds) as it relates to Portigon AG.

December	■ In December, BaFin and other resolution authorities in Europe set for the first time **individual MREL targets** – in addition to the consolidated MREL decisions. MREL stands for Minimum Requirement for Own Funds and Eligible Liabilities. ■ On 17 December 2019, EIOPA publishes the results of the Europe-wide **stress tests for institutions for occupational retirement provision (IORPs)**. The results of the stress test confirm BaFin's assessment that a continuation of the low interest rate environment would represent an enormous challenge for the IORPs. ■ On 20 December 2019, BaFin publishes the final version of its Guidance Notice on dealing with **sustainability risks**, which it had previously submitted for public consultation. BaFin issued the Guidance Notice with the objective of providing the supervised undertakings with guidance on dealing with sustainability risks. ■ On 25 December 2019, Regulation (EU) 2019/2033 **Investment Firms Regulation** (IFR) and Directive (EU) 2019/2034 **Investment Firms Directive** (IFD) enter into force. These prudential rules are aimed at creating more risk-adequate, better tailored supervisory requirements for investment firms. Previously, the investment firms were subject to the same requirements that applied to credit institutions. The IFR is applicable starting on 21 June 2021; the IFD must be transposed into German law by that date.

II

BaFin’s international role

1 Bilateral and multilateral cooperation

BaFin works closely together with supervisory authorities in other countries. It is also represented in numerous European and international organisations and working groups concerned with issues relating to supervision, resolution and regulation.

MoUs and technical cooperation
BaFin again agreed memoranda of understanding (MoUs) relating to cooperation with foreign supervisory authorities in 2019. These included MoUs with the Japan Financial Services Agency (JFSA), the Prudential Regulatory Authority (PRA) and Financial Conduct Authority (FCA) in the United Kingdom, the China Banking and Insurance Regulatory Commission (CBIRC) and the Ontario Securities Commission (OSC) in Canada.

As part of its technical cooperation activities, BaFin invited 35 colleagues, mainly from Africa and Asia, to a seminar covering all sectors. It also provided numerous delegations with information about international supervisory standards.

As a member of the European Supervisor Education Initiative (ESE), BaFin also hosted two specialist seminars. They focused on the issues of consumer protection and the management of IT and cyber risks.

BaFin also continued its work on the EU twinning project with Montenegro in 2019. As the project leader, BaFin together with the supervisory authorities of Croatia and the Netherlands as well as the Deutsche Bundesbank is assisting the country in bringing its regulatory standards into line with EU law.

Multilateral cooperation
Cross-border cooperation between the supervisory authorities mostly takes place within the European and international supervisory organisations and standard-setting bodies. In 2019, BaFin was a member of more than 600 groups of this type – some of which are or were of a temporary nature.

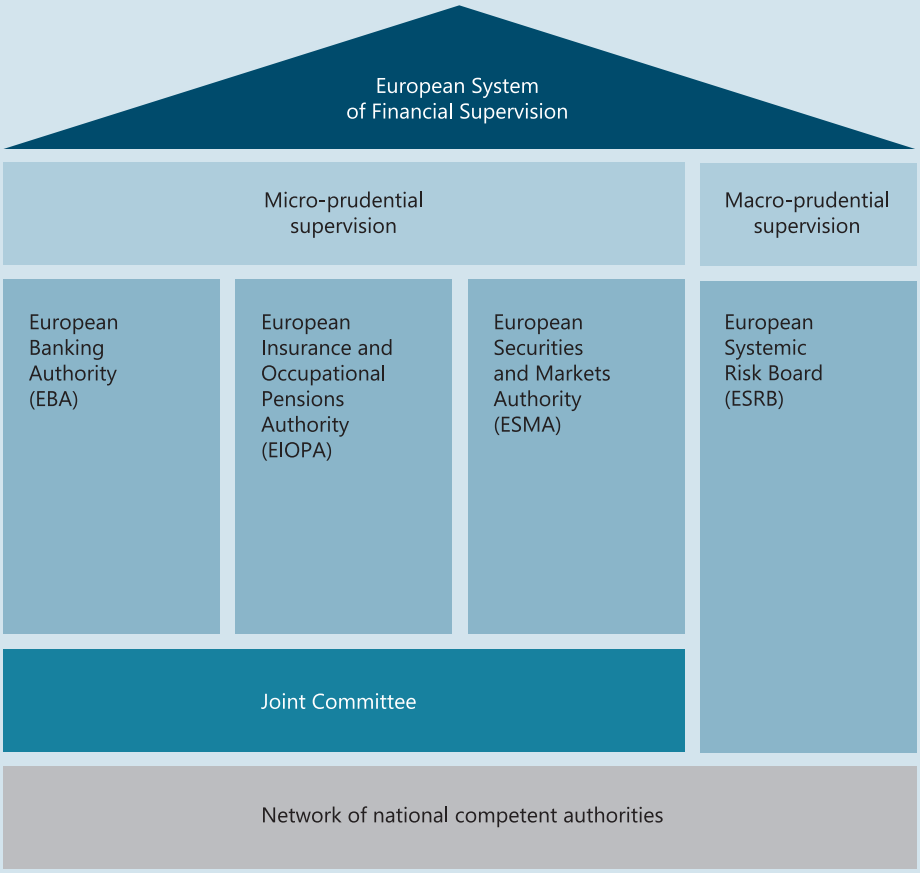
2 Work of the three ESAs

In 2019, the three European Supervisory Authorities were working intensively on the preparations for the forthcoming Brexit, the developments towards a sustainable financial system and the strengthening of

BaFin in the European System of Financial Supervision

BaFin is an active participant in the European System of Financial Supervision (ESFS) established at the start of 2011 (see Figure 1).

Figure 1: European System of Financial Supervision



The three European Supervisory Authorities (ESAs) are responsible for preparing technical standards for the EU Commission on the basis of EU Regulations and Directives (Level 2 of the European legislative process, see Figure 2). The ESAs also publish their own guidelines and recommendations (Level 3).

Figure 2: Role of the ESAs in the EU legislative process

A further central responsibility of the ESAs consists of ensuring that the national competent authorities apply these provisions on a convergent basis. Despite their name, however, the ESAs are not supervisory authorities – apart from a few closely defined exceptions. The Joint Committee works on topics which are significant across all sectors. The ESAs and the Joint Committee operate at a micro-prudential level, i.e. their primary function is to monitor whether individual undertakings are complying with quantitative and qualitative requirements.

The European Systemic Risk Board (ESRB) within the European Central Bank (ECB) is responsible for macro-prudential matters. It is tasked with identifying systemic risks for the European financial system and issuing warnings at an early stage. The micro- and macro-prudential levels are closely interlinked to ensure that there is a two-way flow of information between them.

BaFin in the banking union

Within the framework of the European banking union, BaFin forms part of the Single Supervisory Mechanism (SSM) and of the Single Resolution Mechanism (SRM). Information on the two areas can be found on page 134.

BaFin in global organisations

BaFin is also a member of a number of global bodies, for example

- the International Organization of Securities Commissions (IOSCO),
- the International Association of Insurance Supervisors (IAIS)
- and the Basel Committee on Banking Supervision (BCBS). BaFin is also represented in its supervisory body, the Group of Governors and Heads of Supervision (GHOS).

BaFin collaborates in these international associations on the development of global regulatory standards. In addition, BaFin is involved, for example, in the Financial Action Task Force (FATF) and the Islamic Financial Services Board (IFSB). BaFin is also represented in the Financial Stability Board (FSB). As part of the regulatory reforms after the outbreak of the global financial crisis, the G20 Heads of State and Government gave the FSB a wide-ranging mandate: among other things, its remit includes monitoring the international financial system. If it discovers weak points in the course of its work, it is expected to develop proposals on how they should be eliminated. The FSB is also responsible for coordinating and promoting cooperation and the exchange of information between its members.

supervisory convergence. Work on the implementation of Basel III and the revision of the Solvency II framework[1] represented further priority areas in 2019 for the EBA and EIOPA, respectively. ESMA was concerned with the topics of investor protection, financial innovations, the consistent use of supervisory data, crypto assets and the supervision of central counterparties.

1 See chapter I 9.

2.1 Pan-European Personal Pension Product

Following lengthy negotiations, the European Parliament and the European Council agreed on a compromise text for a Pan-European Personal Pension Product (PEPP) in mid-2019. The related PEPP Regulation was adopted in the summer of 2019.

However, the PEPP project has not yet been finally completed, since there is still much work to do at Level 2 of the European legislative process. As a result, the task EIOPA has been dealing with since 2019 is quite considerable: the agenda includes the preparation of a key information document (KID) for the PEPP, for

example. It also includes detailed work on the provisions for a cost cap for the basic PEPP and the technical methods necessary to reduce risk. For the Level 2 work referred to, moreover, it is important to ensure that a level playing field applies to the various potential providers and also to the products.

2.2 Net returns and product performance for retail investors

At the end of 2017, the European Commission instructed the EBA, EIOPA and ESMA to report annually on the costs (product and selling costs) and net returns of financial products for retail investors. This applies to UCITS funds[2], all packaged retail and insurance-based investment products (PRIIPs) and, in the medium term, all pension products. The objective of the EU Commission in doing so is to create transparency in particular for price differences in national markets and to promote competition in retail client markets.

The mandate lays the foundations for an EU-wide detailed market analysis and statistics on the product offering for retail investors. This mandate has now also been strengthened by the revised Article 9(1) of the regulations establishing the EBA, ESMA and EIOPA. This explicitly authorises the three ESAs to conduct analyses of consumer trends with respect to developments in costs and charges.

The ESAs submitted their initial pilot reports at the start of 2019. This showed that in some cases an analysis of the costs and past returns of financial products can only be carried out by means of comprehensive surveys of the undertakings supervised. The reason for this is that the data required are not routinely requested in the context of financial supervision and are not always available publicly or via data providers.

ESMA focus
ESMA therefore concentrated its initial research on the funds market in particular. It found that, despite a European legal framework that is largely harmonised, in some cases there were substantial variations in the costs for funds in the EU member states. These differences can be explained only partly by different asset classes and types of funds. On average, costs reduce the return by 25 %. The ongoing charges in turn represent 80 % of total costs. Research into alternative investment funds and structured products was focused in particular on an analysis of the size and composition of the retail client markets. But these markets are distinctly lacking in transparency across the EU due to insufficient of data.

EBA focus
The EBA's analysis for 2019 was devoted to the market for structured deposits. Given the lack of market data, the report concentrated on examining the existing disclosure requirements. Overall, the European market for structured deposits has shrunk significantly due to the low level of interest rates.

EIOPA focus
EIOPA developed its own methodology for gathering data on endowment insurance and private pension insurance, including Riester and Rürup pension insurance. The data were collected by surveying a sample of supervised insurance undertakings; in doing so, EIOPA made use of the disclosures in the PRIIPs key information document. The analysis showed that costs are heavily dependent on four factors, namely the specific type of contract, the insurance premium, the risk class of the product and the national market. It was therefore not possible to aggregate the data across the different national markets. The products included in the sample covered contractual terms from 8 to 40 years. EIOPA concentrated on the unit-linked life insurance asset class and generated results which agreed with the ESMA findings.

In BaFin's opinion, the ESAs' reports on the net returns and costs of financial products for retail investors will come to be an important management tool for recommendations and measures in the retail market.

3 Work of the global standard setters

3.1 IAIS concludes long-standing major projects

2019 represents a milestone for the International Association of Insurance Supervisors (IAIS). At its annual general meeting in Abu Dhabi in November 2019, the IAIS completed a number of projects. The reform agenda, launched as a response to the global financial crisis, among other things, is therefore largely concluded.

2 UCITS funds are funds that meet the requirements of the UCITS Directive (Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)).

ICPs as the basis

As the standard setter for the insurance sector, the IAIS is primarily concerned with the question of what minimum standards should apply internationally for the supervision of insurance undertakings. The IAIS lays down these minimum standards in the Insurance Core Principles (ICPs). The standards are supported by guidance. In total, there are now 25 ICPs. With the exception of two ICPs[3], they were revised between 2012 and the end of 2019. Figure 3 provides an overview of all the regulatory frameworks of the IAIS.

In recent years, the IAIS has made great efforts in joint working groups with members of staff from various authorities such as BaFin to develop the ICPs further and adapt them to present-day challenges. Feedback from public consultation exercises has also been taken into account. Noteworthy aspects of this include collaboration in supervisory colleges (ICP 25) or the fundamental revision of the procedures for use in a resolution (ICP 12). Taken together, the ICPs now form a coherent body of standards. They therefore help to promote safe insurance markets worldwide in the interests of the policyholders.

3 They are ICP 14 Valuation and ICP 17 Capital Adequacy. Because they are linked to the International Capital Standard (ICS), both of these will not be dealt with until a later date.

ComFrame as a risk-based supplement for selected insurance groups

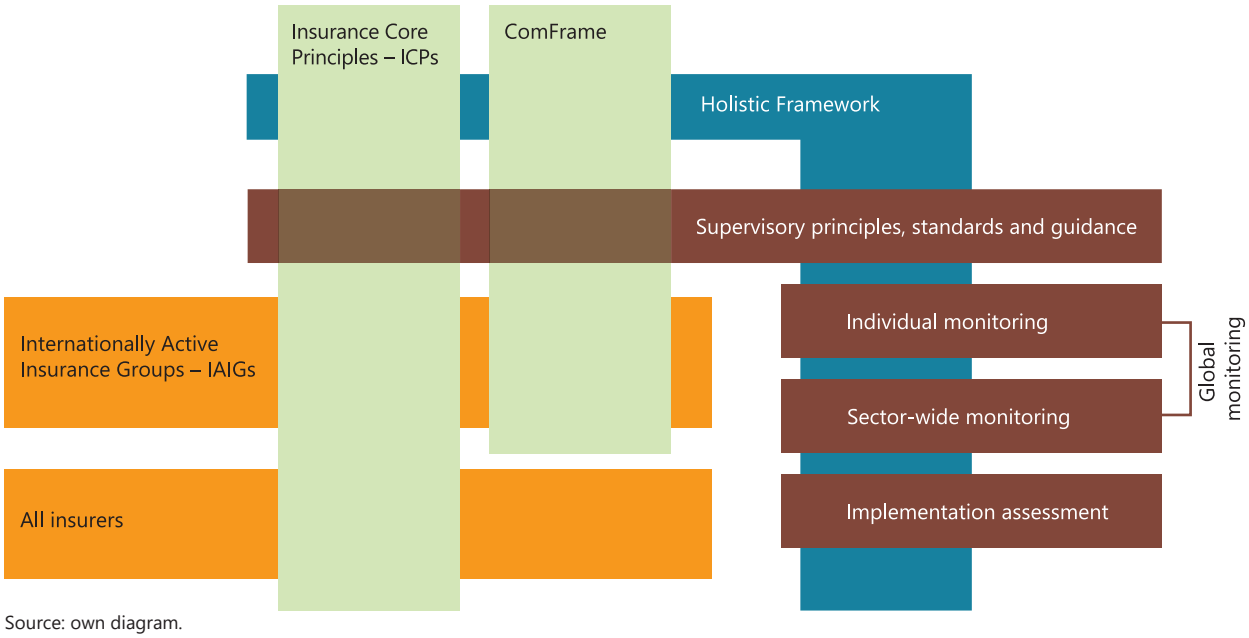
Large insurance groups do not restrict their operations to the insurance market of a single country but position themselves on a global basis. To enable these internationally active groups of undertakings to be supervised more effectively, in 2010 the IAIS began to develop supplements to the ICPs. Following intensive discussions and multiple consultation exercises, the IAIS has now adopted the Common Framework (ComFrame) for the supervision of large internationally active insurance groups (IAIGs) in November 2019.

ComFrame describes the requirements of the IAIS going beyond the ICPs: for example, group supervisors of IAIGs should, as a rule, require them to produce a recovery plan, whereas supervisors of an insurance undertaking subject to ICPs have scope for discretion. ComFrame defines in CF 23.0.a which insurance groups should be identified by supervisors as IAIGs. The criteria are met in Germany by Allianz, Munich Re and HDI.

A global capital standard for IAIGs

In the course of implementing ComFrame, the IAIS also adopted the global Insurance Capital Standard (ICS) for IAIGs in November 2019. However, there will be an initial five-year monitoring period for this standard starting in 2020. The ICS will be integrated into ComFrame from 2025, which will make ComFrame a fully-fledged framework. The ICS represents a major step forward: it views the solvency of a group on the basis of a consolidated calculation. At the same time, the ICS is

Figure 3: IAIS regulatory frameworks



Source: own diagram.

based on market-adjusted valuation, which had already been resolved in 2017 in the Kuala Lumpur Agreement[4]. The USA are working in parallel on their own calculation approach, the aggregation method.

During the five-year monitoring period, it is intended that as many IAIGs as possible will report to their group supervisors using the ICS – based on the standard method. The findings will then be discussed in the supervisory colleges, although they will focus solely on the workings of the ICS. The IAIS will analyse the results in parallel and, where necessary, propose amendments. Internal models – an important element of the management of undertakings and calculation of capital requirements under the European Solvency II regulatory regime – will continue to be researched during the monitoring period. A concluding review will determine whether their use is comparable to the standard method. The same will also apply to the USA's aggregation method mentioned above.

Viewing systemic risk through a wide-angle lens

In 2013, the IAIS adopted a framework for global systemically important insurers (G-SIIs) as a reaction to the financial crisis. In addition to the identification of G-SIIs by the Financial Stability Board (FSB), the G-SII framework also includes a package of supervisory measures.

Since 2016, the IAIS has been working on developing this approach further towards a Holistic Framework. It successfully completed this project in 2019. The Holistic Framework supplements the existing perspective based on individual institutions with a sector-wide perspective on selected activities or exposures. BaFin had already suggested such an approach, capable of identifying potential systemic risks more comprehensively, in 2015.[5]

In addition to its considerations on monitoring, the IAIS has also been investigating since 2016 the extent to which elements that help to counter possible risks for financial stability must also be integrated into ICPs or ComFrame. The IAIS has amended or added to a number of standards with this objective. Always applying the principle of proportionality, a more broadly defined group of undertakings is now expected to address the issue of systemic risk.

The Holistic Framework has been in force since the start of 2020. The IAIS will review by the end of 2022 whether its members have implemented the framework and what practical experience it has been able to accumulate during this phase. The review will also form the basis for the decision by the FSB in 2022 whether the temporary suspension of the identification of G-SIIs from 2020 should be continued for the time being, or whether it should be reversed.

What now?

By joining the IAIS, all of its members, i.e. including BaFin, commit themselves to implementing the standards it adopts at national level and to supervising their own insurance markets accordingly. This forms the basis for global convergence and is also recognised by the International Monetary Fund (IMF), which includes the ICPs in its Financial Sector Assessment Program (FSAP). The IAIS members are pursuing a common objective of using its standards to ensure safe insurance markets, contribute to financial stability and prevent regulatory arbitrage. Consequently, the IAIS will also be able to play a leading role in national implementation in its members' countries, for example with training material or forums for the mutual exchange of information between supervisors. In addition, it will contribute to the achievement of these objectives by means of its own audits of the implementation status of the standards.

The Application Papers have a special role in the transition from the creation of new standards to their implementation. They provide supervisors with examples of how the standards in ICPs and ComFrame can be complied with, without formulating binding or new requirements themselves. The IAIS is increasing its efforts to translate the standards into examples related to supervisors' daily work using a range of Application Papers. BaFin welcomes this change of focus and supports the initiative.

Since 2016, BaFin has been supervising the undertakings and groups in Germany on the basis of Solvency II, as have all other supervisors in the European Union. The IAIS standards are global minimum standards which are essentially covered by European regulations – such as those derived from Solvency II. On the other hand, elements of the international discussion are also being taken up and integrated into the European framework in the context of the further development of Solvency II.

4 See 2018 Annual Report, page 101, and BaFinJournal November 2017, page 12 (only available in German).

5 See Hufeld, A Regulatory Framework for Systemic Risk in the Insurance Industry. In: Hufeld, Felix; Koijen, Ralph S. J.; Thimann, Christian: The Economics, Regulation, and Systemic Risk of Insurance Markets, Oxford University Press, October 2016.

3.2 Basel Committee on Banking Supervision

The Basel Committee on Banking Supervision (BCBS) devoted 2019 to consolidating the Basel Framework, monitoring its implementation and dealing with issues of proportionality, among other things.

The Committee presented a consolidated version of its Framework for the first time which enables all regulations currently in force to be consulted, but at the same time displays all the stages of development from Basel I to Basel III. Its work in 2019 also included resolving outstanding points and, for example, modifying the provisions on the leverage ratio and the credit valuation adjustment.

The discussion on the treatment of loans to governments, non-central government bodies and public-sector entities ended with a recommendation to disclose such exposures voluntarily. The Committee also identified individual elements of its Framework that credit institutions could use for the purposes of arbitrage and window dressing, and considered how these gaps could be closed.

With respect to implementation, the Committee in 2019 also reviewed the national regulations on large exposures and the NSFR[6] in Argentina, Australia, Brazil, China, India and Canada. On the whole, all of the states and associations of states reviewed have introduced national regulations that are equivalent to the Basel provisions. A few non-material divergences were identified. But that did not require a downgrading of the fundamentally positive assessment of the status of implementation.

Together with the Basel Consultative Group, a forum for countries that are not members of the Basel Committee, the Committee discussed principles for the proportional application of the Basel Framework. This primarily involves a modified application of the Basel Framework in non-BCBS member jurisdictions with mainly small and medium-sized banks that are not internationally active. In addition, when developing future standards, the Basel Committee will place greater emphasis on provisions that can be complied with proportionally in relation to the size, complexity and internationality of the institutions.

3.3 IOSCO: focus on five priority areas

The International Organization of Securities Commissions (IOSCO), the leading global standard setter for securities supervision, worked on five topics as priority areas in 2019: crypto tokens, artificial intelligence and machine learning, passive investment strategies and index providers, sales to retail clients, digitalisation, and market fragmentation. In 2020, IOSCO will continue its work on these topics and investigate the impact of the low interest rate environment on corporate financing as a further priority.

IOSCO also published a number of reports in 2019, including a report on good practices for the audit of annual financial statements in January, for example.[7] IOSCO also took up current issues at short notice. For example, an evaluation by IOSCO's Fintech Network in November indicated that stablecoins may contain elements and have characteristics that are typical features of regulated securities. Depending on their structure, IOSCO's Principles and Standards, as well as national laws on disclosure, registration, reporting and liability, also apply to stablecoins such as Libra. BaFin was actively involved in the evaluation by IOSCO's Fintech Network.

3.4 FSB

The implementation of the regulatory reforms initiated by the G20 Heads of State and Government following the collapse of Lehman Brothers was once again a central topic for the Financial Stability Board (FSB) in 2019. BaFin collaborated on the report entitled "Implementation and Effects of the G20 Financial Regulatory Reforms" that the FSB issues each year on this subject. The passages on other reform areas were produced by an FSB working group chaired by BaFin. In addition to other issues, these included the further distribution of the Legal Entity Identifier (LEI), which allocates a unique 20-character code to every legal entity in the financial market, such as banks or funds. Among other benefits, this will enable supervisory authorities to clearly allocate transactions executed in the capital markets to individual legal entities. This will lead to the improved recording and monitoring of risks to which legal entities are exposed. Interest rate benchmarks such as LIBOR or EURIBOR were another topic addressed by the working group. Many contracts between financial market participants are linked to these

6 NSFR stands for Net Stable Funding Ratio.

7 IOSCO Report on Good Practices for Audit Committees in Supporting Audit Quality.

rates, such as loan agreements in which the current LIBOR rate is agreed as the interest rate on the loan. In the past, these interest rate benchmarks had proven to be vulnerable to manipulation. The FSB, with BaFin's cooperation, is therefore backing a global transition away from the use of such interest rates.

One of the FSB's core objectives is the adequate regulation and supervision of non-bank financial institutions (NBFIs) or "shadow banks". BaFin was involved in a number of FSB working groups on this issue in 2019. The annual "Global Monitoring Report on Non-Bank Financial Intermediation" provides information on the current state of progress of the work. The report, on which BaFin collaborated and which appeared in 2019, is concerned among other things with the global increase in lending by "financial technology-related non-bank entities" (fintechs).

The FSB was also occupied with the supervision and regulation of stablecoins in 2019. In October 2019, the FSB conducted a stocktake and brought together all the issues relevant to the regulation of stablecoins, for example their use across borders. A specialist working group will investigate the regulation of stablecoins in greater depth in 2020. BaFin is involved in this exercise as well.

III

Supervision

1 Banks, financial services providers and payment institutions

1.1 Bases of supervisory practice

1.1.1 Countercyclical capital buffer above zero for the first time

BaFin set the countercyclical capital buffer (CCyB) for all credit institutions and financial services institutions[1] at 0.25 % as at the third quarter of 2019 – this was a first as the buffer had been set at 0 % up to this point (see info box). These institutions must fulfil the related Common Equity Tier 1 (CET1) buffer requirement from 1 July 2020 onwards. BaFin published a general administrative act to this effect on 28 June 2019.

1 Significant institutions (SIs) and less significant institutions (LSIs).

Definition

CCyB – the buffer for greater resilience

The countercyclical capital buffer (CCyB) is a macro-prudential tool. Its purpose is to strengthen the banks' resilience against cyclical systemic risks. This supplementary buffer is built up in times of excessive credit growth. In the event of a crisis, it is intended to cushion losses and thus prevent a credit crunch.

The buffer was increased from 0 % to 0.25 % based on a recommendation by the German Financial Stability Committee (FSC; see info box on page 60). The FSC identified a cyclical systemic risk due to three risk areas. Firstly, it was possible that the banks were underestimating credit risks, since these had reduced due to the favourable performance of the economy in recent years. There were also declines in risk provisioning and risk-weighted assets. In an economic downturn, it was therefore possible that credit defaults could rise.

Definition

FSC – the committee for macro-prudential supervision

The Financial Stability Committee (FSC) is the central body for macro-prudential supervision in Germany. It consists of three representatives from each of the Federal Ministry of Finance, the Deutsche Bundesbank and BaFin. The Chief Executive Director of BaFin's Resolution Sector is also part of the committee as an advisory member without voting rights.

Secondly, the FSC believes that banks may be overvaluing loan collateral. The background for this is that property prices have been increasing for years and valuations are too high in some cases. An economic downturn could result in defaults on residential property loans and increasing loss rates on the realisation of collateral for residential property. Thirdly, the lengthy period of low interest rates has exacerbated the risk situation, according to the FSC. They are affecting the institutions' earnings and create an incentive to take greater risks.

If such a cyclical risk were to materialise, the banks that have insufficient loss-absorbing capacity would either have to raise additional capital or reduce their risk-weighted assets. If risk-weighted assets were reduced to a significant extent, this could have a negative impact on lending to the real economy.

The performance shown by the economic data since BaFin's decision confirms that the FSC's risk analysis was correct and the buffer was appropriate.

1.1.2 BaFin integrates new requirements for IRB approach into supervisory practice

The European Commission and the European Banking Authority (EBA) have specified the detailed requirements for the internal ratings-based approach (IRBA) for the measurement of the capital requirements for credit risks (see info box on page 61). The new requirements are addressed to all credit institutions and investment firms authorised in the European Union (EU) and come into force on 31 December 2020. They relate to the Definition of default (including for the credit risk standardised approach), the estimation of the probability of default (PD) and of the loss given default (LGD) and the treatment of loans in default.

BaFin has integrated the new requirements into its supervisory practice, firstly by amending the Solvency Regulation; the new version was published on 19 February 2019. Secondly, it published Circular 3/2019 (BA) on the IRBA on 16 April 2019. In particular, an institution applying the IRB approach may only alter its Definition of default with the approval of the competent supervisory authority. In November 2018, in a collective letter to the less significant institutions (LSIs) applying the IRBA, BaFin set out the process whereby the new IRBA requirements will be introduced.

BaFin offers a choice of two procedures

Like the European Central Bank (ECB), BaFin is offering two options: a one-step procedure and a two-step procedure. Under the two-step procedure, in the first step the institution brings its Definition of default into line with the new requirements, i. e. it now classifies its borrowers in accordance with the new requirements as defaulted or non-defaulted. This first step was completed in 2019. The default data determined on the new basis after the completion of the first step enable the risk parameters to be reviewed and, where necessary, adjusted in the second step. The institutions also have to implement further new requirements for their rating systems in the second step. For example, they have to show the margins of conservatism incorporated in the risk parameters. In the alternative one-step procedure, an institution implements both changes at once.

The two-step procedure was chosen only by those less significant IRBA institutions pooling data with significant IRBA institutions, which are therefore supervised by the ECB. In order to simplify the collective adjustment to the new requirements for the operators of data pools and the participating institutions, BaFin requires the same documentation for its decisions as the ECB and also applies the same assessment criteria.

At a glance

IRBA harmonisation programmes of the EBA

The harmonisation of the requirements for the use of the IRBA procedures represents the EBA's response to the criticism of internal risk models which arose after the financial crisis. The harmonisation takes the form, firstly, of detailed provisions for the institutions' IRB procedures, and secondly of provisions applying to the competent supervisory authorities to ensure that the procedures are evaluated on a consistent basis.

In March 2019, the EBA published guidelines for appropriate LGD estimates in an economic downturn. For the purpose of estimating the loss given default (LGD), the European Capital Requirements Regulation (CRR) requires an economic downturn to be taken into account if that is more conservative than relying on the respective long-term average.

The concept of an economic downturn is intended to be defined more closely by a Delegated Regulation of the EU Commission. The EBA submitted a draft for this purpose to the Commission in November 2018 (Final Draft EBA/RTS/2018/04). In May 2019, the EBA also launched a consultation on its guidelines on credit risk mitigation for institutions applying their own estimates of LGD. The final version of the guidelines is expected to be available at the start of 2020.

Delegated Regulation (EU) 2018/171 and the guidelines for applying the Definition of default must be applied as of 31 December 2020. The Definition of default plays a central role in IRB modelling, as it forms the basis for the consistent recording of defaults by the institutions. It therefore also fundamentally influences the estimation of the probability of default. The implementation of the new provisions will involve applying the new requirements for identifying a default and adjusting the model to match the new Definition of default.

1.1.3 Cooperative banks: newly issued shares and repayment of share capital

On 1 January 2019, BaFin published its revised general administrative act on the share capital of cooperatives. The administrative act implements the provisions of the European Capital Requirements Regulation (CRR) relating to own funds requirements and the provisions of the supplementary Delegated Regulation (EU) No 241/2014, known as the Own Funds RTS (regulatory technical standards). Under these regulations, institutions must obtain permission from the supervisory authority before they redeem Common Equity Tier 1 instruments.

This regulatory procedure is not workable in practice for primary cooperative institutions. The reason: there is a very large number of institutions of this type in Germany, 841 institutions in 2019, and cooperative shares are regularly terminated and reissued for each of these institutions during the course of a financial year.

Simplified provision
Article 32 (2) of the Own Funds RTS therefore offers the option of a simplified provision: BaFin may give permission in advance for a certain predetermined repayment amount for shares, net of the amount of the subscription for new Common Equity Tier 1 instruments, during a period up to one year.

A general administrative act for each year
BaFin has implemented this option annually since 2015 by means of a general administrative act which is valid for one year and only applies to LSIs, i.e. less significant institutions, with the legal form of a registered cooperative. BaFin coordinates with the Deutsche Bundesbank for this purpose. In accordance with the respective general administrative act, approval for the repayment of share capital is deemed to have been granted, provided it does not amount to more than 0.5% of Common Equity Tier 1 capital and the additional conditions in the general administrative act relating to the level of own funds have been met.

The institutions must continue to comply with the own funds requirements, including existing capital add-ons, own funds target ratios and a safety buffer, after the repayment. BaFin set this safety buffer at 1.25% in the general administrative act for 2019 and reviews it annually.

1.1.4 New circular on interest rate risk in the banking book

The new Circular 6/2019 (BA) on interest rate risk in the banking book implements the corresponding Basel framework from 2016 and the new version of the relevant EBA guidelines[2] into German law for all credit institutions, i.e. for SIs and LSIs, although with the exception of the securities trading banks.

The most important new features compared with Circular 9/2018 (BA) include additional supervisory interest rate scenarios (steeper and flatter yield curve, increase or decrease in short-term rates, parallel shift in the yield curve in both directions) and an early warning indicator. In addition to the ±200 basis point (bp) shock, which must still be applied and whose effects are assessed in relation to regulatory capital, in the new interest rate scenarios the institutions must express the negative change in present value as a proportion of Tier 1 capital. If the loss arising from one of the six scenarios exceeds 15 % of Tier 1 capital, this "early warning indicator" should trigger a dialogue with supervisors but, as with the interest rate shock used to date, should not entail any other automatic supervisory measures.

Other significant changes are as follows:

- The calculation and reporting of the supervisory interest rate shocks are mandatory at individual institution and group levels, except for institutions managing interest rate risk in the banking book at group level on the basis of the exemption pursuant to section 2a (1) and (2) or (5) of the German Banking Act (*Kreditwesengesetz*) (group waiver).
- A maturity-dependent floor applies, starting at -100 bp for immediate maturities and rising by 5 bp per year on a linear basis.
- Gains arising from the aggregation of material foreign currencies may be included in the respective interest rate scenarios only up to a maximum of 50 %. A currency is regarded as material if the positions in the respective currency exceed 5 % of the assets or if the aggregated positions excluding foreign currencies account for less than 90 %.
- Non-performing exposures (NPE) are included as expected cash flows if they represent more than 2 % of the total lending volume. This applies unless the internal interest rate risk management system includes all of the cash flows up to a default and has recognised provisions instead.

2 EBA/GL/2018/02.

1.1.5 Circular on securitisations: BaFin adopts EBA guidelines

With its Circular 4/2019 (BA) setting out the detailed STS criteria for non-ABCP and ABCP securitisations, BaFin has incorporated the relevant EBA guidelines on both types of securitisations into its supervisory practice.

The abbreviation STS stands for simple, transparent and standardised securitisations. ABCP securitisations are secured money-market instruments (asset-backed commercial paper – ABCP), while non-ABCP securitisations are unsecured money-market instruments.

In accordance with the Securitisation Regulation which became effective on 1 January 2019, only those securitisations which actually comply with the specified criteria may be designated as "STS". The objective of this designation and the associated requirements is to apply a more risk-sensitive approach to the prudential supervision of securitisations. Prudential oversight of this nature presupposes, however, that the concept of STS securitisation is interpreted consistently on a Europe-wide basis and across all sectors. The EBA guidelines are therefore intended to ensure that there is a common understanding by setting out all of the STS criteria in detail.

Proposal on synthetic STS securitisations
On the basis of Article 45 of the Securitisation Regulation, the EBA also carried out a consultation exercise from September to November 2019 on a proposal to create a specific framework for synthetic STS securitisations as well. This is to be limited to balance-sheet synthetic securitisations. The results of the consultation were not yet available at the time of going to press.

1.2 German institutions directly supervised by the ECB

In 2019, 54 German institutions were classified as SIs and were subject to the Single Supervisory Mechanism (SSM)[3] under the direct supervision of the ECB.[4]

Digitalisation was a topic of central importance for all European SIs in 2019. Institutions are working with varying intensity to keep pace with changes in

3 On BaFin's role within the SSM, see chapter 0.
4 See the annual report of the ECB, https://www.ecb.europa.eu/pub/annual/html/index.en.html.

technology. The major European banks currently view the entry of BigTech companies with global operations such as Amazon, Apple, Microsoft and Google into the financial market as their greatest challenge – alongside traditional financial market risks such as the current low interest rate environment and increasing regulation.[5]

Trend towards outsourcing

BigTech firms long ago demonstrated the efficiency gains and revenues they can achieve thanks to systematic digitalisation. In light of this and in view of the general expectation that significant costs can be saved using this technology, an increasing trend towards outsourcing on the part of the European SIs has been noticeable for years, in particular in the area of IT.

This trend continued in 2019 as well. A new feature is that SIs are now also increasingly outsourcing their operations to clouds. Most of the SIs are attempting to incorporate cloud technology solutions into their system landscapes. However, when it comes to outsourcing critical processes to public clouds, the SIs continue to show considerable reticence. The reasons are cyber risks, data protection issues and the challenge of encrypting outsourced data effectively without restricting user access at the same time.

BaFin and the ECB are following this trend. Firstly, they publish their supervisory expectations[6] or communicate them to the institutions individually. They also review outsourced operations to ensure that they are compatible with the requirements for a proper system of governance. In addition, since 2018 the supervisors have assessed the institutions' IT systems separately in the context of the annual supervisory review and evaluation process (SREP), and have also incorporated these findings into the evaluation of the operational risks.

ECB's TRIM project

Representatives of the ECB as well as of BaFin and other national supervisory authorities continued their work on the SSM's targeted review of internal models (TRIM) project in 2019. The aim of the project, which was launched in 2016, is to ensure the same capital requirements apply within the SSM for the same risk positions and to harmonise the supervision of internal models. BaFin's intention in collaborating on the project is to contribute to rebuilding trust in the use of internal models, which has been shaken since the financial crisis.

The SSM's modelling experts achieved significant objectives of the TRIM project in 2019. For example, they added chapters on internal models for market, counterparty and credit risk to the ECB guide to internal models. Through the consistent interpretation of the supervisory requirements for internal models in the SSM, banks and supervisors improved their understanding of how they can use and review internal models.

As part of the TRIM project, the experts reviewed around 200 models to investigate whether they complied with the supervisory requirements. In the interests of harmonising supervisory practice, the reviewers adopted standardised procedures, developed in the project, for this purpose. In addition, the quality assurance of the review reports by SSM modelling experts also contributed to the objective of harmonising supervisory requirements. The findings of the investigations are still being evaluated. The ECB will publish them at the end of the project, expected to be during the second half of 2020.

The strengthened supervision of internal models resulting from the TRIM project will continue even when the project is completed. The collaborative structures between employees of the ECB and of the national competent authorities and national central banks in TRIM have proven their value and it is intended to retain them beyond the conclusion of the project.

Internal models are never static, but must be constantly adjusted to new circumstances such as changes in markets and products or the results of current risk analyses. This also applies to the interpretation of the supervisory framework by the ECB guide.

Following the successful progress made in 2019, it is anticipated that the aims of the TRIM project referred to above will be achieved in 2020.

1.3 Institutions directly supervised by BaFin

BaFin was responsible for supervising 2,829 institutions at the end of 2019 (see Table 1 on page 64). 57 of those institutions were classified as SIs and were subject to the SSM under the direct supervision of the ECB. BaFin was involved in the supervision of those 57 institutions in the Joint Supervisory Teams of the SSM.

Allocation between two Sectors

The Banking Supervision Sector was responsible for supervising credit institutions, payment and e-money institutions as well as finance leasing and factoring

5 On the low interest rate environment, see also chapter I 4.

6 For example, BaFin's Guidance Notice on outsourcing to cloud service providers.

institutions, which were regarded as financial services providers. The Banking Supervision Sector also supervised four securities trading banks, since these are subsidiaries of institutions allocated to the SSM as SIs. The supervision of securities trading banks is otherwise the responsibility of the Securities Supervision/Asset Management Sector. The same applies to financial services institutions.

The allocation of the institutions supervised between the two Sectors is based initially on whether they are credit institutions or financial services institutions, unless the business model of the respective type of institution is better suited to the supervisory focus of the other Sector. For example, securities trading banks are generally supervised in the Securities Supervision/Asset Management Sector, although they are credit institutions, while finance leasing and factoring institutions are covered by the Banking Supervision Sector, although they are financial services providers.

1.3.1 Credit institutions directly supervised by BaFin

1.3.1.1 Risk classification

The EBA SREP Guidelines[7] require BaFin and the Deutsche Bundesbank to prepare a risk profile for all LSIs, i.e. the less significant institutions, under their supervision on an annual basis (see Table 2 on page 66). BaFin uses this risk profile to classify each institution into risk classes from 1 to 4 according to the categories "quality of the institution" and "potential impact of a solvency or liquidity crisis of the institution on the stability of the financial sector". It derives the supervisory measures necessary from this overall assessment and determines how closely each institution must be supervised on the basis of the principle of proportionality.

7 EBA/GL/2014/13 as amended on 19 July 2018.

Table 1: Institutions under German supervision

As at 31 December 2019

Credit institutions		**1,556**	
of which	CRR credit institutions*, +		1,411
		of which SIs**, +++	57
		of which LSIs***, +	1,352
	Securities trading banks****, ++		37
	Other credit institutions*****, +		29
	Housing enterprises with savings schemes+		47
	Development banks+		12
	Third-country branches+		20
Payment institutions and e-money institutions+		69	
Financial services institutions******		1,204	
of which	Group III financial services institutions++		693
	Finance leasing and factoring institutions+		490
Institutions supervised by BaFin		2,829	

* Two of these CRR credit institutions are neither SIs nor LSIs.

** The SIs are supervised directly by the ECB.

*** Two of these credit institutions provide financial market infrastructures and are therefore supervised by BaFin's Securities Supervision Sector.

**** Five of these credit institutions are supervised by BaFin's Banking Supervision Sector due to their group affiliation.

***** One of these credit institutions is supervised by BaFin's Securities Supervision Sector.

****** In addition to the institutions in financial services institutions Groups III and V (finance leasing and factoring institutions), institutions in Groups I, II and IV are also included. The latter are not covered by this overview.

\+ Supervised by BaFin's Banking Supervision Sector

++ Supervised by BaFin's Securities Supervision/Asset Management Sector

+++ Supervised by the ECB

Definition

Credit institution or not?

A **credit institution** is an undertaking which conducts at least one of the types of banking businesses described in detail in section 1 (1) of the Banking Act commercially or on a scale which requires commercially organised business operations. Banking business includes the deposit business and credit business, but also specific securities-related activities such as principal broking services and the safe custody business.

Pursuant to section 1 (3d) of the Banking Act, a **CRR credit institution** is a credit institution that also meets the narrower Definition of a credit institution in accordance with Article 4 (1) no. 1 of the EU Capital Requirements Regulation (CRR) and is engaged in the deposit and credit businesses. CRR credit institutions are supervised in the context of the Single Supervisory Mechanism (SSM) either directly by the ECB as significant institutions (SIs) or by BaFin together with the Deutsche Bundesbank as less significant institutions (LSIs).

The **securities trading banks** are not engaged in both the deposit and credit businesses but in other banking business mentioned in section 1 (1) of the Banking Act and therefore fall within the German Definition of a credit institution. A securities trading bank is engaged in the principal broking or underwriting businesses or provides a financial service in accordance with section 1 (1a) no. 1 to 4 of the Banking Act as a credit institution. The business models of the securities trading banks range from traditional brokerage activities on the stock exchanges and dealing on own account to the provision of corporate finance or trading in energy derivatives. Their product range includes equities and bonds, cleared and uncleared derivatives, such as sovereign credit default swaps (CDSs), as well as energy derivatives and contracts for difference (CFDs). In addition, some securities trading banks offer services relating to crypto assets, such as bitcoin, as an innovative business area.

In accordance with section 1 (29) of the Banking Act, **housing enterprises with a savings facility** are undertakings with the legal form of a registered cooperative society, whose business object is principally the management of their own housing portfolios and which also conduct banking business solely in the form of deposit business, in a manner restricted by law.

The process of consolidation in the banking sector is progressing further. This was reflected in 2019 in an increase in the proportion of institutions in the medium impact categories, and a smaller share of institutions with a low impact. The consequences of the current low interest rate environment for the risk situation of the institutions can also be detected: the proportion with a quality rating of 1 declined, while lower quality ratings increased.

1.3.1.2 Special audits

BaFin's Banking Supervision Sector ordered a total of 161 special audits pursuant to section 44 (1) sentence 2 of the Banking Act for LSIs in 2019 (see Table 3 on page 65). 11.9% of the German LSIs were therefore required to undergo a special audit. As in 2018, the audits mainly related to section 25a (1) of the Banking Act. They are used to monitor whether an institution's risk management system is adequate. The minimum preconditions for this are set out in detail by the Minimum Requirements for Risk Management (*Mindestanforderungen an das Risikomanagement* – MaRisk)[8] for banks. Among other things, they include provisions for the design of an institution's internal control system, its organisational and operational structure and, in particular, its risk management processes.

8 Circular 09/2017 (BA) – Minimum Requirements for Risk Management (*Mindestanforderungen an das Risikomanagement* – MaRisk).

Table 2: Risk classification results of LSIs in 2019*

As at 31 December 2019

Institutions in %		Quality				
Risk matrix		**1**	**2**	**3**	**4**	**Total**
Impact	High	0.1	0.4	0.1	0.0	0.6
	Medium	4.4	9.6	2.5	0.1	16.6
	Medium-low	9.0	39.2	7.0	0.4	55.6
	Low	2.7	16.0	7.6	0.9	27.2
	Total	**16.2**	**65.2**	**17.2**	**1.4**	**100.0**

* This table presents the LSIs under the supervision of the Banking Supervision Sector.

Table 3: Breakdown of special audits of LSIs in 2019 by areas of emphasis*

As at 31 December 2019

	2019	2018
Impairment-related special audits	6	9
Section 25a (1) of the Banking Act (MaRisk)	133	130
Cover	5	7
Market risk models	1	0
IRBA (credit risk measurement)	16	7
AMA (operational risk measurement)	0	0
Liquidity risk measurement	0	0
Total	**161**	**153**

* This table relates to LSIs under the supervision of the Banking Supervision Sector. IRBA stands for internal ratings-based approach and AMA stands for advanced measurement approach.

At a glance

Why special audits?

BaFin always orders special audits pursuant to section 44 (1) sentence 2 of the Banking Act if it identifies a greater need for information than is covered by the regular sources of information, such as the reporting system, the direct exchange of information with the institutions and the audit reports on the annual financial statements. BaFin may initiate an audit pursuant to section 44 of the Banking Act either for a specific reason or if the previous special audit was too long ago.

The special audits also include cover audits which must normally be carried out every two years in accordance with the statutory provisions of the *Pfandbrief* Act. Institutions may also request special audits themselves, if they intend to use internal models and BaFin's approval is required. In the majority of cases, BaFin appoints the Deutsche Bundesbank to carry out the special audit. In some instances, it also appoints external auditors.

Highest audit ratio for other institutions

The majority of the special audits in 2019 were carried out in the cooperative sector, which represents the largest number of institutions in Germany. However, the other institutions showed the highest audit ratio (see Table 4 on page 67).

Table 5 on page 67 shows the breakdown of special audits of LSIs initiated by BaFin in 2019 by risk class. The special audits are risk-based with the result that the percentage of institutions audited tends to rise for those with a higher impact or lower quality. BaFin also ordered 17 special audits requested by the institutions themselves.

Table 4: Breakdown of special audits of LSIs in 2019 by groups of institutions

As at 31 December 2019

	Commercial banks	Savings bank sector	Cooperative sector	Other institutions
Impairment-related special audits	0	0	6	0
Section 25a (1) of the Banking Act (MaRisk)	23	45	63	2
Cover	1	3	1	0
Market risk models	1	0	0	0
IRBA (credit risk measurement)	6	3	0	7
AMA (operational risk measurement)	0	0	0	0
Liquidity risk measurement	0	0	0	0
Total	**31**	**51**	**70**	**9**
Audit ratio in %*	**27.0**	**13.6**	**8.3**	**47.4**

* Number of audits as a proportion of the number of institutions in each group of institutions. This relates to LSIs supervised by BaFin's Banking Supervision Sector.

1.3.1.3 Objections and measures

The Banking Supervision Sector imposed a total of 665 objections and measures in 2019, of which 610 objections related to LSIs and 55 to non-CRR credit institutions (see Table 6 on page 68). In the previous year, there had been 684 objections for the LSIs.

Discussions and letters as supervisory instruments

BaFin does not necessarily initiate formal measures immediately at the first signs of deficiencies. In most cases it initially discusses the matter with the institutions or writes to them. In this way, the banks are made aware in a quick and uncomplicated manner of BaFin's assessment, for example, of the conclusion of the annual financial statements audit or the findings of a special

Table 5: Breakdown of special audits of LSIs initiated by BaFin in 2019 by risk class

As at 31 December 2019

Special audits initiated by BaFin		Quality of the institution					
		1	2	3	4	Total	Institutions* in %
Impact	High	0	2	1	0	**3**	**37.5**
	Medium	2	14	5	2	**23**	**10.3**
	Medium-low	4	59	15	0	**78**	**10.4**
	Low	2	22	8	3	**35**	**9.6**
	Total	**8**	**97**	**29**	**5**	**139**	**10.3**
	Institutions in %*	**3.7**	**11.0**	**12.6**	**25.0**	**10.3**	

* Percentage of the total number of institutions in the respective quality/impact category accounted for by the audits.

Table 6: Supervisory law objections and measures under the Banking Act in 2019*

Supervisory law objections and measures under the Banking Act in 2019
As at 31 December 2019

Type of measure		Groups of institutions					
		LSIs			non-SSM		
		Commercial banks	Savings bank sector	Cooperative sector	Other institutions	Non-CRR credit institutions*	Total
Substantial objections/letters		17	14	29	3	7	**70**
Measures against managers	Dismissal requests***			2			**2**
	Cautions	1					**1**
Measures against members of supervisory/administrative boards	Dismissal requests***						
	Cautions						
Measures related to own funds/liquidity, exceeding the large exposure limit (sections 10, 13 and 45 of the Banking Act)		84	197	241	13	39	**574**
Measures in accordance with section 25a of the Banking Act		6				7	**13**
Measures in accordance with sections 45, 45b and 46 of the Banking Act**		3				2	**5**
Total		**111**	**211**	**272**	**16**	**55**	**665**

* Including KfW.

** Measures to improve own funds and liquidity (section 45 of the Banking Act), in the case of organisational deficiencies (section 45b of the Banking Act) and in the case of specific danger (section 46 of the Banking Act).

*** These figures comprise formal and informal measures and dismissal requests from third parties.

audit. This enables minor shortcomings to be rectified before they develop into serious problems or possibly even result in formal measures.

The background to this is the preventive approach of Banking Supervision. The objective of this approach, unlike sanctions[9], is not to punish. Instead, it is intended to influence future behaviour and ensure that the undertakings improve matters.[10] The fact that informal instruments such as discussions and letters are often sufficient is also demonstrated by the figures for 2019: BaFin had to take formal measures, for example, against managers or members of supervisory and administrative bodies only in very isolated cases (see Table 6). But even formal measures of this nature do not constitute sanctions and are intended instead to have a preventive effect.

9 For information on BaFin's sanctions, see chapter I 13.

10 For information on the distinction between sanctions and measures, see info box and 2016 Annual report on page 55 ff.

1.3.1.4 Situation of the groups of credit institutions

1.3.1.4.1 Private, regional and specialist banks

The private, regional and specialist banks, which as LSIs are supervised by BaFin, form a very heterogeneous group. They differ from each other with respect to their size but also from the point of view of their business models.

Specialist banks

For example, the specialist banks include asset managers offering standardised financial products either directly or indirectly via intermediaries to a widely diversified group of customers. They also include providers of settlement services for financial and securities transactions, as well as banks specialising in supply chain finance, in addition to the refinancing of leasing and factoring transactions, i.e. the provision of bridge or pre-financing for deliveries of goods or services for the respective recipients.

Captive sales finance companies also belong to the specialist banks group. As members of a manufacturing group, their primary function is to provide financial services to assist sales of the parent company's products, for example in the automobile or consumer goods sectors. To date, captives have proven to be robust and have been comparatively unaffected by the low interest rate environment. The critical factor for these institutions is that the parent company's products can be readily sold. Accordingly, BaFin must pay particularly close attention to developments in the wider economy and in the product portfolios of the parent groups. In the automotive sector, for example, one issue is whether manufacturers are also able to offer competitive vehicles with alternative drive systems on a timely basis. The willingness of customers to purchase these vehicles is also decisive. Developments in this area may result in shifts between different sales channels. It is conceivable that customers will increasingly lease vehicles for a limited period in order to benefit quickly from expected improvements or innovations, such as the vehicle's range.

Traditional private banks

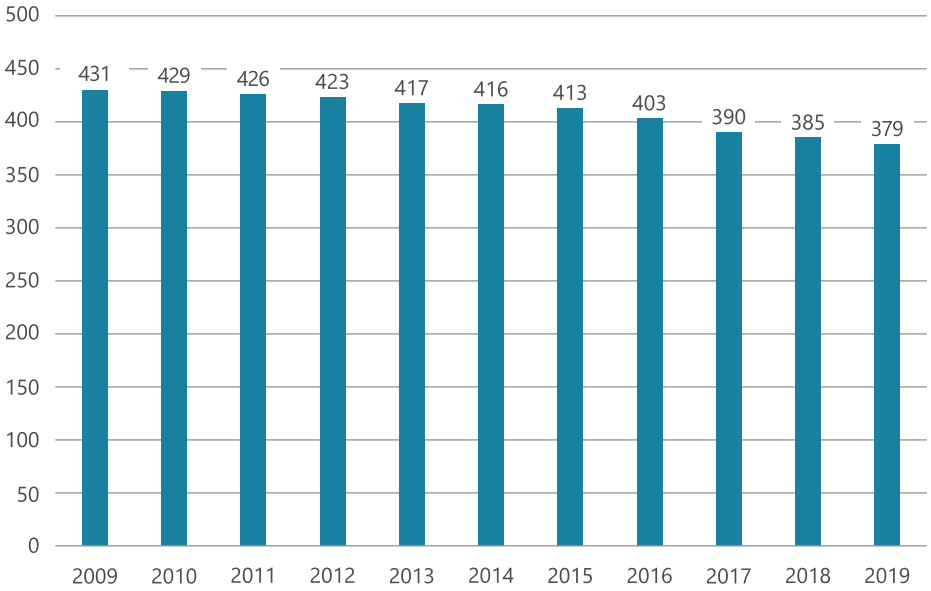
The business model of the traditional private banks is often heavily dependent on interest rates. They are therefore endeavouring to develop sources of income which are not linked to interest rates. These include commission income from services and traditional asset management, but also business areas reserved in the past for traditional major banks, such as investment banking.

As in previous years, a number of institutions have turned to digitalisation in the search for new sources of earnings, to enable them to engage in niche activities either independently or jointly with other private banks or fintechs. Despite this, many private, regional and specialist banks remained under pressure in 2019 as before due to the absence of a turnaround in interest rates and the lack of alternative sources of earnings.

1.3.1.4.2 Savings banks

The savings banks still achieved a satisfactory overall result in the 2019 financial year despite the low level of interest rates. The net profit for the year was roughly equal to the prior-year level. As before, however, the results of operations were affected by the continued decline in net interest income, which the institutions were unable to offset despite a small amount of growth in net commission income. Impairment charges in the securities business declined and reversals of previous charges were even possible. Expenses for risk provisioning in the lending business increased slightly, but remained at a very low level as before. The savings banks as a whole were able to maintain the operating result after valuation, although there were significant differences between the individual institutions. Almost all of them were able to strengthen their reserves once again, even if not as comfortably as in the preceding years. All of the savings banks generally complied with the regulatory own funds requirements. The average total capital ratio was well above the respective minimum ratio demanded by BaFin.

Figure 4: Number of savings banks*



* This statistic does not include seven Landesbanks and DekaBank.

The savings banks further expanded their lending business. Growth was achieved in new lending business with corporate clients and self-employed clients. Lending to private individuals increased even more rapidly. New private residential building loans recorded a particularly good performance.

Among other measures, institutions continued to adjust their terms and conditions and increased their fees in order to compensate for the decline in earnings and therefore in net interest income. Deposit fees are charged to corporate clients and local authorities for larger deposits. Many institutions are now considering whether they should also charge these fees in their retail business. This is already happening in individual cases, although there are generous exempt amounts before fees begin to apply.

A major cost driver for ordinary expenses is the savings banks' branch network. The institutions went ahead with further branch closures during the past financial year. However, the scope for closures is limited: the savings banks must keep sufficient local representation to ensure that all sections of the population continue to be adequately and appropriately provided with money and credit services on a nationwide basis.

1.3.1.4.3 *Bausparkassen*

The low level of interest rates again presented major challenges for the *Bausparkassen* as well in 2019. The whole *Bauspar* sector is faced with the problem of having to pay deposit interest on legacy *Bauspar* contracts at originally agreed rates that are no longer in line with the market, while not receiving corresponding interest income on *Bauspar* loans. This is because offers of *Bauspar* loans based on legacy *Bauspar* contracts that are eligible for allocation no longer bear market rates of interest as a general rule. Such loans are therefore no longer attractive to consumers. The proportion of *Bauspar* loans granted in 2019 was therefore once again very low. Furthermore, *Bauspar* loans already granted but which no longer bear market rates of interest are frequently being redeemed early.

The *Bausparkassen* once again responded to these challenges in 2019 with a variety of measures they had already employed in the preceding years. For example, they cut administrative and staff costs and further reduced their interest expense across the board. They achieved this by terminating older *Bauspar* contracts with above-market rates of interest that were over-saved or had been eligible for allocation for more than 10 years. A *Bauspar* contract is described as over-saved if payments by the customer have already reached the agreed target contract sum and a *Bauspar* loan can therefore no longer be granted. In an attempt to increase the volume of *Bauspar* loans, the *Bausparkassen* also offered their customers the option of switching from legacy *Bauspar* contracts into contracts with more attractive *Bauspar* loan rates of interest.

The German *Bausparkassen* Act (*Bausparkassengesetz*) essentially restricts the business activities of the *Bausparkassen* to the financing of residential property. The institutions therefore pushed ahead with the conclusion of new *Bauspar* contracts at interest rates that are significantly lower and therefore in line with the market, in order to improve their results of operations over the medium and long term. For this purpose, the *Bausparkassen* based their marketing on the guaranteed interest feature of a *Bauspar* contract, rather than on yield considerations. They also increased the volume of pre-financing and bridge financing loans as well as building loans granted.

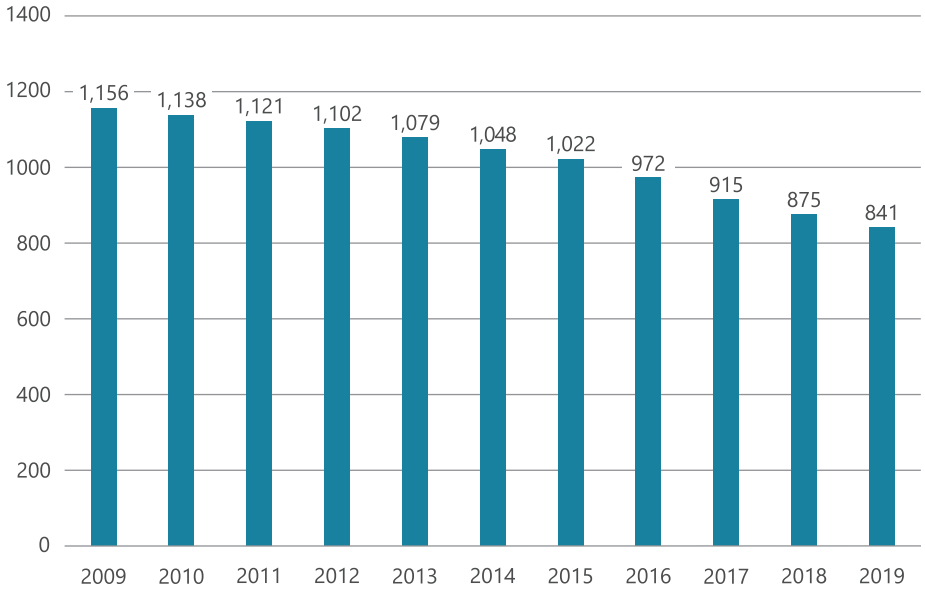
1.3.1.4.4 Cooperative banks

The performance of the cooperative banks was satisfactory in the 2019 financial year despite the continuing difficult market environment. While interest expense declined significantly, the absolute reductions in interest income were even greater, resulting in a further decrease in net interest income. The latter is now noticeably below the long-term average. The continuing successful efforts by the primary institutions to manage costs are only partially compensating for the decline in net interest income. Impairment charges in the securities business were significantly lower, but risk provisioning in the lending business again recorded a small increase. Adequate risk provisioning in the form of reserves continues to be possible at an appropriate level.

Low interest rates increasing pressure
The persisting low level of interest rates is proving an ever greater problem for the previously successful business model of the cooperative banks. This is despite the fact that the Cooperative Financial Network has made successful efforts in recent years to adjust to the new circumstances.

For example, net interest income has remained almost unchanged in absolute terms and administrative expenses have fallen in relation to total assets by over 30 %. The institutions took drastic measures to cut administrative costs: they put an end to offers of free current accounts, combined computer centres (2015) and closed branches. In addition, there were mergers

Figure 5: Number of primary cooperative institutions



of numerous primary cooperative associations and of the two leading institutions, DZ Bank and WGZ-Bank (2016).

This means, on the one hand, that the banks and their branches are increasingly withdrawing from their nationwide presence. Specialist knowledge of the regional markets is being lost as a result. On the other hand, the institutions are endeavouring to generate income by developing new business areas, such as residential property rentals, student accommodation and the operation of wind farms, although this exposes them to new risks. BaFin has been closely monitoring these changes.

If there are further reductions in interest rates which are already negative, profitability could be halved by 2023. The banks will continue to resist this by cutting costs further through mergers of local banks and branch closures. The cooperative banks will also raise their fees further. It is questionable whether these measures will be sufficient. Beyond a certain point, the banks may find themselves forced to pass on the negative interest rates to a wider group of customers.

1.3.1.4.5 *Pfandbrief* business

The German *Pfandbrief* again performed well in 2019 – the year of its 250th anniversary – despite the persisting low interest rate environment. The record number of over 80 issuers also demonstrates that this traditional product is highly popular. The ECB will remain a dominant participant in the *Pfandbrief* market in the near future, due to the reinvestment of cash reflows from the various bond purchase programmes. The sector is also increasingly engaged in building up a new investor base with the "green *Pfandbrief*", focusing on sustainability.[11]

Pfandbriefe with a total volume of €54.9 billion were sold in 2019 (see Table 7).

Table 7: Gross *Pfandbrief* sales

Year	Mortgage *Pfandbriefe** (€ billion)	Public-sector *Pfandbriefe* (€ billion)	Total sales (€ billion)
2016	35.1	10.4	45.5
2017	36.8	11.9	48.8
2018	43.2	7.2	50.4
2019	43.7	11.2	54.9

With an outstanding volume of €359.8 billion, the total volume of outstanding *Pfandbriefe* was slightly lower than in the prior year (see Table 8 on page 72 "Total volume of outstanding *Pfandbriefe*").

11 See chapter I 7.

Table 8: Total volume of outstanding *Pfandbriefe*

Year	Mortgage *Pfandbriefe** (€ billion)	Public-sector *Pfandbriefe* (€ billion)	Total sales (€ billion)
2016	203.7	155.2	358.9
2017	214.0	148.2	362.2
2018	230.5	134.1	364.6
2019	237.2	122.6	359.8

* Including ship and aircraft *Pfandbriefe*, although these represent niche products.

The EU legislative package to harmonise the legal framework for covered bonds was published in the Official Journal of the European Union on 18 December 2019. It necessitates amendments to the German legal framework which must be made by 8 July 2021. At the time of going to press, this was not expected to have any significant impact on the future issuing activities of the *Pfandbrief* banks.

1.3.1.4.6 Securities trading banks

Securities trading banks (see info box on page 65) are supervised by the Securities Supervision/Asset Management Sector, as described above, unless they are subsidiaries of a significant institution (see info box on page 65).

2019 saw those securities trading banks with marketplace activities faced with a difficult environment. Firstly, the capital market was impacted by the trade dispute between China and the USA as well as an imminent Brexit. Secondly, since the implementation of MiFiD II, there has been an observable trend for trading activities to migrate to alternative trading platforms or fully electronic trading.

BaFin initiated measures to improve the level of one institution's own funds, since it had not complied with the requirements for capital ratios applying to securities trading banks.

Brexit

Brexit[12] once again played a major role in the supervision of securities trading banks in 2019. By the anticipated exit date of 31 October 2019, BaFin had issued 10 authorisations for securities trading banks wishing to relocate their activities from London to Germany.

12 For details on Brexit, see also chapter I 2.

These consisted mainly of newly formed subsidiaries of banking groups in particular from the USA and Asia, which want to offer their services in the EU from Germany in the future.

The authorisation procedures focused on the requirements for the risk management system, the appropriateness of the process and structural organisation and the outsourcing of significant areas. This involved an intensive exchange with the Supervisory Coordination Network (SCN) of the European Securities and Markets Authority (ESMA), in which BaFin and other European supervisory authorities work together. The network makes an important contribution to the convergence of supervisory practice by developing consistent standards for the authorisation of investment firms.

1.3.1.4.7 Foreign banks

Foreign banks from 15 non-EU countries have operations in Germany via subsidiaries or branches. Together with the subsidiaries and branch offices of EU institutions, they once again played a significant role for the German market in 2019. They have a large variety of business models and origins. They range from niche activities, such as handling export trade financing with their country of origin, to investment banking or asset management, and up to the full range of services offered by a universal bank.

The integration of these institutions into their respective groups is positive from the point of view of their business opportunities, but on the other hand involves a risk that they are too dependent – particularly with respect to governance. BaFin considers it important that foreign institutions should meet the same requirements for management independence and a proper system of governance as their German counterparts. Smaller entities are willing to rely on services provided by their parent companies for reasons of cost or size. But depending on the structure of those services, they then run the risk of no longer meeting the requirements for a quantitatively and qualitatively appropriate risk control and management system, which would enable them to make decisions independently.

This applies similarly to a number of banks which transferred their registered offices to Germany in good time due to the imminence of Brexit in 2019, but find themselves under-resourced and with little business now that it has been postponed. In these cases, BaFin applies a sense of proportion in maintaining pressure to develop a volume of business sufficient for

profitability together with the associated structures for risk management. Four of the institutions which came to Germany because of Brexit nevertheless achieved the status of a significant institution in 2019 and have transferred to direct supervision within the SSM. Overall, preparations for Brexit have made good progress and the necessary authorisation procedures have been completed.

1.3.2 Payment institutions and e-money institutions

The implementation of the Second Payment Services Directive (PSD2) and of the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*) which came into force in January 2018 was again responsible for a significant increase in applications under that act in 2019.

By the 31 December 2019 reporting date, BaFin had issued a total of 74 authorisation notices under the new Payment Services Supervision Act, for both existing and new undertakings, of which 28 were new authorisations and expanded authorisations in 2019.

The most important new features of PSD2 include new activities requiring authorisation such as payment initiation services and account information services. By regulating these service providers who were already active in the market, the legislature has created the basis for greater security and competition. This is because at the same time the banks are now required to provide these service providers with orderly access to payment accounts. This access is always conditional on the express consent of the payment service user.

These business models have enormous potential from an economic point of view. This applies in particular to account information services, which enable customers to release their online banking payment account data for processing by other providers. This is also demonstrated by the high proportion of the completed procedures relating to these services: of the notices referred to above for 2019, 12 registration notices were for providers of account information services only.[13]

The regulatory response to this development is contained within both PSD2 and the relevant EBA guidelines. For example, the provisions of the EBA guidelines for the authorisation or registration of payment and e-money institutions include a comprehensive assessment of the business model and of the requirements for the security of the IT infrastructure, among other things.

1.3.3 Financial services institutions

1.3.3.1 Investment services enterprises

The majority of financial services institutions providing investment services, alone or in conjunction with ancillary services, have an authorisation to manage financial portfolios. They may also be entitled – or may only be entitled – to engage in investment broking and the contract broking of financial instruments. Some institutions are also authorised to trade for their own account. A very small number of undertakings are authorised to procure ownership or possession of client funds.

Table 9: Investment services enterprises

Investment services enterprises	2019	2018
Investment services enterprises under supervision	706	722[14]
Domestic branches of foreign undertakings	94	110
Authorisations issued	44	47
Expansions of authorisations issued	8	8
Authorisations returned	41	26
Tied agents	21,779	23,300
Liable undertakings	177	183
Inspections of institutions attended	6	28
Supervisory interviews with institutions	75	82

Brexit

Due to the postponement of Brexit on several occasions, just under one-third of the applications for authorisation in 2019 were again submitted by undertakings wishing to operate as financial services institutions in Germany after the departure of the United Kingdom from the EU. As in the previous year, these were mainly German subsidiaries of undertakings from the USA. BaFin is engaged in an intensive exchange with the SCN of ESMA on the subject of these authorisation procedures as well.

13 See chapter I 2.

14 This figure also includes institutions that are exempt under section 2 (4) or (7) of the Banking Act.

BaFin filed a petition pursuant to section 46b (1) sentence 4 of the Banking Act for the initiation of insolvency proceedings over an institution's assets in two cases in 2019. In both cases, the managers had failed to notify BaFin of the institution's insolvency contrary to section 46b (1) sentence 1 of the Banking Act. A breach of the obligation to notify insolvency or overindebtedness is a punishable offence pursuant to section 55 of the Banking Act.

Since 2 January 2018, section 2 (10) of the Banking Act has applied only to domestic tied agents. The liable undertakings, which had overlooked this change in the law and had therefore still entered tied agents domiciled in another country in the register of tied agents, were contacted in writing by BaFin in 2019 and required to take remedial action.

1.3.3.2 Finance leasing and factoring institutions

The leasing and factoring sector once again recorded growth in new business in 2019. New leasing business in equipment goods increased by 9 % (prior year: 4.5 %). The factoring industry achieved revenue growth of around 12 % in the first six months of 2019 (prior year: 5 %). Fraud represents the biggest risk for these institutions. For factoring institutions, this includes in particular cases where non-existent receivables are sold to the institution. For leasing institutions, the misappropriation of the leased asset financed constitutes a major risk. The undertakings are endeavouring to counter offences of this nature, as well as the resulting risks which can end up endangering the institutions' assets, by diversifying their customers and receivables, introducing limit systems and obtaining balance confirmations, among other things. In some cases, leasing institutions are also dependent to a high degree on the leased assets and their manufacturers.

Table 10: Supervision of finance leasing and factoring institutions

Facts	Figures 2019 (2018)
Number of institutions under supervision	
Finance leasing	303 (311)
Factoring	158 (158)
Both types of authorisation	29 (28)
Routine cases processed	
New authorisations	23 (17)
Authorisations terminated	36 (24)
Management appointments	177 (109)
Supervisory board appointments	46 (62)
Qualifying holding procedures	224 (186)
Measures and sanctions	
Substantial letters	16 (3)
Administrative fine proceedings initiated	23 (5)
Authorisations suspended	1

In 2019, BaFin created a formal platform for its regular exchanges with the industry associations and representatives of the institutions by establishing a discussion forum. Potential simplifications of the supervisory requirements for small and medium-sized institutions in particular were discussed at the first meeting. These institutions feel overburdened by the increasing complexity of the regulatory requirements in some cases. The minutes of the meeting, in which BaFin provides more details of its administrative practice when dealing with small and medium-sized institutions (double proportionality), are intended to create greater legal certainty for the institutions and the auditors of their annual financial statements.

2 Insurance undertakings and *Pensionsfonds*

2.1 Bases of supervisory practice

2.1.1 Profit and loss transfer agreements: legislation confirms BaFin's practice

By an amendment to section 12 (1) sentence 1 of the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz*), legislators made clear in the 2019 financial year that the termination of a profit and loss transfer agreement, such as by means of cancellation, giving notice or rescission, must also be approved by BaFin before it is allowed to take effect. The legislation therefore conforms to BaFin's existing supervisory practice and clarifies that the termination of such agreements is also subject to a thorough review by BaFin. In particular, BaFin will consider whether it is certain that the obligations arising from the insurance policies can be met over the long term, and whether the interests of policyholders are adequately protected. Where the intention is to enter into a profit and loss transfer agreement for a limited period of time only, BaFin will grant approval only if the agreement includes an automatic renewal clause.

Requirement to obtain approval from BaFin
In the context of a profit and loss transfer agreement, one undertaking enters into a commitment to transfer its profits to another undertaking. In return, however, the other undertaking concerned enters into a commitment to take over any losses. The requirement to obtain approval from BaFin prevents a parent company with an obligation to assume losses from simply terminating an ongoing profit and loss transfer agreement in the event of foreseeable losses on the part of the insurer, without safeguarding the interests of the policyholders. The putting into effect of one of the grounds for termination set out in section 12 (1) sentence 1 of the Insurance Supervision Act, without prior approval from BaFin, can in future be punished with a fine of up to €50,000 in accordance with section 332 (1) no. 1, (5) sentence 1 of that act.

The amendment to the Insurance Supervision Act forms part of the German Act Implementing Further Aspects of the EU Prospectus Regulation and Amending Financial Market Laws (*Gesetz zur weiteren Ausführung der EU-Prospektverordnung und zur Änderung von Finanzmarktgesetzen*) dated 8 July 2019.[15]

15 Federal Law Gazette I 2019, page 1002 and page 1018.

2.1.2 Minimum requirements for the governance of small insurance undertakings

The Insurance Supervision Act contains numerous provisions on how insurance undertakings should structure their system of governance. In order to ensure that they are applied consistently, in 2017 BaFin published Circular 2/2017 (VA) on the minimum requirements under supervisory law on the system of governance of insurance undertakings (*Mindestanforderungen an die Geschäftsorganisation von Versicherungsunternehmen* – MaGo)[16] for insurers falling within the scope of the European Solvency II supervisory regime. The new minimum requirements for the governance of small insurance undertakings[17], published on 6 March 2020, apply alongside the MaGo and now also provide guidance to small insurance undertakings within the meaning of section 211 of the Insurance Supervision Act on how the requirements for the system of governance should be implemented.

Basis for common interpretation

The Circular forms the basis for a common interpretation of the specific requirements for the system of governance of small insurance undertakings. For example, it defines central concepts such as "proportionality". The Circular follows the familiar structure of the MaGo for insurance undertakings subject to Solvency II. However, it only fleshes out the provisions of the Insurance Supervision Act that are relevant for small insurance undertakings within the meaning of section 211 of that act. In keeping with the principle of proportionality, the Circular also contains additional simplified procedures for the application of the Insurance Supervision Act in particular respects. It is sufficient for small insurance undertakings if they generally comply with the minimum requirements, for example. More complex structures or processes only become necessary if individual business units demonstrate higher than average risks.

BaFin involved the industry associations in the development of the Circular at an early stage. For example, it discussed the draft Circular with representatives of the associations in a joint workshop, and was thus able to incorporate many well-founded comments and suggestions into the Circular prior to the public consultation.

16 www.bafin.de/dok/10295814.

17 Circular 1/2020 (VA); www.bafin.de/dok/13772480 (only available in German).

2.1.3 BaFin general administrative act on the EIOPA pensions data project

In order to monitor financial stability, the European Insurance and Occupational Pensions Authority (EIOPA) is aiming to document the development of institutions for occupational retirement provision (IORPs) in Europe in reports and statistics. EIOPA needs relevant data from the national competent authorities for this purpose. The EIOPA Board of Supervisors passed a resolution to this end in 2018[18] which BaFin implemented by means of its general administrative act dated 30 September 2019.[19]

The European Central Bank (ECB) is also currently establishing a new harmonised basis for its statistics. It is authorised to collect statistical information with the support of national central banks in order to fulfil its responsibilities. For this purpose, in January 2016, the ECB issued a regulation on the statistical reporting obligations of institutions for retirement provision, which is directly addressed to the pension providers. EIOPA then developed the necessary reporting forms in close cooperation with the ECB.

As a consequence of this, both BaFin and the Bundesbank have contacted all undertakings subject to the reporting requirements. The undertaking's size, measured on the basis of its total assets, determines whether or not it is subject to the reporting requirements. As far as possible, BaFin has made use of the scope for flexibility available to it in order to simplify the new reporting obligations for the undertakings. The large undertakings subject to the full reporting requirements were required to submit data (for the third quarter of 2019) to BaFin at the start of December[20]. This initial phase of the new reporting system was completed successfully. The undertakings that are partially exempt must file their reports for the first time as at the 31 December 2019 reference date. EIOPA and the ECB have also issued transitional provisions on the deadlines for filing, in order to allow the undertakings more time to submit their reports to begin with. However, the reporting deadlines will become shorter in the period from 2019 to 2023, and will remain the same from 2024 onwards.[21]

18 EIOPA-BoS/18-114.

19 www.bafin.de/dok/13061030 (only available in German).

20 By 9 December 2019 (ten weeks after the end of the third quarter of 2019).

21 For details of the deadlines, see www.bafin.de/dok/12383156 (submission deadlines).

Table 11: Risk classification results 2019*

Undertakings in %		Quality of the undertaking				
		A	B	C	D	Total
Market impact	very high	0.0	1.7	1.2	0.0	**2.9**
	high	0.7	7.3	3.6	0.0	**11.6**
	medium	2.5	16.6	6.8	0.4	**26.3**
	low	5.9	39.2	12.6	1.5	**59.2**
	Total	**9.1**	**64.8**	**24.2**	**1.9**	**100.0**

* The table shows the assessment based on the data as at 31 December 2019.

Submission of data to BaFin

The Bundesbank and BaFin have agreed that the undertakings subject to the reporting requirement will submit all of the data to BaFin. BaFin in turn will pass the data on to the Bundesbank and to EIOPA.

BaFin is assisting the undertakings with their reporting by providing extensive information on the reporting templates and on the process itself. In addition to an overview of the reporting templates, a second annex to BaFin's general administrative act contains additional notes which are intended to simplify the process of filling out the templates for the undertakings.

In addition, both BaFin and the Bundesbank have hosted information events to prepare the undertakings for their reporting obligations and answer their questions.

2.2 Risk Classification

BaFin allocates the insurance undertakings it supervises to risk classes that it uses to define how closely the insurers are supervised (see info box). In 2019, the number of good-quality insurers was at the previous year's level (see Table 11).

For the purposes of the 2019 risk classification, BaFin classified around 74 % of the insurers in the higher quality range, i.e. as "A" or "B". The proportion of undertakings in the upper quality ratings therefore remained at the same level as in the previous year. As in the previous years, BaFin did not rate any insurers with high or very high market relevance as an undertaking with low quality.

At a glance

Risk classification

Insurers are allocated to classes using a two-dimensional matrix that reflects their market impact and quality. The market impact of life insurers, *Pensionskassen* and *Pensionsfonds* is measured on the basis of their total investments. The relevant parameter for health insurers, property/casualty insurers and reinsurers is those undertakings' gross premium income.

Market impact is measured on a four-tier scale of "very high", "high", "medium" and "low". The quality of the insurers is based on an assessment of the following factors: net assets, financial position and results of operations, growth and quality of management.

BaFin assesses the first two factors using insurance-specific (mainly quantitative) indicators, while it assesses management quality using qualitative criteria. The rating system adds together the ratings of the individual factors to form an overall rating on a four-tier scale from "A" (high quality) to "D" (low quality).

Results in the individual insurance classes
There were no significant changes either for the property and casualty insurers or for the health insurance undertakings in 2019. The proportion of undertakings assessed as "A" or "B" was again over 80% for the property and casualty insurers, and remained over 70% for health insurance undertakings.

In contrast, the life insurers recorded a deterioration in their assessment. In 2019, the proportion of life insurers with a "C" rating was higher than in 2018. At the same time, the proportion of life insurance undertakings assessed as "B" declined. The majority of life insurers once again fell into the medium quality range in 2019.

The proportion of *Pensionsfonds* with a "B" rating increased in 2019. The proportion of undertakings in this segment assessed as "A" declined at the same time.

There were no changes worthy of mention for the reinsurers in 2019. BaFin assessed around 79% as "A" or "B".

Small increase in the number of classified insurers
The number of insurance undertakings and *Pensionsfonds* classified in the 2019 reporting year rose slightly as in the previous year.

Classification of insurance groups
As in previous years, BaFin once again conducted a risk classification in 2019 of the insurance groups under its supervision that are subject to Solvency II. In contrast to a purely mathematical aggregation of the classification results of the individual undertakings, this quality assessment uses additional qualitative and quantitative group-specific inputs. The annual group-level risk classification reflects the growing importance of the supervision of insurance groups. It was updated and expanded with the introduction of Solvency II. The data resulting from BaFin's group-level risk classification thus generate significant added value and provide aggregated information on the overall position of the group.

2.3 On-site inspections

On-site inspections are also planned using a risk-based approach. As well as the results of the risk classification, one of the factors that BaFin takes into account is whether an insurer was subject to an on-site inspection in the recent past. Ad hoc on-site inspections are also conducted.

In the year under review, the Insurance Supervision Sector conducted a total of 87 on-site inspections. The decline in on-site inspections compared with the prior year was partly caused by the need to defer some inspections to the following year.

The risk matrix below (see Table 12) shows the breakdown of the inspections by risk class.

2.4 Authorised insurance undertakings and *Pensionsfonds*

The number of insurance undertakings supervised by BaFin rose marginally in 2019, while the number of *Pensionsfonds* remained unchanged. At the end of the year under review, BaFin supervised a total of 551 insurance undertakings (previous year: 550 undertakings) and 33 *Pensionsfonds* (see Table 13 on page 79). Out of the total number of insurers, 530 were engaged in business activities and 21 were not.

Table 12: Breakdown of on-site inspections by risk class in 2019

On-site inspections		Quality of the undertaking					
		A	B	C	D	Total	Undertakings in %
Market impact	very high	0	8	2	0	**10**	**12.2**
	high	1	10	5	0	**16**	**19.5**
	medium	1	12	12	1	**26**	**31.7**
	low	1	18	9	2	**30**	**36.6**
	Total*	**3**	**48**	**28**	**3**	**82**	**100.0**
	Undertakings in %	**3.7**	**58.5**	**34.1**	**3.7**	**100.0**	

* 5 on-site inspections were also conducted at unclassified undertakings, bringing the total to 87 inspections.

Table 13: Number of supervised insurance undertakings and *Pensionsfonds*

As at 31 December 2019

Insurance undertakings	with business activities	without business activities
Life insurers	83	9
Pensionskassen	135	3
Funeral expenses funds	33	0
Health insurers	46	0
Property and casualty insurers	204	6
Reinsurers	29	3
Total	**530**	**21**
Pensionsfonds	33	0

2.5 Developments in the individual insurance classes

The following figures for 2019 are only preliminary. They are based on the interim reporting as at 31 December 2019.

It should also be noted that, in accordance with section 45 of the Insurance Supervision Act, BaFin has exempted certain undertakings falling within the scope of the Solvency II Directive from elements of the interim reporting requirements.

The overview of aggregate investments (see 2018 Annual Report, page 111 f) has not been provided, since information on the aggregate investments of the primary insurers as at the 31 December 2019 reporting date was not fully available either from the Solvency II reporting system or under the German Insurance Reporting Regulation (*Versicherungsberichterstattungs-Verordnung*) (statement 101 – development of investments).

2.5.1 Life insurers

Business trends
In 2019, new business (i.e. policies with the first premium paid) in direct life insurance remained at the same level as in the previous year with approximately 5.1 million new policies. The total value of new policies underwritten fell slightly by 1.2 % to around €275.1 billion compared with €278.5 billion in the prior year.

The share of the total number of new policies accounted for by term insurance policies declined year on year from 37.5 % to 32.8 %.

The share attributable to pension and other insurance contracts rose from 53.8 % to 58.5 % over the same period. In contrast, the proportion of endowment life insurance policies was unchanged in comparison with the prior year at 8.7 %.

Early terminations of life insurance policies (surrender, conversion to paid-up policies and other forms of early termination) remained at the prior-year level with 2.2 million contracts and a total sum insured of €104.7 billion.

There were a total of approximately 82.4 million direct life insurance contracts at the close of 2019, compared with 83.0 million in the previous year. However, the sum insured increased by 2.9 % to €3,224 billion. Term insurance policies recorded a marginal decrease in the number of contracts from 12.8 million to around 12.7 million, but at the same time an increase in the sum insured from €815.7 billion to €853.6 billion. Pension and other insurance policies continued the positive trend of previous years, with the number of contracts growing from 55.8 % to 57.3 % as a proportion of the total. This represents growth in the share of the total sum insured from 57.4 % to around 58.4 %.

Gross premiums written in the direct insurance business of the German life insurers recorded a significant increase from €87.4 billion in the previous year to €97.6 billion in the year under review, which was attributable to individual undertakings.

Investments
Aggregate investments increased in the year under review by 3.8 % from €949.2 billion to €985.4 billion. Net hidden reserves rose to €181.0 billion at the year-end compared with €105.5 billion in the previous year as a result of the decline in interest rates. This corresponds to 18.4 % of the aggregate investments, following 11.1 % in the prior year.

Preliminary figures indicate that the average net investment return amounted to 3.9 % in 2019, higher than the prior-year level of 3.6 %. One reason for the growth in the net investment return is likely to be the increased expenditure on building up the *Zinszusatzreserve* in 2019 and the associated realisation of valuation reserves.

Projections
BaFin again prepared projections for the life insurers in 2019 (see info box). BaFin uses the projections primarily to analyse how two different capital market scenarios affect the insurers' performance for the current financial year.

At a glance

Life insurance projections

The projection as at the 30 September 2019 reference date focussed on examining the medium- to long-term impact of the low level of interest rates on the life insurers. For this purpose, BaFin collected data on the forecast financial performance in accordance with the German Commercial Code (*Handelsgesetzbuch*) for the 2019 financial year and the following 14 financial years. In preparing the projections, BaFin assumes that new investments and reinvestments are made solely in fixed-interest investments with an interest rate of 0.5 % and otherwise unchanged conditions in the capital markets. In a second scenario, the life insurers were able to simulate new investments and reinvestments and the performance of the capital markets according to their individual corporate planning.

The analysis of the projections confirmed BaFin's assessment that the life insurers would be able to satisfy their contractual obligations. However, should the low interest rate environment persist and take another turn for the worse, it is to be expected that the economic position of the undertakings will deteriorate further. BaFin will therefore continue to monitor the insurers very closely to ensure that they analyse their future financial development in a continued low interest rate environment at an early stage and in a forward-looking and critical manner. It is essential that the life insurers introduce suitable measures in good time and take appropriate precautions.[22]

Solvency II
82 of the 83 life insurers supervised by BaFin fell within the scope of Solvency II at the reporting date. For the purpose of calculating the solvency capital requirement (SCR) at the close of 2019, a total of 72 of the 82 undertakings employed the standard formula while 10 undertakings used a (partial) internal model. None of the life insurers used undertaking-specific parameters.

Of the total of 82 life insurers, 48 applied the volatility adjustment in accordance with section 82 of the Insurance Supervision Act and the transitional measure for technical provisions pursuant to section 352 of the Insurance Supervision Act. Eight life insurers used only the transitional measure for technical provisions, while eight undertakings employed the volatility adjustment as the only measure. One undertaking applied the transitional measure for risk-free interest rates under section 351 of the Insurance Supervision Act, i.e. the transitional discount curve, in combination with the volatility adjustment. In total, therefore, 57 life insurers used the volatility adjustment, 56 life insurers the transitional measure for technical provisions and 1 life insurer the transitional discount curve.

SCR coverage
All of the life insurance undertakings were able to report adequate SCR coverage as at 31 December 2019. The SCR ratio for all undertakings together (eligible own funds for the sector in relation to the SCR for the sector) amounted to 382.0 % compared with 448.3 % in the previous year.

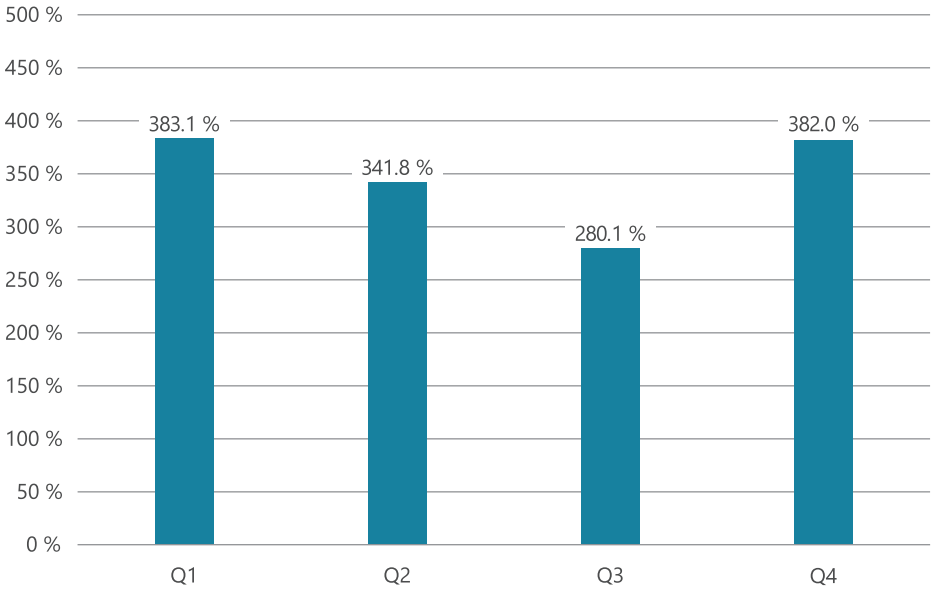
Figure 6 on page 81 shows the SCR coverage ratios of the life insurance undertakings subject to interim reporting obligations over time.

Composition of the SCR
The SCR amounted to €34.7 billion as at 31 December 2019. Measured by the gross basic SCR, 70 % on average of the capital requirements of the undertakings applying the standard formula that were subject to interim reporting obligations in 2018 was attributable to market risk (excluding diversification effects). In addition, a significant proportion of the SCR related to underwriting risks for life (34 %) and health (25 %) insurance. By contrast, counterparty default risks (2 %) were generally less important. The percentages quoted add up to more than 100 % because diversification effects, which reduced the gross basic SCR, have not yet been included. They amounted to 31 %.

The SCR required to be covered is calculated on the basis of the gross basic SCR, taking other variables into account. In this context, the loss-absorbing effects of technical provisions (75 %) and of deferred taxes

22 On the impact of the low interest rate environment on insurers and *Pensionskassen*, see also chapter I 5.

Figure 6: Development of SCR coverage ratios



* Q stands for quarter.

(7 %) contributed to a lower figure. On the other hand, operational risk (3 %) was reflected in a slight increase in the figure.

Composition of own funds

The own funds eligible for the SCR of the life insurance undertakings subject to interim reporting requirements amounted to €131.4 billion as at 31 December 2019. Of the total amount, 98 % of the eligible own funds were accounted for by basic own funds and 2 % by ancillary own funds. 97 % of the eligible own funds were attributable to the highest class of own funds (Tier 1) and the majority of the remainder to the second-highest class (Tier 2). On average, the "reconciliation reserve" accounted for 65 % of the industry's basic own funds, while surplus funds accounted for 29 %. Other noteworthy components at the reporting date were share capital including issuing premiums (4 %) and subordinated liabilities (2 %).

Remediation plans

If undertakings apply one of the transitional measures incorporated in Solvency II and are showing inadequate coverage of the SCR without that measure, they must submit a remediation plan in accordance with section 353 (2) of the Insurance Supervision Act. In the plan, the undertaking must set out the step-by-step introduction of measures planned to generate sufficient own funds or to reduce its risk profile, to ensure that it will comply with the solvency capital requirements without the use of transitional measures at the latest by the end of the transitional period on 31 December 2031.

26 insurers affected

26 of the life insurers under supervision by BaFin at the reporting date have been required to submit a remediation plan since the introduction of Solvency II, because they were unable to guarantee adequate SCR coverage without employing transitional measures. BaFin is in close contact with these undertakings in order to ensure that the SCR is complied with on a long-term basis at the latest following the end of the transitional period. The undertakings concerned are required to comment on the stage of development of the measures in their annual progress reports, even if adequate SCR coverage has been restored at that time without the application of transitional measures.

Development of discretionary bonuses

Most life insurers are making a moderate reduction in the 2019 level of discretionary bonuses for 2020 in view of the continuing low level of interest rates. The current total return, i.e. the sum of the guaranteed technical interest rate and the interest surplus, for the tariffs available in the market for endowment insurance policies is an average of 2.2 % for the sector as a whole. This figure was 2.3 % in both 2019 and 2018.

Development of the additional interest provision

Since 2011, life insurers have been required to build up an additional interest provision (*Zinszusatzreserve*) to prepare for lower investment income in the future on the one hand and the guarantee obligations on the other, which remain high. Their expense for this in 2019 was more than €9.3 billion. The cumulative

Zinszusatzreserve at the end of 2019 therefore amounted to €75.2 billion. The reference interest rate used to calculate the *Zinszusatzreserve* was 1.92 % at the end of 2019.

2.5.2 Private health insurers

Business trends
The 46 private health insurers supervised by BaFin generated premium income totalling around €41 billion in 2019. This represents an increase of 3.0 % over 2018. The growth in premiums was therefore higher than in the previous year. It was mainly attributable to new business, especially in supplementary insurance, and to premium adjustments.

Comprehensive health insurance, with around 8.7 million persons insured and premium income of €28 billion – representing approximately 70 % of total premium income – was once again by far the most important business line for the private health insurers in 2019. Including the other types of insurance, such as compulsory long-term care insurance, daily benefits insurance and the other partial health insurance types, the private health insurance undertakings insure approximately 42 million people.

Investments
The health insurers increased the carrying amount of their investment portfolio by 4.9 % to approximately €302 billion in the year under review. Investment remained focused on fixed-income securities. BaFin did not identify any significant shifts between the asset classes.

The main macroeconomic factor affecting private health insurers is still the low interest rate environment. Since interest rates in the year under review remained at an extremely low level, the health insurers' reserve situation remains comfortable mainly thanks to high valuation reserves in fixed-income securities. At 31 December 2019, net hidden reserves in investments amounted to around €52 billion, or roughly 17 % of investments (previous year: 21 %).

Preliminary figures put the average net investment return in the year under review at around 3.2 %, and therefore slightly above the level of the previous year (3.0 %).

Solvency
Since Solvency II came into effect on 1 January 2016, Solvency I has applied only to six health insurers qualifying as small insurance undertakings within the meaning of section 211 of the Insurance Supervision Act. Preliminary figures indicate that all six undertakings will comply with the solvency rules applicable to them as at 31 December 2019.

The remaining 40 health insurers were subject to the Solvency II reporting obligations at the end of 2019. The majority of these health insurers use the standard formula to calculate the SCR. Four undertakings used a partial or full internal model. None of the undertakings used undertaking-specific parameters.

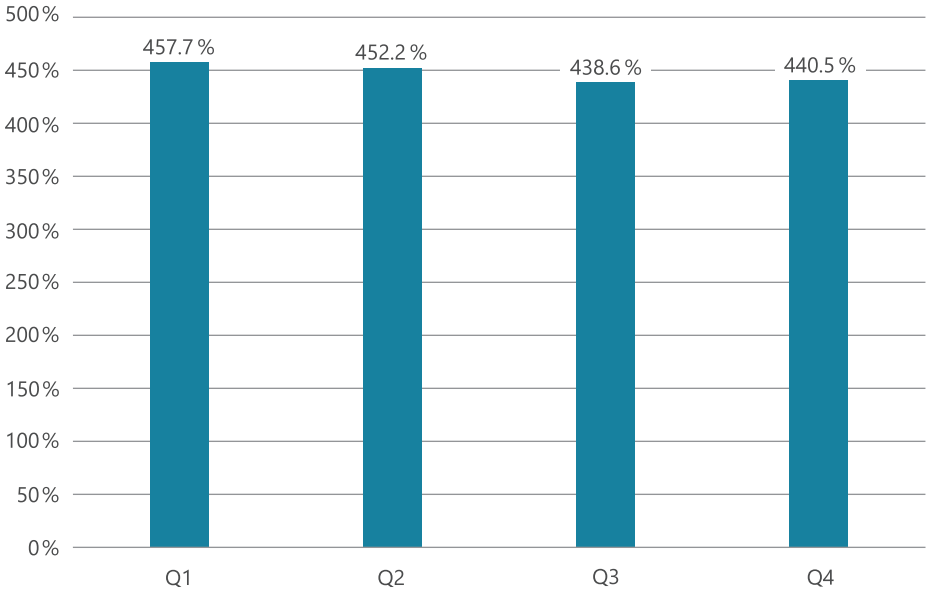
Transitional measures and volatility adjustment
In the year under review, one health insurer applied the volatility adjustment in accordance with section 82 of the Insurance Supervision Act and the transitional measure for technical provisions pursuant to section 352 of the Insurance Supervision Act. One health insurer used only the transitional measure for technical provisions, while four undertakings employed the volatility adjustment as the only measure. The health insurers did not apply the transitional discount curve, i.e. the transitional measure for risk-free interest rates pursuant to section 351 of the Insurance Supervision Act. Undertakings that apply a transitional measure and report a shortfall without that measure must submit a remediation plan in accordance with section 353 (2) of the Insurance Supervision Act. None of the health insurers has so far been required to submit a remediation plan of that type.

All of the undertakings demonstrated more than adequate coverage of the SCR at 31 December 2019 – as well as at all the quarterly reporting dates in 2019. Figure 7 on page 83 shows the SCR coverage ratios for the sector.

The SCR coverage ratio of private health insurers amounted to 478 % as at 31 December 2018. This represents a year-end value, while the values in Figure 7 on page 83 are derived from reporting during the year. The variations in the coverage ratios are mainly caused by changes in the interest rate environment and in own funds, in particular the surplus funds.

The sector SCR for all private health insurers amounted to €6.5 billion as at 31 December 2019 according to the quarterly reporting. The health insurers were primarily exposed to market risk. This was responsible for around 79 % of the capital requirements for users of the standard formula at the close of the previous year. Around 41 % of the capital requirements at that date related to the underwriting risk for health insurance.

Figure 7: Development of SCR coverage ratios



* Q stands for quarter.

The eligible own funds for all health insurers amounted to approximately €28.7 billion as at 31 December 2019 according to the quarterly reporting. The health insurers reported the majority of their own funds in the reconciliation reserve. At the end of the previous year, the proportion was approximately two-thirds. The surplus funds were another major component of own funds, accounting for just under one-third. Other components of own funds such as share capital including the attributable issuing premium were comparatively unimportant.

At a glance

Health insurance projections

The projection as at the 30 September 2019 reference date focussed on examining the medium-term impact of the low level of interest rates on the health insurers. For this purpose, BaFin collected data on the forecast financial performance in accordance with HGB for the 2019 financial year and the following four years – in each case in different unfavourable capital market scenarios. In one scenario, BaFin assumed that new investments and reinvestments were made solely in fixed-interest investments with a return on new investments of 0.5 %. In a second scenario, the health insurers could simulate new investments and reinvestments according to their individual corporate planning.

Projections

BaFin also carried out a projection exercise for health insurers in 2019 in order to simulate the effects of unfavourable developments in the capital market on the performance and financial stability of an undertaking (see info box).

39 insurers took part in the projection exercise. Only seven undertakings were exempted from taking part by BaFin. These are insurers offering Non-SLT health insurance. These undertakings do not have to establish a provision for increasing age and do not have to generate a specific technical interest rate.

The overall conclusion is that even a persistent low interest rate environment would be tolerable for the health insurers from an economic point of view. As expected, the data generated show that in a low interest rate scenario the risk attaching to new investments and reinvestments continues to arise and that investment returns decline. This demonstrates that the technical interest rate must be gradually brought down by means of premium adjustments.

ACIR and technical interest rate

The health insurers base the determination of the technical interest rate on the actuarial corporate interest rate (ACIR) (see info box on page 84).

Definition

Actuarial corporate interest rate

The business model of SLT health insurance (operated using Similar to Life Techniques) is based on premium rates which must be reviewed annually to ascertain whether they are appropriate. This involves an examination of all the assumptions on which the premium calculation is based – in particular those relating to the development of the net return on investments. Insurers estimate this development and the safety margin, which must also be factored into these assumptions, on the basis of the actuarial corporate interest rate (ACIR) developed by the German Association of Actuaries (*Deutsche Aktuarvereinigung* – DAV). Insurers must report their ACIR to BaFin each year. This determines whether they are also required to lower the technical interest rate for existing tariffs if they are required to adjust their premiums.

The ACIR figures calculated in the 2019 financial year are below the maximum technical interest rate of 3.5% stipulated in the German Health Insurance Supervision Regulation (*Krankenversicherungsaufsichtsverordnung*) throughout the sector. As a result of the continuing low interest rate environment, the ACIR figures have again fallen in comparison with previous years. In most cases, the insurers will therefore have to make further reductions in the relevant technical interest rates used for the purposes of premium rates. The ACIR guideline contains a procedure for this purpose which allows the responsible actuary and the actuarial trustee involved in the premium adjustment to determine an appropriate and reliable technical interest rate for the particular entity under consideration.

Around 61% of insureds are affected by the premium adjustments for comprehensive health insurance pending in 2020. The average premium adjustment for the sector amounts to approximately 5.1%. The health insurers have used a total of approximately €2 billion of the provisions for bonuses to limit the increases in premiums.

2.5.3 Property and casualty insurers

Business trends
Property and casualty insurers recorded a 5.5% year-on-year increase in gross premiums written in the direct insurance business in 2019 to €83.3 billion (previous year: €79.0 billion).

Gross expenditures for claims relating to the year under review rose by 1.7% to €25.5 billion (previous year: €25.1 billion). Gross expenditures for claims relating to prior years also rose by 2.6% to €20.6 billion. Provisions recognised for individual claims relating to the year under review amounted to €22.6 billion, compared with €22.3 billion in the previous year; provisions recognised for individual claims relating to prior years amounted in total to €69.5 billion, compared with €66.3 billion in the previous year.

Motor vehicle insurance
With gross premiums written amounting to €28.9 billion, motor vehicle insurance was by far the largest insurance class in 2019. This represented growth of 1.6% over the previous year. The increase was primarily due to a modest rise in the number of policies. Gross expenditures for claims relating to the year under review rose by 5.8% year on year, while gross expenditures for claims relating to previous years remained almost unchanged. Gross provisions recognised for individual claims relating to the year under review increased by 3.5%. On the other hand, gross provisions recognised for individual claims relating to prior years rose only slightly.

General liability insurance
Property and casualty insurers collected premiums of €10.9 billion (+7.0%) for general liability insurance. Claims relating to the year under review were 1.7% higher than the previous year's level at €1 billion. Property and casualty insurers paid out €3.3 billion for claims relating to prior years, almost the same amount as in the previous year. Gross provisions for individual claims, which are particularly important in this insurance class, rose by 1.5% to €3.3 billion for outstanding claims relating to the year under review. Gross provisions for outstanding claims relating to prior years rose by 6.4% to €22.7 billion.

Fire insurance
Insurers recorded gross fire insurance premiums written of €2.7 billion (+11.2%). Gross expenditures for claims relating to the year under review fell by 14.0% to €522.5 million.

Residential buildings and contents insurance
Insurers generated premium income for comprehensive residential buildings insurance and comprehensive contents insurance of €11.3 billion (+6.3%). Expenditures for claims relating to the year under review declined

by 9.7% year on year. Gross provisions recognised for individual claims relating to the year under review increased by 8.1%. Expenditures for claims relating to previous years grew by 3.8%. Provisions for claims relating to previous years rose by 11.2%.

Accident insurance

Premium income for general accident insurance amounted to €6.7 billion, 1.5% higher than the prior-year level. Gross expenditures for claims relating to the year under review amounted to €459.7 million. An unchanged amount of €2.4 billion was reserved for outstanding claims relating to the year under review.

Solvency I

The Solvency II supervisory system came into force on 1 January 2016. Solvency I now only applies to around 11% of property and casualty insurers which constitute small insurance undertakings within the meaning of section 211 of the Insurance Supervision Act.

The average coverage ratio for German property and casualty insurers subject to Solvency I amounted to 482% at the end of 2018[23].

Solvency II

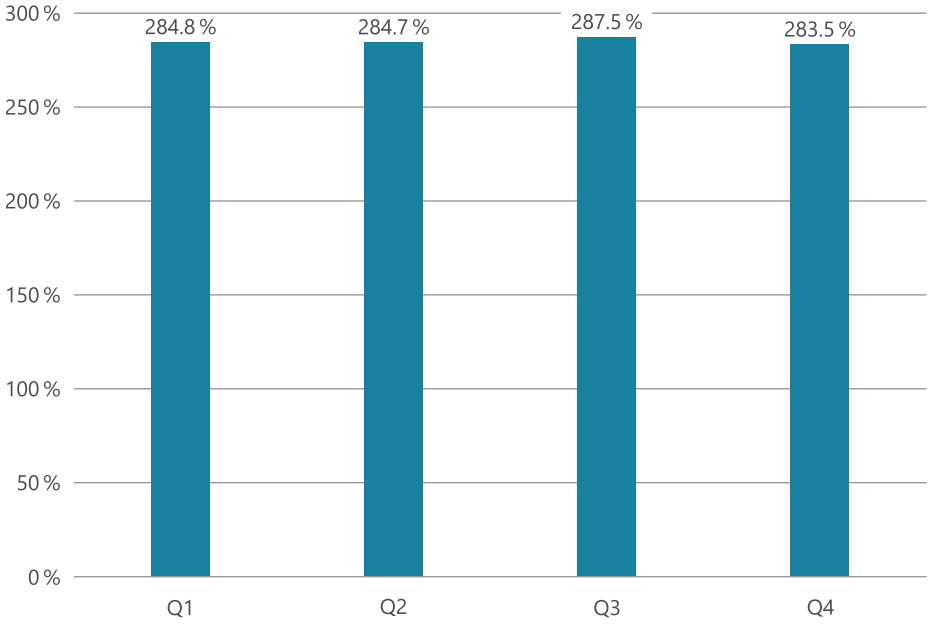
As at 31 December 2019, 89% of property and casualty insurers were subject to supervision in accordance with Solvency II. 92% of all property and casualty insurers subject to reporting obligations under Solvency II used the standard formula to determine their solvency capital requirement (SCR). 8 insurance undertakings calculated the SCR on the basis of an internal model while 7 used a partial internal model. 9 insurers took up the statutory option of incorporating undertaking-specific parameters into the calculation of the SCR. 7 of them were legal expenses insurers.

All property and casualty insurers – with the exception of one very small specialist insurer – were able to report adequate SCR coverage as at 31 December 2019. The SCR coverage ratio for the sector amounted to 283.5% (see Figure 8).

The SCR of the property and casualty insurers subject to interim reporting obligations for 2019 was €43.8 billion. The minimum capital requirement (MCR) for the industry as a whole amounted to €14.0 billion. The most important risk drivers by far for property and casualty insurance were market risk and underwriting risk for non-life insurance. These represented 61% and 52%, respectively, of the basic SCR. Underwriting risk for health insurance (7%) and counterparty default risk (4%) were much less significant. The diversification effect reducing the capital requirements amounted to 25%, while the loss-absorbing effects of deferred taxes represented 19% of the basic solvency capital requirement.

23 The disclosures relate to the 2018 financial year since projections are not prepared for property and casualty insurers.

Figure 8: Development of SCR coverage ratios



* Q stands for quarter.

Those German property and casualty insurers falling within the scope of Solvency II had eligible own funds for the purposes of SCR coverage amounting in total to €124.1 billion as at 31 December 2019. Of total eligible own funds, around 96.7 % were attributable to the highest category of own funds (Tier 1). The share of Tier 2 own funds was 3 %. Tier 3 own funds accounted for a proportion of 0.3 %. The property and casualty insurers report the majority of eligible own funds in the reconciliation reserve. As at 31 December 2019, this proportion was approximately 88 % of basic own funds.

The relatively unchanged coverage ratio – in comparison with the life insurance sector, for example – mainly reflects the fact that property and casualty insurers do not issue long-term guarantees and that the average term of their investments is shorter. The undertakings are therefore considerably less sensitive and volatile in response to movements in the capital markets.

2.5.4 Reinsurers

The level of claims resulting from natural disasters in 2019 was approximately at the level of the long-term average. Natural disasters are estimated to have caused total economic losses amounting to US$150 billion worldwide in 2019. This amount was roughly equal to the 30-year average (US$145 billion). Of the total economic losses from natural disasters, losses amounting to US$52 billion were insured. This figure lay almost exactly between the 10-year average (US$65 billion) and the 30-year average (US$43 billion).

Hurricanes were frequently responsible for the largest total economic losses that were insured. Japan was particularly affected this time. The typhoons Hagibis and Faxai alone were responsible for around one-third of insured losses worldwide with US$10 billion and US$7 billion, respectively. A combination of heat waves and severe storms with hail were the biggest drivers for losses in Europe. In Italy, for example, hailstones as large as oranges destroyed cars and roofs, while many people were injured.

The mild claims experience in 2019 strengthened the resilience of the reinsurers, which had suffered a high level of losses in both of the preceding years. The premium trend in 2018 and 2019 provided little relief, however: the traditional reinsurance cycle, in which severe natural disasters are followed by substantial premium increases to compensate for high claims expenditures, has applied only to a limited extent despite the record losses in 2017. Double-digit increases in premiums were indeed observed in some cases in the insurance classes and regions impacted by losses. But prices remained relatively unchanged in the other markets and segments. 2019 also saw a continuation of the sideways trend in reinsurance prices from the point of view of the market as a whole.

The unusual trend in premiums that followed the record losses of 2017 is due to an oversupply of capacity. Neither reinsurers nor investors in the alternative risk transfer (ART) market reduced capacity in 2018. Business in the ART market remained at a high level in 2019, even if investors reduced their activities to some extent. Factors contributing to the popularity of the ART market are not only the relatively attractive yields, but also the comparatively low correlation between insurance risk and market risk.

With respect to catastrophe bonds (insurance-linked securities – ILS), both new issues and the volume of bonds outstanding reached record highs at the end of 2018, with totals of US$13.9 billion and US$37.6 billion, respectively. New issues of ILS in 2019 amounted to US$11.1 billion. The total amount of catastrophe bonds in circulation once again reached a record high of US$40.7 billion. According to the broker Aon Benfield, the ART market had a volume of approximately US$93 billion as at the end of the second quarter of 2019 and made up around 15.2 % of the entire reinsurance market. The largest share of the market was accounted for by collateralised reinsurance, the second-largest by ILS.

Solvency II

Of the 33 German reinsurance undertakings subject to financial supervision by BaFin, 32 were required to comply with the Solvency II reporting obligations. They had own funds amounting to around €212.6 billion as at 31 December 2018 (previous year: €212.5 billion). At the same date, the solvency capital requirement amounted to around €64.1 billion (prior year: €63.1 billion). This represented an average SCR coverage ratio of around 331 % (previous year: 337 %). The minimum capital requirement (MCR) coverage amounted to 957 % on average at the reporting date (previous year: 985 %).

The range of the coverage ratios within the reinsurance sector is considerable, especially with respect to the MCR. As at 31 December 2018, the reinsurers reported SCR coverage ratios between around 124 % and 567 %, and MCR coverage ratios between 121 % and 2,269 %. None of the reinsurance undertakings reported inadequate capital coverage as at 31 December 2018.

Heterogeneous market

The wide range of the coverage ratios reflects the heterogeneous nature of the reinsurance sector. In addition to undertakings with regional and international operations, the sector also includes captive insurers, undertakings specialising in the run-off of reinsurance portfolios (run-off platforms) and some reinsurance undertakings that also perform the function of a holding company for an insurance group or a financial conglomerate. In such cases, the reinsurance activities are frequently subordinated to the holding company function and this is reflected, among other things, in more than adequate capital resources from the point of view of the reinsurance activities. Even though reinsurance undertakings represent only 8.5 % of all insurers subject to the Solvency II reporting requirements in terms of numbers, they nevertheless account for around 44.5 % of the own funds of all insurers falling within the scope of Solvency II.

The own funds of the reinsurance undertakings rose to an overall total of €246.6 billion at the 31 December 2019 reporting date according to the quarterly reports submitted, while the solvency capital requirement also increased, to €87.4 billion. The significant rise in own funds and the SCR mainly reflects the start of operations of one reinsurer which also acts as the holding company for a large insurance group. The coverage ratio amounted to around 282 %.[24]

2.5.5 *Pensionskassen* and *Pensionsfonds*

2.5.5.1 EIOPA stress test

In 2019, EIOPA carried out a Europe-wide stress test for IORPs for the third time. The objective of the test was to determine the resilience of the European IORP sector in the event of potential negative developments on the capital market. For the first time, EIOPA published the names of all participants in the stress test in its report. EIOPA's desired 60 % market coverage was reached in Germany.

The results of the stress test confirm BaFin's assessment that a continuation of the low interest rate environment would represent an enormous challenge for the IORPs. This would be even more the case for the scenario of a negative development on the capital markets, on which the stress test was based.

The stress test showed that, on an aggregated basis and applying the standardised European measurement approach (common balance sheet – CBS) developed by EIOPA, European IORPs offering benefit entitlements are not reporting sufficient investments to cover their obligations to the beneficiaries. This could have negative consequences for some of the employers using IORPs for the purpose of their employees' occupational retirement provision, namely if they had to make up those shortfalls.

The stress test also investigated how the IORPs are dealing with sustainability risks. The findings showed that for the most part they have access to information on the extent to which their investments are exposed to risks of that nature. It can be assumed that EIOPA will continue its research into this topic.

In a change from the previous stress test, EIOPA also enquired about cash flows relating to security mechanisms and possible reductions in benefits. The results showed that in the case of a stress event, additional payments by employers would tend to be especially high in the early years, while the effects of benefit reductions would probably be reflected over a longer period.[25]

2.5.5.2 *Pensionskassen*

Business trends

In addition to the life insurers, the *Pensionskassen* were also required to submit forecast figures in 2019. The results show that the total premium income of the *Pensionskassen* was lower in 2019 than in the prior year. Premiums earned amounted in total to approximately €6.7 billion in the year under review, a year-on-year decrease of around 6.6 %. In 2018, they had declined by 1.2 %.

Premium income for the stock corporations newly formed since 2002, which offer their services to all employers, fell by around 2.9 % compared with the prior year to €2.4 billion.

In the case of the mutual insurance associations funded largely by employers, premium income shrank by around 8.6 % to approximately €4.4 billion. The significant decline compared with the previous year is primarily due to non-recurring effects.

24 Further information and figures relating to the reinsurance business can be found in BaFin's 2018/2019 statistics on reinsurance undertakings, which are available on BaFin's website.

25 See chapter I 5.

Investments
The aggregate investment portfolio of the *Pensionskassen* supervised by BaFin grew by 7.1% in 2019 to approximately €180.4 billion (previous year: €168.5 billion). The dominant investment types are still investment units, bearer bonds and other fixed-income securities, as well as registered bonds, notes receivable and loans.

The sector's hidden reserves grew to around €29.8 billion (previous year: €19.6 billion) according to preliminary figures. This corresponds to roughly 16.5% of the aggregate investments (previous year: 11.6%). The hidden liabilities are relatively insignificant at 0.3% overall.

Projections and impact of the low interest rate environment
In the projections at the 30 September 2019 reference date, BaFin asked the *Pensionskassen* to estimate their results for the financial year under four scenarios for equities and interest rates. In view of the continuing low interest rate environment, the projections also covered the following four financial years, as in previous years. For certain *Pensionskassen* – including those with premium rates to which the German Premium Reserve Regulation (*Deckungsrückstellungsverordnung*) applies and which are required to build up a *Zinszusatzreserve*, as well as those subject to more intensive supervision – the projections were further extended to cover the following 14 financial years.

As the analysis of the projections showed, the coverage ratio for the SCR for the 2019 financial year was higher than the prior-year level. As a general rule, the undertakings were therefore able to meet the solvency requirements, which are not based on Solvency II but on the provisions of the IORP II directive. In BaFin's opinion, therefore, the sector's short-term risk-bearing capacity seems to be assured as before. Based on the projections, the overall net return on investment for the *Pensionskassen* was approximately 3.9% in 2019 (previous year: 3.3%).

The persistently low interest rates are also posing exceptional challenges for the *Pensionskassen*. The projections clearly show that the current return on investments is falling more rapidly than the average technical interest rate for the premium reserve. If it should be necessary for individual *Pensionskassen* to tighten their biometric actuarial assumptions or reduce the technical interest rate, it will become increasingly difficult for those *Pensionskassen* to finance the necessary increases in reserves from surpluses.

The *Pensionskassen* took action at an early stage to maintain their risk-bearing capacity. This can also be seen from the results of the 2019 projection: in many cases, the *Pensionskassen* have already recognised additional provisions.

BaFin therefore continues to monitor and support the *Pensionskassen* closely, so that they can maintain and strengthen their risk-bearing capacity as far as possible even in the event of persistent low interest rates. *Pensionskassen* which have been particularly badly affected by the low interest rate environment are subject to more intensive supervision. This requires them to comply with additional regular reporting obligations. In some cases, the intensified supervision has already resulted in more active involvement by the employers and/or shareholders.

However, it is becoming clear that if the low interest rate environment persists, certain *Pensionskassen* will require additional funds. For *Pensionskassen* in the form of mutual insurance associations, it would be appropriate for their sponsoring undertakings to make funds available. *Pensionskassen* in the form of stock corporations would turn to their shareholders. If the necessary support is not received, *Pensionskassen* may no longer be able to meet their obligations to the beneficiaries to the full extent. Three *Pensionskassen* in the form of mutual insurance associations resolved to make reductions in benefits in 2019.

If an employer grants occupational retirement benefits to its employees and appoints a *Pensionskasse* for this purpose, it has an obligation under the German Occupational Pensions Act (*Betriebsrentengesetz*) to pay the benefits granted itself in the worst case. This gives the beneficiaries and pensioners additional security.

Solvency
The solvency margin ratio in accordance with the German Capital Resources Regulation (*Kapitalausstattungs-Verordnung*) applicable to the *Pensionskassen* was an average of 138% according to the projections as at the 2019 reporting date, which is therefore higher than in the previous year. According to the estimates, four *Pensionskassen* were unable to comply with the solvency requirements as at 31 December 2019.

2.5.5.3 *Pensionsfonds*

Business trends

The *Pensionsfonds* recorded gross premium income totalling €2.6 billion in 2019, compared with €10.3 billion[26] in the previous year. The fluctuations in premium income are attributable in particular to the fact that, in the case of *Pensionsfonds*, the premiums are often paid as a single premium, depending on the type of commitment agreed.

The total number of beneficiaries rose in the year under review to 1,112,677 persons compared with 1,058,215 persons in the previous year. Of those, 674,677 were vested employees who were members of defined contribution pension plans, while 68,992 vested employees were members of defined benefit pension plans. The benefit payouts of €2,381 million (previous year: € 1,907 million) related to 370,857 persons drawing benefits.

Investments

Investments for the account and at the risk of *Pensionsfonds* grew from €2,917 million to €3,161 million in the year under review. This corresponds, as in the previous year, to an increase in investments of 8.4%. The largest share of the portfolio amounting to 57% consisted of contracts with life insurance undertakings. As at 31 December 2019, net unrealised gains in the investments made by *Pensionsfonds* amounted in total to €267.8 million (previous year: €131.9 million).

Assets administered for the account and at the risk of employees and employers grew from €40.8 billion in the previous year to €45.5 billion in the year under review. Roughly 91% of these investments, which are measured in accordance with section 341 (4) of the Commercial Code at current market value, consisted of investment units.

Projections and low interest rate environment

BaFin prepared projections in 2019 for 32 *Pensionsfonds* (see info box). The particular focus of the projections was the expected profit for the year, the expected solvency and the expected valuation reserves at the end of the current financial year.

At a glance

Projections for *Pensionsfonds*

The scenarios defined by BaFin for the projections for the *Pensionsfonds* were the capital market situation at the 30 September 2019 reference date and a negative equity scenario with a 29% drop in prices. In addition, it required scenarios to be calculated that combined each of the two above-mentioned scenarios with a 200 basis point increase in the yield curve.

The assessment of the projections indicated that the 32 *Pensionsfonds* included would be able to withstand the four defined scenarios financially. The technical provisions for the account and at the risk of employees and employers are generally recognised retrospectively in accordance with the assets administered for the account and at the risk of employees and employers. If this process indicates that the amount of the investments falls short of a minimum premium reserve which may be calculated on a prospective basis, the difference must be made up by supplementary contributions from the employer. This means that balance-sheet cover for these technical provisions is guaranteed at all times. The projections showed that with no change in the capital market situation, supplementary contributions would have become due as at 31 December 2019 for two *Pensionsfonds*. The obligations recognised by the *Pensionsfonds* in their financial statements are to a large extent not guaranteed by the *Pensionsfonds*, and the guarantees are covered by congruent reinsurance in some cases.

Nevertheless, BaFin also considers it necessary to address the potential medium- and long-term ramifications for the *Pensionsfonds* of a low interest rate phase that persists even longer. As part of the projection exercise, the *Pensionsfonds* were once again also asked to estimate the expenses for the *Zinszusatzreserve* for the following four financial years. They also had to indicate whether they expected to be able to cover these expenses with corresponding income. *Pensionsfonds* with insurance-based business also had to show whether they would be able comply with the solvency requirements under the German Regulation on the Supervision of *Pensionsfonds* (*Pensionsfonds-Aufsichtsverordnung*) in the following four financial years. Of the 21 *Pensionsfonds* which operate insurance-based business, 19 have so far been required to establish a *Zinszusatzreserve*. These

26 The 2018 annual report contained the preliminary figure of €10.2 billion.

19 *Pensionsfonds* are currently financed through congruent reinsurance cover, or through current income or surpluses.

Solvency

According to the preliminary figures, all of the *Pensionsfonds* had sufficient own funds. They therefore complied with BaFin's solvency requirements. For around two-thirds of the *Pensionsfonds*, the level of own funds required by supervisory law was equal to the minimum capital requirement of €3 million for stock corporations and €2.25 million for mutual *Pensionsfonds*. The individual SCR for these *Pensionsfonds* is below the minimum capital requirement. This is due either to the relatively low volume of business or the type of business concerned.

3 Securities trading and the investment business

3.1 Monitoring of market transparency and integrity

If BaFin has – external or internal – information on market abuse, it will initially conduct an analysis (see 3.1.1) to establish whether this will provide enough evidence. If so, BaFin will launch a formal investigation (see 3.1.2). If this investigation corroborates the evidence that prohibitions on market abuse have been breached, BaFin either files a complaint with the public prosecutor's office, or the BaFin Division responsible for prosecuting administrative offences takes care of the matter (see 3.1.2).

3.1.1 Market abuse analyses

In 2019, BaFin completed considerably more market abuse analyses than in 2018 (see Table 14). This is because, since March 2019, it has reinforced its

Table 14: Market abuse analyses in 2019

	New suspicious transaction and order reports	Analyses completed	Analyses with sufficient evidence
2019			
Total	**2,471**	**3,767**	**25**
Market manipulation	1,557	2,635	10
Insider trading	888	1,081	15
Mixed cases	26	51	0
Reference year 2018			
Total	**3,104**	**353**	**65**
Market manipulation	2,404	166	32
Insider trading	688	168	33
Mixed cases	11	19	0

risk-based approach when processing information on market abuse.

If the initial review of information received already shows that there is not enough evidence of market manipulation and/or insider trading, BaFin now provisionally suspends the process after a brief standard analysis. If new insights subsequently come to light, it can restart the process at any time. This brief analysis process, which has been largely formalised, makes it possible to conduct a large number of analyses in a short period of time and to discontinue the process, if that is deemed expedient.

BaFin continues to give the highest priority to matters of special significance for the integrity of the financial market or for which there are clear indications of market abuse so it can investigate them urgently. This also fits in with a risk-based approach.

Figure 9: Breakdown of market manipulation evidence

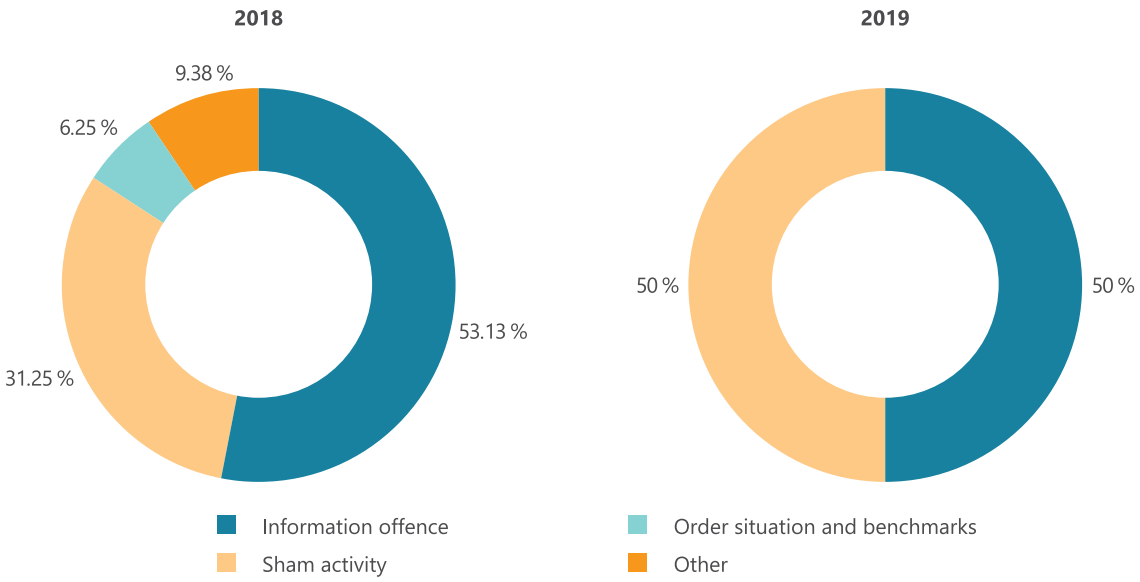
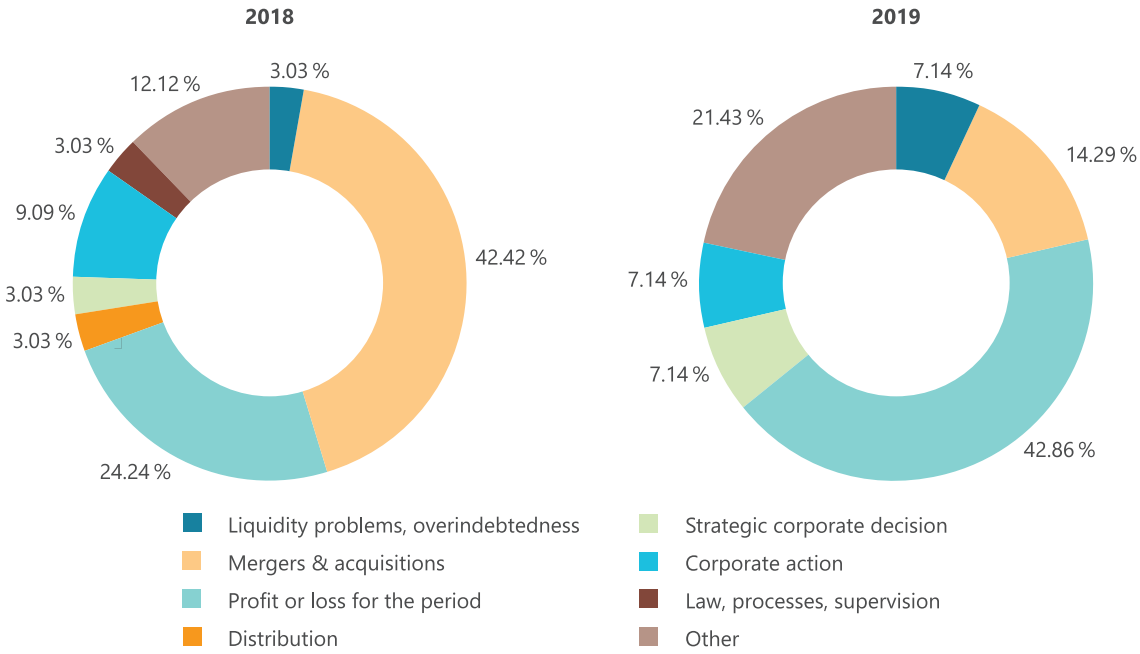


Figure 10: Breakdown of insider trading evidence



3.1.1.1 Market manipulation

Ten analyses conducted by BaFin in 2019 found sufficient evidence of market manipulation. Figure 9 on page 91 gives a percentage breakdown of the categories to which the evidence was attributable in 2019 and in the previous year.

3.1.1.2 Insider trading

15 analyses conducted by BaFin in 2019 found sufficient evidence of insider trading. The percentage breakdown to different categories is shown in Figure 10 on page 92.

Table 15: Market manipulation investigations

Period	New investigations	Investigations discontinued	International investigations	Investigations referred to public prosecutors' offices or BaFin Administrative Fines Division					Ongoing investigations
				Public prosecutors' offices		Administrative Fines Division*		Total (cases)	
				Cases	Individuals	Cases	Individuals		
2017	226	56		121	197	6	7	**127**	**441**
2018	149	84		77	124	4	4	**81**	**277**
2019	96	130	3	27	45	0	0	**27**	**213**

* The number of referrals to the BaFin Administrative Fines Division and the number of administrative fine proceedings initiated by BaFin (see 3.6) differ because different processes are used.

Table 16: Completed market manipulation proceedings

Period	Total	Decisions by the public prosecutors' offices*					
		Investigations discontinued				Proceedings discontinued in accordance with section 153a of the Code of Criminal Procedure	Public main proceedings not commenced in accordance with section 204 of the Code of Criminal Procedure
		Proceedings discontinued in accordance with sections 152 (2) and 170 (2) of the Code of Criminal Procedure	in accordance with section 153 of the Code of Criminal Procedure	in accordance with sections 154, 154a of the Code of Criminal Procedure	in accordance with section 154f of the Code of Criminal Procedure		
2017	**407**	187	71	30	24	56	5
2018	**268**	138	31	16	14	43	5
2019	**177**	109	12	11	2	22	0

	Final court judgements following criminal proceedings*				Rulings following administrative fine proceedings	
	Proceedings discontinued by the court in accordance with section 153a of the Code of Criminal Procedure	Convictions following summary proceedings	Convictions following full trial	Acquittals	Investigations discontinued	Final administrative fines
2017	5	15	4	0	3	7
2018	0	6	7	3	3	7
2019	3	5	4	0	4	5

* The figures relate to decisions from previous years, but BaFin only came to know about them in the years specified in the left table column.

3.1.2 Market abuse investigations

3.1.2.1 Market manipulation

3.1.2.1.1 Developments in 2019

BaFin pursues a risk-based approach not only when analysing market manipulation, but also in the subsequent investigations. Since BaFin concentrates on breaches with greater relevance, it launched fewer new investigations in 2019 and filed fewer criminal complaints than in the previous year (see Table 15 on page 93). On the other hand, BaFin discontinued more investigations, a number of them (38) for technical reasons, or because there were related investigations that had not been recorded in previous years.

International cooperation
In 2019, BaFin again worked together with foreign supervisory authorities on many investigations.

BaFin primarily exchanged information with supervisory authorities of other member states of the European Union (EU), such as France, Austria and the United Kingdom. Among countries outside the EU, BaFin received support for its investigations into market manipulation in particular from Canadian and Swiss supervisory authorities.

Table 17: Requests for international administrative assistance regarding market manipulation

Period	Requests made	Requests received	Total
2017	95 (to 27 countries)	44 (from 13 countries)	**139**
2018	75 (to 22 countries)	31 (from 12 countries)	**106**
2019	36 (to 18 countries)	29 (from 7 countries)	**65**

3.1.2.1.2 Selected priority areas for the investigations

PVA TePla AG
If the public prosecutor's office decides against criminal prosecution of market manipulation in the form of wash trades (see info box) on the ground of insignificance and a lack of public interest in accordance with section 153 (1) of the Code of Criminal Procedure (*Strafprozessordnung*), this does not prevent BaFin from nevertheless pursuing the corresponding cases as administrative offences. For example, the Osnabrück public prosecutor's office initially discontinued an investigation into trade-based market manipulation. The investigation had been initiated by BaFin filing a criminal complaint. The closure of the investigation against the accused, who had not previously attracted any criminal attention, related only to his alleged criminal conduct. That notwithstanding, since BaFin was the competent administrative authority, it was therefore free to pursue the alleged market manipulation as an administrative offence.

Definition

Wash trades

In wash trades, an investor simultaneously buys and sells products such as shares or other financial instruments. The transactions do not lead to a change in beneficial ownership. These types of transactions create the impression that prices are formed independently and freely driven by supply and demand. Wash trades can mislead other market participants and are prohibited because they are a form of market manipulation.

Facts of the case: on 3 March 2017, the accused issued offsetting buy and sell orders in seven cases in shares of PVA TePla AG; he had coordinated these transactions in terms of nominal amount, trading limits and choice of trading venue. Through this order behaviour, the accused sought to create exchange trades in which he simultaneously traded against himself as buyer and seller. The trades concerned added up to approximately 85% of daily turnover. The transactions did not, however, lead to a change in beneficial ownership of the financial instrument concerned.

Legal considerations: the accused conceded during the investigation that the events had more or less happened as follows: he had issued offsetting orders in order to create loss determinations that would be tax deductible. Capital markets law prohibits these types of transactions, irrespective of whether they are motivated by tax considerations. The trading behaviour of the accused was moreover intentional, because he had placed the buy and sell orders specifically so that they would be executed against each other.

Administrative fine: BaFin imposed individual fines of between €400 and €4,800 on the seven administrative offences committed by multiple acts. The total fine amounted to €12,800. The administrative order imposing the fines is final.

Cashcloud AG

Facts of the case: Cashcloud AG issued an ad hoc disclosure on 2 August 2016 in which it informed capital market participants that the operating business, which was bundled in a subsidiary, and loan receivables from that subsidiary had been sold to a group of investors. Cashcloud AG did not, however, publish the selling price or disclose the changes the transaction caused to its balance sheet. As a member of the administrative board, the accused was personally responsible for complying with the disclosure obligation and should have published this information, which was relevant to the share price. The reason is that, as a result of the purchase price achieved and the remeasurement of the loan receivable, the value of Cashcloud AG's assets declined by approximately 94 %. The accused failed to meet his obligation to include this highly price-relevant information in the disclosure published. As a result, the shares of Cashcloud AG were traded at a multiple of their intrinsic value, although the company had disposed of its operating business and was thus de facto only a shell of a company.

Punishment: in response to an application by the public prosecutor's office, the Local Court of Frankfurt am Main imposed an administrative fine of 90 daily units of €500 per day. The total fine amounted to €45,000. The sentence is final.

COMplus Technologies SE

Violations of the prohibition on market manipulation under the old market abuse law (section 20a of the German Securities Trading Act (*Wertpapierhandelsgesetz*, old version)) can still be subjected to criminal prosecution in Germany. The objection that entry into force of the European Market Abuse Regulation had led to a gap in criminal law, which – based on the principle of applying the most lenient law set out in section 2 (3) of the German Criminal Code (*Strafgesetzbuch*) – entailed the assumption of impunity, has meanwhile been clarified in a high court decision. This means that there has at no time been a gap in criminal law.

Facts of the case: The accused, who had several previous convictions, held a fairly large block of shares of COMplus Technologies SE, which was listed on the regulated unofficial market of the Frankfurt Stock Exchange. In order to sell his shares as profitably as possible, he commissioned market letters such as "Depot-Gewinner" or "Musterdepot" to advertise these securities and paid them for doing so. These services distributed e-mails with specific buy recommendations for the stock, but without adequately disclosing the existing conflict of interest. The accused took advantage of the demand generated in this way by selling the shares he held.

Legal considerations: it is prohibited, under both old and new market abuse law, to advertise shares in market letters without at the same time disclosing any existing conflict of interest, i. e. to engage in market manipulation by means of scalping. In section 52 of the new version of the Securities Trading Act, legislators have introduced a transitional provision for old cases that ensures that criminal offences committed under section 38 of the Securities Trading Act, old version, are prosecuted in accordance with the law applicable at the time of the offence.

Punishment: in this case, the Regional Court of Frankfurt am Main – Commercial Crime Division – deemed a prison sentence of two years and six months appropriate for the offence and crime. At the same time, it decided to seize a total of €7.8 million. The appeal against the judgement lodged by the accused was rejected by the Federal Court of Justice (*Bundesgerichtshof*) without further explanation.

3.1.2.2 Insider trading

3.1.2.2.1 Developments in 2019

BaFin's risk-based approach led to a decline in the number of cases of insider trading pursued in 2019. BaFin concentrated on violations with greater relevance and therefore initiated fewer new investigations (see Table 18) and filed fewer criminal complaints.

Table 18: Insider trading investigations

Period	New investigations	Investigation results						Ongoing investigations
		Investigations discontinued	Investigations referred to the public prosecutor's office or BaFin Administrative Fines Division					
			Public prosecutors' offices		Administrative Fines Division		Total (cases)	
			Cases	Individuals	Cases	Individuals		
2017	62	11	18	40			18	72
2018	71	48	19	63	1	4	20	75
2019	31	38	10	26			10	58

Table 19: Completed insider trading proceedings

Period	Total	Investigations discontinued	Investigations discontinued as part of out-of-court settlements	Final court judgements			
				Rulings by the court	Convictions following summary proceedings	Convictions following full trial	Acquittals
2017	41	27	5	5	4	0	0
2018	45	42	2	0	1	0	0
2019	58	29	17	6	0	1	5

International administrative assistance
International administrative assistance is an indispensable tool in insider trading surveillance. In 2019, BaFin requested administrative assistance from supervisory authorities in 15 cases (previous year: 38 cases; see Table 20). Administrative assistance was requested from BaFin in 22 cases. In the previous year, BaFin received 18 requests for administrative assistance.

Table 20: Requests for international administrative assistance in insider trading investigations

Period	Requests made	Requests received	Total
2017	79	28	107
2018	38	18	56
2019	15	22	37

3.1.2.2.2 Selected priority areas for the investigations

In 2019, the courts and public prosecutors' offices again informed BaFin about the outcome of insider trading proceedings. Although most of the cases for which BaFin had filed a complaint had been discontinued, some companies had to make large payments as part of out-of-court settlements. The largest settlement was €5 million.

OSRAM Licht AG
Facts of the case: at 6.05 p.m. on 10 November 2015, OSRAM Licht AG published an ad hoc disclosure, which said that the company was planning to invest a total of approximately €3 billion as part of an innovation and growth initiative up to and including the 2020 financial year. Out of this total, approximately €1 billion had been intended for the construction of a new LED chip factory in Malaysia. Based on this rise in expenditure, the managing board expected the adjusted EBITA[27] margin in financial year 2016 to be down significantly on the preliminary prior-year (2015) figure of 10.2%.

At 2.45 p.m. on 18 January 2016, OSRAM published an ad hoc disclosure, which indicated that, on the basis of the preliminary figures for the first quarter of the 2015/16 financial year, the company expected that the adjusted EBITA margin would be better than in the prior-year quarter, at 11.8%.

The accused had a leading position in the Accounting and Controlling department at OSRAM Licht AG. In addition, he was a member of the company's Disclosure Committee, which examines whether information has to be published in ad hoc disclosures. The investigations revealed that, in two cases, he had passed inside information without authorisation to another individual, against whom a complaint was also filed.

Punishment: the Regional Court of Würzburg sentenced the accused to a total fine of 180 daily units of €40 each. The judgement is final.

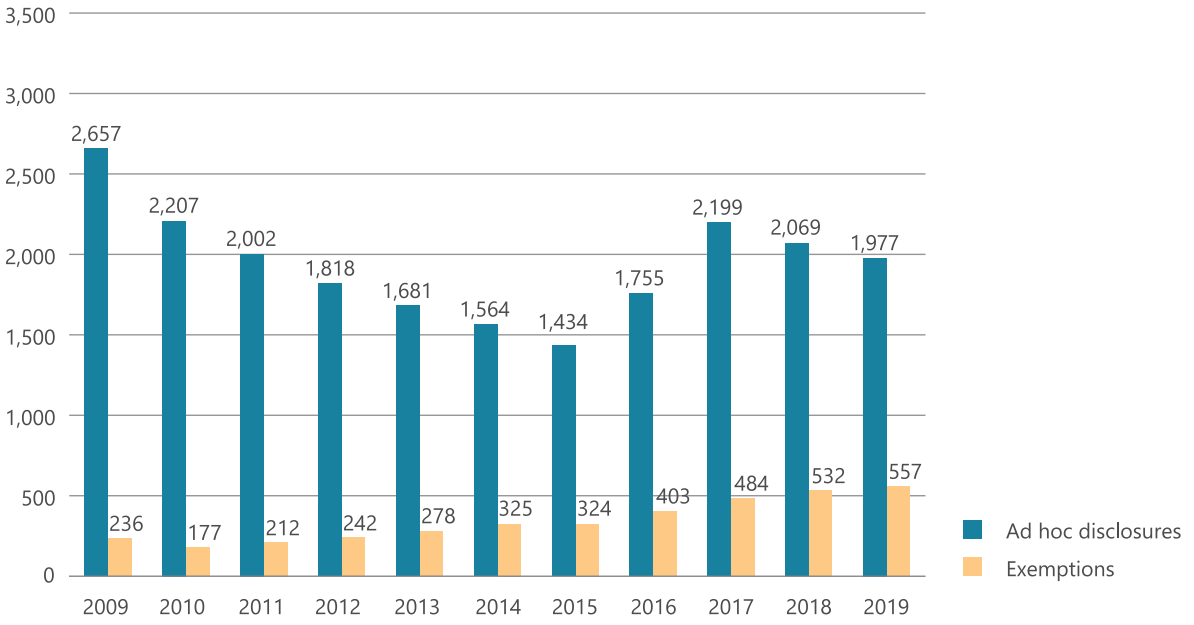
3.1.2.3 Ad hoc disclosures and managers' transactions

3.1.2.3.1 Ad hoc disclosures

In 2019, issuers published a total of 1,977 ad hoc disclosures (previous year: 2,069 disclosures; see Figure 11 on page 97). In addition, BaFin received 557 self-exemption notifications (previous year: 532 notifications).

27 EBITA stands for earnings before interest, taxes and amortization.

Figure 11: Ad hoc disclosures and exemptions



Many of BaFin's investigations were concerned with share buy-backs and corporate actions. Disclosures of such events were often published late. Background: inside information may relate in particular to a resolution by the board of management to use an authorisation given by the general shareholders' meeting to initiate a share buy-back programme. A resolution by a board of management to implement a capital increase may also constitute inside information.

Other topics included disclosures in connection with M&A[28] transactions and intermediate steps related to them, as well as on insolvencies. Submissions addressed to BaFin also triggered a large number of investigations. Many whistleblowers complained that issuers had not published inside information or had not published it in full.

Note

Issuer Guideline revised

In 2019, BaFin also expanded further on its interpretive practice on the disclosure of inside information. To this end, it submitted its revised Issuer Guideline for consultation. Publication of module C is planned for spring 2020.

28 Mergers and acquisitions.

3.1.2.3.2 Managers' transactions

In 2019, BaFin received 3,198 reports of managers' transactions (see Figure 12 on page 98). Background: managers – for example members of management or supervisory boards – of issuers admitted to a regulated market, multilateral trading facility (MTF) or organised trading facility (OTF) have to report to BaFin any transactions in shares or debt instruments of the issuer or in derivatives or other financial instruments related to them. The same applies to persons closely associated with them.

3.1.3 Monitoring of short selling

3.1.3.1 Prohibitions

The EU Short Selling Regulation prohibits uncovered short selling of shares and certain sovereign debt instruments. This also applies to entry into sovereign credit default swaps (CDSs) other than for hedging purposes or to the creation of such CDSs.

BaFin investigated 97 potential cases in 2019, which had been triggered by suspicious transaction reports or BaFin's own evidence. Table 21 on page 98 shows what has become of these investigations. Most of the investigations discontinued by BaFin related to voluntary self-reports due to minor infringements, caused by human error, such as a misunderstanding when the customer placed an order.

Figure 12: Reports of managers' transactions

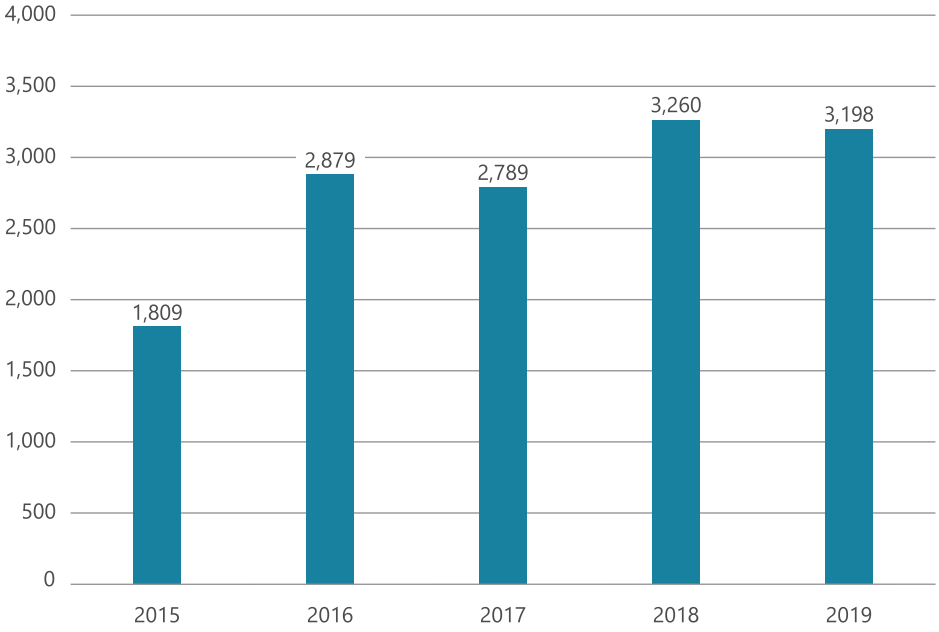


Table 21: Investigations of prohibited short sales

Period	New investigations	Investigation results			Investigations	Ongoing investigations**
		Investigations discontinued	Referred to another EU authority*	Referred to Administrative Fines Division		
2017	92	79	6	4	100	19
2018	55	53	44	0	71	18
2019	72	47	7	0	97	43

* Referred to the competent authority in accordance with Article 35 of the EU Short Selling Regulation.

** As at 31 December.

Wirecard AG

On 18 February 2019, BaFin issued a general administrative act prohibiting the establishment of new net short positions in shares of Wirecard AG (DE0007472060) and increases in existing net short positions until 12.00 midnight on 24 April 2019. The reason for issuing the act was the occurrence of large net short positions, considerable price falls and a high level of volatility in conjunction with potential manipulative practices, which posed a serious threat to market confidence and the price formation mechanism.

3.1.3.2 Transparency requirements and notifications by market makers

The holder of net short positions or a third party engaged by the holder notifies BaFin of these positions using BaFin's reporting and publishing platform, the MVP Portal. At the end of 2019, 972 undertakings and 1 private individual were registered for the reporting system. As in previous years, most of the parties subject to the notification requirement came from the United States and the United Kingdom. Table 22 on page 99 shows a summary of the notifications received by BaFin and of the net short positions published in the Federal Gazette (*Bundesanzeiger*).

Table 23 on page 99 provides a summary of the investigations initiated into violations of the transparency requirements. The number of notifications of net short positions submitted is high, but that of investigations initiated is low. This is because, here too, BaFin pursues a risk-based approach. Both in monitoring the notifications submitted and in the resulting investigations, BaFin focuses on notifications and violations with greater relevance.

Table 22: Notifications and disclosures of net short positions

Period	Notifications regarding shares	Disclosure required in the Federal Gazette	Number of shares affected	Notifications regarding debt securities	
				of the federal government	of the federal states
2017	12,861	4,001	281	135	0
2018	16,417	4,764	489	124	0
2019	14,976	4,656	371	93	2

Notifications broken down to indices in 2019*			
DAX	MDAX	SDAX	TecDAX
2,340	5,679	5,028	2,797

* The individual figures add up to an amount that is higher than the total number of notifications, because some issuers are represented in two indices.

Table 23: Investigations of transparency requirements

Period	New investigations	Investigation results		Investigations	Ongoing investigations*
		Investigations discontinued	Referred to Administrative Fines Division		
2017	17	26	0	38	12
2018	18	17	0	23	7
2019	4	3	0	11	8

* As at 31 December.

Table 24 gives a summary of market makers and primary dealers that made use of the exemptions from the prohibitions on short selling and from the transparency requirements in 2019.

Table 24: Notifications by market makers and primary dealers in 2019

	Market makers	Primary dealers
Total number of companies	51	34
of which based in Germany	48	10
of which based abroad	3*	24**
Total number of notifications in 2019	1,768	2
Total number of notifications since September 2012	9,822	40

* Non-EU third country.
** Domiciled outside Germany.

3.1.4 Supervision of financial market infrastructures: central counterparties and central securities depositories

3.1.4.1 New EMIR 2.2 Regulation

The European Market Infrastructure Regulation (EMIR) is the main regulatory framework for the supervision of central counterparties (CCPs). Its provisions were revised in recent years in collaboration with BaFin. The amended regulatory framework entered into force by way of Regulation (EU) 2019/2099 (EMIR 2.2) as at 1 January 2020.

One of the most important new features is that supervision has been strengthened for CCPs whose registered office is in a country outside the EU (third-country CCPs). Although there was a pre-existing requirement for third-country CCPs to be recognised by the European Securities and Markets Authority (ESMA), there was no ongoing supervision. Instead, reliance was placed almost entirely on supervision in the CCP's home country.

Since EMIR 2.2 entered into force, a new CCP Supervisory Committee established within ESMA has been responsible for supervising third-country CCPs. BaFin is a voting member of this Committee. Following consultations of the European Systemic Risk Board (ESRB) and the relevant central banks, ESMA will in future determine whether a third-country CCP is deemed systemically important for the financial stability of the European Union or of one or more of its member states or likely to become systemically important (Tier-2 CCP). In addition to the requirements in their home country, such Tier-2 CCPs will in future always have to meet the requirements of EMIR as well. Likewise, ESMA has been given expanded powers to issue supervisory measures applicable to third-country CCPs.

EMIR 2.2 has generally strengthened ESMA's role and that of the supervisory colleges, including in relation to European CCPs. Both ESMA and the supervisory colleges have been given additional rights to be involved in supervisory decisions. The colleges play a key role in supervising the CCPs because they ensure better exchange of information.

3.1.4.2 Brexit

In 2019, BaFin observed a significant rise in the volume of interest rate derivatives traded at Eurex Clearing AG. In addition, it noticed the beginnings of transfers of portfolios of euro interest rate derivatives to Eurex Clearing AG. In the context of Brexit, further shifts cannot be ruled out. BaFin is examining whether the German central counterparties are fully equipped to deal with the new additional business risks arising from Brexit. BaFin's supervisory focus defined in 2019 will continue to be on the risk management of CCPs in 2020.[29]

3.1.4.3 Authorisation procedure for central securities depositories – reporting obligation for settlement internalisers

After the EU had published the regulatory technical standards (RTSs) on the European Central Securities Depositories Regulation (CSDR) on 10 March 2017, all CSDs applied for their authorisation by the deadline set for the end of September 2017. The application normally covers the core services provided by CSDs and, for selected central securities depositories, also banking-type ancillary services.

29 For details on Brexit, see chapter I 2.

Since 1 July 2019, settlement internalisers[30] in Germany have had an obligation under Article 9(1) of the CSDR to report to BaFin on a quarterly basis the aggregated volume and value of all securities transactions that they settle outside securities settlement systems. To set out the reporting requirements in more detail, ESMA developed guidelines[31], which BaFin adopted into its administrative practice in June 2019. BaFin's MVP Portal is available for submissions.

3.1.5 Supervision of OTC derivative transactions and compliance with position limits

In accordance with the EMIR Regulation[32], certain financial and non-financial counterparties have to clear standardised OTC derivatives through a CCP. Alternative methods of risk mitigation, such as collateralisation, must be applied to OTC derivative transactions that do not have to be cleared through a CCP.

However, under EMIR, the companies concerned may opt not to collateralise transactions conducted within a consolidated or supervisory group. BaFin received a total of 72 requests to this effect in 2019. Details are listed in Table 25.

In parallel, companies that have been subject to the clearing obligation for OTC derivatives since 2016 have the option to request an exemption from this obligation for intragroup transactions. 19 requests to this effect were submitted in 2019, compared with 11 requests in the previous year.

Table 25: Notifications and requests

	Notifications/ requests 2018	Notifications/ requests 2019
Total number of notifications/ requests	66	72
One counterparty domiciled in other EU member state (notification)	39	31
One counterparty domiciled in third country (request)	27	41

30 Pursuant to Article 2(1)(11) of the CSDR, these are institutions, including institutions authorised under Directive 2013/36/EU or Directive 2014/65/EU, which execute transfer orders on behalf of clients or on their own account other than through a securities settlement system.

31 Guidelines on Internalised Settlement Reporting under Article 9 of CSDR.

32 See 3.1.4.1.

EMIR Refit
An amendment to EMIR entered into force as at 17 June 2019: Regulation (EU) No 2019/834 as regards the requirements for counterparties in OTC derivative contracts (EMIR Refit). The aim was to make the requirements simpler and more efficient and to reduce disproportionately high costs and burdens. A key new feature is that financial and non-financial counterparties now have a choice in terms of calculating the clearing threshold: if they opt not to calculate the threshold, they are automatically subject to the clearing obligation. If they do calculate it, but are below the threshold at the group level, the clearing obligation does not apply to these companies.

Market surveillance by BaFin
The clearing and collateralisation requirements for OTC derivatives are subject to market surveillance by BaFin, which pursues a risk-based approach for financial counterparties – in the same way as for insurance undertakings, investment firms, banks and funds. Where non-financial counterparties enter into more than 100 contracts a year or the gross nominal volume of contracts exceeds €100 million a year, these counterparties are required pursuant to section 32 of the Securities Trading Act to demonstrate that they meet the main requirements of EMIR, such as the clearing and collateralisation requirement. To this end, they have to produce an auditor-issued certificate.

New requirements for position limits
The requirement laid down in MiFID II to set position limits in commodity derivatives and report positions in such products entered into force at the beginning of 2018. BaFin imposed 11 individual position limits in commodity derivatives by way of general administrative acts in 2019. The limits related to freight rates and gas. In 2018, 15 general administrative acts had been issued. The technical infrastructure set up at the time has proven its worth: the parties subject to the notification requirement can now go through trading venue operators to meet their requirement to notify positions in commodity derivatives electronically by the set deadline.

No sustained violations of notification requirements
Although BaFin did not find evidence of sustained violations of the notification requirements in 2019, it identified six cases where position limits had been exceeded. Most of the cases related to energy contracts. At BaFin's instigation, these breaches were rectified promptly. In addition, 18 requests for hedging exemptions were received in 2019.

3.1.6 Voting rights

In 2019, there were a total of 513 issuers whose shares were admitted for trading on an organised market (previous year: 517 issuers, Figure 13). These undertakings published a total of 271 notifications (previous year: 305 notifications) on changes in the total number of voting rights (section 41 of the Securities Trading Act).

Figure 13: Number of issuers admitted to an organised market

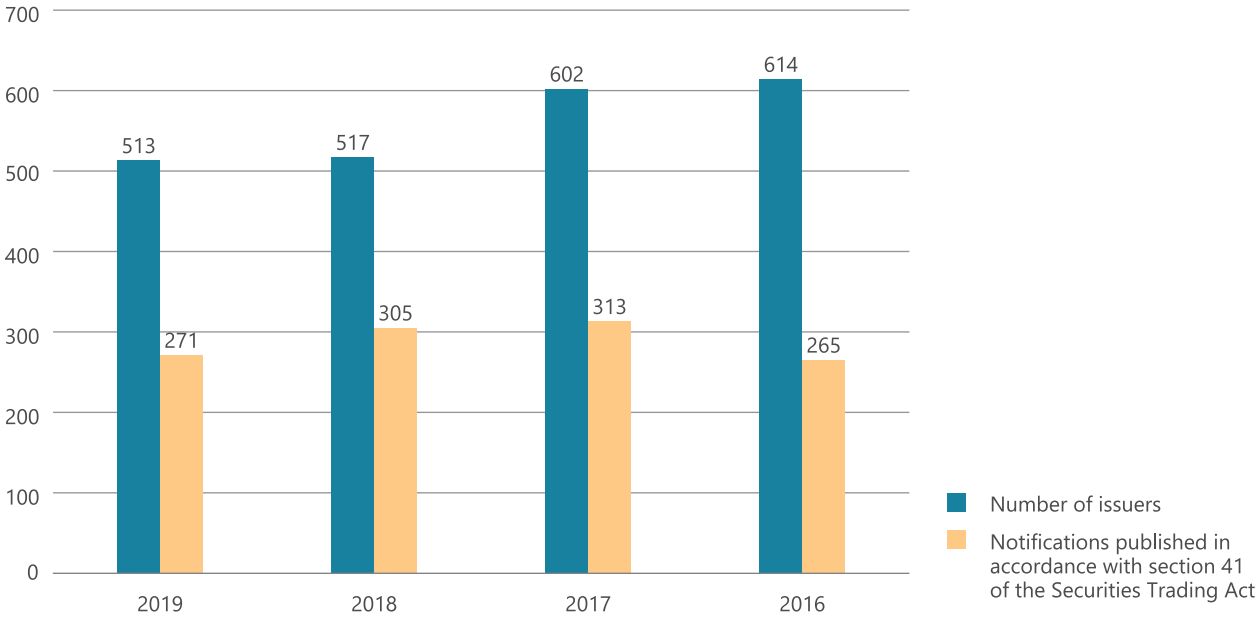


Figure 14: Total number of voting rights notifications

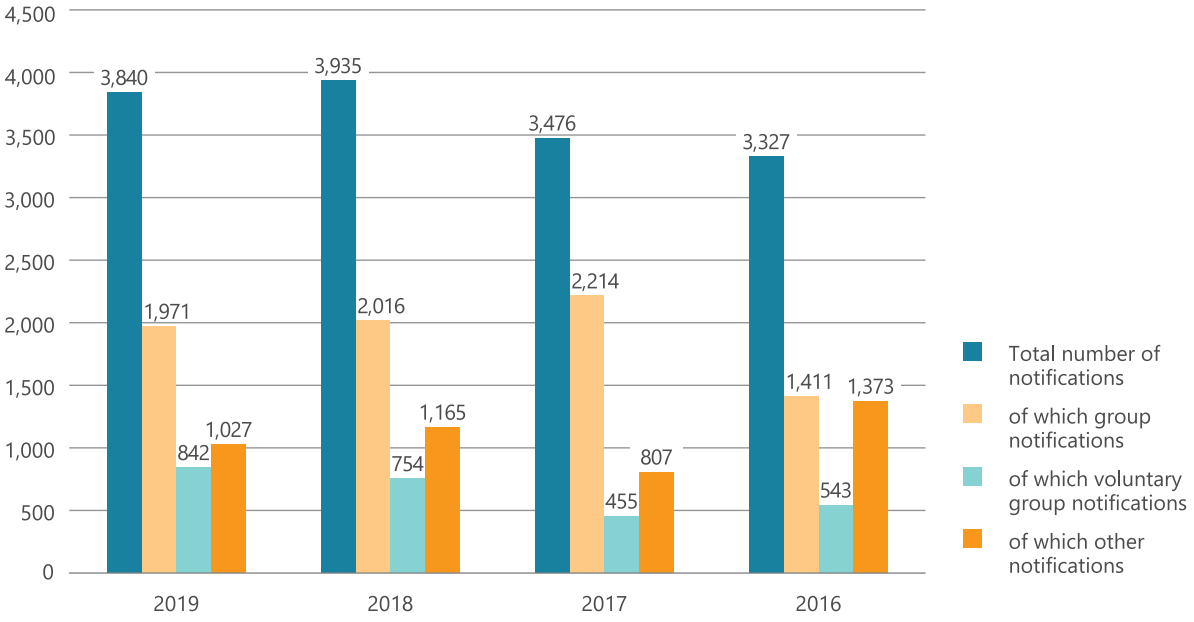
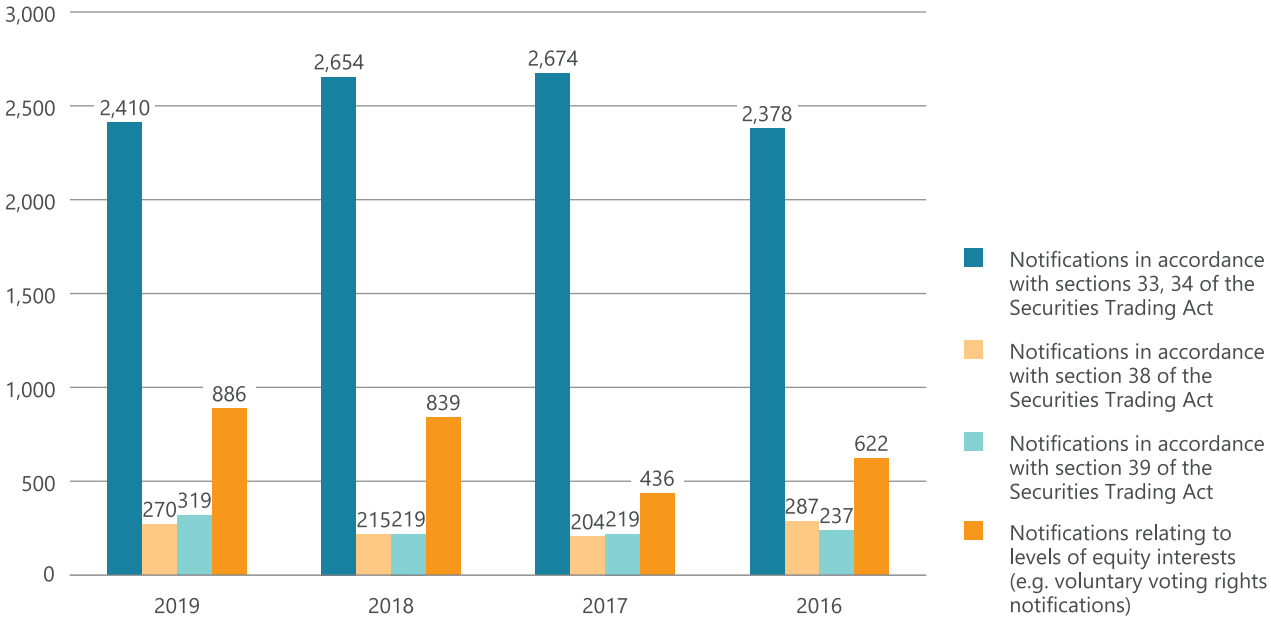


Figure 15: Breakdown of voting rights notifications by notification criterion



The total number of notifications of changes in the percentage of voting rights was almost unchanged in 2019, at 3,840 notifications. This compares with 3,935 notifications in 2018 (see Figure 14). The same applied to the breakdown of notifications into the group notifications, voluntary group notifications and other notifications[33].

Figure 15 shows the voting rights notifications by notification criterion. Most notifications (2,410; previous year: 2,654 notifications) related to changes in voting rights triggered by the number of voting rights reaching or crossing certain thresholds (sections 33 and 34 of the Securities Trading Act). This was followed by 886 notifications on existing shareholdings (previous year: 839 notifications) 270 notifications (previous year: 215 notifications) relating to changes resulting from holdings of financial instruments (section 38

33 See chapter III.4.4.2.

of the securities Trading Act) and 319 notifications (previous year: 219 notifications) relating to aggregated voting rights and holdings of financial instruments (section 39 of the Securities Trading Act).

3.2 Prospectuses

3.2.1 Securities prospectuses

In 2019, BaFin for the first time approved three securities prospectuses for security token offerings (STOs), or token-based debt securities. The underlying tokens represent rights similar to securities. In addition, in 2019 BaFin approved the publication of the first two securities information sheets for securities that also had a token-based structure. Other securities information sheets for STOs were in the process of being reviewed at the end of the year.

At a glance

New Prospectus Regulation

Since 21 July 2019, the EU Prospectus Regulation has applied in full. By setting a higher threshold for the prospectus requirement and simplifying the requirements, among other things, the new rules are intended to contribute to making it easier, cheaper and more effective to raise capital in the financial market. At the same time, more specific and compact information is intended to ensure improved investor protection. This will benefit in particular small and medium-sized undertakings and secondary issuances. Another positive aspect is the new prospectus summary, which has to be significantly shorter than before and, thus, allows investors to identify the essential information At a glance. Likewise, the amended requirements for risk factors aim to provide more compact and easy-to-follow information on the risks that are really material to an investment decision.

The German Securities Prospectus Act (*Wertpapierprospektgesetz*) has been amended to bring it in line with the EU Prospectus Regulation. It now governs, among other things, the securities information sheet, prospectus liability, BaFin's powers and the punishment of offences.

BaFin initiated market surveillance proceedings against several issuers, including issuers of token-based securities, using, among other things, product intervention tools in the process.[34] In a total of 7 cases, the outcomes of the proceedings included the issuers' withdrawal of the applications for approval or authorisation. 1 case involved a securities information sheet, while the others related to securities prospectuses. 5 of the 7 cases concerned token-based securities.

BaFin approved 69 securities information sheets
BaFin has approved 69 securities information sheets since 21 July 2018 (Table 26). On that date, the amendments to the German Act Exercising Options of the EU Prospectus Regulation and Amending Other Financial Market Laws (*Gesetz zur Ausübung von Optionen der EU-Prospektverordnung und zur Anpassung weiterer Finanzmarktgesetze*), which introduced the securities information sheet, entered into force in the Securities Prospectus Act. 33 of the 69 securities information sheets related to share issues, 30 to debt securities issues and the rest to hybrid capital. In most cases, the issue volume was at around €2 million. After the amendments to the Securities Prospectus Act as at 21 July 2019, issuers submitted an increasing number of securities information sheets for approval in order to take advantage of the new simplifications for rights issues.

The continuing volatility in the market was reflected in the number of initial public offerings (IPOs): a total of 13 applications for approval of an IPO prospectus were made in 2019, although 10 of them were withdrawn again, in most cases shortly before the end of the application process. Overall, there was an increase in the number of withdrawals across all prospectus procedures (2019: 39 withdrawals, previous year: 31 cases).

The total number of final terms for base prospectuses filed indicates that the banks remain engaged in lively issuance activity, which continues a multi-year trend.

Table 26: Number of approvals in 2019 and 2018

Product	2019	2018
Prospectuses (of which IPOs)	291 (3)	303 (21)
Registration documents	41	35
Supplements	765	836
Notifications transmitted	2,163	2,819
Notifications received	563	756
Final terms	4,476,213	4,450,367
Securities information sheets	55	14

34 See chapter III 4 4.2.

3.2.2 Non-securities investment prospectuses

In 2019, BaFin received a total of 55 non-securities investment prospectuses for checking (Figure 16). For market-related reasons, this was another drop compared with 2018, when 93 prospectuses were submitted. This decline can be attributed to, among other things, the amended requirements in the German Renewable Energy Sources Act (*Erneuerbare-Energien-Gesetz*). This is because fewer prospectuses were submitted that had wind power plants as target investment (relating in particular to investments in the form of limited partnership interests, Figure 17). "Other" target investments led the statistics in 2019 (Figure 18 on page 105). This collective category covers a large number of different target investments, such as study grants, battery development and block-type thermal power stations. BaFin approved 35 non-securities investment prospectuses (previous year: 84 prospectuses). A total of 23 processes were discontinued in 2019 because the offerors withdrew their application for approval. BaFin did not prohibit the publication of any prospectuses in 2019.

Figure 16: Prospectuses received, approved, withdrawn and rejected

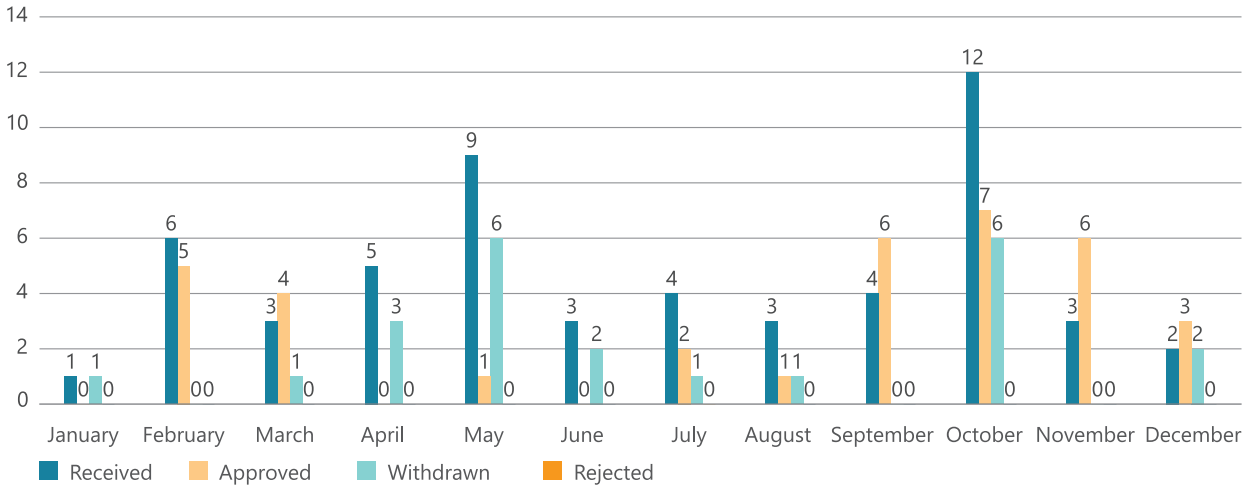


Figure 17: Prospectuses by type of participation (in order of number of prospectuses received)

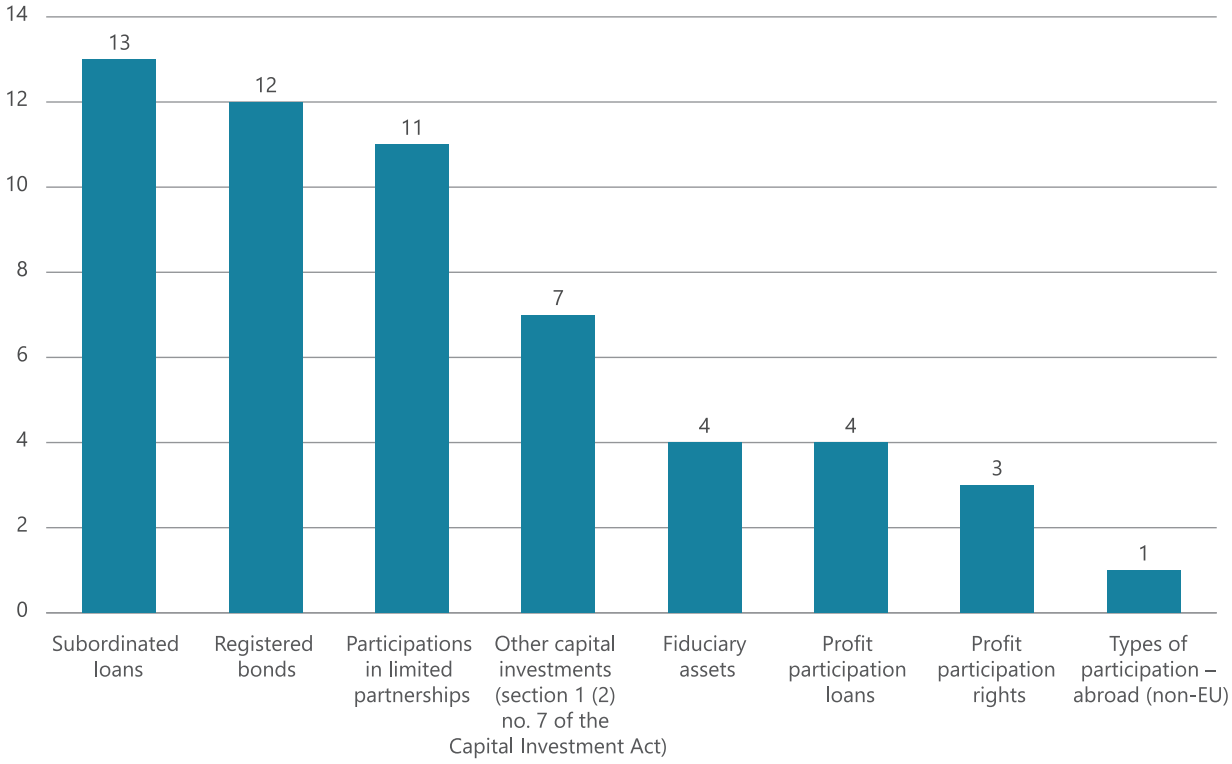
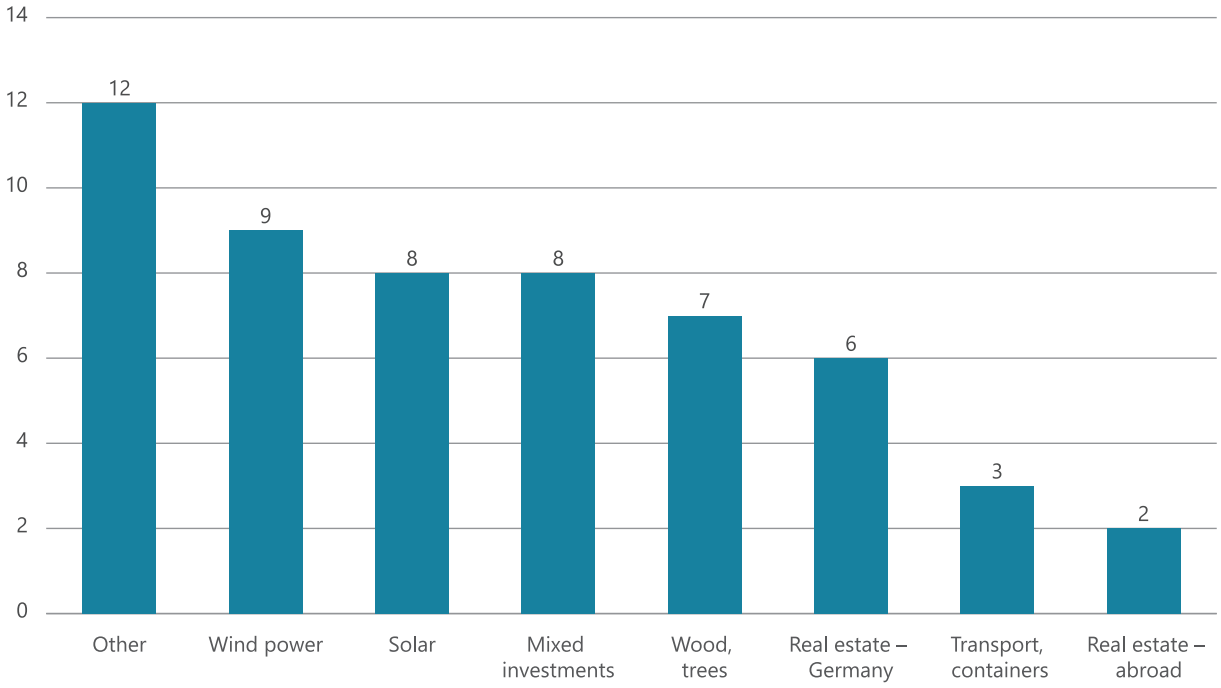


Figure 18: Prospectuses by target investment (in order of number of prospectuses received)



Supplements to investment prospectuses

In 2019, BaFin received a total of 18 applications for the approval of supplements under the German Capital Investment Act (*Vermögensanlagengesetz*), a decrease compared with 32 applications received in the previous year. BaFin approved 21 supplements[35] (previous year: 31 supplements).

Capital investment information sheets without prospectus

BaFin found that the rising trend in the number of capital investment information sheets without prospectus in crowdfunding processes continued, with 587 documents received in 2019 (previous year: 491 documents received). BaFin approved the publication of 480 capital investment information sheets without prospectus. Another 48 applications were withdrawn in the same period. In 2019, other target investments ranked in second place among the capital investment information sheets without prospectus submitted – after domestic properties (Figure 19 on page 106). The "other" target investment category, which is used in the absence of another more suitable category, is often used for investment in a company's normal business activity. The business objectives of the companies concerned are very varied – ranging from the production of explanatory videos as a service through the construction and extension of restaurants down to the development of nutritional supplements. Among the possible types of participation, qualified subordinated loans were the clear leader of the table, with 376 submissions (Figure 20 on page 106). In July 2019, the measures introduced by the German Act Implementing Further Aspects of the EU Prospectus Regulation and Amending Financial Market Laws (*Gesetz zur weiteren Ausführung der EU-Prospektverordnung und zur Änderung von Finanzmarktgesetzen*) included raising the maximum issue volume for crowdfunding from €2.5 million to €6 million per issuer and year. Since the amended regulations entered into force, 19 capital investment information sheets have been submitted for issue volumes in excess of €2.5 million, including 12 with real estate projects as target investment.

3.2.3 Market supervision of offers of securities and capital investments to the public

In 2019, BaFin conducted a total of 151 market surveillance proceedings for possible violations of the Capital Investment Act or the Securities Prospectus Act and the EU Prospectus Regulation (previous year: 142 violations). BaFin initiated 144 proceedings in 2019.

Prohibitions

In 2019, BaFin prohibited eight offers of securities to the public and five offers of capital investments to the public

35 This figure includes supplements filed in 2018.

Figure 19: Capital investment information sheets without prospectus by target investment (in order of number of information sheets received)

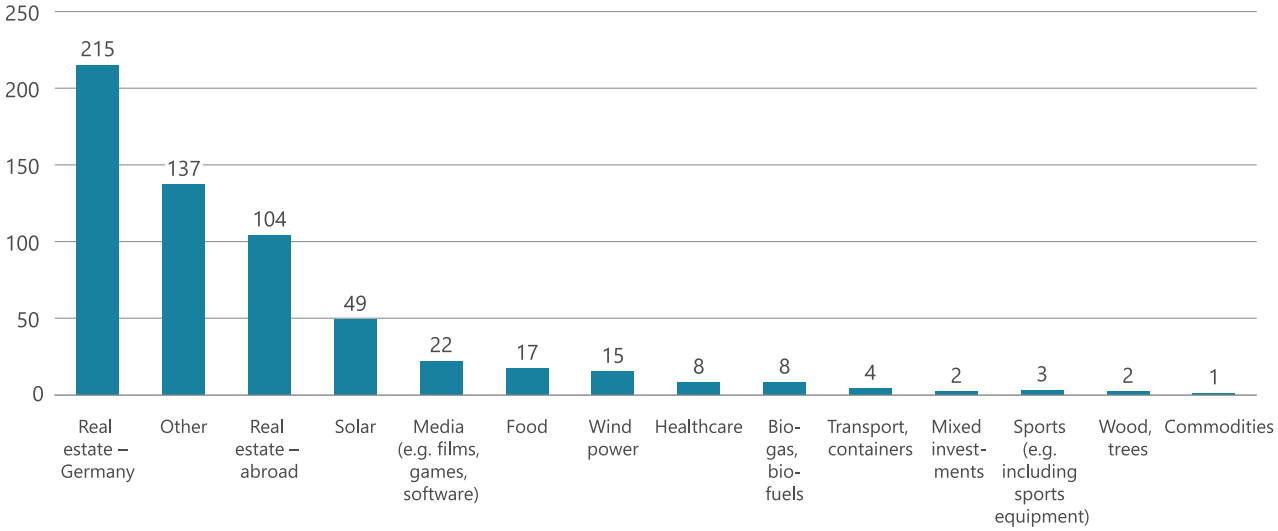
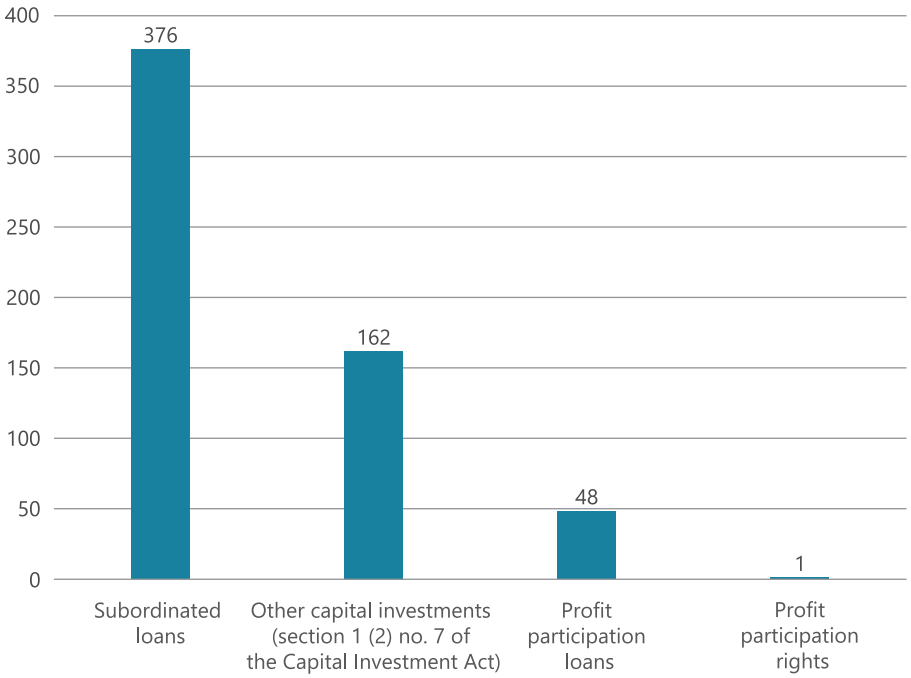


Figure 20: Capital investment information sheets without prospectus by type of participation (in order of number of information sheets received)



because the prospectus requirement had been violated. The prohibitions of capital investments related mostly to offers of direct investments to the public, while most of those under the scope of the Securities Prospectus Act concerned share offers. In some cases, BaFin did not have to prohibitthe offer because the offerors had already discontinued their offer after BaFin had conducted the hearing.

Information published on BaFin's website

In 20 cases, BaFin published irregularities and the measures it took on its website in 2019. In the previous year, there were 5 such cases. The sharp rise is in part attributable to an amendment to the Securities Prospectus Act by way of the German Act Implementing Further Aspects of the EU Prospectus Regulation and Amending Financial Market Laws. But it also reflects BaFin's desire to improve consumer protection by providing information.

Marketing violations
BaFin pursued marketing violations in 21 proceedings (previous year: 27 proceedings). 8 of these related to violations of the Securities Prospectus Act. In 1 case, for example, BaFin's logo was used without permission, wrongfully creating the impression that the authority had given its seal of approval. 13 proceedings related to violations of the marketing rules in section 12 of the Capital Investment Act.

3.3 Company takeovers

BaFin's Securities Supervision monitors offers to the public for the acquisition of securities admitted to trading on a regulated market. It examines the offer documents for completeness and apparent contraventions of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*). If necessary, BaFin can prohibit an offer (see Figure 21 on page 108).

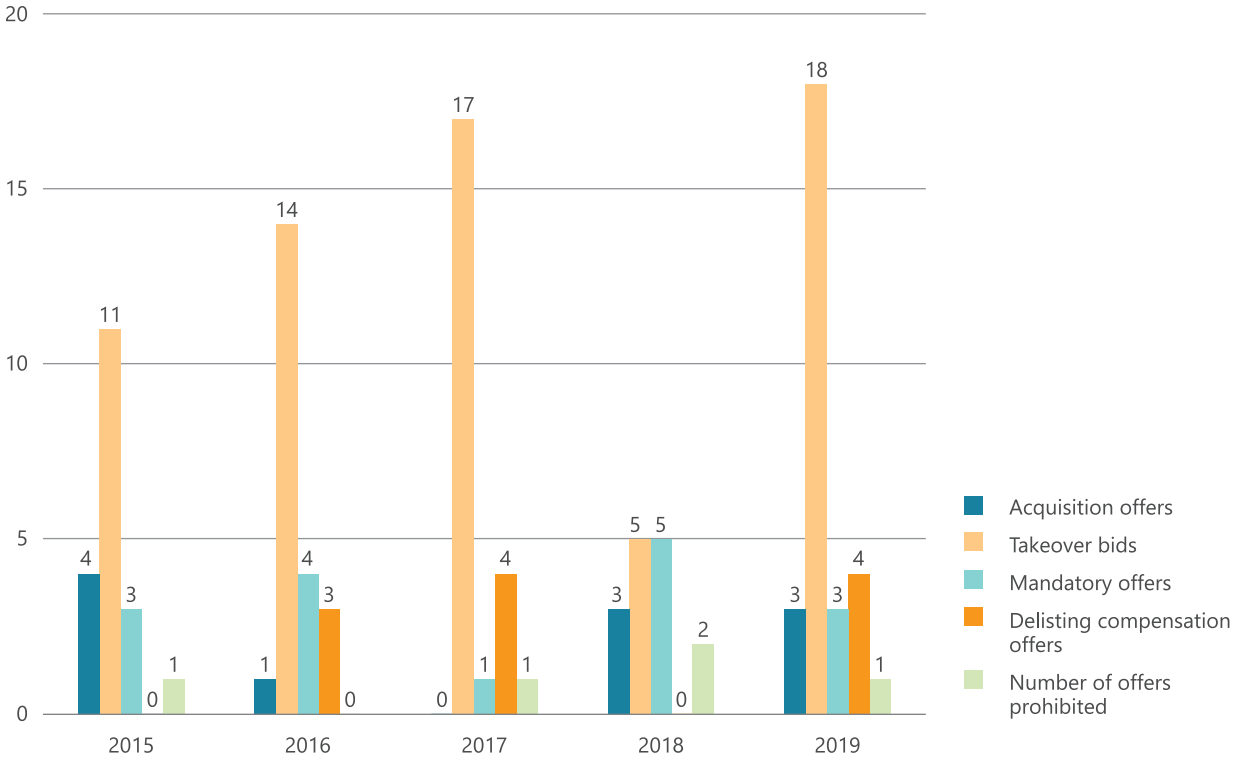
Takeover battle for OSRAM Licht AG
On 4 July 2019, Luz (C-BC) Bidco GmbH announced a takeover bid for all shares of OSRAM Licht AG at a price of €35 per share. Luz (C-BC) Bidco GmbH is jointly controlled by investment funds that are advised by or related to the investment firms Bain Capital Private Equity and The Carlyle Group.

Following the publication of the relevant offer document and still during the four-week acceptance period, Opal BidCo GmbH announced a competing takeover bid for all shares of OSRAM Licht AG at a price of €38.50 per share. Opal BidCo GmbH is a direct subsidiary of the Austrian semiconductor manufacturer ams AG. Opal BidCo GmbH published the offer document for the competing bid even before the acceptance period for the first takeover bid by Luz (C-BC) Bidco GmbH had ended. This extended the acceptance period for the first takeover bid, with the result that the acceptance period for both bids ended on the same date, 1 October 2019. Although, through a price-raising parallel transaction, Opal BidCo GmbH had increased the consideration for the competing bid to €41 per share of OSRAM Licht AG, it was unable to reach the most recently selected minimum acceptance threshold of 62.5 % of the shares of OSRAM Licht AG. The minimum acceptance threshold of the takeover bid by Luz (C-BC) Bidco GmbH was not reached either, with the result that neither takeover bid could be completed. Because of the lockup period specified in section 26 (1) sentence 2 of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*)[36], neither offeror company may make another takeover bid for OSRAM Licht AG within one year.

On 18 October 2019, ams Offer GmbH, another subsidiary of ams AG, announced a takeover bid for all shares of OSRAM Licht AG at a price of €41 per share. BaFin did not prohibit the new takeover bid within 10 working days of the offer document being submitted so that the publication of the offer document was deemed approved as at 6 November 2019 (section 14 (2) sentence 1 of the Securities Acquisition and Takeover Act). The new offeror published the offer document on 7 November 2019. The group works council of OSRAM Licht AG lodged a complaint against BaFin in an effort to force the supervisory authority to prohibit the new takeover bid. However, this complaint was not upheld by the Higher Regional Court (*Oberlandesgericht*) of Frankfurt am Main because the provisions of the Securities Acquisitions and Takeover Act never have the effect of protecting third parties.[37] By the end of the acceptance period on 5 December 2019, the offer had been accepted for so many shares of OSRAM Licht AG that the minimum acceptance threshold of 55 % was reached.

36 See 2017 Annual Report, page 148.
37 Decision of 18 November 2019, file reference WpÜG 3/19.

Figure 21: Offer procedures



Delisting compensation offer of Highlight Communications AG to the shareholders of Constantin Medien AG

On 31 July 2019, Highlight Communications AG – following approval by BaFin – published a delisting compensation offer in accordance with section 39 (2) sentence 3 no. 1 of the German Stock Exchange Act (*Börsengesetz*) to the shareholders of Constantin Medien AG in Ismaning. The acceptance period for this delisting compensation offer expired on 28 August 2019.

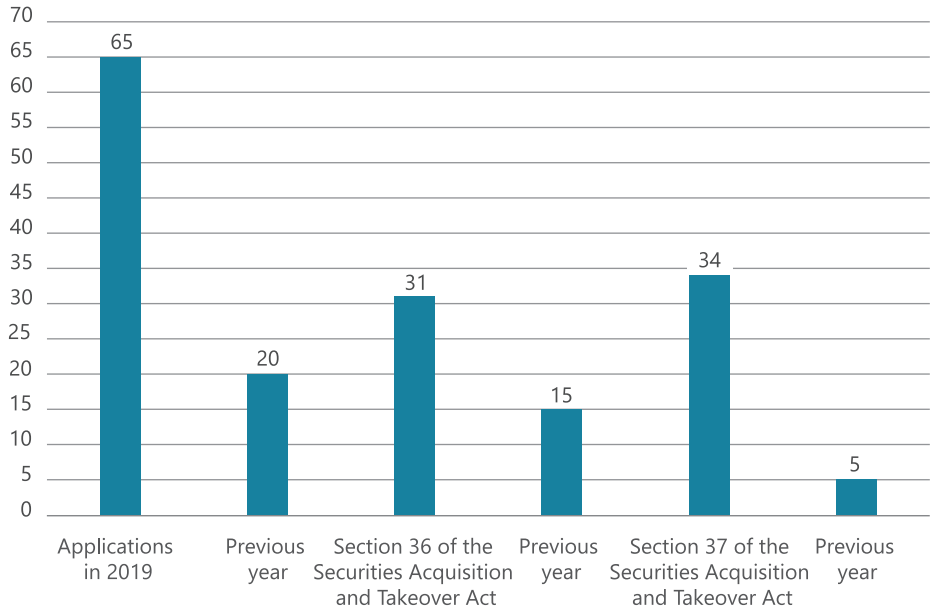
On 19 August 2019, the Federal Gazette published an offer for the acquisition of up to 150,000 shares of Constantin Medien AG, although BaFin had not granted approval for this transaction. The acceptance period for this acquisition offer was intended to run until 30 September 2019. However, before publishing its offer, the offeror had not submitted an offer document to BaFin for examination in accordance with section 14 (1) of the Securities Acquisition and Takeover Act. It was therefore mandatory under section 15 (1) no. 3 of the Securities Acquisition and Takeover Act to prohibit the offer. BaFin has to date not been able to issue the corresponding notice, because it has not been possible to determine a serviceable address of the offeror.

If the publication of the acquisition offer in the Federal Gazette of 19 August 2019 had been valid as a competing offer within the meaning of section 22 of the Securities Acquisition and Takeover Act, the acceptance period of the delisting compensation offer of Highlight Communications AG would have been extended to 30 September 2019 in accordance with section 22 (2) of the Securities Acquisition and Takeover Act.

However, to interpret the law in this way could encourage misuse and would lead to untenable results from the perspective of the capital market. In accordance with section 22 (2) sentence 2 of the Securities Acquisition and Takeover Act, the acceptance periods of the original offer and the competing offer synchronise even if the competing offer is prohibited or contravenes legal provisions. As a result, a competing offer could trigger an overly long acceptance period for the original offer and delay its implementation considerably.

In its administrative practice, BaFin therefore assumes that, in formulating section 22 of the Securities Acquisition and Takeover Act, legislators had only envisaged those offers made, at least formally, within the processes provided for by the Securities Acquisition and Takeover Act and for which BaFin had at least been given the opportunity to examine the corresponding offer document. For this reason, BaFin did not initiate

Figure 22: Exemption procedures



measures for non-compliance with statutory provisions against Highlight Communications AG to force publication in order to extend the acceptance period of its delisting compensation offer to 30 September 2019.

Exemption procedures
In certain circumstances, BaFin can exempt a legal entity from the duty to make an offer that it would otherwise have to satisfy in accordance with the Securities Acquisition and Takeover Act. Legislators have created two options for this purpose: exemption in accordance with section 37 of the Securities Acquisition and Takeover Act and non-consideration of voting rights in accordance with section 36 of the Securities Acquisition and Takeover Act (see Figure 22).

3.4 Financial reporting enforcement

Monitoring of financial reporting
As at 1 July 2019, 549 companies from 7 countries were subject to the two-tier enforcement procedure (see info box) by BaFin and the German Financial Reporting Enforcement Panel (*Deutsche Prüfstelle für Rechnungslegung* – FREP). This compares with 552 companies from 8 countries in 2018. Table 27 on page 110 shows At a glance how the procedures have evolved.

Court confirms BaFin's practice
The second stage of the enforcement procedure may give rise to, among other things, legal disputes about the appropriate accounting treatment. These disputes are then referred to the Higher Regional Court (*Oberlandesgericht*) of Frankfurt am Main, the competent court of first and last instance. The decisions handed down by the Higher Regional Court of Frankfurt am Main are sometimes significant beyond the individual case. They are policy decisions that are important to the relevant public involved in financial reporting.

For example, in 2019, the Higher Regional Court of Frankfurt am Main was asked to rule on the fundamental question of when financial reports prepared under commercial law are incorrect. Is there a single applicable legal position that BaFin can adopt that will ultimately

At a glance

Two-tier enforcement procedure

International accounting scandals – most notably "Enron" – have prompted German legislators to introduce an additional tool for monitoring company financial statements: the two-tier enforcement procedure. This procedure has been in place since 1 July 2005.

Since then, level 1 of financial reporting enforcement has been performed by an institution organised under private law, the FREP, which is the body of DPR e. V. (*Deutsche Prüfstelle für Rechnungslegung e.V.*), a registered association. BaFin steps in at level 2 – likewise exercising the powers of a public authority.

Table 27: Enforcement procedures completed

	Errors found: yes	Errors found: no	Errors published: yes	Errors published: no
Companies accept FREP's* findings	12	n/a**	12	0
Companies do not accept FREP's findings	1	0	1	0
Companies refuse to cooperate with FREP	0	2	0	0
BaFin has material doubts as to the accuracy of the FREP's findings/procedure	0	0	0	0
BaFin has assumed responsibility for examination (banks, insurers)	0	0	0	0
Total	**13**	**2**	**13**	**0**

* FREP stands for Financial Reporting Enforcement Panel (*Deutsche Prüfstelle für Rechnungslegung* – DPR).

** n/a: not applicable.

be determined with binding effect by the court? Or is it enough if the company preparing the financial statements has used all available sources of information and the decision in favour of a particular accounting treatment seems at least plausible?

The Court's Securities Acquisition and Takeover Division (*Wertpapiererwerbs- und Übernahmesenat*) has confirmed BaFin's assessment of this issue. This means that, in accordance with the tax law rulings of the Federal Tax Court (*Bundesfinanzhof*), the first of the two opinions mentioned above, and therefore the objectively correct legal position, is relevant. The Higher Regional Court of Frankfurt am Main has thus ruled in favour of the objective and against the subjective concept of error.[38] This is appropriate because the information relevant to the capital market should not depend on the information available to, and discretionary decisions of, the entity preparing the financial statements, but exclusively on the objectively correct legal position.

Publication of financial reports

In 2019, BaFin examined in approximately 915 cases (previous year: 920 examinations) whether the issuers had published their online annual and half-yearly financial reports on time. In 12 cases (previous year: 19 cases) it found indications of violations, which it pursued further in administrative fine proceedings.

As in the previous year, BaFin continued in 2019 to monitor the publication of notifications, which provide information on when and where issuers publish their financial reports on the internet. In 29 cases (previous year: 19 cases), issuers whose registered office is in Germany failed to publish the required notifications. 25 of these cases related to annual financial reports and 4 cases to half-yearly financial reports. In 22 cases, the issuers had not only neglected to publish the notifications on annual financial reports, but also failed to publish the financial reports themselves. The Federal Office of Justice (*Bundesamt für Justiz*) monitors the publication of annual reports by issuers whose registered office is in Germany. BaFin initiated administrative offence proceedings in the 29 cases where the notification had not been published.

BaFin also verified whether the published half-yearly financial reports contained the minimum components required by law. In 3 cases, it found that there was no responsibility statement (*Bilanzeid*). In 2 other cases, the interim management report had not been included. This prompted BaFin to pursue these 5 cases further in administrative fine proceedings.

BaFin launched 10 administrative procedures to enforce the financial reporting requirements, compared with 13 such procedures in 2018. A total of 23 proceedings were still pending from previous years, and 17 proceedings were concluded by BaFin in 2019. Most of the pending proceedings are at the enforcement stage. In 2019, BaFin threatened coercive fines in 10 cases. It imposed coercive fines of up to €565,000 and initiated enforcement measures in 3 cases.

In 2019, BaFin published information on 13 companies on its website, detailing the measures taken and the associated notes pursuant to section 124 of the Securities Trading Act. In the previous year, it published this kind of information on 16 companies.

38 Decision of 4 February 2019, file references WpÜG 3 and 4/16.

European Single Electronic Format (ESEF)
For financial years beginning on or after 1 January 2020, annual financial reports have to be prepared in the European Single Electronic Format. These reports will have to be published using the eXtensible Hypertext Markup Language (XHTML) format for the whole report. Consolidated financial statements prepared in accordance with the International Financial Reporting Standards (IFRSs) will additionally have to be tagged using eXtensible Business Reporting Language (XBRL). These requirements are set out in Commission Delegated Regulation (EU) 2018/815. This Delegated Regulation, which supplements the Transparency Directive, has been in force since June 2019. It is to be adapted to the latest applicable version of IFRSs, most recently by way of Commission Delegated Regulation (EU) 2019/2100. In Germany, a legislative process is ongoing to supplement the Delegated Regulation.

3.5 Supervision of the investment business

3.5.1 Asset management companies

In 2019, 9 (previous year: 12) German asset management companies (*Kapitalverwaltungsgesellschaft*) were authorised to manage investment funds or BaFin extended their existing authorisation. 4 companies surrendered their authorisation, compared with 2 in the previous year. This brought to 143 the number of companies in Germany with an authorisation in accordance with the German Investment Code (*Kapitalanlagegesetzbuch*) at the end of 2019 (previous year: 146 companies). In addition, 49 asset management companies registered in accordance with section 44 of the Investment Code; 71 companies had requested registration in 2018. 24 companies surrendered their registration, 1 of which applied for authorisation in accordance with the Investment Code. The total number of asset management companies registered at the end of 2019 therefore stood at 404 (previous year: 379 companies).

In 15 cases, asset management companies established a branch in another EU member state or offered cross-border services (previous year: 13 cases). Conversely, 126 companies from other EU countries notified BaFin that they had established a branch or started providing cross-border services in Germany (previous year: 57 companies).

Risk-based supervision
During the year under review, BaFin performed a total of 110 supervisory visits and annual interviews on site, compared with 99 such events in 2018. In addition, it accompanied 8 audits and special audits at asset management companies as well as at depositaries and trustees (previous year: 18 audits accompanied).

As in the previous year, the supervisory and annual interviews conducted in 2019 focused in particular on how to deal with negative interest rates and issues around Brexit, such as investments in the United Kingdom. Other central topics included, among others, sustainable investments, the resolution of real estate funds and their transfer to the depositary, a change in the supervisory board and a comparison between Germany and other jurisdictions as fund locations. The supervisory and annual interviews also focused on the response to current and future new supervisory regulations, such as changes to the risk model, or the requirements for IT in asset management companies.

Publication of KAIT
On 1 October 2019, BaFin published its Supervisory Requirements for IT in Asset Management Companies (*Kapitalverwaltungsaufsichtliche Anforderungen an die IT* – KAIT[39]). Providing basic infrastructure for all processes, an asset management company's information technology (IT) is not only of central importance for its business operations, but also represents a relevant operational risk. IT governance and information security have therefore long since emerged from the sidelines to become an important focal point also of supervision.

Using a principles-based approach, BaFin explains in KAIT the minimum requirements, in particular for IT governance and information security, that every asset management company authorised in accordance with section 20 of the Investment Code has to meet. There are similar requirements for banks (BAIT)[40] and insurance undertakings (VAIT)[41].

3.5.2 Investment funds

The German investment market continued to grow in 2019, with both special and retail funds recording cash inflows.

In the year under review, BaFin approved 161 new retail investment funds in accordance with the Investment Code, including 126 UCITS[42], 6 open-ended retail AIFs and 29 closed-ended retail AIFs. In 2018, BaFin had

39 See chapter I 3.
40 www.bafin.de/dok/10445406.
41 www.bafin.de/dok/11733690.
42 UCITS stands for "undertakings for collective investment in transferable securities". UCITS are funds that meet the requirements of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

Table 28: Open-ended investment funds

	2019		2018	
	Number	Assets	Number	Assets
Total	6,898	€2,391.4 billion	6,679	€2,057 billion
Retail funds	2,726	€548.3 billion	2,576	€468 billion
Special AIFs[43]	4,172	€1,843.1 billion	4,103	€1,589 billion

Table 29: Cash flows

	2019	2018
Aggregate net cash inflows	€133.6 billion	€103.3 billion
Aggregate gross cash inflows	€357.1 billion	€355.9 billion
Gross cash inflows into retail investment funds	€106.0 billion	€113.3 billion
Gross cash inflows into special AIFs	€251.1 billion	€242.6 billion
Aggregate cash outflows	€223.5 billion	€253 billion

authorised 152 retail investment funds in accordance with the Investment Code, including 114 UCITS, 5 open-ended retail AIFs and 33 closed-ended retail AIFs.

3.5.2.1 Open-ended real estate funds and hedge funds

As at the end of 2019, 64 asset management companies had an authorisation to manage open-ended real estate funds (previous year: 61 companies). This includes 3 new companies that were authorised by BaFin in 2019.

A total of 22 asset management companies also established open-ended real estate funds for retail investors in 2019 (previous year: 21 asset management companies). 42 companies limited their activities to the management of open-ended real estate special funds, compared with 40 in the previous year. Of this number, 8 companies have to date not established any open-ended real estate funds.

5 open-ended real estate funds for retail investors were issued in the course of 2019 and 2 were liquidated, increasing the number of these funds to 57 (previous year: 54 funds). The fund volume of this market segment totalled €109.85 billion as at the end of the year (previous year: €99.01 billion).

In the year under review, gross cash inflows into open-ended real estate funds for retail investors amounted to €12.22 billion. Gross cash inflows into open-ended real estate special funds amounted to €20.25 billion (previous year: €15.5 billion). The fund assets of open-ended real estate special funds amounted to €121.12 billion at the end of 2019, compared with €103.7 billion in the previous year.

21 open-ended real estate funds for retail investors were in liquidation at the end of the year under review (previous year: 22 funds). Their fund volume amounted to €1.92 billion (previous year: €3.17 billion). The management rights for all of these funds have already been transferred to the depositary (previous year: 20 funds).

Hedge funds

There were 13 hedge funds in Germany at the end of 2019 (previous year: 13 hedge funds). The total volume under their management was €3.98 billion (previous year: approximately €3.36 billion). As in 2018, no German funds of hedge funds were registered in Germany.

3.5.2.2 Foreign investment funds

In 2019, 10,550 EU UCITS were authorised for marketing in Germany (previous year: 10,511 funds). A total of 886 new notifications were submitted to BaFin by companies wanting to market EU UCITS in Germany, compared with 1,158 new notifications in 2018. As

43 Alternative investment funds.

in previous years, most of the notifications – 561 in total – came from Luxembourg in 2019. In addition, BaFin received 230 notifications from Ireland, 37 from France and 22 notifications from Austria. Marketing was discontinued for 847 EU UCITS.

In addition, 2,715 EU AIFs and 445 foreign AIFs from third countries were authorised to market units or shares in Germany (previous year: 2,095 EU AIFs and 321 foreign AIFs from third countries). Of the total number, 1,741 originated in Luxembourg, 289 in the United Kingdom, 318 in Ireland, 132 in the Cayman Islands, 122 in the United States, 136 in France, 82 in the Netherlands and 3 in Switzerland. A total of 847 AIFs (previous year: 771 AIFs) started marketing in Germany in 2019, including 513 from Luxembourg, 55 from the United Kingdom, 76 from Ireland, 25 from the United States and 31 from the Cayman Islands. Conversely, 327 EU AIFs and foreign AIFs ceased marketing, including 186 from Luxembourg, 42 from the United Kingdom and 40 from Ireland.

3.6 Administrative fine proceedings

In 2019, BaFin initiated[44] 242 new administrative fine proceedings due to violations of capital markets law. A total of 682 proceedings were still pending at the beginning of 2019. BaFin concluded 407 proceedings in 2019, 98 of them by imposing administrative fines. The aggregate amount of fines was €9.5 million. BaFin discontinued another 309 proceedings, 262 for discretionary reasons[45].

44 This includes violations of the German Securities Trading Act (*Wertpapierhandelsgesetz*), the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*), the German Capital Investment Act (*Vermögensanlagengesetz*), the German Securities Prospectus Act (*Wertpapierprospektgesetz*), Regulation (EU) No 1286/2014 (PRIIPs Regulation), Regulation (EU) No 236/2012 (EU Short Selling Regulation), Regulation (EU) No 600/2014 (MiFIR) and Regulation (EU) No 596/2014 (MAR).

45 See chapter I 13.

Table 30: Administrative fine proceedings – Securities Supervision

	Proceedings pending at the beginning of 2019	New proceedings initiated in 2019	Proceedings completed by imposing an administrative fine	Highest individual administrative fine imposed (€)	Proceedings discontinued for factual or legal reasons	Proceedings discontinued for discretionary reasons	Proceedings pending at the end of 2019
Reporting requirements	5	0	2	18,000	0	3	0
Ad hoc disclosures	85	17	12	130,000	2	17	71
Managers' transactions	4	0	0	0	1	0	3
Market manipulation	16	0	5	16,900	0	3	8
Notification and publication requirements	306	157	45	800,000	9	160	249
Duties to provide information to securities holders	7	0	0	0	2	5	0
Short selling	10	0	1	24,000	0	5	4
Financial reporting requirements	179	46	25	1,300,000	23	44	133
Prospectuses	29	8	2	250,000	9	7	19
Company takeovers	11	7	0	0	1	1	16
Conduct of business rules and organisational and transparency requirements	20	1	5	10,000	0	13	3
Other	10	6	1	6,300	0	4	11

4 Consumer protection

4.1 Consumer complaints and enquiries

Consumers can make complaints to BaFin about banks, insurers and other financial services providers.

BaFin looks into every complaint and, if it needs more information, asks the undertaking concerned to comment. It intervenes if it identifies a violation of the applicable rules and this violation puts the interests of a large number of consumers at risk. By contrast, responsibility for enforcing the rights of individuals belongs in particular to the civil courts. Affected parties may nevertheless get in touch with BaFin if they suspect violations, as this is the only way to establish whether collective consumer protection interests are affected.

4.1.1 Credit institutions and financial services providers

In 2019, BaFin processed significantly more submissions relating to credit and financial services institutions than in the previous year: the total number of submissions received by BaFin in 2018 was 5,791; this went up to 8,525 submissions in 2019. Out of this total, 8,408 were complaints and 117 general enquiries. In 21 cases, BaFin issued statements to the Petitions Committee of the Bundestag (the lower house of the German parliament). The complaints were upheld in 636 cases.

Table 31: Complaints by groups of institutions

Group of institutions	Total number of submissions
Private banks	5,545
Savings banks	885
Public sector banks	168
Cooperative banks	698
Mortgage banks	6
Bausparkassen	248
Financial services providers (e.g. leasing and factoring undertakings, etc.)	253
Foreign banks	605

Online banking

An area of special interest among the enquiries received in 2019 was online banking. This was mainly attributable to the stricter requirements introduced by the Second

Payment Services Directive (PSD2)[46], which entered into force on 14 September 2019, specifying an obligation to apply strong customer authentication (two-factor authentication). The methods used up to that date no longer satisfied the new requirements.

Consumers complained about problems with setting up new authentication procedures, as well as a lack of support from institutions, whose service units and call centres could not cope with demand. In addition, especially older customers often criticised in principle the fact that the new procedures had been introduced. In particular, they complained that they were forced to use smartphone apps or TAN generators against their will and that they had incurred additional costs as a result.

Note

Complaints at BaFin

In an article in the March issue 2020 of BaFinJournal, BaFin provides detailed information on the subject of complaints. BaFinJournal is published at www.bafin.de.

Negative interest rates
Another key area of concern of the submissions was negative interest rates and deposit fees on credit balances in current or savings accounts. While initially this problem affected only corporate customers or wealthy retail clients who had considerable amounts of deposits, some institutions had also introduced negative interest or fees on deposits from €100,000. A small number of them even did so for much lower amounts. As a general rule, BaFin cannot prohibit institutions from introducing negative interest or fees on deposits. Although the supervisory authority cannot influence these kinds of individual business policy decisions, it ensures that they are introduced in a legally correct manner and that the financial institutions safeguard the rights of consumers.

Interest rate adjustment clauses
Another core concern of consumer enquiries was the interest on long-term premium-aided savings agreements (*Prämiensparverträge*) with variable interest payments. Many institutions included interest rate adjustment clauses in their general terms and conditions, which granted them unlimited unilateral discretionary powers to decide on changes in the contractual interest rate. However, the Federal Court of Justice (*Bundesgerichtshof* – BGH) has declared, in a number of rulings handed down since 2004[47], that these clauses are invalid on the grounds that they are not sufficiently transparent. Savers could therefore find themselves unable to calculate potential changes in interest rates or check any adjustments made. At the time, the BGH formulated requirements for the future wording to be used in such clauses.

However, in 2019 the interest rate adjustment clauses of many institutions still failed to meet these requirements. At the time of going to press, three model declaratory actions were pending before the Higher Regional Court of Dresden (*Oberlandesgericht Dresden*), aimed at specifying detailed criteria for interest rate adjustment clauses. BaFin continues to observe these developments and is working towards finding a solution in the interest of all affected consumers.

Note

BaFin publishes information on interest rate adjustment clauses

Further details on the subject of interest rate adjustment clauses can be found in BaFinJournal (February 2020)[48]. BaFinJournal can be accessed at www.bafin.de.

4.1.2 Insurance undertakings

In 2019, BaFin handled a total of 7,851 submissions relating to insurance undertakings (previous year: 8,097 submissions). 37.2 % (previous year: 33.3 %) of these submissions ended in success for the parties that made them.

7,637 submissions (previous year: 7,906 submissions) were attributable to the insurance classes mentioned in Table 32 on page 116. Out of this total, 7,145 were complaints and 420 general enquiries. 72 submissions were petitions that reached BaFin via the German Bundestag or the Federal Ministry of Finance (Bundesministerium der Finanzen).

46 See chapter I 4.

47 Judgements of the Federal Court of Justice of 17 February 2004 – case ref. XI ZR 140/03; 13 April 2010 – case ref. XI ZR 197/09; 21 December 2010 – case ref. XI ZR 52/08 and 14 March 2017 – case ref. XI ZR 508/15.

48 See BaFinJournal February 2020, pages 16 ff.

Table 32: Submissions received by insurance class since 2015

Year	Life	Motor	Health	Accident	Liability	Legal expenses	Building/ contents	Other classes	Miscella-neous*	Total
2019	1,549	1,958	1,420	245	452	776	605	632	214	**7,851**
2018	1,869	1,734	1,653	215	439	666	711	619	191	**8,097**
2017	1,825	1,508	1,433	219	400	591	603	633	155	**7,367**
2016	1,817	1,533	1,335	294	460	924	708	759	155	**7,985**
2015	2,113	1,778	1,267	294	505	722	470	769	1,558	**9,746**

* Until 2015: misdirected correspondence, intermediaries, etc.; since 2016: intermediaries

Table 33: Most frequent reasons for complaints in 2019

Reason	Number
Claims handling process/delays	1,514
Issues of coverage	983
Sum insured	778

Run-offs, higher premiums and claims settlement
In 2019, BaFin again received complaints from a large number of consumers about plans by life insurers to sell policy portfolios (run-off). Other topics: uncertainty around Brexit and repayment claims based on the court rulings of the BGH on the "permanent right to object" in life insurance, which prompted many consumers to file an objection to their contracts on the grounds that they may have been given incorrect information on their right to object.

Complaints about private health insurers focused on premium adjustments. Customers also had numerous queries about the prompt processing of their payout claims.

Many consumers also complained to BaFin in 2019 about the settlement conduct of property and casualty insurers. The complaints involved primarily motor insurance as well as residential buildings and contents insurance policies. In an above-average number of cases, there was dissatisfaction that claims had been processed with a delay or the amount of recoverable damages had been reduced. Legal expenses insurance also attracted complaints from a large number of customers who were unhappy because the undertakings had denied them cover for legal action.

4.1.3 Securities business

In 2019, BaFin received a total of 615 complaints relating to securities transactions (previous year: 676 complaints) and 296 written enquiries (previous year: 396 enquiries) from investors. The focus was primarily on administration and customer service, delayed or inadequate order execution, client information and fees charged.

As in previous years, BaFin received a relatively large number of complaints about companies domiciled in Cyprus offering cross-border services in 2019. They related primarily to transactions involving financial contracts for difference (CFDs).

4.1.4 Investment and asset management companies

Consumers also complained about investment and asset management companies. BaFin received 123 such complaints and enquiries, which related to matters such as publication requirements of asset management companies, their management decisions or the distribution of investment funds. Many queries also related to the liquidation of open-ended real estate funds for retail investors.

4.1.5 Consumer helpline

Citizens can call BaFin's consumer helpline at +49 (0) 800 2 100 500. They again made frequent use of this facility in 2019: the advisers dealt with 20,391 telephone queries (previous year: 18,651 queries) about the financial market, specific consumer protection issues and problems with banks, insurance undertakings or financial services providers. Of these calls, 29 % related to the insurance sector and 53 % to the banking sector. 9 % of the queries were about securities supervision.

4.2 Product interventions

In 2019, BaFin issued two product intervention measures (see info box) and published general administrative acts in this context.

At a glance

A powerful weapon: product intervention

The Retail Investor Protection Act (*Kleinanlegerschutzgesetz*) of 2015 has handed a new supervisory tool to BaFin, which gives it the right to restrict or even prohibit the marketing, distribution and sale of financial products, activities or practices.

However, BaFin makes use of this powerful weapon with a sense of proportion and only in specific circumstances, for example

- if a product raises considerable concerns about investor protection
- or poses a risk to the orderly functioning and integrity of the financial or commodity markets or to the stability of the financial system.

BaFin can also intervene if a derivative has a negative impact on the pricing mechanism in the underlying markets.

The three European Supervisory Authorities, ESMA, the EBA and EIOPA, have similar tools at their disposal but can only use them under certain conditions. One key requirement is that the national competent authority has failed to take appropriate action to eliminate the risks.

Binary options

The first product intervention in 2019, which BaFin announced on 1 July, was aimed at binary options. Simply put, when trading binary options, investors bet on the direction in which the price of an underlying asset will move in a very short period of time, normally just a few minutes, i.e. whether it will rise or fall. If investors bet right, they will typically receive a payout of a fixed amount agreed in advance. If not, they lose all the money invested.

The marketing, distribution and sale of binary options to retail investors had already been temporarily banned in the European Union (EU) since 2 July 2018 by way of a product intervention measure issued by the European Securities and Markets Authority (ESMA). Despite several extensions, the EU ban finally expired at the beginning of July 2019. Similar to many other national competent authorities in the EU, BaFin turned the expired ESMA ban into a ban at the national level that is valid indefinitely.

Contracts for difference

A product intervention measure on contracts for difference (CFDs) was issued by BaFin on 23 July 2019. By entering into such a contract, the provider and investor promise to each other to cash-settle the change in value that has occurred in a defined underlying assets (such as a stock, an index or a currency pair) until the contract is closed out.

BaFin's product intervention on CFDs had also been preceded by a corresponding measure issued by ESMA: for the protection of retail investors, ESMA had imposed restrictions on the offering of CFDs at the beginning of August 2018. The measure introduced a maximum permissible leverage for CFDs. At the same time, ESMA specified a mechanism for limiting losses by automatically closing out contracts. In addition, obligations to make additional payments had to exclude retail investors. Providers were likewise not allowed to create incentives for further CFD positions and had to warn their customers expressly about the significant risk of loss.

These temporary restrictions were also extended by ESMA several times until they finally expired at the end of July 2019. On the basis of the product intervention measure issued on 23 July 2019, BaFin also seamlessly turned these restrictions into a national regulation with unlimited validity. Many other supervisory authorities in the EU proceeded in a similar way in order to permanently maintain the level of customer protection reached as a result of ESMA's regulation.

4.3 Market surveys

4.3.1 Second market survey on MiFID II

In January 2019, BaFin repeated a market survey on the implementation of the Second Markets in Financial Instruments Directive (MiFID II)[49]. BaFin had conducted the first survey immediately after the Directive had entered into force on 3 January 2018. The focus and target group of the January 2019 survey were the same

49 See chapter I 10.

as in 2018. The survey conducted in 2019 was aimed at finding out whether in the preceding 12 months the investment services institutions had fixed supervisory shortcomings that had been identified in the first survey.

BaFin's second market survey also focused on areas of particular relevance for consumers. A total of 20 private and foreign banks and 10 savings and cooperative banks from each of the different regional associations participated in the survey on a voluntary basis.

The most significant outcomes of the January 2019 market survey are presented below.

Record-keeping obligations
A taping requirement has been in force since January 2018. This means that financial institutions have to record all telephone conversations and other electronic communication if they relate to client orders. By 2018, they had already implemented good technical and procedural measures to meet the taping requirements. In 2018, BaFin had objected to unauthorised gaps in the recordings caused by pressing a combination of stop and start buttons. The 2019 survey did not find any more of those gaps. Malfunction during recordings due to technical or individual user error were again the exception.

Only a small number of clients made negative comments about the recording of their conversations (1.5 %). It seems as though investors have come to terms with the recording requirement for securities transactions requested by phone.

Ex-ante cost information
The rules on ex-ante cost information specify that the costs of securities and investment services must be disclosed to every client in due time. This allows investors to make better comparisons of products and services and make more informed decisions.

The 2019 survey showed that the quality of cost forecasts is very good. In 90 % of cases, the costs indicated did not deviate from the actual costs of order execution (up-front costs), or deviated by a maximum of 5 %. Another positive aspect was that, with few exceptions, the institutions had provided ex-ante cost information in due time and on a durable medium (98.5 %).

When viewed as a whole, however, the format of ex-ante cost information currently used in the market continues to be disparate. This may, above all, be attributable to the fact that there is no consistent market standard and some details have not yet been resolved. For this reason, BaFin is engaged in extensive exchanges with the institutions, the other national competent authorities and ESMA.

Suitability report
Since the rules of conduct entered into force as at 3 January 2018, investment firms have to explain in writing, after providing investment advice, to what extent their recommendation is suitable for the individual client concerned.

In its analysis of the 2019 survey, BaFin had reasons to doubt the suitability of the recommendation itself only in a few instances. Many suitability reports were incomplete, however. This is all the more surprising, given that after the first survey BaFin had explained to market participants, in publications, talks and face-to-face meetings, the exact requirements for the suitability reports.

One aspect that has remained unchanged is the fact that in only 11.3 % of the suitability reports, the institutions explain how the characteristics of the recommended product match all of the client's requirements. In this matching process, the institution must consider, in particular, the investment term required as well as the attitude to risk, knowledge, experience and ability to bear losses. However, 49.4 % of cases show that the consideration of the individual criteria is not fully documented in the report.

While the result of this review may already benefit the client to some extent, it fails to meet the legislation's objective, which is to allow investors to gain a complete overview of the reasons behind a recommendation. 39.3 % of the sample group's suitability reports merely contained vague standard phrases. ESMA has expressly confirmed that this does not satisfy the European requirements either. It means that the institutions will have to take significant steps to correct this.

Outlook
Subsequent to the survey, BaFin found that the institutions had already begun to address the implementational shortcomings identified in the 2019 survey. Likewise, on-site visits that BaFin has made since have also shown that the institutions are doing their utmost to comply with the requirements.

4.3.2 forsa survey on the "effects of MiFID II on consumer behaviour"

To get an idea of how satisfied or dissatisfied investors are with the new requirements of MiFID II and of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, BaFin commissioned the market research institute forsa to conduct a survey of 3,800 consumers in 2019. The survey focused in particular on the ex-ante cost information, the suitability report, the recording (taping) of telephone conversations and the key information document.

Mixed picture

The results of the survey painted a mixed picture. While the majority of participants had a broadly positive opinion of the new obligations, some consumers were critical of the plethora of information these obligations entail. Most of the investors surveyed who had carried out securities transactions after 3 January 2018 had a positive view of the changes brought about by the suitability report (76 %) and by the ex-ante cost information (63 %) and thought these information sources were worthwhile. The above-mentioned process of taping in the securities business was also viewed positively by more than three-quarters (77 %) of survey participants who had had first-hand experience of this practice.

But the survey also revealed that a large number of investors had not yet made enough use of the new information options. More than half (53 %) of those surveyed who had carried out a securities transaction since 3 January 2018 stated that they had not (yet) read the costs disclosure. 38 % of survey participants who had sought investment advice after 3 January 2018 had not read the suitability report at all. The reason the participants gave for this was that there was too much information (64 %) or that it was not of interest to them (24 %). The results of the survey commissioned by BaFin, and in particular further details, are available on BaFin's website.[50]

50 www.bafin.de/dok/12900592.

Note

Making use of available information

BaFin recommends that all consumers should use the new information available to them because each individual is responsible for making their own investment decisions. To this end, BaFin provides extensive information material on its website www.bafin.de that explains the significance and benefits of the new financial market rules. Moreover, detailed information on MiFID II has been provided in several issues of the online magazine BaFinJournal, which is published monthly on the BaFin website.

4.3.3 Coordinated supervisory action by ESMA on suitability assessment

In 2019, the European Securities and Markets Authority (ESMA) launched its first coordinated supervisory action (CSA) of the supervisory authorities in the EU member states. The issue chosen for this pilot project was a survey of the appropriateness assessment. Accordingly, the project focused not only on analysing the substance, but also on developing the corresponding processes and a shared methodology. The participating supervisory authorities, including BaFin, conducted the survey independently within the framework set out by ESMA.

For this project, BaFin surveyed financial services institutions, private banks, savings banks and cooperative banks. Since the appropriateness assessment had already been a requirement in non-advised business under MiFID I, the implementation status was good among most of the institutions surveyed. In some cases, there was, however, uncertainty about individual aspects of the appropriateness assessment, such as the classification of products or the client information to be gathered. In addition, there were differences in the warnings to be issued in cases where a requested transaction is not appropriate or the information about the client is not complete. If the assessment finds that a transaction is not appropriate, clients can in most cases complete the transaction regardless – once a warning has been issued.

ESMA is expected to publish a summary of the results with anonymised data and conduct a coordinated supervisory action once a year from now on. For 2020,

ESMA has chosen the issue of suitability assessment and suitability report.

4.3.4 Market survey into repeat acquisition and distribution costs for Riester pension insurance policies

Another market survey conducted by BaFin in 2019 was aimed at repeat acquisition and distribution costs for Riester pension insurance policies. It was prompted by the fact that a small number of life insurers charge their clients for acquisition and distribution costs again when the state allowance changes during the savings phase and the client's own contribution rises or falls as a result, while the overall premium remains the same.

BaFin surveyed 20 life insurers with a market coverage of approximately 70 %; in particular it wanted to know whether, as part of their Riester charges, they levied repeat acquisition and distribution costs in the above constellations of cases and – if so – on what legal basis. An analysis of the comments received confirmed that the majority of undertakings had indeed charged repeat acquisition and distribution costs in these cases, although, on the basis of the contract documents submitted, this had not, or not validly, been agreed.

For this reason, BaFin made the affected undertakings and the 43 Riester providers among the life insurers aware of the Federal Finance Ministry's letter of 14 March 2019[51]. According to this letter, this practice is invalid. In addition, BaFin asked for written confirmation from these undertakings that, for all contracts entered into since 2002, they would refrain from charging repeat acquisition and distribution costs and would deal with applicable customer complaints in the interest of consumers.

To ensure that, in addition to life insurers, all other Riester providers would also refrain from charging repeat acquisition and distribution costs on the types of policies specified in the Federal Finance Ministry's letter of 14 March 2019, BaFin obtained similar confirmations from the industry associations as a precautionary measure.

A contribution in BaFinJournal October 2019 provides information on the invalidity of repeat acquisition and distribution costs for Riester pension insurance policies.[52] In another article in the December issue of BaFinJournal[53], BaFin also points out that the practice described above is not permitted. Moreover, it makes affected consumers aware that they can ask their life insurers to review their existing Riester pension insurance policies.

4.3.5 Surf day on sample information sheets for Riester and Rürup pension insurance policies

Since 1 January 2017, all providers of retirement provision or basic pension insurance have been obliged to provide sample product information sheets for each tariff distributed. In doing so, they have to reflect four different maturities and observe specific form and content requirements. Details can be found e.g. in an interpretative letter of the Federal Ministry of Finance of 14 March 2019.[54]

Before this type of insurance is distributed for the first time, the providers have to publish the sample product information sheets on the internet. At a surf day held in 2019, BaFin researched to what extent providers of retirement provision or basic pension insurance are meeting this new requirement.

For 10 out of the 55 insurance undertakings, BaFin raised various objections. For example, some information sheets did not provide the mandatory information on switching providers or a complete performance example. One undertaking had called the sample product information sheet "personal product information sheet", while another had specified an incorrect maturity.

BaFin made the insurers aware of its objections. All the information has since been corrected.

4.4 Digital *Stammtisch* (get-together)

In 2019, BaFin took part in three regular Digital *Stammtische* (get-togethers) hosted by Digital-Kompass. At these events, it educated in particular older consumers about financial issues by video link. Consumers can participate live in the event being presented. More information is published at www.digital-kompass.de. The Digital *Stammtisch* portal receives support from the Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz* – BMJV). It is intended to encourage older people to embrace

51 File ref.: IV C PIA – S 2220-a/16/10003 :004.
52 See BaFinJournal October 2019, page 7 (only available in German).
53 See BaFinJournal December 2019, page 6 (only available in German).
54 File ref.: IV C PIA – S 2220-a/16/10003 :004.

digital platforms. The project partners are the German National Association of Senior Citizens' Organisations (*Bundesarbeitsgemeinschaft für Senioren-Organisationen e.V.* – BAGSO) and the Association for IT Security in Germany (*Deutschland sicher im Netz e.V.*).

4.5 World Investor Week

The third World Investor Week (WIW), an initiative of the International Organization of Securities Commissions (IOSCO), was held in October 2019. This event is aimed at educating consumers around the world about financial issues. As in previous years, BaFin took part in WIW: at the beginning of October 2019, for example, it published on its website an investment primer written in simple language (*Das kleine ABC der Geldanlage in Leichter Sprache*)[55] and a new brochure on the basic rules of investment (*Grundregeln der Geldanlage*)[56]. In addition, BaFin published an explanatory video[57] on its website, which guides consumers through selected requirements of MiFID II and the PRIIPs Regulation.

55 www.bafin.de/dok/13035364 (only available in German).
56 www.bafin.de/dok/13035950 (only available in German).
57 See 4.3.2.

5 Money laundering prevention

5.1 Restructuring of the Prevention of Money Laundering Directorate

The risk-oriented restructuring and growth in staff numbers of the Prevention of Money Laundering Directorate were on the agenda in 2019. The primary objective was to enhance its capacity to carry out audits using its own supervisory personnel. It was also resolved to keep a closer watch on the risks immanent in the various areas of activity of the institutions. For this purpose, BaFin combined responsibility for credit institutions requiring intensive supervision and created an "Affiliated Institutions" Unit. Finally, the Division for the supervision of the non-banking sector was split up on 1 January 2020 in view of the large number of entities supervised. The staffing of the whole non-banking sector area was also expanded with 16 new positions.

5.2 Symposium on 12 December 2019

BaFin's second symposium on money laundering was held in Bonn on 12 December 2019. The target group consisted of undertakings under BaFin's supervision together with their industry associations and auditors. In his speech to around 500 participants, Chief Executive Director Dr Thorsten Pötzsch addressed the topic of the global activities of the Financial Action Task Force (FATF, see info box) and the forthcoming FATF evaluation of Germany in 2020, but also dealt with current efforts aimed at the Europeanisation of supervision. Pötzsch

At a glance

Financial Action Task Force

Germany is a member of the Financial Action Task Force (FATF) founded in 1989. The FATF is the most important international body for the purpose of combating and preventing money laundering, terrorist financing and proliferation financing. The FATF establishes standards for these areas ("International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations"). At the same time, it promotes the worldwide distribution of these standards and reviews their implementation in its member states.

also drew attention to the significance of the newly formed Anti Financial Crime Alliance (AFCA), which has improved the exchange of information between undertakings, prosecutors and supervisors.[58]

Other topics discussed at the symposium were current issues in money laundering prevention. In addition to the findings of the money laundering audits, the focus was on the Financial Intelligence Unit's (FIU) 10 risk priority areas on the topics of money laundering and terrorist financing, among other items. These priority areas have been in effect since July 2019.

5.3 Inspection statistics and inspection priority areas of the Prevention of Money Laundering Directorate

BaFin conducted or shadowed a total of 109 inspections (see Table 34) in the field of money laundering prevention in 2019 (prior year: 90 inspections).

Thanks to the inspection groups established in 2017, BaFin was again able to raise the number of money laundering inspections in 2019. The inspections increased significantly in the non-banking finance sector in particular.

BaFin identified the following priority areas for money laundering prevention in 2019: review of customer due diligence (CDD), review of correspondent banking relationships and review of the position and powers of a money laundering officer.[59]

Priority area: customer due diligence
BaFin named CDD as a priority area for supervision in 2019, since it had identified deficiencies in identifying beneficial owners in individual cases in its own on-site inspections in 2018. CDD refers to the process whereby an institution identifies its customers and ensures that their details are correct. In 2019, BaFin wanted to establish whether there are systematic problems with the identification procedures employed which need to be addressed from a supervisory point of view.

The result: BaFin found deficiencies in individual inspections, but these were remedied in the follow-up procedure.

Priority area: correspondent banking
International money laundering scandals have illustrated the particular potential risks of correspondent banking relationships. In order to deploy its supervisory resources on a risk-oriented basis, BaFin firstly conducted a stocktake of correspondent banking relationships in the German banking landscape. It also established a priority area for audits of the 2019 annual financial statements in accordance with section 30 of the German Banking Act (*Kreditwesengesetz*).

Priority area: money laundering officer
In 2019, BaFin also wanted to verify at individual institutions whether the key function of the money laundering officer carries the necessary weight by making this issue a supervisory priority area in its own right. Where necessary, it wanted to work towards further strengthening of this function as a follow-up.

The on-site inspections showed that institutions generally acknowledge the increasing importance of the topic of money laundering prevention, and the position of the money laundering officer within management, and have reacted with the required seriousness. Nevertheless, there were also a few exceptions where BaFin had to press for improvements in the organisation. The on-site inspections had a very positive effect on the institutions: in a number of cases the personnel and financial resources devoted to the prevention of money laundering were significantly reinforced as a consequence.

58 See Opinion.
59 On this subject, see also chapter I 1.

Table 34: Money laundering inspections in 2019

Type	In the banking sector	In the non-banking financial sector	Of which agents
Own inspections	46	28	17
Shadowing of audits of annual financial statements	14	8	
Shadowing of ad hoc inspections by auditors (foreign branches)	13		

Table 35: Account information access procedures in accordance with section 24c of the Banking Act

Recipient	2019		2018	
	absolute	in %	absolute	in %
BaFin	752	0.4	877	0.6
Tax authorities	12,648	6.8	13,249	9.3
Police authorities	131,959	70.7	87,931	61.5
Public prosecutors	29,982	16.1	30,671	21.5
Customs authorities	10,683	5.7	9,645	6.8
Other	551	0.3	515	0.4
Total	**186,575**		**142,888**	

5.4 Requirement for a central contact point

Cross-border payment institutions domiciled in another state within the European Economic Area (EEA) frequently provide their services in Germany using agents within the meaning of section 1 (9) of the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*). If they have a network of at least 10 agents, they must appoint a central contact point (Article 3 (1) of Delegated Regulation (EU) 2018/1108) if required to do so by BaFin.

In 2019, BaFin required cross-border payment institutions which meet the criteria stipulated in the regulation referred to above to nominate a central contact point. Since 2019, the payment institutions' annual money laundering reports have been submitted to BaFin via this contact point. The agents described above have no obligations to provide BaFin with money laundering reports themselves.

Thanks to these reports – and the improved information available to it as a result – BaFin was able to introduce a risk-oriented approach to the supervision of payment agents.

5.5 Statistics on account information access procedures

Under section 24c (1) of the Banking Act, credit institutions, asset management companies and payment institutions are required to maintain a data file in which they store certain account master data, such as the account number, name and date of birth of the account holders and persons authorised to draw on the account as well as the date of opening and closure of the account. Upon request, BaFin provides information from the account information access file to the authorities listed in section 24c (3) of the Banking Act. It did so on 185,137 occasions in 2019 (see Table 35).

5.6 Intensified supervision of German branches of banks in the EU

The Prevention of Money Laundering Directorate paid closer attention to branches of European banks and stepped up its supervision of this sector in 2019.

In BaFin's opinion, there is a high inherent risk of these institutions being misused for money laundering or terrorist financing purposes due to the international orientation of their business model. This assessment was also confirmed by the first National Risk Assessment (NRA) of the Federal Ministry of Finance.[60]

In accordance with section 2 (1) no. 1 of the German Money Laundering Act (*Geldwäschegesetz*), branches operating in Germany with European passporting rights are subject to supervision by BaFin for money laundering purposes. The relevant group supervisors from the institutions' home countries also have supervisory powers. To enable BaFin to respond to the challenges of this special set of circumstances from the point of view of supervision and the risks involved, the branches have been brought together under the responsibility of a Money Laundering Division.

In principle, branches must comply with the same obligations as any other credit institution. One major difference, however, is that they are not required to have compliance with these obligations reviewed by the auditors of the annual financial statements.

60 See BaFinJournal November 2019, page 4 (only available in German).

Information deficit remedied

In order to correct this information deficit, BaFin sent a questionnaire to the relevant institutions in 2019 to collate key financial indicators and information. It also carried out an increased number of special inspections of these institutions in 2019. Both the answers to the questionnaires and the findings of the inspections show that supervisory objections are frequently linked to the organisational and legal integration of the branch into an undertaking with international operations.

BaFin identified deficiencies in money laundering prevention in particular in those areas in which German money laundering legislation differs from the requirements in the parent undertakings' countries of origin. It found organisational deficiencies in many cases where activities were outsourced to other countries, for example to parent undertakings located there. It should be noted in this context that not all duties of the money laundering officer and other functions related to money laundering prevention are capable of being outsourced abroad.

The findings from the questionnaires and special audits will be incorporated in BaFin's risk-based supervisory planning for 2020.[61]

61 See Opinion.

6 Unauthorised business activities

6.1 Authorisation requirement

As a matter of principle, anyone wishing to conduct banking business, e-money business, investment business or insurance business in Germany may do so only with authorisation from BaFin, and is then subject to its supervision. The same applies to financial services and payment services (see info box on page 127).

In 2019, the number of new authorisation queries received by BaFin declined – from 1,397 to 1,055 queries (see Table 36 on page 127). They focused primarily on fintech companies, initial coin offerings (ICOs) and security token offerings (STOs) as well as new payment services.

At a glance

Authorisation requirement

BaFin's responsibilities include examining the business of new providers or new business models of established undertakings to determine whether they require authorisation under supervisory laws. Providers require authorisation for the following businesses:

- banking business or financial services under the German Banking Act (*Kreditwesengesetz*)
- insurance business under the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz*)
- payment services or e-money business under the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*)
- management of investment funds within the meaning of the German Investment Code (*Kapitalanlagegesetzbuch*)

If a provider has already commenced an activity requiring authorisation without having obtained the necessary authorisation from BaFin, the latter will enforce its right to withhold authorisation. It will ensure that the provider ceases and winds up the unauthorised business without delay. BaFin will inform investors of this on its website www.bafin.de and in BaFinJournal. Depending on the nature of the case, BaFin may also file a complaint with the prosecuting authorities against the operators responsible.

BaFin can only determine whether a planned business activity requires authorisation in each individual case. However, it has published Guidance Notices on its website. They are intended to assist applicants in making an initial assessment themselves.

Table 36: New authorisation queries

	2017	2018	2019
New authorisation queries	1,208	1,397	1,055

Exemption from the authorisation requirement
Pursuant to section 2 (4) of the Banking Act, BaFin can determine in individual cases that an undertaking should be exempted from the authorisation requirement and specific provisions of ongoing supervision. This exemption is only valid for as long as the undertaking does not require supervision due to the nature of its business. Exemptions granted to third-country undertakings may only be granted if BaFin does not also have to supervise their business in Germany because it is supervised in the home country. This is governed by section 2 (5) of the Banking Act.

Table 37: Exemption of institutions

	2017	2018	2019
Exempted institutions	358	368	361
newly exempted institutions	1	10	3

In practice, exemptions can only be granted on application. BaFin does not often grant such exemptions. The normal case is that authorisation is required for an activity classified under the law as a banking business or financial service.

6.2 Investigation of unauthorised business activities

Any violation of the authorisation requirements damages the integrity of the financial system. Anyone offering one of the business activities named above without authorisation from BaFin is committing an offence. BaFin dedicates substantial resources to investigate such cases. The legislature has provided it with a wide range of instruments for the purpose of such investigations. For example, it is entitled to search business and private premises, and persons as well. These powers inevitably run into barriers if the perpetrators are operating from other countries. In such cases, however, BaFin has the option of turning to domestic telecommunications networks, website providers and banks (e.g. in order to freeze accounts or cash). Moreover, BaFin is constantly expanding the scope of its cross-border collaboration with foreign authorities. Digital business models (online trading platforms such as PrestigeFM and XTraderFx) were a particular focus of such cross-border investigations in 2019. BaFin also announces measures it has taken on its website to act as a deterrent.

Record level of suspected violations in 2019
The number of suspected violations rose again in 2019 – from 1,281 cases to 1,318 cases (see Table 38 on page 128). BaFin took formal steps against unauthorised business activities in 150 cases – an unprecedented

number. According to conservative estimates, the total loss caused by these violations amounted to at least €141 million. In most cases, the providers discontinued their unauthorised business voluntarily after a hearing with BaFin on the issue.

Table 38: Investigation of unauthorised business activities

	2017	2018	2019
New suspected violations	1,042	1,281	1,318
Searches	20	23	17
Formal measures	25	87	150

Irrespective of any formal measures, there were 43 cases in 2019 (previous year: 15 cases) where BaFin drew attention on its website and in BaFinJournal to undertakings that had contacted German customers anonymously or using a pseudonym by e-mail, telephone or online. As is usual in such cases, the providers contacted customers from abroad. They claimed untruthfully that they were supervised by BaFin, or created that impression, in order to lull their customers into a false sense of security.

Objection and court proceedings

Formal measures imposed by BaFin can be objected to by the parties concerned.

Table 39: Objection proceedings

	2017	2018	2019
New objection proceedings	37	48	34
Formal objection notices	21	34	22
Withdrawals/other discontinuances	22	19	16

The measures imposed by BaFin are immediately enforceable, however; any objection raised has no suspensory effect. The parties for which the formal measures are intended can only apply to the Administrative Court (*Verwaltungsgericht*) of Frankfurt am Main in summary proceedings for an order that the legal remedy should have a suspensory effect.

Table 40: Summary proceedings – first instance

	2017	2018	2019
New summary proceedings	4	8	8
Dismissal of application	1	7	11
Order of suspensory effect	1	0	0

If BaFin ultimately rejects the objection to a formal measure, the party for which the measure is intended can bring legal action before the Administrative Court of Frankfurt am Main.

Table 41: Legal proceedings – first instance

	2017	2018	2019
New legal proceedings	16	16	10
Judgment entered in favour of BaFin	4	2	7
Actions allowed	1	1	0
Withdrawals of actions/other discontinuances	5	10	5

On appeal, the Higher Administrative Court (*Verwaltungsgerichtshof*) of Hesse concluded 2 appeal proceedings in 2019, as in the previous year, and 3 cases (prior year: 9 cases) in interim relief proceedings.

6.3 Platforms and money collection accounts

In particular, fraudulent and unlicensed online trading platforms for contracts for difference (CFDs) and forex trading are still attempting to persuade their customers to pay their trading capital into accounts held by German companies at German credit institutions.

BaFin and the Federal Office of Criminal Investigation (*Bundeskriminalamt*) had already issued express warnings about transactions with online trading platforms of this nature.[62] This was because the money is very often transferred abroad and in most cases the payer loses the whole amount. The companies frequently take the form of a limited liability company (*GmbH*) or an entrepreneurial company with limited liability (*Unternehmergesellschaft*) and are formed by their backers specifically for this activity.

62 www.bafin.de/dok/11771618.

BaFin intervened in a large number of cases against companies of this nature in 2019. It intends to step up its activities against these fraudulent practices.

6.4 Investigation of hawala banking

Hawala banking as practised in the Middle East and similar funds transfer systems from other countries, such as hundi (India), padala (Philippines) and fei-chien (China), are traditional payment systems which continue to be used today, mainly by migrants to transfer funds cheaply back to their home countries. The World Bank estimates that this method was used for transfers totalling US$250 billion in 2018.

From a legal point of view, hawala is a money transmission business which would require authorisation in Germany under section 10 (1) of the Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*). However, it can be assumed that hawala banking is generally conducted without such authorisation. This creates a large number of problems.

Anonymity
For example, hawala banking makes it possible to transfer money abroad anonymously. To do this, the payer hands over money to a hawaladar, for example in Germany, and instructs them to pay the amount to a recipient in another country. The hawaladar in Germany accepts the money, gives the payer a payment code and passes the payment information on to a hawaladar known to them in the destination location. The latter pays the money to the recipients once they have quoted the related payment code. The payment information is communicated with no documentation using messenger services or also by phone.

The hawaladars involved balance their funds by offsetting the transactions against payment business in the opposite direction. In the event that one party has a cash surplus, however, cash is also transported abroad. Regular finds of cash by customs authorities give an indication of the scale of these money transfers.

Risk of abuse
As a result of the anonymity it offers, there is a risk that the hawala banking system could be used to transfer money of uncertain origin. In other words: it creates the possibility of terrorist financing, money laundering and the transfer abroad of money obtained from smuggling and organised crime. With the amendments to the Payment Services Supervision Act in January 2018 and the associated legal clarification of the criminal nature of the actions of natural as well as legal persons, the investigation of unauthorised hawala banking operations is therefore a major area of focus for BaFin and the prosecuting authorities.

BaFin is especially reliant on collaboration with these authorities for the purpose of investigating criminal transactions of this nature. It passes on to them the findings from its own on-site measures, such as searches of properties and persons. BaFin also assists the law enforcement agencies on site with searches ordered by the public prosecutor's office, and contributes its expertise in preparing criminal law prosecutions of offences falling under financial market laws.

In November 2019, BaFin officials participated in a wide-ranging search operation conducted by the state office of criminal investigation for North Rhine-Westphalia. This involved a total of 62 search warrants executed by more than 850 officials from a variety of authorities across Germany.

6.5 Identity theft

Since 2019, there has been a growing number of cases in which undertakings operating without authorisation use the identity of a licensed financial services provider. For example, they copy an institution's entire website, falsely claim to be supervised by BaFin, quote a BaFin ID or even link to the existing authorisation of another institution. When doing so, they use an almost identical corporate name and a very similar internet address. Such undertakings are usually pursuing fraudulent objectives and obtain money from investors. Many investors only discover that they were dealing with a criminal copy and not the genuine original once they have come to grief and attempted to contact the undertaking.

BaFin published a number of clarifications in relation to such cases on its website and in BaFinJournal in 2019 in order to protect the authorised institutions and also consumers. In addition, it issued orders to cease operations if it had indications of activities of this nature in Germany.

6.6 Advertorials – advertising in editorial guise

Advertorials on German media websites are also becoming increasingly popular with unauthorised undertakings operating in the financial market. Advertorials are advertisements presented in an editorial style to create the impression of a journalistic article. Photos of prominent figures are frequently used – generally without their knowledge. German press law

requires such contributions to be described as advertising. But in many cases this description is concealed to such an extent that it is difficult for readers to recognise the advertising nature of the supposed report. In consequence, they take the contributions disguised as editorials to be credible factual reports, and allow themselves to be deceived into concluding a contract with the provider.

Many investors who come to grief with these dubious offers turn to BaFin. The investigations which BaFin then initiates are very time-consuming, because the media generally outsource the marketing of advertorials to third-party companies. The latter also outsource the marketing in turn. If BaFin puts measures into effect and publishes them, the media concerned usually remove the advertorials from their web presence immediately.

6.7 BaFin's contact point for whistleblowers

In 2019, BaFin's contact point for whistleblowers received 925 reports – once again more than in the prior year (665 reports). 49 % of the submissions concerned alleged violations by supervised institutions. 32 % of the reports related to potentially unauthorised business activities, and 6 % to suspected money laundering. Further reports consisted of complaints which are being processed by the Consumer Protection Directorate, or raised matters for which BaFin is not the competent authority or that did not contain any identifiable facts. BaFin does not pursue reports of this nature.

Since 1 January 2017, whistleblowers have been able to report alleged supervisory law violations to BaFin using an electronic system. Over 55 % of the whistleblowers made use of this option in 2019. The system guarantees absolute anonymity for whistleblowers, but allows BaFin to get in touch with them. They remain anonymous, providing they do not disclose any data that allows them to be traced. It is technically impossible to trace the submission.

33 % of the reports were sent in by e-mail and 7 % by post. Around 3 % of the submissions were made by phone, while those delivered in person remained below 1 %.

At a glance

New Directive

The new EU Whistleblower Directive on the protection of persons who report breaches of Union law came into force in December 2019. The member states have a period of two years in which to implement it. The Directive establishes a consistent EU-wide minimum standard for the protection of whistleblowers, so that they do not have to fear negative consequences.

Undertakings with more than 50 employees and public-sector bodies are required to establish secure internal channels for reporting breaches. Notwithstanding the above, whistleblowers will be able in future to refer directly to the competent supervisory authority or to the public through external reporting channels. Whistleblowers will decide themselves which reporting channel they choose to use first. This will not reduce their protection as whistleblowers. The Directive contains clear provisions on the design of the reporting channels in such a way that the confidentiality of the whistleblower is protected.

IV

Resolution

1 Resolution standards

1.1 Guidelines for resolution

Even five years after its introduction, the European resolution regime remains a very new area of banking regulation (see info box on page 134). It therefore has a particular need for guidelines, standards and interpretive guides. In addition to resolution planning on a daily basis, BaFin and the Single Resolution Board (SRB) are continually developing new guidelines and improving the existing frameworks. The objective is to further enhance the quality of resolution plans. This applies in particular to the minimum requirement for own funds and eligible liabilities (MREL), the public interest assessment (PIA), the critical functions, the implementation of the bail-in and the continuity of business operations in a resolution. Numerous workshops on these topics were organised with German institutions in 2019.

1.2 Circulars and guidance notices

In its capacity as the NRA, BaFin also published or issued for consultation a series of circulars and guidance notices in 2019. The primary focus was on bail-ins and their implementation, but also on reporting data.

1.2.1 MaBail-in

On 4 July 2019 BaFin published its Circular 5/2019 (A) on the minimum requirements for implementing a bail-in (*Mindestanforderungen zur Umsetzbarkeit eines Bail-in* – MaBail-in). The Circular is intended to contribute to further improving the resolvability of institutions in the event of a bail-in. It is addressed to institutions for which BaFin as the NRA is responsible and which are not candidates for insolvency proceedings. In essence, the Circular deals with the requirements for the information that must be provided, as well as the institutions' technical and organisational resources. Its core consists of a list of data points which the institution must provide within 24 hours at the level of the individual liability. They are required at short notice so that both of the resolution tools, the write-down and conversion of

At a glance

Who is responsible?

1 Resolution in the banking union

European legislators created the Single Resolution Mechanism (SRM) for the eurozone on 1 January 2016 as the second pillar of the banking union. The first pillar: the Single Supervisory Mechanism (SSM) headed by the European Central Bank (ECB).[1]

The SRM comprises the SRB and the national resolution authorities (NRAs) within the eurozone. BaFin has been the NRA in Germany since 2018. Responsibilities within the SRM are allocated between the SRB and the NRAs.

BaFin as NRA
As the NRA, BaFin is responsible for the German institutions that are classified as less significant institutions (LSIs) in the SSM and do not have cross-border operations. These also include financial market infrastructures (FMIs) with a banking licence.

SRB
The SRB is responsible for

- institutions classified as significant institutions (SIs) in the SSM and supervised by the ECB;
- cross-border LSIs and
- LSIs for which responsibility is transferred to the SRB in specific circumstances.

The SRB has established Internal Resolution Teams (IRTs) for each institution or group of institutions for which it is responsible. The SRB and the relevant competent NRAs work together in the IRTs. In that sense the IRTs are similar to the Joint Supervisory Teams (JSTs) in the SSM. The primary task of the IRTs is to prepare resolution plans and keep them up-to-date. For example, they assess whether an institution is in principle resolvable, the impediments that may prevent a possible resolution and the appropriate measures to remove these obstacles. In 2019, BaFin collaborated in more than 30 IRTs.

2 Resolution in the European Union and cooperation with third-country authorities

The SRB and the NRAs establish resolution colleges to coordinate the collaboration between different resolution authorities in the banking union, in Europe and in third countries. The main purposes of these colleges are

- the exchange of information;
- the development of group resolution plans;
- the assessment of resolvability for specific institutions;
- the removal of impediments to resolution;
- the decision on group resolution schemes
- and the coordination of public communications.

BaFin was represented in a total of 18 resolution colleges in 2019.

Crisis Management Groups (CMGs) are set up for all institutions classified by the Financial Stability Board (FSB) as global systemically important banks (G-SIBs). 18 of the 30 institutions classified as G-SIBs in 2019 have operations in Germany. There were also another eight CMGs for central counterparties (CCPs) in 2019. BaFin therefore collaborated in a total of 26 CMGs in 2019.

relevant capital instruments and the bail-in of creditors, can be calculated and implemented.

Among other things, the Circular also sets out requirements for the systems and processes necessary to estimate the impact of the bail-in on the balance sheet, risk-weighted assets and own funds. Whether, when and how the institutions concerned must implement the Circular is determined by BaFin in the context of the specific resolution planning, always bearing in mind the principle of proportionality.

1 On the SSM see chapter III.1.

1.2.2 Guidance Notice on the external implementation of a bail-in

On 1 October 2019 BaFin published its Guidance Notice on the external implementation of a bail-in. It is addressed to all institutions issuing securities in Germany. The question whether the Guidance Notice applies to an institution depends on whether the resolution strategy envisages a bail-in. The content of the Guidance Notice is based on the MaBail-in and deals with the issue of how the bail-in is to be implemented technically once the resolution order has been published.

BaFin developed the Guidance Notice jointly with Clearstream Banking Frankfurt, WM Datenservice and the Frankfurt Stock Exchange. It describes the participants involved, their responsibilities, communications channels and interfaces as well as timescales. It also lays down requirements for the information that must be provided for the purpose of an external implementation of a bail-in. The objective of the Guidance Notice is the same as that of the MaBail-in: to optimise the resolvability of the banks with respect to the bail-in. The Guidance Notice is intended to assist institutions in converting the MaBail-in into a coordinated and efficient process.

1.2.3 MIA – the Circular on reporting obligations

At the end of August 2019, BaFin issued its Circular 9/2019 (A) on reporting information for resolution planning (*Meldung von Informationen für die Abwicklungsplanung* – MIA). Background: BaFin is dependent on the undertakings' data for the purpose of preparing and updating resolution plans and for the assessment of whether an institution can be resolved. The necessary procedures, standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms are set out in Commission Implementing Regulation (EU) 2018/1624 of 23 October 2018. The information is divided into three blocks:

- "General information", which provides an overview of the organisational structure of a group and its entities, the distribution of assets and risk exposure amounts.
- "Information on on-balance sheet items and off-balance sheet items", which covers financial information on liabilities, own funds, financial connections and deposit insurance, among other items.
- "Critical functions", which provides an overview of critical functions and maps them to legal entities, core business lines, critical services, financial market infrastructures and information systems.

In addition, BaFin can require further information not requested in the templates.

The MIA Circular explains BaFin's administrative practice with respect to the Implementing Regulation of the EU Commission referred to above.

Scope of the MIA Circular
Only those institutions for which BaFin is responsible fall within the scope of the MIA Circular. Institutions or groups for which the SRB is responsible are subject to the requirements published by the SRB. The starting point for determining the reporting requirement for a specific institution is a review of whether simplified obligations can be applied (Article 11 (3) and (4) of the SRM Regulation in conjunction with section 41 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*)). For this purpose, the resolution authority considers whether the failure of an institution or group is likely to have significant adverse consequences for the financial system or be a threat to financial stability or the wider economy.

If BaFin concludes that in all probability the resolution of an institution or group under normal insolvency proceedings would be unlikely to have negative consequences, it is possible to simplify resolution plans: in these cases there is no notification and reporting requirement in accordance with Implementing Regulation (EU) 2018/1624. All other institutions or groups are informed individually of the notification and reporting obligations for the specific institution.

1.2.4 Treatment of certain liabilities of CRR institutions under insolvency law

The new provisions for the treatment of certain liabilities of CRR[2] credit institutions under insolvency law are the subject of a Guidance Notice published by BaFin in May 2019. It is a response to the amendment of section 46f of the German Banking Act (*Kreditwesengesetz*).

The new provisions of section 46f (5) to (9) of the Banking Act as amended were intended to reflect the new requirements of Article 108 (2) of Directive 2014/59/EU

2 European Capital Requirements Regulation – CRR.

as amended by Directive (EU) 2017/2399.[3] In order to be classified as a liability within the meaning of section 46f (6) of the Banking Act (non-preferred liabilities), instruments must in particular have an original contractual maturity of at least one year and explicitly refer to their lower ranking under normal insolvency proceedings stipulated by section 46f (5) of the Banking Act. This is intended to create transparency for investors and adequate legal certainty.

2 EBA Handbook

In its capacity as the NRA, BaFin cooperates closely with the European banking authority (EBA) for the purposes of standard setting at European level. On 22 February 2019, the EBA published a Handbook[4] on valuation for the purposes of resolution, to which BaFin's work made a major contribution. The Handbook is addressed to national resolution authorities such as BaFin and is intended to help foster consistent resolution standards and processes across Europe. It sets out the EBA's expectations for the methodological approach of the valuation process and the key content to be included in the valuation reports.

A current valuation of the institution's assets and liabilities must be available to begin with before resolution measures can be initiated. The valuation process is divided into three steps. The purpose of the first step is to establish whether the general conditions for a resolution are met. The main objective of the second step in the valuation process is to arrive at an informed decision on the appropriate resolution actions to be taken.

The EBA Handbook also covers the third step of the valuation process. Following the completion of a resolution, an independent valuer determines whether shareholders and creditors have been placed in a worse position in the resolution than under normal insolvency proceedings and therefore have a claim for compensation – also known as a "no creditor worse off" valuation.

3 Legislative process for CCP recovery and resolution

BaFin is providing expert assistance with the preparatory work for two legislative processes: the special regulations for the recovery and resolution of central counterparties (CCPs) are the subject of a legal initiative on which the Federal Ministry of Finance held a public consultation in summer 2019. The Federal Cabinet approved them in September of the same year, so that they were able to be accepted by the Bundestag and Bundesrat in early 2020. CCPs are growing in importance as a result of the mandatory clearing of over-the-counter derivatives.

At the same time, work is being carried out at European level on a framework for the recovery and resolution of CCPs. The draft European regulation on CCP recovery and resolution (CCP RR) provides for the possibility that the relevant national resolution authority responsible can issue orders to preserve critical functions. The Croatian Presidency of the Council is expected to initiate the trilogue on the CCP RR, i.e. the negotiations between the European Parliament, the EU Commission and the Council of the European Union, in spring 2020. As things currently stand, the CCP RR is likely to come into effect 24 months following its publication.

4 Institutions under German responsibility for resolution

BaFin was directly or indirectly responsible as the NRA for the resolution and resolution planning for 1,375 CRR credit institutions and 39 CRR investment firms in Germany in 2019.[5] BaFin was directly responsible for 1,339 of those 1,375 CRR credit institutions and the 39 CRR investment firms. The SRB (see info box on

3 Federal Law Gazette I 2018, page 1102.

4 https://eba.europa.eu/-/eba-publishes-handbook-on-valuation-for-purposes-of-resolution.

5 The total number (as at 31 December 2019) relates to group level and in principle does not include branches of foreign banks or financial services providers, such as housing enterprises with a savings facility, since these institutions do not fall within the area of competence of the NRAs, nor CRR investment firms.

page 134) is the resolution authority for the remaining 36 institutions and groups of institutions.

5 Resolution planning

5.1 2019 resolution planning cycle

In the 2019 planning cycle (see info box), BaFin was closely involved in the resolution planning for the 19 institutions domiciled in Germany under the direct responsibility of the SRB as part of the Internal Resolution Teams (see info box). BaFin also collaborated on the resolution planning for 20 foreign groups of institutions for which the SRB was primarily responsible. During the year under review, two foreign institutions transferred from BaFin's area of responsibility to the remit of the SRB in the course of Brexit.

At a glance

Resolution planning cycle

A resolution planning cycle generally covers 12 months, for example from 1 April of one year to 31 March of the following year. In the course of a resolution planning cycle, the resolvability of the institutions concerned is continually analysed and, where necessary, improved. The respective resolution planning cycles generally conclude with the adoption of an institution-specific resolution plan (including the MREL requirement – see section 5.2 below).

BaFin prepared resolution plans for 1,170 LSIs for which it was directly responsible at the end of 2019. On the basis of the current position, insolvency proceedings are anticipated for most of these LSIs. For the other LSIs, BaFin is reviewing[6] whether resolution tools can be applied or is developing initial preferred resolution strategies.

5.2 MREL

The minimum requirement for own funds and eligible liabilities (MREL) represents one of the key elements of resolution planning. It contributes to improving the banks' resolvability: institutions for which a resolution is prescribed if they are failing or likely to fail need to maintain adequate capital – for the purpose of a recapitalisation or to enable them to absorb losses. For institutions that can be wound up by means of insolvency proceedings, on the other hand, it is generally not necessary that funds are kept available for a recapitalisation. This means that, for these institutions, the MREL requirement is equivalent to their regulatory own funds requirement. If such institutions fall under the direct responsibility of BaFin, they are not the subject of a separate MREL administrative act. BaFin has clarified this with Circular 12/2019 (A)[7].

For the SRB institutions, BaFin sets the level of the institution-specific MREL ratio in accordance with the decision of the SRB by means of an administrative act. BaFin issued a total of 17 MREL decisions in this way in 2019. In addition to the MREL targets at the consolidated level of the parent company, individual MREL targets were also set for subsidiaries for the first time. As part of the determination process for MREL targets, BaFin and the SRB conducted a joint right to be heard process.

The SRM Regulation allows for the possibility of waiving the determination of individual MREL targets subject to certain conditions. An MREL waiver of this nature was granted to a number of institutions at their request.[8]

At a glance

Second BaFin resolution conference

BaFin organised a specialist conference on the subject of bank resolution for the second time on 4 December 2019. The main topics were the current status of resolution planning, the data requirements for resolution planning, the further development of the MREL requirements and crisis preparation. The event was mainly aimed at representatives of institutions for which BaFin has primary responsibility. In total, 200 representatives of credit institutions, industry associations and other institutions within the finance sector took part in the conference.

6 The review process will continue in 2020.

7 Circular 12/2019 (A) – Determination of the minimum amount of own funds and eligible liabilities for institutions for which the implementation of insolvency proceedings as a resolution strategy is credible and feasible.

8 See chapter I 8.

V

About BaFin

1 Who works for BaFin?

As at 31 December 2019, a total of 2,722 employees (see Table 42) worked at BaFin (prior year: 2,713 employees) – the principal disciplines represented were law and administrative studies, economics, natural sciences and information technology. 71 employees were on long-term assignment to international institutions and supervisory authorities as at 31 December. 37 of them were working temporarily as delegates to the European Central Bank (ECB).

BaFin recruited a total of 122 new members of staff in 2019 (see Table 43 on page 140) – the same number as in the previous year. BaFin will invite applications for numerous open positions in 2020 as well. One of the reasons: BaFin's range of responsibilities is constantly expanding.

BaFin offers interesting career prospects and varied areas of activity. Its responsibilities are complex and many have an international aspect. Moreover, the regulatory framework and the extent of BaFin's responsibilities are constantly being developed further. Many members of staff work in interdisciplinary teams.

BaFin promotes the compatibility of career and family: it provides its own day care centres at both locations. Furthermore, following a successful pilot project, BaFin introduced the option for all employees of working in their home office[1], in addition to the option of teleworking[2].

Expertise through CPD

BaFin also considers it particularly important that employees develop and maintain their knowledge and skills on an ongoing basis and keep them up-to-date. Whether for those starting their careers or more advanced participants: BaFin provides continuing professional development (CPD) sessions and further training for its employees in a wide range of specialist areas. Joint training initiatives, in particular with the Deutsche Bundesbank, the ECB and the European Supervisory Authorities (ESAs), also promote closer collaboration and more effective international networking.

In 2019, BaFin employees took part in 643 CPD events (previous year: 693 events). The total number of attendances at such events in 2019 was 4,063 (previous year: 4,602 attendances). On average, each BaFin employee therefore attended a CPD session on 2.7 days (previous year: 2.8 days).

In addition, BaFin aids its employees' development with specific induction programmes, for example, and by offering them opportunities to move to a higher career bracket, gain promotion or work for international institutions and supervisory agencies.

1 Option of working from home on flexible dates.
2 Option of working from home on predetermined dates subject to certain conditions.

Table 42: Personnel

As at 31 December 2019

Career level	Employees			of which civil servants	of which public service employees
	Total	Female	Male		
Higher civil service	1,346	554	792	1218	128*
Higher intermediate civil service	844	373	471	688	156*
Intermediate/basic civil service	532	360	172	190	342
Total	**2,722**	**1,287**	**1,435**	**2,096**	**626***
of which in Bonn	1,895	890	1,005	1,481	414*
of which in Frankfurt	827	397	430	615	212*
of which candidates for entry to the higher intermediate civil service/vocational trainees	37	19	18	15	22

* Including those employees not covered by collective wage agreements.

Table 43: Recruitment in 2019

As at 31 December 2019

Career level				Qualifications			
	Total	**Female**	**Male**	**Fully qualified lawyers**	**Economists**	**Mathematicians/ statisticians**	**Other**
Higher civil service	58	20	38	15	30	6	7
				Business lawyers	**Economists**	**Career training**	**Other**
Higher intermediate civil service	46	21	25	3	32	2	9
Intermediate/basic civil service	18	10	8				
Candidates for entry to the higher intermediate civil service/vocational trainees	11	7	4				
Total	122*	51*	71*				

* Excluding candidates for entry to the higher intermediate civil service/vocational trainees.

2 Budget

BaFin's Administrative Council approved a budget of €382 million for 2019. Planned expenditure for 2019 was therefore around €37 million higher than in 2018 (€345 million). This mainly reflected an increase in budgeted staff costs.

Personnel expenses accounted for 67.2% of the projected expenditure for 2019 amounting to €256.8 million and non-staff costs for 27.2% or €104 million. In the previous year, personnel expenses amounted to €233.3 million, while non-staff costs were €90.7 million. Capital expenditure represented 3.4% of the 2019 budget (previous year: 3.6%). Cost reimbursements and grants accounted for 2.2% of the budget (previous year: 2.4%).

Financing through cost allocations and fees
BaFin is independent of the federal budget and is fully self-financed from its own income. The largest proportion of this in the 2019 budget was attributable to cost allocations levied on the supervised undertakings, a special levy with a financing function. The projected figure for total cost allocations in 2019 amounted to €359.6 million (previous year: €310.3 million). BaFin also finances itself from administrative income such as fees. The projected figure for this item in 2019 amounted to €22.5 million (previous year: €34.7 million).

The final cost allocation for 2018 was performed in 2019. It showed that the banking industry accounted for 45.1% of the total income from cost allocations in 2018. The insurance sector contributed 26.6% and the securities trading sector 21.9%. The share attributable to the National Resolution Authority area of activity amounted to 6.4%. The final cost allocation for 2019 will take place during 2020.

Actual expenditure and income
BaFin's actual expenditure in 2019 was approximately €345.3 million (previous year: €320.5 million). It was set against income of around €386.5 million (previous year: €331.3 million). BaFin's Administrative Council had not yet approved the 2019 annual financial statements at the time this report went to press.

Separate enforcement budget
BaFin drew up a separate enforcement budget totalling €8.3 million in 2019 as in the previous year. Also as in the previous year, this included a planned cost reimbursement to the German Financial Reporting Enforcement Panel (*Deutsche Prüfstelle für Rechnungslegung*) amounting to €6 million. Actual expenditure on enforcement finally amounted to around €8.2 million (previous year: €8 million), while income – including advance cost allocation payments for 2020 – amounted in total to approximately €15.7 million (previous year: €14.7 million).

3 Compliance

Code of conduct for the members of BaFin's Executive Board
The code of conduct for the President and Chief Executive Directors in force since 1 January 2018 was evaluated and left unchanged by BaFin in 2019 in consultation with the Federal Ministry of Finance and external auditors. The code contains rules on the acceptance of gifts, lecturing activities, honorary positions and private securities transactions. For example, the code provides that members of the Executive Board may not carry out transactions in securities of companies within the financial sector. The Compliance Officer for the Executive Board, who works in the Central Compliance Office, receives reports of securities transactions from the members of the Executive Board and reviews their compliance with the code of conduct. An external auditor in turn evaluates this internal review and the completeness of the reports. This ensures that the transactions are subject to independent control.

Rules of conduct at European level
The Code of Conduct for high-level ECB officials came into force on 1 January 2019. As a member of the Supervisory Board for European banking supervision within the ECB, this code also applies to the president of BaFin. The members of the Governing Council and the Executive Board of the ECB must also comply with the ECB's new Code of Conduct. The central bank established the code in response to calls from the European Parliament and the European Ombudsman.

Its requirements include the publication of an annual declaration of interests by the members of the Supervisory Board on the ECB's website. This involves the disclosure of previous occupational activity, private activities, official mandates and financial interests, among other things.

The European Banking Authority (EBA), European Securities and Markets Authority (ESMA), European Insurance and Occupational Pensions Authority (EIOPA) and European Single Resolution Board (SRB) also each have their own codes of conduct. BaFin representatives in bodies of those European institutions must also comply with these guidelines in addition to the respective applicable national regulations.

4 Bodies and councils

BaFin is assisted and monitored in its work by a number of bodies and councils (see Table 44).

Table 44: BaFin bodies and councils[3]

- Administrative Council
- Advisory Board
- Insurance Advisory Council
- Securities Council
- Consumer Advisory Council

The Administrative Council monitors the management of BaFin and supports BaFin in the performance of its supervisory functions. It is also responsible for deciding on BaFin's budget.

The Advisory Board advises BaFin in the performance of its supervisory functions. In addition, it assists BaFin in the further development of its supervisory principles.

5 Communications

5.1 Press enquiries

In 2019, BaFin again received several thousand enquiries from journalists relating to the various areas of responsibility of the Supervisory Authority.

Money laundering prevention
The topic of money laundering prevention continued to be a focus of media interest. For example, press representatives were keen to find out more about the response from BaFin and also other national and international agencies to a number of international cases of money laundering at banks. In this context, the Europeanisation of money laundering supervision was also a leading topic, as before in 2018. Journalists also sought information on BaFin's responsibilities and powers in this area – especially with regard to its collaboration with the Financial Intelligence Unit (FIU). BaFin's participation in the Anti Financial Crime Alliance (AFCA) also generated lively interest. The objective of

3 A complete list of the bodies and councils is available on BaFin's website at https://www.bafin.de/dok/7859930.

this new public-private partnership, under the leadership of the FIU together with BaFin, the Federal Office of Criminal Investigation and more than a dozen German banks, is to step up the fight against money laundering and terrorist financing in the financial sector at national level.

Persistent low interest rates
The situation of the banks in the low interest rate environment once again received considerable media attention in 2019. Attention focused, among other things, on whether banks were entitled to pass on negative rates of interest to their clients.

Another important topic for the media in 2019 was the situation of the *Pensionskassen*. *Pensionskassen* have been hit especially hard by the prolonged period of low interest rates, since their portfolios consist almost entirely of pension insurance contracts which run for a lifetime and in some cases have high guaranteed payments. Journalists were interested in the financial situation of the funds and the supervisory measures planned or already taken – particularly with respect to intensified supervision. The decision to reduce benefits had drawn the public's attention to particular *Pensionskassen*, namely Pensionskasse der Caritas VVaG, Kölner Pensionskasse VVaG and Deutsche Steuerberater-Versicherung – Pensionskasse des steuerberatenden Berufs VVaG.

Life insurers as well continue to face significant challenges due to the low level of interest rates and this also attracted journalists' interest. The central issues were the impact that the renewed reduction in interest rates was having on the cover situation and the undertakings' profitability. Run-off returned as a central topic of media interest for a while as a result of the sale of Generali Lebensversicherung AG to Viridium AG. Following a thorough review, BaFin established that the interests of the policyholders had been adequately protected in the transaction, and that there were therefore no grounds to prohibit it.[4]

Short attacks
BaFin's intervention in suspected short attacks caught the public eye in particular in 2019. For the first time, BaFin had banned new net short positions or increases in existing positions in an individual stock (Wirecard AG). Above all, journalists wanted to know what evidence had convinced BaFin to regard overall market confidence as under threat and therefore to impose the temporary prohibition. They were also frequently keen to be informed about the extent and current status of the investigation launched into market manipulation.

Takeover law
Numerous enquiries were also received relating to the takeover proceedings in connection with OSRAM Licht AG[5]. For example, journalists wanted to know whether offeror companies are permitted to issue a renewed offer immediately after an unsuccessful takeover attempt using a different subsidiary. In principle, a one-year exclusion period applies to unsuccessful bidders. However, in the past this only applied to the specific offeror company, which allowed other entities of the previous offeror company to make a new offer. An amendment to the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) means that this is no longer possible. Persons acting in concert with the bidder are now also covered by the exclusion period.

PSD2
Many enquiries were also received about the provisions of the Second Payment Services Directive (PSD2) for which application has been mandatory since 14 September 2019. Strong customer authentication in electronic payment transactions was a subject of particular interest for the journalists. It has resulted in significant changes when using online banking services and making payments on the internet. Media representatives also sought details on the opening of account interfaces for third-party service providers, as well as the current status of authorisation procedures for payment initiation service providers and registration procedures for account information service providers.

Unauthorised business activities
Journalists were not just interested in undertakings whose unauthorised business activities had been prohibited by BaFin. They also asked about new trends in fraudulent business models. Crypto currencies and the authorisation requirement for bitcoin machines continued to receive attention from the press.

Sustainability risks
Some journalists wanted to know the extent to which banks and supervisors were taking the topic of sustainability into consideration. At the end of December 2019, BaFin published its Guidance Notice on

4 www.bafin.de/dok/12304072 (only available in German).

5 See also chapter III 3.3.1.2.2.2.

dealing with sustainability risks[6], which it had previously submitted for public consultation.

5.2 Events and trade fairs

"Sustainable Finance" conference
In 2019, BaFin once again engaged in exchanges with external experts at a number of events. For example, it hosted its first conference on "Sustainable Finance" at the Umweltforum in Berlin on 9 May 2019. Almost 350 participants were given an overview of current European regulatory projects and BaFin's supervisory approaches. They also held discussions with BaFin representatives.

Money laundering conference
The second conference on the subject of combating money laundering and terrorist financing was held in the World Conference Center Bonn on 12 December 2019. Around 500 specialists engaged in discussions and dialogue with supervisors at the BaFin symposium. The central question concerned ways of preventing financial institutions being misused for money laundering, terrorist financing or other criminal activities.

Information for investors at trade fairs and events
In April 2019, BaFin took part in the "Invest" trade fair in Stuttgart, providing information covering a wide range of subjects. The BaFin representatives also gave talks providing consumers with clarification on risky transactions with online trading platforms, among other topics.

BaFin was also represented in 2019 at *Börsentage* and at the Federal Ministry of Finance's open house in Berlin.

6 https://www.bafin.de/dok/13476464.

5.3 Publications

BaFin again issued a number of publications on supervisory and consumer topics at www.bafin.de in 2019. A few examples are described below.

BaFinJournal and BaFinPerspectives
BaFin continued to provide information on current supervisory topics in BaFinJournal in 2019. The publication appears monthly on BaFin's homepage. BaFin also published two more editions of its BaFinPerspectives series. The year's first issue appeared on 28 February 2019 and focused on the topic of digitalisation. The second issue for 2019 was published on 9 May and – in keeping with the conference on the same date (see 5.2) – was devoted to the topic of sustainable finance.

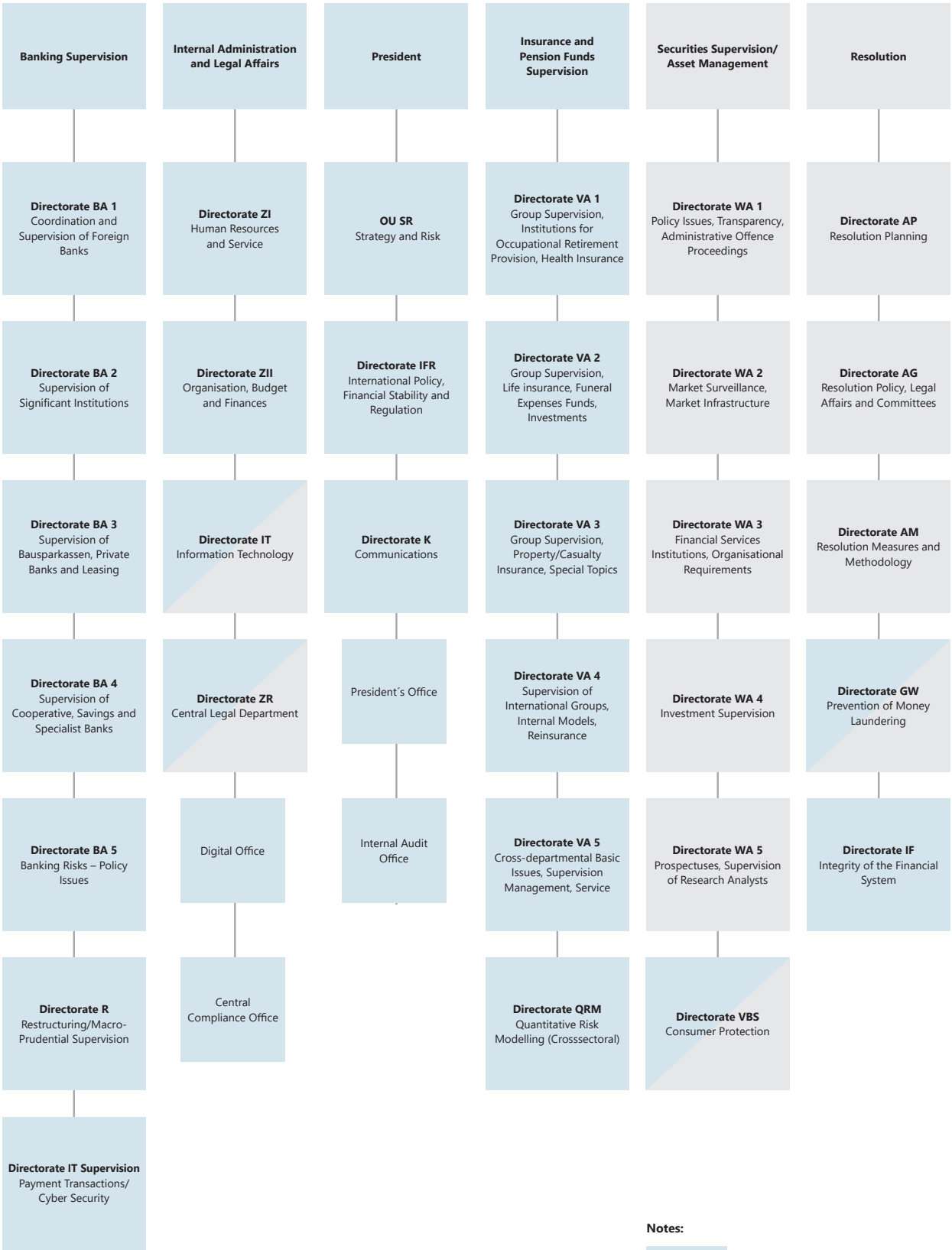
The series is published on BaFin's homepage in German and English.

Brochures
Numerous brochures on BaFin's website address topics of relevance to consumers. These include its brochure on the basic rules of investment (*Grundregeln der Geldanlage*), published in September 2019. The brochure explains what consumers should bear in mind when making an investment – for example, how to find an investment suited to their own situation and how to identify dubious offerings.

Annual Report and statistics
In addition to its Annual Report, BaFin publishes its annual statistics on the status and development of German insurance undertakings and its statistics on reinsurance undertakings at www.bafin.de. The Annual Report and the reinsurance statistics are also available in an English language version.

Appendix

1 Organisation chart*



* A detailed organisation chart is available on BaFin's website at www.bafin.de/dok/7859566. As at March 2020.

2 Complaints statistics for individual undertakings

For many years, BaFin has published complaints statistics in its annual report classified by insurance undertaking and class. The Higher Administrative Court in Berlin (*Oberverwaltungsgericht* – OVG) issued a ruling on 25 July 1995 (case ref.: OVG 8 B 16/94) ordering the Federal Insurance Supervisory Office (*Bundesaufsichtsamt für das Versicherungswesen* – BAV), one of BaFin›s predecessors, to include this information. The complaints statistics for 2019 will no longer be published in BaFin's annual report for the first time. They are available on BaFin's website.[1]

The complaints statistics list how many complaints BaFin processed in full in 2019 for Insurance Supervision.

The statistics do not take into account whether the complaints processed are justified, and hence are not indicative of the quality of the insurance business.

In order to provide an indicator of the volume of insurance business, the number of complaints that BaFin processed in full in 2019 is compared with the number of policies in the respective insurance class as at 31 December 2018. The individual undertakings report their existing business data. The information on existing business puts those insurers that recorded strong growth in the reporting period, often newly established undertakings, at a disadvantage because the new business written in the course of the year giving rise to the complaints is not adequately accounted for in the complaints statistics.

In the life insurance class, the existing business figure specified for group insurance relates to the number of insurance contracts. Existing health insurance business is based on the number of natural persons with health insurance contracts, rather than the number of insured persons under each premium scale, which is usually higher. As in the past, these figures are not yet entirely reliable.

The information on property and casualty insurance figures relates to insured risks. The existing business figure increases if undertakings agree group policies with large numbers of insured persons. Due to the limited disclosure requirements (section 51 (4) no. 1 sentence 4 of the Regulation on German Insurance Accounting (*Verordnung über die Rechnungslegung von Versicherungsunternehmen*)), only the existing business figures for insurers whose gross premiums earned in 2017 exceeded €10 million in the respective insurance classes or types can be included. The tables give no information on existing business (n.a.) for undertakings below the limit in the individual insurance classes.

The statistics do not include insurance undertakings operating within one of the classes listed that have not been the subject of complaints in the year under review.

As undertakings domiciled in other countries in the European Economic Area (EEA) were not required to submit reports to BaFin, no data is given for the existing business of these insurers. The number of complaints is included in order to present a more complete picture.

[1] www.bafin.de/dok/8230614 (only available in German).

3 Memoranda of Understanding (MoUs)

Banking Supervision	
Albania	2012
Argentina	2001
Armenia	2011
Australia	2005
Belgium	1993
Bosnia and Herzegovina	2016
Brazil	2006
China	2004
Denmark	1993
Dubai	2006
El Salvador	2011
Estonia	2002
France	1992
Finland	1995
Georgia	2011
Greece	1993
United Kingdom (BE/FSA)	1995
United Kingdom (SIB/SROs)	1995
United Kingdom (BSC)	1995
Guernsey	2011
Hong Kong	2004
India	2013
Ireland	1993
Italy (BI)	1993
Japan	2019
Jersey	2012
Canada	2004
Korea	2006
Kosovo	2011
Croatia	2008
Latvia	2000
Lebanon	2016
Lithuania	2001
Luxembourg	1993
Malta	2004
Macedonia	2011
Mexico	2010
Moldova	2014

Banking Supervision	
Nicaragua	2011
Netherlands	1993
Norway	1995
Austria	2000
Philippines	2007
Poland	2004
Portugal	1996
Qatar	2008
Romania	2003
Russia	2006
Sweden	1995
Serbia	2011
Singapore	2009
Slovakia	2002
Slovenia	2001
Spain	1993
South Africa	2004
Czech Republic	2003
Turkey	2011
Hungary	2000
USA (OCC)	2000
USA (NYSBD)	2002
USA (FedBoard/OCC)	2003
USA (OTS)	2005
USA (FDIC)	2006
USA (SEC)	2007
Vatican	2014
United Kingdom	2019
Vietnam	2010

Securities Supervision	
Argentina	1998
Australia	1998
Brazil	1999
China	2019
Dubai	2006
Estonia	2002
France	1996

Securities Supervision	
Guernsey	2011
Hong Kong	2018
Iran	2016
Israel	2017
Italy	1997
Japan	2019
Jersey	2012
Canada	2003
Korea	2010
Croatia	2008
Lebanon	2016
Monaco	2009
Poland	1999
Portugal	1998
Ontario (Canada)	2018
Qatar	2008
Russia	2001
Russia	2009
Switzerland	1998
Singapore	2000
Slovakia	2004
Spain	1997
South Africa	2001
Taiwan	1997
Czech Republic	1998
Turkey	2000
Hungary	1998
USA (CFTC)	1997
USA (SEC)	1997
USA (SEC)	2007
Vatican	2014
United Arab Emirates	2008
Cyprus	2003

Insurance Supervision	
Egypt	2010
Australia	2005
China	2001

Insurance Supervision	
Connecticut (USA)	2011
Dubai	2006
Estonia	2002
Florida (USA)	2009
Georgia (USA)	2012
Guernsey	2011
Hong Kong	2008
Japan	2019
Jersey	2012
California (USA)	2007
Canada	2004
Korea	2006
Croatia	2008
Latvia	2001
Lebanon	2016
Lithuania	2003
Malta	2004
Maryland (USA)	2009
Minnesota (USA)	2009
Nebraska (USA)	2007
New Jersey (USA)	2009
New York (USA)	2008
Qatar	2008
Romania	2004
Singapore	2009
Slovakia	2001
Thailand	2010
Czech Republic	2002
Hungary	2002
USA (OTS)	2005
Vatican	2014

Index of tables

Index of figures

Imprint

Published by
Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin)
Directorate K (Communications)

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Marie-Curie-Straße 24–28 | 60439 Frankfurt am Main

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Bonn and Frankfurt am Main | May 2020
ISSN 1611-910X

Editing
Directorate K (Communications)
Heimbüchel pr – kommunikation und publizistik GmbH

Design
Werksfarbe.com, konzept+design, Frankfurt

Typesetting
CMS – Cross Media Solutions GmbH

Printed by
Naumilkat – Agentur für Kommunikation und Design