2021

BaFin

Bundesanstalt für
Finanzdienstleistungsaufsicht

Annual Report

Federal Financial
Supervisory Authority

Annual report 2021

Federal Financial Supervisory Authority
(Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin)

Contents

Foreword

2021 was a year of change for BaFin. The Executive Board line-up changed, with Birgit Rodolphe joining at the beginning of November 2021 to head up our resolution and anti money laundering teams. Her predecessor Dr Thorsten Pötzsch took over responsibility for securities supervision and consumer protection at the beginning of September 2021. I myself came aboard as BaFin President in August 2021.

BaFin had already started the most fundamental modernisation project in its 20-year history. The direction for the reform was set out in February 2021: BaFin should become bolder. And that is exactly what we are aiming to achieve. The project that launched BaFin's renewal was successfully completed at the end of 2021 and you can read about its results in this Annual Report. But the modernisation process itself is continuing – in fact, permanently.

Modernising BaFin is also a question of culture. Being a modern supervisory authority, BaFin's thinking has to be holistic, integrated and forward-looking. BaFin must be fast, flexible, open and clear in its communication. And we must also be prepared to take risks from time to time. If necessary, BaFin must be in a position to take decisions even when responsibilities are not 100% clear and not every detail can be clarified in advance. For supervisory authorities, the risk of not acting, or of acting too late, is often the biggest risk. And here, too, I see BaFin on the right track.

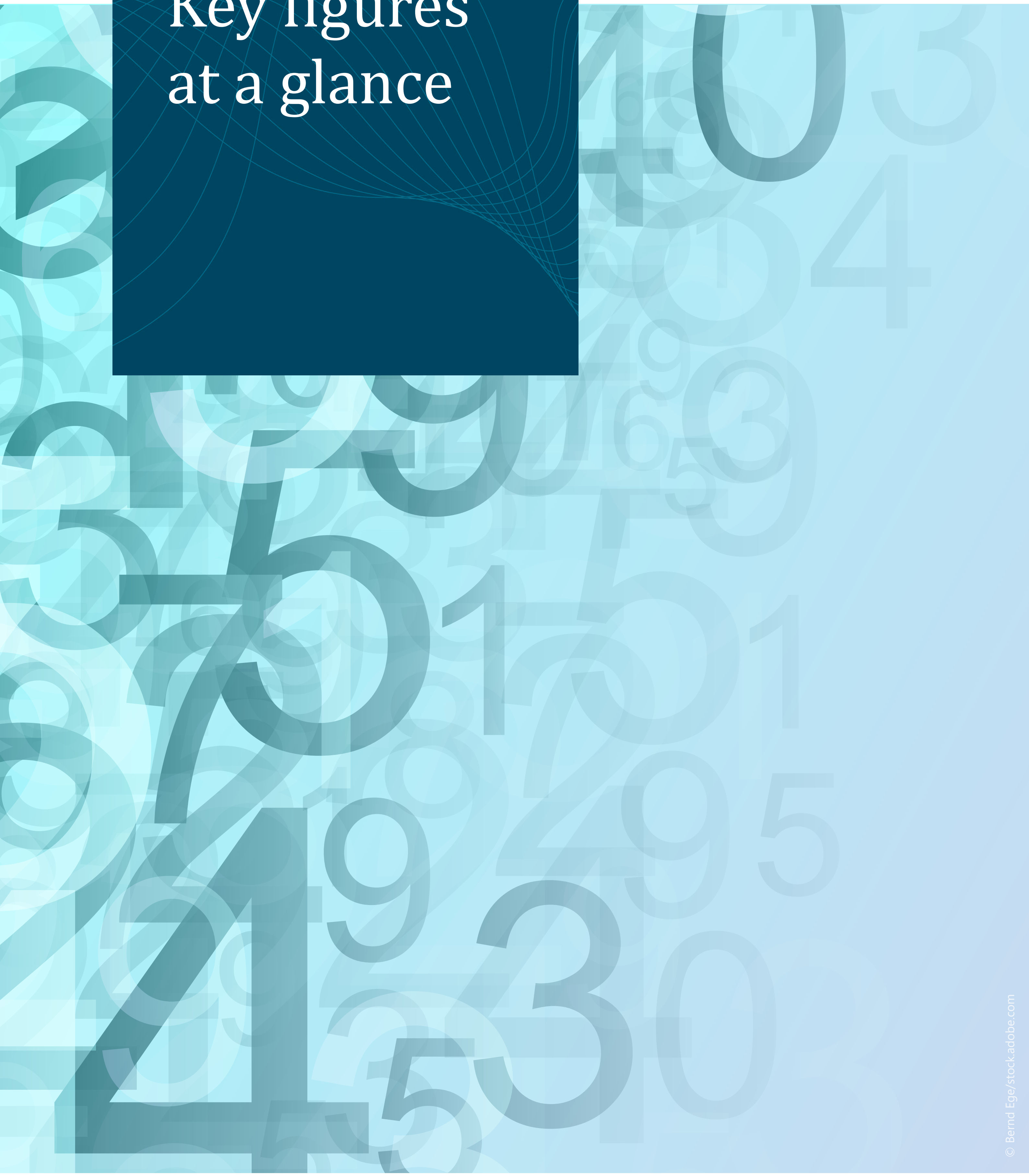
Another vital thing for BaFin on its journey is to set itself clear objectives. This is why we published ten medium-term objectives in November 2021. These are designed to guide our work until 2025, enabling us to best fulfill our mandate and take the balanced, clear-sighted decisions that are expected of a modern supervisory authority.

A lot has happened since then – both at BaFin and in particular in the world at large. The war in Ukraine is just one example. This Annual Report looks at what happened at BaFin in 2021. But we will also be present and visible in 2022 and beyond – both for the public and for the entities we supervise.

Mark Branson

BaFin President, May 2022

Key figures at a glance



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Key indicators at a glance

	2017	2018	2019	2020	2021
Credit institutions[1),2)]					
Capital resources[3)]					
Tier 1 capital (€ billion)	491.2	514.7	511.7	567.9	591.7
Own funds (€ billion)	559.7	580.5	573.0	629.6	660.2
Tier 1 capital (%, ratio)	16.6%	16.8%	16.6%	17.6%	17.2%
Own funds (%, ratio)	18.9%	18.9%	18.6%	19.5%	19.2%
Total assets					
Total assets (€ billion)[4)]	8,411.2	8,329.8	8,826.8	9,291.4	9,547.0
Total assets (€ billion)[5)]	8,379.5	8,303.3	8,755.1	9,244.9	9,521.7
Structure of loans and advances to banks and non-banks (%)[6)]					
Domestic banks	21.4%	19.8%	18.3%	19.8%	19.4%
Foreign banks	9.3%	9.2%	9.0%	11.2%	14.6%
Non-banks – other financial institutions	2.6%	2.7%	2.9%	2.9%	2.9%
Non-financial corporations	15.8%	16.7%	17.3%	17.7%	17.4%
Private households	29.3%	30.2%	31.0%	32.0%	31.9%
Private non-profit organisations	0.3%	0.3%	0.3%	0.3%	0.3%
Public sector	5.2%	4.8%	4.5%	4.5%	4.1%
Foreign non-banks	16.0%	16.2%	16.5%	11.7%	9.5%
Amounts due to non-banks as a proportion of loans and advances to non-banks (%)[7)]	104.3%	103.0%	102.0%	105.1%	106.9%
Proportion of foreign-currency loans to private households (%)	0.3%	0.2%	0.2%	0.2%	0.1%
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[8)]	1.6%	1.1%	1.2%	1.4%	1.5%
Structure of equity and liabilities (proportions in %)[9)]					
Amounts due to domestic banks	12.6%	12.3%	12.4%	13.3%	13.7%
Of which to the Deutsche Bundesbank				3.7%	4.5%
Amounts due to foreign banks	7.5%	6.8%	7.0%	7.3%	9.9%
Deposits from domestic non-banks	40.9%	42.2%	39.7%	41.9%	40.8%
Deposits from foreign non-banks	6.4%	6.0%	5.6%	3.8%	2.9%
Securitised debt including subordinated capital	15.3%	11.8%	15.2%	13.5%	13.8%
Income statement structure (in % of average total assets)[10)]					
Net interest income	1.04%	1.07%	0.97%	0.88%	0.91%
Net commissions received	0.37%	0.36%	0.37%	0.35%	0.41%
General administrative expenses	1.07%	1.09%	1.06%	0.94%	1.00%
Net trading income	0.07%	0.04%	0.03%	0.04%	0.05%
Operating profit/loss before measurement gains/losses	0.42%	0.40%	0.33%	0.36%	0.42%
Measurement gains/losses	-0.04%	-0.08%	-0.08%	-0.14%	-0.03%
Operating profit/loss	0.37%	0.32%	0.26%	0.22%	0.39%
Net amount of other and extraordinary income and expenses	-0.04%	-0.08%	-0.19%	-0.06	n/a

	2017	2018	2019	2020	2021
Profit for the period before tax	0.33%	0.23%	0.07%	0.16	n/a
Profit for the period after tax	0.24%	0.15%	-0.02%	0.06	n/a

1) See chapter III.1.3 for the number of undertakings under supervision.
2) See chapter III.1.3 for further information on credit institutions in Germany.
3) After CoRep including financial services institutions.
4) Assets based on balance sheet statistics (BISTA) and data provided under the FinaRisikoV (including financial services institutions).
5) Assets based on BISTA.
6) Structure in accordance with BISTA.
7) Based on BISTA.
8) Based on the FinaRisikoV.
9) Based on BISTA only. The "Securitised debt including subordinated capital" item also includes the FinaRisikoV data (financial services institutions, etc.).
10) The data for 2017 to 2020 was taken from publications by the Deutsche Bundesbank (monthly report on the performance of German credit institutions). The figures for 2021 have been based on the preliminary FinaRisikoV notifications and an approximate income statement structure has been given, since the 2021 annual financial statement data is not yet available in full.

Insurance undertakings and pension funds[1]

		Life insurers				Private health insurers				Property/ casualty insurers			
		2018	2019	2020	2021[2]	2018	2019	2020	2021[2]	2018	2019	2020	2021[2]
Gross premiums written	(€ billion)	87.4	97.6	98.1	95.2	39.7	40.9	42.7	45.2	78.2	83.3	86.5	88.7
Investments	(€ billion)[3]	949.2	985.4	1.024.2	1.049.8	287.7	302.3	316.1	332.3	175.8	182.3	190.2	197.9
Average SCR coverage	(%)[4) 5)]	448.3	382.0	357.7	452.7	430.3	440.5	430.0	434.7	283.1	283.5	276.5	274.7

		Pensionskassen			
		2018	2019	2020	2021[2]
Gross premiums earned	(€ billion)	7.2	6.8	6.9	6.6
Investments	(€ billion)[3]	168.5	176.9	184.5	194.7
Average solvency	(%)	135.1	139.7	138.7	142.0

		Pensionsfonds			
		2018	2019	2020	2021[2]
Gross premiums written	(€ billion)	10.2	2.6	7.4	5.6
Investments	(€ billion)[3) 6)]	42.7	48.7	55.0	57.7
Beneficiaries		1,058,215	1,112,677	1,185,407	1,233,848
Benefit recipients		373,134	370,857	386,904	394,516

1) See also chapter III.2 for the key figures for BaFin's Insurance and Pension Funds Supervision Sector.
2) The data provided is only preliminary, since it is based on interim reports and forecasts.
3) Carrying amounts in accordance with the German Commercial Code (*Handelsgesetzbuch*).
4) Figure for the fourth quarter.
5) Up to and including 2018, certain undertakings were exempt from interim reporting requirements on SCR coverage in accordance with section 45 of the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz*).
6) Total investments.

	2017	2018	2019	2020	2021
Capital market companies[1),3),4)]					
Supervised financial services institutions	722	722	706	710	745
Supervised branches	106	110	94	43	45
Total number of approvals[1)]	1,405	1,174	1,097	904	828
Of which prospectuses	301	303	291	301	250
Of which registration documents	38	35	41	32	29
Of which supplements	1,066	836	765	571	549
Authorised asset management companies[2)]	142	146	143	143	139
Registered asset management companies[2)]	309	379	404	431	468
Number of investment funds[2)]	5,752	5,932	6,082	6,172	6,379
Assets under management by these funds (€ billion)[2)]	2,062	2,062	2,391	2,551	2,835

1) Data comparability between different periods is limited, due to the change in the data collection method during the period under review.
2) The term "asset management company" (*Kapitalverwaltungsgesellschaft*) was only defined in 2013, when the German Investment Act (*Investmentgesetz*) expired and section 17 of the German Investment Code (*Kapitalanlagegesetzbuch*) came into force. This fundamental change in the system means that comparative figures are not available for the years up to 2013.
3) See chapter III.3.3.5 for the number of undertakings under supervision.
4) See also chapter III.3.3.5 for information on the key figures for BaFin's Securities Supervision/Asset Management Sector.

Key:
n/a: Not available.
Tier 1: The highest category of own funds.
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 BaFin in a process of change

1.1 New head of BaFin

2021 was a year of change for BaFin, with Mark Branson taking over as President on 1 August. Before that British national Mark Branson, who also holds Swiss citizenship, headed FINMA, the Swiss Financial Market Supervisory Authority, in Bern for seven years. Branson began his career in the financial industry at Credit Suisse, before moving in 1997 to UBS, where he held a number of management positions.

He made it clear how he sees his role as BaFin's President in his inaugural address: "Being a supervisor is more than just a job; it's a vocation." Branson's predecessor was Felix Hufeld, who had been head of BaFin since March 2015. Hufeld and Vice President Elisabeth Roegele had reached a mutual agreement with the Federal Ministry of Finance (*Bundesministerium der Finanzen*) at the end of January 2021 to terminate their contracts of employment. Hufeld stepped down at the end of March. Roegele, who was also Chief Executive Director of the Securities Supervision Sector, left BaFin at the end of April.

Dr Thorsten Pötzsch has been the new Chief Executive Director of the Securities Supervision Sector since September 2021. Prior to this, he was Chief Executive Director of BaFin's Resolution Sector. Birgit Rodolphe, previously Divisional Managing Director Corporate Clients Non-Financial Risk at Commerzbank, took over as Chief Executive Director of the Resolution Sector – which also includes the Prevention of Money Laundering and Integrity of the Financial System directorates – on 1 November 2021.

"Strengthening the BaFin management team in this way is an important step", said BaFin President Mark Branson. He added that, as a respected financial supervisor, Pötzsch would further strengthen securities supervision and consumer protection. And with acknowledged banking expert Birgit Rodolphe deciding to join the Executive Board, BaFin gained another highly-valued Board Member.

1.2 On the way to state-of-the-art supervision

BaFin completed an ambitious modernisation project at the end of 2021. The project team working on it had roughly 100 members, mostly drawn from BaFin. They were supported by staff from the Federal Ministry of Finance and external advisors.

The then Federal Minister of Finance Olaf Scholz had presented a seven-point-plan for reforming BaFin in February 2021, in response to the Wirecard scandal. This plan was based on the German Act to Strengthen Financial Market Integrity (*Gesetz zur Stärkung der Finanzmarktintegrität*), which was passed by the Bundestag – Germany's national parliament – in June 2021 (see info box). The aim is to increase BaFin's effectiveness in supervision and auditing, and to ensure more efficient and tighter supervision of the financial market using state-of-the-art technology.

1.2.1 Focused supervision and Task Force

Two key new elements introduced by the modernisation project are BaFin's focused supervision and its Task Force. Both were launched in mid-August 2021 and are coordinated by the KFT Office. KFT stands for "Coordination of Focused Supervision & Task Force" (*Koordination Fokusaufsicht und Taskforce*).

BaFin's focus units examine financial services institutions that require tighter oversight, e.g. because they have complex or innovative business models. The goal is to identify critical risks early on and hence allow BaFin to mitigate them. At the end of 2021, 17 banks, insurers, securities firms and payment services providers were placed under focused supervision. Further details can be found in the expert article in BaFinJournal entitled "State-of-the-art supervision: looking behind the façade".

The Task Force allows BaFin to deploy its own staff to examine suspicious cases at short notice. The core team, which comprises a group of auditors and IT forensic investigators, is also supported by experts from BaFin's various sectors.

1.2.2 New financial reporting enforcement structures

Another reform that was implemented was to reorganise financial reporting enforcement. Under the Act to Strengthen Financial Market Integrity, this will be organised as a single-stage process from 2022 onwards. The background to this is that the previous two-tier procedure – with the German Financial Reporting Enforcement Panel (*Deutsche Prüfstelle für Rechnungslegung*) serving as tier 1 and BaFin as tier 2 – did not prove effective in the Wirecard case. Since the beginning of 2022, BaFin is now the sole authority responsible, and will conduct both ad hoc and sampling examinations. As an expert article explains, this significantly strengthens BaFin's right to examine the financial statements of companies listed in Germany. BaFin can now take a more proactive approach, e.g. by performing forensic financial

At a glance

German Act to Strengthen Financial Market Integrity

In June 2020, Wirecard AG filed an application to open insolvency proceedings due to imminent insolvency and overindebtedness. The events surrounding the Aschheim-based financial services provider undermined trust in Germany as a financial centre. By adopting the German Act to Strengthen Financial Market Integrity (*Gesetz zur Stärkung der Finanzmarktintegrität*), German lawmakers paved the way for fundamental reforms, including the reform of financial supervision in Germany. For BaFin, this means greater powers and rights of intervention. Large parts of the Act entered into force on 1 July 2021, and the Act took effect in full on 1 January 2022.

In particular, BaFin's role in the area of financial reporting enforcement has been significantly strengthened as a result of the Act to Strengthen Financial Market Integrity. Since it came into force, BaFin has also had direct access to companies to which banks outsource key activities and processes. The Act also strengthens the role of BaFin's President – both with regard to the strategic management of the authority and in organisational and budgetary questions. Detailed provisions are to be found in BaFin's Statutes and in the Organisational Statute that is based on them. The Act to Strengthen Financial Market Integrity also enables mystery shopping for the first time. Trained test buyers act as if they were consumers seeking advice, or they acquire products for test purposes. Additional information on the Act can be found in the expert article entitled "After Wirecard: more powers for BaFin".

examinations. In September 2021, a newly established directorate assumed responsibility for financial reporting enforcement at BaFin.

At the beginning of 2022, Financial Reporting Enforcement Panel experts moved to BaFin. Additional auditors and accounting specialists have also been recruited to strengthen the team.

1.2.3 Contact point for whistleblowers and Market Contact Group

In August 2021, BaFin reorganised its contact point for whistleblowers. The latter – i.e. individuals who have access to non-public information about supervised entities as a result of their personal or professional circumstances – can get in touch with this unit. The information they submit can be very valuable and helpful to BaFin, especially if it provides evidence of misconduct. This enables BaFin to remedy or even prevent undesirable developments.

In the course of the modernisation process at BaFin, it became clear that the contact point for whistleblowers – which was established in mid-2016 – needed to be more visible and more accessible. As a result, BaFin created a new division specifically for this purpose. It also made this division the home of the new Market Contact Group (MCG). The MCG is the point of contact for market participants such as short sellers, analysts and other financial market experts. These people often have valuable information about market activities that can help BaFin with its work.

In 2021, the contact point for whistleblowers received 2,281 reports. The Market Contact Group, which was launched in August, received 50 submissions. You can read more about this topic in the expert article entitled "State-of-the-art supervision: BaFin strengthens its contact point for whistleblowers".

1.2.4 Mystery shopping

BaFin's collective consumer protection mandate was strengthened following the Wirecard scandal. Thanks to the Act to Strengthen Financial Market Integrity, BaFin now also has a new, effective tool in this area: mystery shopping. Trained test buyers approach banks, insurers and other financial services providers incognito, pretending to be customers. This allows BaFin to monitor – unnoticed and at close range – how companies in the financial sector behave towards their customers.

In a pilot project in 2021, BaFin sent testers into bank branches, instructing them to ask for investment advice. BaFin's primary objective was to quickly gain experience with the new supervisory tool. The pilot project offered an initial glimpse, direct and authentic, of market realities. The results were "sobering", as an expert article published in February 2022 revealed. For example, important disclosure documents were not provided in 12 out of the total of 36 consultations held. In particular, major shortcomings were found to exist in the advice provided to people aged 60 and over.

1.2.5 Investor and Consumer Protection Officer

The position of an Investor and Consumer Protection Officer was introduced at BaFin in July 2021. Christian Bock, the Director-General for Consumer Protection, took on this role in that month. The duties of the Investor and Consumer Protection Officer include advising BaFin's Executive Board on investor and consumer protection issues. He does this by participating in Executive Board meetings in an advisory capacity whenever such issues are discussed. In addition, he can recommend that the Executive Board address investor and consumer protection issues.

BaFin divided the Consumer Protection Directorate into two groups as of 1 October 2021 in order to make its consumer protection activities even more efficient and more forward-looking.

At a glance

BaFin's organisation chart

BaFin's current organisation chart can be found on its website.

1.2.6 Data Intelligence Unit and IT supervision

The new Data Intelligence Unit (DIU) is also designed to boost modernisation at BaFin. This central analytics unit was established in 2021 with the aim of linking BaFin's organisational units and its IT operations, and to serve as the backbone for its data-driven, IT-based supervisory activities. The main goal of the DIU is to provide and continuously enhance skills and tools for digital data and information analysis. One of these tools will be the supervisor cockpit, which will provide BaFin's supervisors with access to relevant information.

In August 2021, BaFin also strengthened its IT supervision and spun off its oversight of crypto custodians, e-money institutions and payment institutions to a new directorate. The Directorate for IT Supervision expanded its prevention of cyber crises and monitoring of networked IT companies providing outsourced services. As a flanking measure, BaFin is working to enhance its employees' digital skills using an extensive training programme.

1.2.7 Modernisation to continue beyond 2021

The modernisation project that was completed at the end of 2021 is only the start of the BaFin's long-term development. As Mark Branson put it at a press conference in October 2021, "BaFin is certainly more modern that it was half a year ago. But we will need years to reach the level we are aiming for."

For Branson, modernising BaFin is also a question of culture. He believes that, as a modern supervisory authority, BaFin's thinking has to be holistic, integrated and forward-looking. "We need to be fast, flexible, open and extremely clear in our communication," he said at the autumn press conference. For BaFin's President, it is essential that "we are bold and prepared to take risks from time to time." If push comes to shove, BaFin must make decisions even when responsibilities are not 100% clear and not every detail can be clarified, he continued: "The risk of not having all of the information needed for a decision is not as great as the risk of not acting, or of acting too late."

At a glance

You may also find the following interesting:

The press conference on the modernisation project was attended both by BaFin President Mark Branson and by Dr Jörg Kukies, who at the time was State Secretary at the Federal Ministry of Finance. An overview of the project and of Branson and Kukies' remarks is given in the expert article entitled "Reform as a long-distance race".

In addition, BaFin has been presenting individual milestones in the modernisation project under the heading of "State-of-the-art supervision". The articles can be accessed on BaFin's website by searching for this term.

1.3 Medium-term objectives

BaFin is tasked with ensuring the proper functioning, stability and integrity of the German financial market and with protecting the collective interests of consumers. To fulfil its mandate to the best of its ability, BaFin developed ten medium-term objectives that it published on 15 November 2021. "Over the next four years, these objectives will guide our actions and help us make the kind of intelligent and clear-sighted decisions that are expected of professional supervisors", said BaFin President Mark Branson in a speech he gave on the same day.

2 Economic environment

2.1 Low interest rates

In BaFin's opinion, the persistently low level of interest rates is one of the largest financial risks facing the financial sector. It continued to have a significant negative impact on a number of traditional financial market business models in 2021. For some institutions and enterprises, the ongoing low-rate environment could have material negative consequences and, in the long term, could even endanger their existence. In addition, it encourages exuberance in the markets and could result in cluster risks forming.

2.1.1 Banks and savings banks in the low-rate environment

In Germany, institutions affected include those that are primarily engaged in the deposit and lending business, such as banks and savings banks. Net interest income still accounts for a significant part of their profits. Where high-yield assets expire in an environment in which new lending only generates low interest margins, this can impact institutions' earnings substantially in some cases. Some banks and savings banks have attempted to generate additional income – for example, by increasing maturity transformation through expanding lending – or to enter other business areas or to continue to cut costs. A number of institutions have also introduced deposit fees.

2.1.2 Life insurers and *Pensionskassen* in the low-rate environment

The persistent low-rate environment is also putting life insurers under considerable pressure, since they have to meet the comparatively high guarantees issued in the past even in times of extremely low interest rates. The life insurance sector remained largely robust in 2021, and has been offering innovative products with reduced interest rate guarantees for some time now. Even so, signs of tangible relief are only gradually emerging. At the end of 2021, 15 life insurers were the subject of intensified supervision by BaFin.

The number of *Pensionskassen* under this intensified supervisory regime on the same date was around 40. The low interest rates have affected *Pensionskassen* especially strongly, since they only offer life-long annuities. If interest rates remain at current levels, a growing number of *Pensionskassen* will probably only meet their commitments to beneficiaries if they receive external support, for example from the employer as sponsor.

2.2 COVID-19 pandemic

In March 2020, shortly after the outbreak of the COVID-19 pandemic, BaFin resolved to use the flexibility offered by the existing regulatory framework to temporarily adapt a number of its requirements to the circumstances caused by the pandemic. BaFin published a series of frequently asked questions (FAQs) on this subject on its website, and updated them as needed. The main goal was to mitigate the consequences of the pandemic for the companies it supervises and to reduce the burden on them so that they could continue to perform their macro-economic function. For example, the aim was to support banks and savings banks in disbursing both their own and government funds rapidly to companies in the real economy. The requirements to be met by the companies supervised were only loosened to the extent that the existing rules and financial stability allowed.

2.2.1 Banks and savings banks during the pandemic

BaFin's Banking Supervision Sector monitored the institutions directly under its supervision closely during the COVID-19 pandemic. It used regular special surveys to gain insights into their specific risk situations and also calculated a number of stress scenarios that it had developed. In addition, it monitored the institutions' economic environment, especially in the sectors particularly hit by the pandemic.

Overall, the banks and savings banks proved resilient in 2021 despite the pandemic. The main fear at the start of the pandemic was of large-scale credit defaults. However, the number of corporate insolvencies filed in Germany in 2021 was down 11.66% year-on-year according to the Federal Statistical Office (*Statistisches Bundesamt*). The decrease compared to 2019 – the last year before the pandemic – was even larger, at 25.36%. The ratio of non-performing loans across all institutions in the German banking sector, which has been low for years, was a mere 1.3% in December 2021[1]. As a result, the institutions were able to reduce their risk provisioning and boost their earnings.

Delayed insolvencies
However, in its report entitled "Risks in BaFin's Focus", the Supervisory Authority warns that it is too early to sound the all-clear. The obligation to file for insolvency was suspended temporarily so as to mitigate the effects of the pandemic on the real economy, while the state provided financial support for many companies. For this reason, increased levels of insolvencies may still be seen after a delay, particularly in the sectors hit by the pandemic. What is more, consumer habits have changed. Many people are making greater use of online services, a trend which might not reverse.

A cautious approach to dividends
In July 2021, BaFin concurred with the decision by the European Central Bank (ECB) not to prolong the recommendations on distributions and variable remuneration that had been made in 2020 beyond 30 September 2021. However, at the same time BaFin required the institutions it supervises to continue taking a cautious approach.

Operational challenges
By and large, the institutions also successfully mastered the operational challenges posed by the pandemic. As a result, the temporary supervisory relief measures that the Banking Supervision Sector had granted in 2020 became increasingly superfluous at an overall level. German institutions had made little use of the measures by European standards in any case.

2.2.2 Insurers during the pandemic

The pandemic had hardly any impact on business in the insurance sector. As a result, in 2021 BaFin allowed most of the measures adopted in 2020 in response to the pandemic to expire for the time being. Only certain operational relief measures associated with the restrictions on contact still required due to the pandemic remained in force. BaFin is continuing its in-depth monitoring of the liquidity risk and market risk situation.

1 The calculation did not include central bank balances.

The recommendation by the European Systemic Risk Board (ESRB) on restricting distributions during the pandemic was also allowed to lapse in 2021. This had recommended that insurers should refrain from making any share buybacks and should only distribute dividends, profits or bonuses after careful consideration and following an analysis of their individual situation. However, the Supervisory Authority continues to expect that insurers will take a cautious approach. BaFin has analysed dividend distributions made since the start of the pandemic and has determined that the insurers' economic performance and risk-bearing capacity is guaranteed even in difficult conditions despite their cash outflows, which were reduced or postponed in some cases due to the intervention of the Supervisory Authority.

Business shutdown insurance
One line of business that was in the public eye in 2020 and 2021 as a result of the pandemic was business shutdown insurance. The background to this was that a large number of businesses – especially in the hospitality trade – were officially ordered to close. Some of these had taken out business shutdown insurance policies. Since the general terms and conditions used on the market varied widely, it was not possible to make a blanket statement as to whether or not they were covered. A number of first- and second-instance court rulings had been issued by the time of the editorial deadline for this report at the end of 2021, with the courts very largely ruling in favour of the insurers. However, no ruling had been made on the individual cases by the highest court, the Federal Court of Justice, by that date.

3 Supervisors provide relief for smaller institutions

With the agreement of the Deutsche Bundesbank, BaFin introduced the category of "small and non-complex institutions" (SNCIs) for the first time in 2021. This new classification is based on Article 4(1) no. 145 of the Capital Requirements Regulation (CRR).

The background is that SNCIs can take advantage of operational relief measures. These relief measures are purely operational in nature and are designed to reduce the administrative burden on SNCIs – they are not aimed at preserving capital or liquidity. "We are making an even stricter distinction between less conspicuous institutions on the one hand and problematic institutions on the other", said Raimund Röseler in a joint press release by BaFin and the Deutsche Bundesbank. "This allows us to bundle capacity and ensure that our Supervisory Authority 'has bite'", the Chief Executive Director of BaFin's Banking Supervision Sector added.

All in all, roughly 88% of all less significant institutions (LSIs) directly supervised by BaFin were classified as SNCIs in 2021.

Please see the BaFin website for information on the relief and other measures applicable to SNCIs.

4 Sustainable finance

How are banks, insurers and investment firms implementing BaFin's Guidance Notice on Dealing with Sustainability Risks (*Merkblatt zum Umgang mit Nachhaltigkeitsrisiken*), which was published in December 2019? In April 2021, BaFin launched a survey of 399 undertakings on this topic (see info box on page 21). A total of 381 of the answers could be evaluated. One positive factor was that almost all of the entities were aware of the topic of sustainability. What is more, they are not just focusing on climate and environmental risks but also take social factors and governance aspects into account.

However, one aspect worries Raimund Röseler, Chief Executive Director of Banking Supervision: awareness of sustainability risks is relatively weak among small and medium-sized banks and savings banks in particular. "Smaller institutions have different customer structures to the major banking groups", Röseler explained in a speech he gave in mid-November 2021. For regional banks, climate and environment risks "feel further away". Nevertheless, Röseler was pleased that banks from all groups of institutions want to take the opportunities offered by the transition towards a sustainable economy.

In another speech held in mid-November, Dr Frank Grund, BaFin Chief Executive Director of Insurance and Pension Funds Supervision, criticised the ground that insurers need to make up in the area of risk management, as revealed by the survey. One positive thing that he emphasized was that the insurance sector already increasingly has methods for identifying, assessing and managing sustainability risks: "But that's probably due to

At a glance

BaFin survey on sustainability

An expert article on the BaFin website dated 18 November 2021 covered the cross-sectoral sustainable finance survey launched by BaFin in the spring of 2021. The aim of the survey was to find out how much progress had been made on implementing BaFin's Guidance Notice on Dealing with Sustainability Risks (*Merkblatt zum Umgang mit Nachhaltigkeitsrisiken*). All in all, 399 entities from the banking, insurance and securities sectors took part. The detailed status report is available here.

The total of 260 insurers and pension funds, 82 of which are classified as institutions for occupational retirement provision, received a significantly more extensive and detailed set of questions than the other entities. The results are representative, since roughly half of the insurers and pension funds under BaFin's supervision took part. BaFinJournal reported on the results for insurers in January 2022. The detailed report on the results for insurers and pension funds is available on BaFin's website.

their specific business model and not because insurance managers are better people", Grund added.

5 Torrential rainfall in July 2021

In July 2021, severe weather events in several regions of Germany cost many people their lives and destroyed homes, livelihoods and whole villages. Insurers and banks were also hit.

5.1 Insurers

BaFin surveyed the insurers affected by the disastrous flooding twice in the course of 2021 to estimate their worst-case losses.[2] The second survey revealed that primary insurers were expecting gross losses of approximately €8.2 billion in the worst case. Roughly €6.3 billion of this amount is reinsured, with €3.3 billion of this being attributable to reinsurers domiciled in Germany. Subtracting the €6.3 billion from the gross amount of €8.2 billion reveals that the maximum net claims expenditure expected in the comprehensive residential buildings insurance segment in 2021 is around €0.9 billion, while the figure for the comprehensive contents insurance segment is around €0.2 billion and that for the comprehensive motor vehicle insurance segment is also around €0.2 billion. The remaining amount is spread across a wide range of other insurance classes, such as storm insurance and business interruption insurance. The German reinsurers polled by BaFin expected gross losses of approximately €4 billion in the worst-case scenario. Since some of these losses are also reinsured, the companies were expecting maximum net losses of around €1 billion.

BaFin Chief Executive Director Dr Frank Grund sounded the all-clear with respect to the solvency of the insurers surveyed in the September issue of BaFinJournal: "While we are seeing a decrease in the coverage ratio at many companies, in most cases this is only minor", he reported. At the time, the key message in his view was that – despite substantial losses in some cases – there was still no sign of any threats to the continued existence of either primary insurers or reinsurers.

In its second survey, BaFin collected assessments from, among others, 136 German property and casualty insurers (including EU branches). The focus was on companies that had reported losses from the floods in the first ad hoc survey in July 2021. In addition, the Supervisory Authority polled 28 reinsurers.

5.2 Banks

The extreme weather events in the summer of 2021 posed major challenges for regional banks in particular, which had branches destroyed and staff who were personally hit by the disaster. In addition, many bank clients suffered heavy losses. Institutions are therefore faced with the question of what to do if customers are temporarily unable to make loan repayments.

BaFin again drew attention here to statutory relief measures. Banks should review cases individually to determine whether it is sensible and possible to help customers mitigate liquidity bottlenecks, said Raimund Röseler, BaFin's Chief Executive Director of Banking Supervision, in BaFinJournal.

2 The figures given are drawn from the second survey. More recent updates have not been included here.

BaFin had already made clear shortly after the start of the COVID-19 pandemic in its Frequently Asked Questions (FAQs) that banks can defer payments on loans in individual cases – i.e. not as part of a general payment moratorium – without debtors being classed as in default for that reason alone. A precondition for this is that interest is applied to the amounts postponed in line with the conditions originally agreed ("at the original effective interest rate"). "As was the case during the pandemic, we shall exercise reasonable discretion in our supervisory activities following the flooding. We cannot override the rules, but we can make appropriate use of the latitude they offer for people and companies", said Röseler at the time.

6 Digitalisation

In his speech on BaFin's medium-term objectives that were mentioned under section 1.3, BaFin President Mark Branson emphasised that innovation is vital to the future of the financial sector. BaFin aims to support this, he said. It wants to understand and analyse new technologies and incorporate its insights in its supervisory practice.

In addition, Branson made it clear that BaFin is continuing to monitor undertakings' operational stability and security. The Supervisory Authority is focusing on two main questions: how well are supervised entities protecting themselves against cyber-attacks and internal security incidents, and how resilient and reliable are their technology platforms? "Institutions that do not remedy gaps in their IT security risk suffering substantial losses, are putting their reputations on the line and – in a worst-case scenario – could damage the stability of the financial system", is how Branson summed it up. This was a very prevalent risk, and was growing fast, he said. Another topic that BaFin has to bear in mind is that value chain fragmentation is changing companies' risk profiles – especially where material activities and processes are outsourced. However, BaFin now has the authority to directly inspect companies providing outsourced services. "And that is precisely what we intend to do," said BaFin's President.

6.1 BaFin publishes new versions of MaRisk and BAIT and the new ZAIT Circular

BaFin published the sixth amendment to its Minimum Requirements for Risk Management for Banks (*Mindestanforderungen an das Risikomanagement der Banken* – MaRisk) on 16 August 2021. In particular, this implemented the European Banking Authority (EBA)'s guidelines on the management of non-performing and forborne exposures and on outsourcing arrangements. In addition, the Supervisory Authority included individual requirements from the EBA Guidelines on ICT and security risk management. "ICT" stands for "information and communication technology". The new version of the MaRisk entered into force on publication.

New version of BAIT
Also on 16 August 2021, BaFin published the new version of the Supervisory Requirements for IT in Financial Institutions (*Bankaufsichtliche Anforderungen an die IT* – BAIT). This entered into force on the same day. BAIT builds on the MaRisk. The revised version sets out the requirements that BaFin now expects for secure information processing and information technology. BaFin has not formulated any fundamentally new requirements in the BAIT but instead sets out existing ones in greater detail. The EBA Guidelines for ICT and security risk management mentioned above form part of the backdrop to the BAIT amendment.

New ZAIT Circular
16 August 2021 also saw BaFin's publication of its new Circular on Supervisory Requirements for IT at Payment Services Providers (*Zahlungsdiensteaufsichtliche Anforderungen an die IT* – ZAIT). In this document, it explains the supervisory requirements for the due and proper conduct of business that must be met by payment and e-money institutions in relation to the use of information technology and to cyber security. The ZAIT interprets existing supervisory requirements and took effect immediately on publication. The Circular is closely based on the MaRisk and the BAIT. Specifically, it includes the requirements set out in the above-mentioned EBA Guidelines on ICT and security risk management and Guidelines on outsourcing arrangements.

Additional information on the revised versions of the MaRisk and BAIT, and on the ZAIT, can be found in the BaFinJournal for August 2021.

6.2 BaFin survey on the digital transformation of the insurance sector

BaFin's Insurance Supervision Sector conducted a survey on digital transformation in the insurance sector in the period between April and June 2021. The objectives were to obtain an overview of the volume of finance being deployed for digital transformation and the resources available for this process, and to identify current IT trends in the sector.

Based on a representative sample, BaFin requested 28 insurance undertakings and 13 insurance groups to answer questions on this topic. The answers received suggest that the sector considers the following IT topics to be particularly important:

- cloud computing;
- data-driven projects; and
- automation.

Key goals for pending or already completed IT projects were:

- more rapid processing;
- making better use of existing data; and
- improving competitiveness.

The evaluation of the responses had not been completed as of the editorial deadline at the end of 2021.

6.3 BaFin survey on cyber insurance

In addition, the Insurance Supervision Sector surveyed 55 primary insurers and reinsurers domiciled in Germany plus five branches of other EU insurers in Germany about the cyber insurance segment. BaFin already reported on the results of the survey in the September issue of the BaFinJournal and in an expert article on the BaFin website dated 8 February 2022.

While the cyber insurance segment is growing fast, business in Germany is still comparatively small with gross written premiums of approximately €240 million in 2020. The gross loss ratio of 42.1% in 2020 was relatively moderate; however, the range of ratios recorded at individual insurers is wide.

The lack of a loss history was revealed as problem with respect to pricing. In addition, it became clear that insurers were not always able to provide the data requested in the required level of granularity.

6.4 Comments process for joint BaFin and Bundesbank consultation paper

"We will also carefully examine processes that are based on artificial intelligence", announced BaFin President Mark Branson in his November 2021 speech on BaFin's medium-term objectives. He said that BaFin would be very careful to ensure that consumers can benefit from such innovations and that they are not unduly exposed to technology-driven risks. One question, for example, is how to prevent customers or customer groups from being discriminated against because an algorithm has learned indirectly that a certain feature that should not actually play a role negatively impacts credit quality. Another important issue is how to make algorithms explainable and comprehensible to customers, financial entities and supervisors. One of the many areas in which this arises is in the case of banks' and insurers' internal models.

BaFin and the Deutsche Bundesbank aim to provide undertakings with guidance in this area, which is why they drafted a consultation paper entitled "Machine learning in risk models – Characteristics and supervisory priorities" and requested comments on it in the summer of 2021. The responses to the arguments set out in the paper were positive. For further details, please see the expert article on the BaFin website entitled "Machine learning in risk models".

7 Consumer protection

7.1 Leading case law

Two rulings by the Federal Court of Justice (*Bundesgerichtshof*) in 2021 led to major developments in the area of collective consumer protection.

7.1.1 Interest rate adjustment clauses for premium-aided savings plans invalid

In October 2021, BaFin welcomed the recent decision by the Federal Court of Justice on premium-aided savings plans as an important step towards strengthening consumer protection. On 6 October 2021, the Court had ruled that interest rate adjustment clauses for premium-aided savings plans that grant credit institutions unlimited discretionary powers with respect to the interest paid on savings deposits are invalid (judgement of 6 October 2021 – case ref. XI ZR 234/20). This confirmed the court's existing rulings on long-term savings plans. The Federal Court of Justice had already set out general requirements to be met by such clauses in a number of judgements[3] in 2004, 2010 and 2017.

In its ruling of 6 October 2021, which was the result of a model declaratory action (*Musterfeststellungsklage*) filed by the Saxony Consumer Centre (*Verbraucherzentrale Sachsen*), the Federal Court of Justice voiced clear support for monthly interest rate adjustments according to the original relative difference between the contractually agreed rate and the reference rate. The question of the concrete reference rate that credit institutions must apply when adjusting interest rates is still open. Here the Federal Court of Justice ruled that a standard reference rate of interest must be fixed to determine the variable interest payable on long-term savings deposits. It referred the case back to the Dresden Higher Regional Court (*Oberlandesgericht Dresden*), which must now decide which reference rate is appropriate. According to the Federal Court of Justice, this should be an interest rate for long-term savings deposits determined by the Deutsche Bundesbank and published every month. It was not clear as of the editorial deadline at the end of 2021 when a judgement by the Dresden Higher Regional Court could be expected.

No consensus reached on a solution
On 21 June 2021, following a public hearing, BaFin issued a general administrative act with concrete instructions to the credit institutions. The background to this was that, according to the information at BaFin's disposal, many institutions had also not implemented the previous rulings by the Federal Court of Justice and were continuing to use interest rate adjustment mechanisms that did not comply with the Court's requirements. "It was clear to us that this shortcoming had to be remedied", said Dr Thorsten Pötzsch in June 2021, when he was still acting Chief Executive Director of BaFin's Securities Supervision Sector. Pötzsch emphasised at the time that BaFin "had not escalated to a general administrative act – which is a big gun – immediately". Before that, BaFin had tried reaching a consensus solution with the banks in customers' interests. However, the representatives of the banking associations did not respond to BaFin's dialogue-based approach to a solution.

As a result, BaFin adopted a multi-pronged approach: at the beginning of December 2020, it called on consumers to check whether their premium-aided savings plans contained interest rate adjustment clauses that had been ruled invalid by the Federal Court of Justice. In parallel, BaFin drafted the above-mentioned general administrative act and released it for consultation at the end of January 2021. BaFin's objective with the general administrative act is to ensure at a blanket level that affected customers are informed and treated in a manner that is consistent with the law. Banks must either irrevocably guarantee that the interest will be recalculated or offer them a contractual amendment with an effective interest rate adjustment clause. The basis for this is the Federal Court of Justice's ruling from 2010.

Objections to the general administrative act
As was to be expected, a large number of credit institutions filed objections to the general administrative act. The total number to do so had already reached 1,156 at the end of 2021. BaFin had not yet decided on their objections as of the editorial deadline at the end of 2021. The suspensory effect of these legal remedies mean that the institutions do not have to comply with the obligations set out in the administrative act until the matter has been definitively decided by an administrative court. In line with this, BaFin informed consumers that their claims to the due and proper payment of interest could become time-barred and that they might if necessary have to assert them independently in the civil courts.

7.1.2 Mechanism for amending banks' and savings banks' general terms and conditions is invalid

In its judgement of 27 April 2021 (case ref. XI ZR 26/20), the Federal Court of Justice (*Bundesgerichtshof*) ruled that clauses in a bank's general terms and conditions of business feigning customer consent to amendments to these general terms and conditions and to special terms and conditions without any restriction on content are invalid. Since this amendment mechanism is invalid, current and previous changes to the general terms and conditions are now ineffective. This applies in particular to the introduction of and changes to fees that were changed during the course of an existing business relationship as a result of this supposed consent.

BaFin found that the individual credit institutions took different approaches to the Court's ruling. It also received a large number of consumer complaints[4] on this topic in 2021. On 26 October 2021, BaFin therefore

3 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.

4 See III 4.3.1.

published a supervisory statement making clear what it expects from the institutions in relation to the implementation of the Court's ruling. For BaFin, it is above all important that that customers are informed clearly and transparently about the effects of the judgement, that the institutions introduce new bases for their contracts, that they do not levy any fees for which there is no legal foundation and that they refund any fees that were charged in error.

In BaFin's opinion, it is important to address implementing the ruling by the Federal Court of Justice openly, transparently and in a spirit of partnership, given the contractual relationships between customers and their credit institutions, which have existed in many cases for decades. This applies both to the creation of an effective contractual basis for the future and to dealing with justified requests for repayment. In order to put their contracts on a sound legal footing to ensure legal certainty without delay, a number of institutions have already sent personalised letters to their customers requesting them to agree to the new bases of the contract within a reasonable time frame. BaFin announced that such an approach was to be welcomed from its perspective.

7.2 Remuneration for insurance distribution

In 2021, BaFin continued its in depth examination of how insurers are addressing the requirements relating to the remuneration for distribution activities that are set out in the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz*).

The focus of its attention in the course of the year was on the legal situation created by the Insurance Distribution Directive (IDD). In relation to the supervision of the conduct of business, the IDD sets out an obligation on the part of insurance undertakings to act in the best interests of its policyholders – referred to as "customers" in the IDD wording – when distributing insurance.

In 2021, BaFin started to develop a Circular containing supervisory standards for life insurance (and more specifically for endowment products), which it intends to publish in the second half of 2022. BaFin's work was based on the requirements for the remuneration of insurance distribution and the prevention of conflicts of interest and the product oversight and governance (POG) requirements, which are based on the IDD. The POG procedure was also a priority for the European Insurance and Occupational Pensions Authority (EIOPA) in 2021, and was the subject of a supervisory statement published by EIOPA on its website at the end of November 2021. BaFin was involved in this work and welcomes the statement as a measure to strengthen the supervision of the conduct of business.

7.3 Neo-brokers

In 2021, BaFin and other supervisory authorities paid particular attention to neo-brokers . Not because they offer customers a restricted range of services at relatively low cost, but because – at least in some cases– they accept payment for their services from third parties. They receive compensation from trading partners for routing their customers' securities orders to them; this is known in the trade as "payment for order flow".

BaFin therefore saw a risk that neo-brokers, when passing on customer orders, might be influenced by the amount of compensation paid, rather than being guided by customers' interests. In BaFin's view, there was also a risk that neo-brokers might be concealing the true costs of their services. BaFin therefore investigated both risks. In addition, it set out clear requirements to be met by neo-brokers in its FAQs on the MiFID II conduct of business rules under sections 63 ff. of the German Securities Trading Act (*Wertpapierhandelsgesetz*).

These require investment firms to be able to prove in general, and in particular in relation to order acceptance and execution, that they perform their services in their customers' best interests. "We will not hesitate to impose sanctions in the case of infringements," said Dr Thorsten Pötzsch, whose sector is also responsible for consumer protection. Additional information on this topic can be found in the expert article entitled "The promises neo-brokers make – and the ones they keep" on BaFin's website. Further details of the risks associated with securities orders can be found here.

8 Money laundering prevention

8.1 Special commissioners deployed at credit institutions

To prevent money laundering and terrorist financing, BaFin ordered a credit institution on 29 April 2021 to take additional appropriate internal precautionary measures and to comply with duties of care, especially in relation to the standard process for updating customer information. Also affected were the areas of correspondent banking and transaction monitoring.

The order was issued on the basis of section 51 (2) sentence 1 of the German Money Laundering Act (*Geldwäschegesetz*). BaFin expanded the mandate of the special commissioner who had been appointed by way of a notice dated 21 September 2018 in accordance with section 45c (1) in conjunction with subsection (2) no. 6 of the German Banking Act (*Kreditwesengesetz*), so as to monitor the implementation of the measure that had been ordered. The role of the special commissioner is to report on and assess the progress made with implementation.

Special commissioners permit closer monitoring
BaFin uses special commissioners because these allow it to track at close quarters whether and how serious deficiencies are being remedied. Another advantage is that, thanks to the special commissioner, BaFin can – if necessary – intervene in the process of rectifying the deficiencies at an early stage, and can manage this so as to ensure that the legally required situation is implemented or reinstated swiftly and effectively. In other words, the function of the special commissioner serves to protect both Germany as a financial centre and the institution itself. "The role of the special commissioner is to provide temporary support, and such a measure is, of course, not always welcomed by the institution concerned", said Birgit Rodolphe, Chief Executive Director of the Resolution and Prevention of Money Laundering Sector. The fact that special commissioners can work with large teams and at national level allows them to provide particularly close support for the supervised institution during the rectification process, she added.

Alongside its formal measures, BaFin holds a large number of discussions with institutions, both at the expert level and with top management. This close support allows BaFin to ensure that an institution's board of management and supervisory board pay the necessary attention to remedying deficiencies in relation to anti-money laundering.

The year in review

BaFin's supervisory priorities in 2021

BaFin had already assumed when planning its supervisory priorities for 2021 that the COVID-19 pandemic would continue to cause uncertainty on the financial markets. It designed its supervisory programme in line with this and successfully implemented it.

The overarching supervisory priorities were:

- dealing with the effects of the pandemic;
- IT and cyber risks at supervised undertakings, which remain high; and
- challenges in the collective consumer protection area.

Information on these and the priorities mentioned below can be found in these spotlights and the other chapters of this Annual Report.

The supervisory priorities were published for the last time for 2021. They have been replaced by the Risks in BaFin's Focus, which were published for the first time for 2022.

Banking Supervision
In 2021, BaFin's Banking Supervision Sector used information provided by the institutions on the effects of the COVID-19 pandemic to perform the stress scenarios that it had developed on them, and hence to obtain a current overview of the sector. The results were used as the basis for ordering special credit risk inspections under section 44 of the Banking Act.

BaFin used special inspections under section 44 of the Banking Act to gain new insights regarding mechanisms installed and precautions taken by the institutions to protect their IT systems against cyber-attacks, and included these in its regular Supervisory Review and Evaluation Process (SREP). It also focused on outsourcing of IT services and on sub-outsourcing.

In April 2021, BaFin conducted a survey in order to find out, among other things, how banks and savings banks are implementing the Guidance Notice on Dealing with Sustainability Risks that BaFin published in December 2019. It used and is using the findings to adapt its supervisory activities in this area.

Another focus of the Banking Supervision Sector in 2021 was on institutions impacted by Brexit. The transitional provisions expired at the end of 2020. In addition, BaFin took a close look at the implementation and effects of the Federal Court of Justice's rulings on the mechanism for amending banks' and savings banks' general terms and conditions of business, and on the invalidity of interest rate adjustment clauses in premium-aided savings plans. The judgements were also a topic for discussion during the routine supervisory interviews with banks and savings banks.

Insurance Supervision
In 2021, BaFin mainly focused on investments by insurers and established that the undertakings have not relaxed their lending standards and that there were no indications of negative impacts on their cover situation. Life insurers' projections for 2021 suggested that they would continue to be able to robustly finance their insurance obligations. By contrast, the situation at *Pensionskassen* remained tight.

BaFin developed supervisory measures for dealing with section 48a of the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) in 2021. These regulate remuneration for distribution and how to avoid conflicts of interest. In addition, BaFin started work on a Circular on distribution remuneration, which is scheduled for publication by the end of 2022. It is aiming to use this to formulate concrete requirements for the remuneration to be paid for distributing endowment insurance.

The Insurance Supervisory Sector also developed a policy for monitoring compliance with the European sustainable finance disclosure requirements. This is designed to prevent greenwashing, among other things.

The Sector also took a close look at cyber insurance in 2021 and surveyed insurers on this. In the process, it found that data preparation is still often inadequate. Establishing appropriate, robust prices is another sore point. The background to this is that insufficient historical data is currently available and that the loss scenarios are constantly changing.

Securities Supervision
In the area of collective consumer protection, the Securities Supervision Sector took a close look at investment services providers' digital business models in 2021. BaFin's main focus was on online brokers in the non-advised business area. Subjects under discussion included pricing and gamification. Another key focus was on robo-advisors (for either investment advice or financial portfolio management). In addition, BaFin ensured that service providers no longer use advertising that does not comply with supervisory law requirements.

Preventing the marketing of unsuitable products to customers was another key area of activity in 2021. BaFin's Securities Supervision Sector used external consumer surveys to gain insights into the use of social media for investment recommendations and consumer loans. In addition, BaFin started its first mystery shopping trial run.

Above and beyond this, BaFin published an increased number of warnings in 2021 drawing attention to cases in which it suspected that the necessary prospectuses were not available. In the area of product governance, its investigations uncovered sector-wide deficits, especially with respect to target market designation, plus conspicuous findings at individual institutions and product providers.

BaFin used a workshop on the liquidity tools set out in the Securities Trading Act to provide information on the content and protective purpose of these instruments and the benefits that they offer for investors. It helped the industry draft its own practical guide regarding redemption restrictions on open-ended investment funds.

BaFin published FAQs on implementing the European Investment Firm Regulation (IFR) and the German Investment Institutions Act (*Wertpapierinstitutsgesetz*) for investment institutions in which it answered both content-related and application-related questions. In addition, BaFin established a classification process allowing it to distinguish between small, medium and large institutions and hence to ensure proportionality.

Resolution and Prevention of Money Laundering
In 2021, the Sector conducted its first deep dives in the area of resolution planning. These served to prepare on-site inspections at selected institutions, which are to take place more frequently in future. The Sector took system-wide scenarios into account when determining resolution strategies. Another core topic was IT infrastructure outsourcing and the assessment of how this impacts resolvability.

In the course of the year, the Sector published new circulars and guidance notices, and made amendments to existing ones. One objective was to improve the resolvability of the institutions concerned by ensuring optimum data provision in the event of a resolution. Another core point was the technical implementation of the bail-in together with the relevant financial market infrastructures.

The Directorate for the Prevention of Money Laundering ordered special audits at institutions whose suspicious transaction reports deviated significantly from those made by comparable institutions. BaFin also examined the money-remittance business conducted by banks in greater detail. Institutions engaged in this business were already under intensified supervision. Another focus of the Directorate for the Prevention of Money Laundering was on the spread and use of crypto assets. It combined the results of its investigations with information provided by the Financial Intelligence Unit (FIU). This enabled BaFin to gain far-reaching insights into the obliged entities under the German Money Laundering Act (*Geldwäschegesetz*).

The Integrity of the Financial System Directorate, which is responsible for investigating unauthorised business activities, focused in 2021 on fraudulent online platforms and illegal operators of crypto ATMs, which are frequently used for money laundering. BaFin recorded an increasing number of cases of identity theft and attempts to recruit payment agents.

II

BaFin’s international role

1 Bilateral and multilateral cooperation

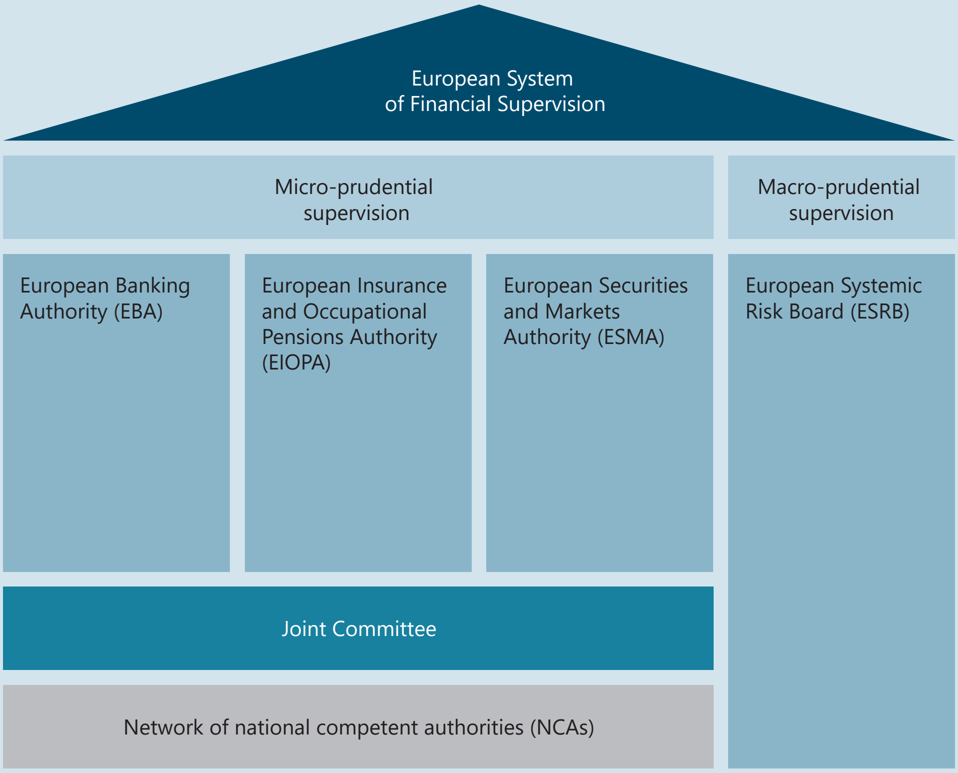
A large number of financial sector enterprises today operate on an international or global level. As a result, bilateral and multilateral cooperation by supervisory authorities is also becoming more and more important. In line with this, BaFin works closely together with supervisory authorities in other countries. The formal basis for this cooperation generally consists of bilateral and multilateral memoranda of understanding (MoUs) between BaFin and its partner institutions (see the table in the Appendix on page 110).

Within the European Union (EU), cross-border cooperation largely takes place under the umbrella of the European supervisory organisations. However, BaFin is also represented on the global standard-setting bodies (see info box on pages 32 and 33).

BaFin’s international role

BaFin’s role in the European System of Financial Supervision
BaFin is an active participant in the European System of Financial Supervision (ESFS), which was established at the start of 2011.

Figure 1: European System of Financial Supervision



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

Figure 2: The levels in the EU’s legislative process and the role of the ESAs

Level 1	▪ Directive or regulation ▪ Article 289 of the Treaty on the Functioning of the European Union (TFEU) ▪ Ordinary (i.e. co-decision) or special legislative procedure ▪ Right of proposal: European Commission; European Parliament and Council involved
Level 2	▪ Delegated acts (Article 290 of the TFEU) adopted by the European Commission (Level 1): these include the regulatory technical standards developed by the ESAs ▪ Implementing acts (Article 291 of the TFEU) adopted by the European Commission (Level 1): these include the implementing technical standards developed by the ESAs ▪ The ESAs may also have an advisory function in these cases (Calls for Advice by the European Commission)
Level 3	▪ Non-legislative regulations issued by the ESAs ▪ Main instruments: guidelines and recommendations in accordance with Article 16 of the ESAs Regulations ▪ Characteristic: non-binding, but national authorities must give reasons for not applying them (“comply or explain” principle)

Another core task performed by the ESAs is ensuring that the national competent authorities apply these provisions on a convergent basis. Despite their name, however, the ESAs – apart from a few closely defined exceptions – are not supervisory authorities. The Joint Committee works on topics which are significant across all sectors. The ESAs and the Joint Committee operate at a micro-prudential level.

The European Systemic Risk Board (ESRB), which is attached to 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 on them at an early stage. The micro- and macro-prudential levels are closely dovetailed to ensure that information flows between them in both directions.

BaFin's role in the banking union

At the level of the European banking union, BaFin forms part of the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). Information on these can be found starting on page 38 (SSM) and page 100 (SRM).

BaFin's role in global organisations

BaFin is also a member of a number of global bodies, such as
- 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 on the BCBS's supervisory body – the Group of Governors and Heads of Supervision (GHOS).

Within these international associations, BaFin collaborates 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 on the Financial Stability Board (FSB). The G20 Heads of State and Government gave the FSB a wide-ranging mandate as part of the regulatory reforms introduced after the outbreak of the global financial crisis in 2007/2008: among other things, it was entrusted with overseeing 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 information sharing between its members.

2 Work of the three ESAs and the ESRB

2.1 EBA

One of the main focuses of the work performed by the European Banking Authority (EBA) in 2021 was to produce amendments for a number of legislative packages: the European Capital Requirements Directive (CRD), the Capital Requirements Regulation (CRR) and the Bank Recovery and Resolution Directive (BRRD). In addition, the EBA revised the European Investment Firm Directive (IFD) and the European Investment Firm Regulation (IFR).

The EBA also performed the EU-wide stress test of 50 banks that had originally been planned for 2020. Further information on the EBA's work in 2021 – for example in the areas of anti-money laundering, sustainability and financial innovation – can be found on its website.

2.2 EIOPA

In 2021, the European Insurance and Occupational Pensions Authority (EIOPA) focused on the topics of sustainability, digital transformation and pensions. In addition, it reviewed the implementation of its priorities regarding business model sustainability and adequate product design.

EIOPA also issued a statement on supervisory practices in case of breach of the Solvency Capital Requirement. The EIOPA report on the use of artificial intelligence in the insurance sector examined the opportunities for more granular risk assessments and pricing practices. The EIOPA stress test for insurance groups performed in 2021 showed that the sector is resilient but that it is also still relying on the transitional measures offered by the framework. EIOPA also analysed trends at cross-border institutions for occupational retirement provision (IORPs) in 2021 and drew up Guidelines on PEPP supervisory reporting (PEPP = pan-European Personal Pension Product).

In addition, EIOPA published a statement on value for money. Further information on this topic is provided in a speech by Dr Frank Grund, BaFin Chief Executive Director of Insurance and Pension Funds Supervision. EIOPA also issued its Report on the independence of National Competent Authorities in which it sought to factually represent the legal and operational position of the NCAs.

Additional information on EIOPA's work in 2021 can be found on its website.

2.3 ESMA

In 2021, the European Securities and Markets Authority (ESMA) focused on the topics of sustainability, financial innovation, digitalisation and supervisory convergence. ESMA defined joint strategic supervisory priorities for the first time.

In addition, ESMA played an important role in implementing the Taxonomy Regulation, working together closely with BaFin and the other supervisory authorities to do so. ESMA and the other European and national supervisory authorities advised the European Commission on its "Call for Advice on Digital Finance". In the year under review, ESMA also prepared to take over supervision for benchmark administrators and datareporting services providers in the course of 2022, in addition to its existing direct supervisory powers.

Further information on ESMA's work in 2021 can be found on its website.

Overarching project: EU retail investment strategy
The European Commission issued three requests for advice to EIOPA, ESMA and the Joint Committee of the European Supervisory Authorities (ESAs) in 2021 in preparation for its EU Retail Investment Strategy. Both EIOPA and ESMA are to develop recommendations on how to improve disclosures relating to the distribution of financial products. Other objectives are to assess the risks and opportunities associated with digital disclosure and digital sales channels.

2.4 ESRB

In 2021, Luxembourg implemented a macro-prudential measure designed to cap the financing of private residential property located in the country (loan-to-value – LTV). As a result, the member states of the European Systemic Risk Board (ESRB) with material exposures on the Luxembourg residential property market were called on to apply this LTV cap in their dealings in both directions. After examining the prescribed materiality threshold, BaFin decided to comply with this request. It did this by issuing a general administrative act to German banks.

Expiration of the recommendation to restrict distributions
In its September 2021 meeting, the ESRB General Board resolved to allow the restriction on distributions by financial institutions that had been introduced in view of the COVID-19 pandemic (see recommendations ESRB/2020/7 and ESRB/2020/15) to expire. BaFin supported this move.

Detailed information on the work performed by the ESRB last year can be found on its website.

3 International standard setters

3.1 BCBS

The work of the Basel Committee on Banking Supervision (BCBS) in 2021 revolved around the regulatory and supervisory measures taken to overcome the consequences of the COVID-19 pandemic. In addition, the BCBS continued its regulatory impact assessment and prepared for the implementation of the Basel III finalisation package. It also assessed the consequences associated with new risks, and especially climate risks and crypto asset risks, and suggested how these two topics could be handled from a regulatory perspective. Further information is available here.

3.2 IAIS

In 2021, the International Association of Insurance Supervisors (IAIS) focused on examining how the IAIS Holistic Framework has been implemented in the insurance sector. It did this by conducting a global monitoring exercise. In parallel, the IAIS started the second round of the monitoring period for the International Capital Standard (ICS). In the consumer protection area, the body focused on the issue of corporate culture. The IAIS provides detailed information about its work on its website.

3.3 IOSCO

In the same year, the International Organization of Securities Commissions (IOSCO) analysed market activities for March 2020, the month following the outbreak of the COVID-19 pandemic. In the second half of the year, IOSCO conducted a consultation process for potential regulatory amendments. BaFin took part in this work. Whereas in 2020 IOSCO was still coordinating immediate reactions to the pandemic, in 2021 it focused on identifying any regulatory gaps and failures and on identifying potential improvements. Among other things, the spotlight here was on money market funds and the impact of government support measures on ratings. Additional information about IOSCO's work is available on its website.

3.4 FSB

Also in 2021, the Financial Stability Board (FSB) continued its in-depth examination of the impacts of the COVID-19 pandemic on global financial stability. For example, it helped with international coordination of, and cooperation regarding, countermeasures and voiced its opinion on the lessons to be learned from the crisis. In addition, the FSB addressed the financial risks posed by climate change, among other things. Vulnerabilities in the NBFI (non-bank financial intermediation) sector were another key topic. The FSB has drawn up a comprehensive work programme to increase the resilience of this segment. An overview of the FSB's work can be found here.

III

Supervisory Practice

III

1 Supervision of banks, financial services providers and payment institutions

1.1 Bases of supervisory practice

The bases of banking supervision changed in 2021.

Third Regulation Amending the Remuneration Regulation for Institutions
On 25 September 2021, the revised version of the German Remuneration Regulation for Institutions (*Institutsvergütungsverordnung*) entered into force. This largely implemented the requirements of the Fifth European Capital Requirements Directive (CRD V). The remuneration regulations had to be amended because of the requirements of the CRD V and of the German Risk Reduction Act (*Risikoreduzierungsgesetz*) resulting from the directive. You can read more about this topic in the expert article on the BaFin website entitled "Shaping fair pay".

Modified Solvency Regulation: legal basis for calculating the systemic risk buffer
The revised German Solvency Regulation (*Solvabilitätsverordnung* – SolvV) entered into force on 25 September 2021. The newly added section 36a creates the legal basis for calculating the systemic risk buffer. The background to this is to found in the requirements of the Fifth European Capital Requirements Directive (CRD V), which was transposed into German law at the end of 2020. This led to a revision of section 10e of the German Banking Act (*Kreditwesengesetz* – KWG), among other things.

Cooperative banks: New general administrative act on Common Equity Tier 1 capital instruments
On 1 January 2021, BaFin published a new general administrative act. This regulates the extent to which newly issued shares in cooperative banks can be classified as Common Equity Tier 1 capital instruments with BaFin's approval. In addition, the Supervisory Authority used the act to set out the conditions under which prior approval must be obtained for the repayment of share capital in connection with the termination of cooperative shares. The general administrative act applied until the end of 2021.

Liquidity: Circular on Delegated Regulation
On 16 August 2021, BaFin published a Circular on Article 23 of Delegated Regulation (EU) 2015/61, complete with a reporting template, for all less significant institutions (LSIs). The Circular entered into force on 1 September 2021. It specifies the supervisory approach to be adopted when applying Article 23 of Delegated Regulation (EU) 2015/61 and the provisions of Delegated Regulation (EU) 2021/451 on additional liquidity outflows relating to other products and services not covered by the outflow categories set out in Articles 27 to 31a of Delegated Regulation (EU) 2015/61.

New versions of MaRisk and BAIT, and new ZAIT circular
On 16 August 2021, BaFin published three Circulars containing information security requirements. These comprised revisions to the Minimum Requirements for Risk Management (*Mindestanforderungen an das Risikomanagement* – MaRisk) for banks and to the Supervisory Requirements for IT in Financial Institutions (*Bankaufsichtliche Anforderungen an die IT* – BAIT), plus the newly-published Supervisory Requirements for IT in Payment Services and E-money Institutions (*Zahlungsdiensteaufsichtliche Anforderungen an die IT* – ZAIT).[1]

Countercyclical capital buffer: no increase made by BaFin by end of 2021
BaFin kept the countercyclical capital buffer (CCyB) at 0% in 2021. The background to this was the real economy's expected credit requirements during the ongoing COVID-19 pandemic. The decision provided the German banking sector with planning certainty. It made it easier for institutions to make appropriate levels of loans available to companies and private households despite losses from credit defaults.

1.2 German institutions directly supervised by the ECB

In 2021, 21 German groups of institutions had been classified as significant institutions (SIs). As a result, these were directly supervised by the European Central Bank (ECB)[2] within the Single Supervisory Mechanism (SSM – see info). BaFin was involved in supervising the institutions through the SSM's Joint Supervisory Teams (JSTs), which are composed of staff from the ECB and the national supervisors that together make up the joint administrative structure.

1 See chapter I.6.1.
2 See the European Central Bank's Annual Report.

At a glance

Supervision in the SSM

On the launch of the Single Supervisory Mechanism (SSM) in November 2014, the European Central Bank (ECB) took over the direct supervision of those banking groups that had been classified as significant. A Joint Supervisory Team (JST) is responsible for each of these significant institutions (SIs). In addition to ECB employees, the teams include staff from BaFin and the Deutsche Bundesbank. The number of members on each JST and the latter's composition vary depending on the size and complexity of the banking group concerned. The JSTs are headed by JST coordinators from the ECB. The core JST for all supervisory teams for German SIs consists of the JST coordinator plus one sub-coordinator each from BaFin and the Deutsche Bundesbank.

Bank stress test: EBA and ECB publish results
On 30 July 2021, the European Banking Authority (EBA) announced the results of the EU-wide bank stress test for 2021, which it had coordinated. The stress test subjected the 50 largest European banks – including seven German credit institutions – to a macro-economic crisis scenario. The German participants came through the stress test well and met the Common Equity Tier 1 (CET 1) requirements. On the same day, the European Central Bank (ECB) also published the results of its SREP bank stress test, which included the individual bank level as well for the first time. "SREP" is the abbreviation for "Supervisory Review and Evaluation Process". Nine out of the total of 51 significant institutions (SIs) that took part were German; these came through the stress test well and met the CET 1 requirements.

1.3 Institutions directly supervised by BaFin

At the end of 2021, BaFin supervised a total of 2,692 institutions (see Table 1 on page 39). Of this figure, 50 were significant institutions (SIs) directly supervised by the ECB, although BaFin was involved in their supervision via the Joint Supervisory Teams. A total of 2,642 institutions – including 1,272 LSIs, or less significant institutions – were directly supervised by BaFin.

Table 1: Institutions under German supervision

As at 31 December 2021

Credit institutions			1,439
Of which	CRR credit institutions*+		1,324
		Of which SIs**+++	50
		Of which LSIs***+	1,272
	Other credit institutions****+		42
		Of which development banks +	15
	Housing enterprises with savings schemes +		47
	Third-country branches +		26
Payment institutions and e-money institutions +			82
Investment firms*****++			745
Financial services institutions******			426
Of which	Finance leasing and factoring institutions +		417
Institutions supervised by BaFin			2,692

* Two of these CRR credit institutions were neither SIs nor LSIs. "CRR" stands for "European Capital Requirements Regulation".
** The SIs are supervised directly by the ECB.
*** Two of these credit institutions provided financial market infrastructures and were therefore overseen by BaFin's Securities Supervision Sector.
**** Including Kreditanstalt für Wiederaufbau (KfW). One of these credit institutions was supervised by BaFin's Securities Supervision Sector.
***** Two of these investment firms were supervised by BaFin's Banking Supervision Sector.
****** This comprises institutions in financial services institutions Groups IV and V (finance leasing and factoring institutions) and crypto custodians.
\+ Supervised by BaFin's Banking Supervision Sector.
++ Supervised by BaFin's Securities Supervision/Asset Management Sector.
+++ Supervised by the European Central Bank.

1.3.1 Credit institutions

1.3.1.1 Risk classification

The EBA's SREP Guidelines (EBA/GL/2014/13; version dated 18 July 2018) require BaFin and the Deutsche Bundesbank to prepare an annual risk profile for all less significant institutions (LSIs) under their direct supervision (see Table 2 on page 40).

Building on these EBA guidelines, the ECB published the SSM-LSI-SREP methodology in February 2020, in order to ensure a uniform procedure in the SSM for LSIs as well. This methodology is being continuously enhanced to reflect developments in the banking sector.

As in the past, BaFin uses two dimensions to classify institutions: the quality of the institution, which results from the application of the SREP, and the potential impact of a solvency or liquidity crisis at the institution on the overall stability of the financial sector.

BaFin adopts the classification used in previous years for this: it defines four tiers ranging from 1 to 4 (very good to poor). In the same way, it classifies the impact dimension on a scale from I to IV (low to high). It then derives the necessary supervisory measures from this overall assessment. In addition to determining the inspection cycle, it sets out the frequency for SREP capital determination and the level of granularity to be used for the annual risk analysis.

Table 2: Risk classification results for LSIs*

As at 31 December 2021

Institutions in %		Quality				
Risk matrix		1	2	3	4	Total
Impact	High	0.0	0.5	0.2	0.0	0.7
	Medium	3.6	12.6	2.5	0.2	18.9
	Medium-low	7.9	40.3	8.3	0.3	56.8
	Low	2.5	14.4	6.1	0.6	23.6
	Total	**14.0**	**67.8**	**17.1**	**1.1**	**100.0**

* This table shows the LSIs supervised by the Banking Supervision Sector.

1.3.1.2 Special inspections

The COVID-19 pandemic meant that BaFin was once again unable to perform special inspections in 2021 to the same extent as had been normal before. It had to largely refrain from routine inspections, which normally take place at regular intervals in addition to ad hoc special inspections.

As in the previous year, BaFin used other means in 2021 to compensate for the inspections that did not take place. Its close contacts to the institutions – which BaFin ensured through supervisory discussions or other means of contact – proved particularly important here. BaFin intends to significantly increase the number of inspections it performs in the coming years so as to make up for the ones that had to be cancelled in recent years.

Highest inspection ratio again at other institutions
In 2021, most inspections were performed in the cooperative sector – the largest area – even though the large number of cooperative banks meant that the inspection ratio for 2021 was higher for other groups of institutions (see Table 4 on page 41).

Table 3: Breakdown of special inspections of LSIs by areas of emphasis*

As at 31 December 2021

	2021	2020
Impairment-related special audits	2	4
Section 25a (1) of the Banking Act (MaRisk)	94	63
Cover	2	
Market risk models		
IRBA (credit risk measurement)	8	12
AMA (operational risk measurement)		
Liquidity risk measurement		
Total	**106**	**79**

* This table relates to less significant institutions (LSIs) under the supervision of the Banking Supervision Sector. "IRBA" stands for "Internal Ratings-Based Approach" and "AMA" stands for "Advanced Measurement Approach".

The special inspections that BaFin orders correlate with institutions' risk classifications. Comparatively more inspections take place at lower-quality institutions and institutions with a higher impact. Table 5 on page 41 shows the breakdown by risk class of the special inspections of LSIs initiated by BaFin in 2021. In addition, BaFin ordered eight special inspections that had been requested by institutions themselves, for example because they needed approval for internal models (see Table 3).

Table 4: Breakdown of special inspections of LSIs by groups of institutions

As at 31 December 2021

	Commercial banks	Savings bank sector	Cooperative sector	Other institutions
Impairment-related special audits	2			
Section 25a (1) of the Banking Act (MaRisk)	13	25	48	8
Cover		1		1
Market risk models				
IRBA (credit risk measurement)	3	2		3
AMA (operational risk measurement)				
Liquidity risk measurement				
Total	**18**	**28**	**48**	**12**
Inspection ratio in %*	**15.8**	**7.6**	**6.3**	**63.2**

* The ratio of the number of inspections to the number of institutions in each group of institutions. The institutions concerned are LSIs supervised by BaFin's Banking Supervision Sector.

Table 5: Breakdown by risk class of special inspections of LSIs initiated by BaFin

As at 31 December 2021

Special inspections initiated by BaFin		Quality of the institution					
		1	2	3	4	Total	Institutions* in %
Impact	High		1	1		**2**	**25.0**
	Medium	2	14	2	1	**19**	**7.9**
	Medium-low	4	23	18	1	**46**	**6.4**
	Low		15	10	4	**29**	**9.7**
	Total	**6**	**53**	**31**	**6**	**96**	**7.6**
	Institutions in %*	**3.4**	**6.2**	**14.4**	**40.0**	**7.6**	

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

1.3.1.3 Objections, measures and sanctions

The Banking Supervision Sector only imposed a total of 214 objections and measures in 2021 (see Table 6 on page 42). This was less than in the previous year (534 objections). Normally, the number of objections and measures correlates with the number of special inspections, since these are a material source of information on deficiencies. However, since fewer special inspections were performed in 2020 as a result of the COVID-19 pandemic and delays had occurred, there were fewer objections and measures in 2021. In addition, the pandemic had led BaFin to take advantage of the latitude offered by the regulatory framework and to temporarily adapt supervisory rules so as to support the banks during the crisis. This was another reason why fewer infringements were seen in the areas of own funds, liquidity levels and compliance with the rules for large exposures.

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

As at 31 December 2021

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		30	23	21	2	21	**97**
Measures against managers	Dismissal requests***	2					**2**
	Cautions	3		4			**7**
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)		24	4	50	3	1	**82**
Measures in accordance with section 25a of the Banking Act		8			1	2	**11**
Sanctions in accordance with sections 45, 45b and 46 of the Banking Act**		14				1	**15**
Total		**81**	**27**	**75**	**6**	**25**	**214**

* Including KfW.
** Measures taken 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.

1.3.1.4 Situation at credit institutions

Private, regional and specialist banks
In 2021, the COVID-19 pandemic did not impact balance sheets in the extremely heterogeneous group of private, regional and specialist banks as hard as had been feared. However, the persistent low interest rate phase continued to impact earnings, especially at those institutions whose business is heavily dependent on interest rates. As a result, they increasingly attempted to find other sources of income or to specialise in particular types of finance.

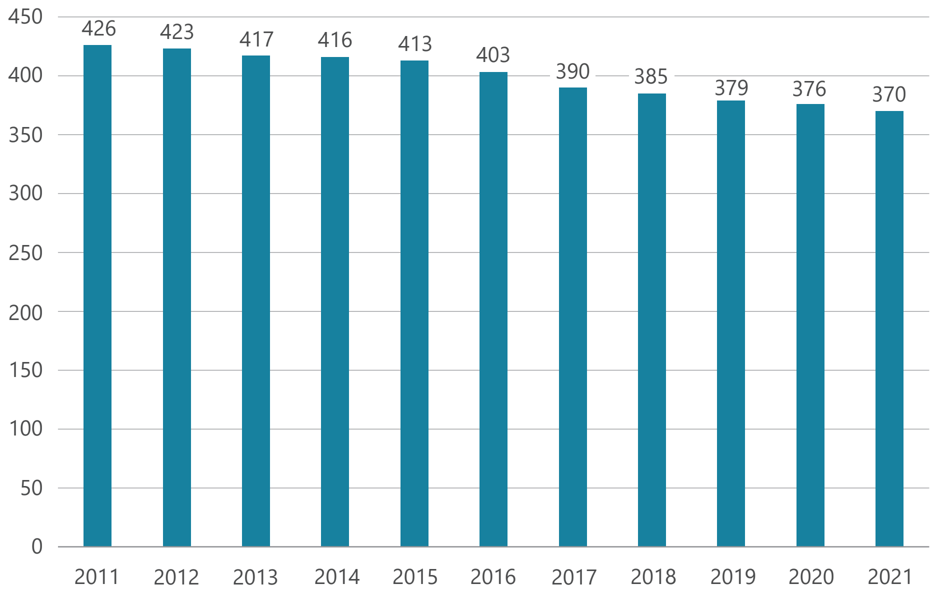
In addition to classic private banks, this group contains a growing number of institutions with new digital business models. The associated special risks pose a number of new questions for supervisors. In addition, the new business models still have to prove that they are economically viable in the long run.

The increasingly complex issues involved in managing banks mean that it is increasingly difficult for very small institutions to cope in view of the resources available to them. As a result, a number of these banks use the data centres operated by affiliated credit institutions.

Savings banks
In the case of the savings banks, the situation in 2021 was still largely dominated by the challenges associated with the COVID-19 pandemic, although day-to-day banking operations increasingly returned to normal. Loan defaults did not occur to anything like the extent feared at the beginning of the pandemic. Nevertheless, the income generated by savings banks continued to decline given the persistently low interest rates and what was in part a difficult economic environment. Despite this, results were still largely in line with forecasts.

To a certain extent, the institutions were able to offset low margins in the lending business through higher lending volumes and an increase in private mortgage lending. Remeasurement effects in the securities business in 2021 were not as high as had originally been expected due to the positive market performance.

Figure 3: Number of savings banks*



* This statistic does not include six Landesbanks or DekaBank.

More and more savings bank clients are using online banking – a trend that continued in 2021. In turn, this forced institutions to take more measures to protect their systems against cyber attacks.

The local savings banks in the areas of North Rhine-Westphalia and the Rhineland-Palatinate that were hit by the floods faced particular challenges: they had to continue supplying people with cash and conducting normal banking business in the aftermath of the natural disaster.

The trend toward branch closures persisted in 2021, due among other things to strong competitive pressure. Branches that closed in the course of the pandemic often shut their doors for good. Mergers led to a decrease in the number of savings banks from 377 to 370 in 2021 (see Figure 3). This development looks set to continue in the years to come given the difficult overall market environment and the competitive situation.

Cooperative banks

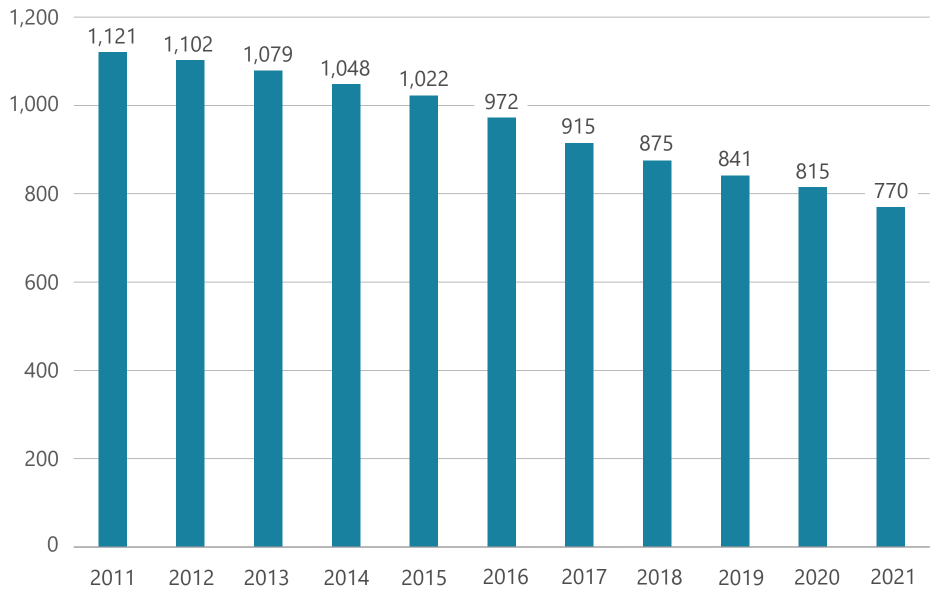
The COVID-19 pandemic, low interest rates and stiff competition also made the market environment difficult for cooperative banks in financial year 2021. Nevertheless, the institutions were able to successfully defend their market position and lifted their profit for the year after tax. At the same time, consolidated total assets at the reduced number of cooperative banks (770 as opposed to 815 banks in the previous year, see Figure 4 on page 44) rose by roughly 6%.

Institutions in the parts of North Rhine-Westphalia and the Rhineland-Palatinate that were hit by the floods in the summer of 2021 had to keep operating, supplying people with cash and granting them loans to repair the damage caused and rebuild their lives.

Net interest income – the most important source of income for cooperative banks – declined year-on-year, as did net commission income. Impairment losses on loans and advances doubled compared with 2020 to approximately €1.1 billion. Capital ratios recovered to pre-crisis levels after plummeting at the beginning of the pandemic.

The low interest rate environment, the enormous competitive pressure in the banking sector and the changing competitive conditions caused by digital transformation will remain challenges for cooperative banks. In addition, the market is likely to become even tougher going forward as a result of the fallout from the COVID-19 pandemic. As a result, institutions are continuing their efforts to cut costs, for example by closing branches, and enhance their efficiency. At the same time, they are pushing forward with digitalisation and sustainability projects. Consequently, the number of cooperative banks will probably decline further as a result of mergers.

Figure 4: Number of cooperative banks



Bausparkassen

The low interest rate period and the COVID-19 pandemic have led to challenging conditions for Germany's *Bausparkassen*. In particular, the restrictions introduced in response to the pandemic made it difficult for them to market new *Bauspar* contracts, leading to a decline in new business in this area. By contrast, new business in the area of mortgage loans performed well, with the *Bausparkassen* being able to match or even exceed their prior-year figures in most cases. This was also helped by the finance provided for modernisation projects.

On the other hand, the volume of *Bauspar* loans granted declined again in 2021. *Bauspar* plans in line with market interest rates – the main products distributed by the institutions in the past few years in order to replace the old, high-interest rate plans – have not yet been able to permanently reverse the downward trend in *Bauspar* loans. The *Bausparkassen* are continuing their efforts to replace older *Bauspar* plans in their special-purpose savings collectives paying interest that is no longer in line with market rates. One way in which they are doing this is to terminate over-saved contracts and contracts that have been eligible for allocation for more than 10 years.

No significant loan defaults were seen in the reporting period – despite the expiration of the options for clients to defer loan repayments that were introduced in 2020 in response to the pandemic.

***Pfandbrief* business**

Pfandbriefe again proved to be robust financial products in the reporting period despite the ongoing COVID-19 pandemic. As in the previous year, *Pfandbrief* banks increasingly deposited their own *Pfandbriefe* as collateral when obtaining liquidity from the ECB. The number of *Pfandbrief* banks was also stable year-on-year, at 85 as at the 2021 year-end.

All in all, *Pfandbriefe* with a total volume of €62.2 billion were sold (see Table 7).

Table 7: Gross *Pfandbrief* sales

Year	Mortgage *Pfandbriefe** (€ billion)	Public-sector *Pfandbriefe* (€ billion)	Total sales (€ billion)
2017	36.8	11.9	48.7
2018	43.2	7.2	50.4
2019	43.7	11.2	54.9
2020	40.6	17.8	58.4
2021	44.2	18.0	62.2

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

With an outstanding volume of €381.1 billion, the total volume of outstanding *Pfandbriefe* was almost 5% higher in 2021 than in the prior year (see Table 8 on page 45).

Table 8: Total volume of outstanding *Pfandbriefe*

Year	Mortgage *Pfandbriefe** (€ billion)	Public-sector *Pfandbriefe* (€ billion)	Total volume outstanding (€ billion)
2017	214.0	148.2	362.2
2018	230.5	134.1	364.6
2019	237.2	122.6	359.8
2020	242.4	120.9	363.3
2021	257.6	123.5	381.1

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

In May 2021, Germany transposed the European Covered Bonds Directive (CBD) into national law by way of the German Act Implementing the CBD *(CBD-Umsetzungsgesetz*). The first amendments to the German Pfandbrief Act (*Pfandbriefgesetz*) entered into force as at 1 July 2021; additional amendments will follow with effect from 8 July 2022. These will not probably affect future issuing activities by the *Pfandbrief* banks.

Foreign banks

Foreign banks – which have a wide range of legal forms, business models and supervisory regimes – played a significant role on the German market in the reporting period. However, excessively close links to home-country parent groups continue to endanger the independence of the institutions concerned. This can also have a negative indirect impact on their proper business organisation. An example would be if a foreign bank were unable to conduct its own risk management operations.

Such problems arose in particular with newly formed banks and where business was transferred in connection with Brexit. Some institutions initially struggled to implement the necessary minimum requirements in time to be able to conduct their business with EU clients on the Continent. However, fears that the real economy would be impacted turned out to be unfounded.

1.3.2 Payment and e-money institutions

BaFin granted 10 authorisations and registered one entity under the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*) in 2021. Consequently, at the end of 2021 a total of 83 institutions had been authorised or registered as providers of payment services or e-money business operators in Germany.

BaFin's ongoing supervision of payment institutions and e-money institutions in 2021 focused primarily on the impacts of the COVID-19 pandemic. This not only impacted working conditions and workflows, but also increased the risk of IT/cyber incidents. Since 2018, payment services providers have been obliged to report major cyber incidents (i.e. severe operational or security incidents). This includes external attacks, sabotage by staff and accidental internal failures alike.

As already mentioned earlier, BaFin's ZAIT Circular[3], which was published on 16 August 2021, set out in greater detail the supervisory requirements for the due and proper conduct of business regarding information technology and cyber security. This created legal certainty for specific rules set out in the Payment Services Supervision Act.

The institutions turned in a robust performance overall during the pandemic despite the real problems resulting from this environment. New opportunities continued to open up, especially for those institutions that had largely digitalised their business models. This applied even more since the start of the COVID-19 pandemic, which led many people to use digital and contactless payment options more frequently and led to a tangible change in behaviour. This can also be seen from the growth of the market for payment services. The number of new applications for approval remained at a high level despite the authorisations already granted.

However, BaFin also observed a trend towards consolidation in the form of cross-border takeovers and mergers at the same time as the flow of new undertakings entering the market. In addition, it noticed that a wide variety of private equity investors were increasingly taking stakes in payment services providers.

1.3.3 Financial services institutions

1.3.3.1 Finance leasing and factoring institutions

To date, the risks associated with the COVID-19 pandemic have not had any significant impact on finance leasing and factoring institutions. BaFin has been in regular contact with selected institutions since the outbreak of the pandemic. The factoring market grew slightly even in 2020, despite the start of the pandemic, and its growth accelerated again in the first half of 2021, with the market expanding by 8.6% to €146.5 billion.

3 See III 1.1.

The leasing sector, which saw a clear drop in new business to roughly €70 billion in 2020 as a result of the pandemic, recovered again by a comparable amount (7%) in January to September of the reporting period.

Table 9: Supervision of finance leasing and factoring institutions

Facts	Figures for 2021 (2020)
Number of institutions under supervision	
Finance leasing	242 (249)
Factoring	147 (150)
Both types of authorisation	28 (28)
Routine cases processed	
New authorisations	7 (10)
Terminated authorisations	22 (68)
Management appointments	184 (314)
Supervisory board appointments	90 (83)
Qualifying holding procedures	101 (128)
Measures and sanctions	
Substantial letters	20 (13)
Administrative fine proceedings initiated	1 (21)
Authorisations suspended	1 (1)
Additional notification/ reporting obligations ordered	1 (0)
Management dismissal requests	1 (0)

BaFin used the opportunity offered by an insolvency to investigate general indications of systematic deficits in the area of prescription billing processes at six factoring institutions that accounted for a significant proportion of the market. It did this by performing a special inspection under section 44 of the Banking Act. In addition, BaFin instructed the auditors of the financial statements at a number of institutions in accordance with section 30 of the Banking Act to focus on IT security issues during their current audits. Table 9 shows the measures taken and the sanctions imposed.

BaFin also continued its dialogue with the finance leasing and factoring institutions using a regular discussion forum. For example, this enabled it to discuss what the amendments to MaRisk and BAIT mentioned under 1.1 above mean for BaFin's administrative practice.

1.3.4 Crypto custody business

The crypto custody business comprises the custody, management and safeguarding of crypto assets or private cryptographic keys used to keep, store or dispose of crypto assets or crypto securities for others. The protection of private cryptographic keys and the specific IT requirements needed for this were key issues in 2021, both during authorisation procedures and in ongoing supervision.

A total of 19 institutions, including 4 CRR credit institutions, used the transitional provision set out in section 64y of the Banking Act during the reporting period. For these institutions, provisional authorisation is thus regarded as having been granted from 1 January 2020. As a result, they were permitted to continue doing business during their ongoing authorisation processes. There were 28 authorisation processes under way at the 2021 year-end, with roughly one-fifth of these relating to CRR credit institutions.

In addition to permitting the crypto custody business, the German Electronic Securities Act (*Gesetz zur Einführung elektronischer Wertpapiere* – eWpG) dated 10 June 2021 provides for another new financial service under the Banking Act: crypto securities registration in Germany under section 16 of the eWpG. This is regulated in section 1 (1a) sentence 2 no. 8 of the Banking Act. The new Act puts the inclusion of a security in an electronic register on the same footing as classic certification. If a company indicates that it intends to make use of the transitional provision contained in section 65 of the Banking Act, the company is deemed to have been granted provisional authorisation. Conditions that have to be met here are that the financial services provider must have notified BaFin that it was commencing business as at 10 December 2021 at the latest, and that it submitted its application for authorisation six months later. Roughly a dozen institutions use this transitional provision.

2 Supervision of insurance undertakings and pension funds

2.1 Bases of supervisory practice

The bases of supervisory practice were expanded or amended in 2021.

Act Implementing Directive (EU) 2019/2034 on the Prudential Supervision of Investment Firms
The German Act Implementing Directive (EU) 2019/2034 on the Prudential Supervision of Investment Firms (*Gesetz zur Umsetzung der Richtlinie (EU) 2019/2034 über die Beaufsichtigung von Wertpapierinstituten*) entered into force in June 2021. Among other things, this implements Directive (EU) 2019/2177, which forms part of the review by the European Supervisory Authorities (ESAs).

With respect to the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz* – VAG), the main changes relate to notification obligations: in the case of significant cross-border insurance activity or a crisis situation, the amended version of the Act strengthens the exchange of information between the national supervisory authority and the European Insurance and Occupational Pensions Authority (EIOPA). In addition, the new term investment institution (*Wertpapierinstitut*) replaces the term securities trading firm (*Wertpapierhandelsunternehmen*) that was previously used in the VAG.

German Act to Strengthen Financial Market Integrity
The German Act to Strengthen Financial Market Integrity (*Gesetz zur Stärkung der Finanzmarktintegrität*), large parts of which entered into force on 1 July 2021 and which took effect in full on 1 January 2022, introduced an enabling provision for a regulation into section 34 (3) of the VAG for the insurance sector as well. As a result, the Federal Ministry of Finance and/or BaFin are authorised to issue more detailed provisions governing notifications of the outsourcing of functions and insurance activities. At the end of 2021, BaFin held a consultation process on a draft regulation building on this – the German Insurance Outsourcing Notification Regulation *(Versicherungs-Ausgliederungsanzeigenverordnung)* – and the parallel drafts of the regulations regarding the German Banking Act (*Kreditwesengesetz*), the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*), the German Capital

Code (*Kapitalanlagegesetzbuch*) and the German Investment Institutions Act (*Wertpapierinstitutsgesetz*). The objective is to obtain an overview across all areas of supervision of potential concentration risks at service providers, particularly with respect to cloud and other IT services.

In addition, the Act to Strengthen Financial Market Integrity now also obliges insurance undertakings, *Pensionskassen*, *Pensionsfonds* and funeral expenses funds that are not public-interest entities to change their auditors at the latest after ten consecutive financial years.

German Crowdfunding Implementation Act (*Schwarmfinanzierung-Begleitgesetz*)[4]

Lawmakers added implementing regulations for Regulation (EU) 2019/1238 – the PEPP Regulation – to the VAG; among other things, these set out measures and sanctions to be taken in the case of infringements of the Regulation, including the competent authority. "PEPP" stands for "pan-European personal pension products". What is more, section 234 (7) of the VAG gives certain *Pensionskassen* the opportunity to improve the conditions under which employers can make supplementary contributions by changing their statutes. This has been possible since 1 January 2022. In addition, lawmakers established new rules governing liability for cancellations (section 49 of the VAG) and the commission payable when payment protection insurance is taken out (section 50a of the VAG); these take effect on 1 July 2022.

Travel Insurance Fund Act

The Travel Insurance Fund Act (*Reisesicherungsfonds-gesetz*), which entered into force on 1 July 2021, transferred insolvency protection for package holidays and associated travel services to the German Travel Insurance Fund (*Deutscher Reisesicherungsfonds* – DRSF). This is financed by fees levied on the insured travel operators and is supervised by the Federal Ministry of Justice. Only small enterprises are still permitted to obtain insurance from an insurance company or a credit institution.

Maximum technical interest rate lowered

In 2021, the Federal Ministry of Finance reduced the maximum technical interest rate in the German Premium Reserve Regulation (*Deckungsrückstellungsverordnung*) and the German Regulation on the Supervision of *Pensionsfonds* (*Pensionsfonds-Aufsichtsverordnung*) from 0.9% to 0.25% with effect from 1 January 2022, due to the lower yields obtainable from low-risk investments.

Circular on informing the Supervisory Authority about the amounts used to calculate the minimum bonus

On 26 January 2021, BaFin supplemented Financial Statement Form 612 by publishing Circular 01/2021 (VA). The revised form reflects the new rules on how providers of capital should finance provisions for interest that were included in the German Regulation on the Minimum Bonus in Life Insurance (*Verordnung über die Mindestbeitragsrückerstattung in der Lebensversicherung*) in 2020. Financial Statement Form 612 must be submitted by all supervised life insurers and is used by BaFin to check that minimum allocations are being made.

Circular on genuine group insurance contracts

On 3 March 2021, BaFin published Circular 03/2021 (VA), which contains guidance on genuine group insurance contracts. This replaces Circulars 3/90, 3/94 and 2/97 and is intended to enhance the protection and information provided to consumers who are insured under genuine group insurance contracts.

Circular on the solvency of small insurance undertakings, funeral expenses funds, *Pensionskassen* and *Pensionsfonds*

On 20 April 2021, BaFin published Circular 5/2021 (VA), which contains guidance on how to apply the solvency provisions of the VAG. The new text replaces Circular 4/2005 (VA), which had to be revised following the implementation of the European IORP II Directive into German law. "IORP" stands for "institutions for occupational retirement provision". The new Circular applies to all primary insurance undertakings as defined by section 211 of the VAG in Germany, funeral expenses funds (section 218 (1) of the VAG), *Pensionskassen* (section 232 (1) of the VAG) and *Pensionsfonds* (section 236 (1) of the VAG) that are supervised by BaFin.

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 entitled "Risk classification" on page 49). Table 10 (on page 49) shows the risk classification results for 2021.

4 Federal Law Gazette I, page 1568 ff. (1589 ff.).

Table 10: Risk classification results*

Undertakings in %		Quality of the undertaking A	B	C	D	Total
Market impact	Very high	0.0	1.9	1.9	0.0	**3.8**
	High	1.2	6.9	3.8	0.0	**11.9**
	Medium	3.4	17.4	6.7	0.4	**27.9**
	Low	5.5	37.9	11.7	1.3	**56.4**
	Total	**10.1**	**64.1**	**24.1**	**1.7**	**100.0**

* The table shows the assessment based on the data as at 31 December 2021.

At a glance

Risk classification

Insurers are allocated to classes using a two-dimensional matrix that reflects the company's/the group's market impact and quality. Market impact is measured on a four-tier scale with categories of "very high", "high", "medium" and "low". The quality of the insurers is assessed on a four-tier scale ranging from "A" to "D" on the basis of the following factors: "net assets and financial position", "results of operations", "system of governance", "future viability", and "holders of significant holdings". When assessing groups, BaFin uses "group-specific factors" instead of "holders of significant holdings".

Classification of insurance groups
Group classifications use both the classification results for the individual undertakings and qualitative and quantitative group-specific inputs. The classified insurance groups received quality ratings of "A" (2%) "B" (83%) or "C" (15%) during the year under review.

2.3 Inspections

Regular inspections are planned using a risk-based approach; they can be performed flexibly to differing degrees either on-site at the undertakings' premise or remote. One of the factors that BaFin takes into account above and beyond the results of the risk classification is when a supervised entity was most recently inspected. Ad hoc and topic-related inspections are also conducted.

In 2021, the Insurance Supervision Sector conducted a total of 65 inspections, more than in the previous year (42 on-site inspections). The background to this was that BaFin also performed investigations during the reporting period that it had postponed in 2020 because of the COVID-19 pandemic. A large number of investigations were conducted remotely.

The risk matrix in Table 12 (on page 50) shows the breakdown of inspections by risk class.

2.4 Authorised insurance undertakings and pension funds

The number of insurance undertakings and pension funds supervised at national level – i.e. by BaFin – is shown in Table 11.

Table 11: Number of supervised insurance undertakings and pension funds

As at 31 December 2021

Insurance undertakings	with business activities	without business activities
Life insurers	80	5
Pensionskassen	132	4
Funeral expenses funds	30	2
Private health insurers	46	0
Property and casualty insurers	202	4
Reinsurers	29	1
Total	**519**	**16**
Pensionsfonds	35	0

2.5 Developments in the individual insurance classes

The following figures for 2021 are only preliminary. They are based on the interim reporting as at 31 December 2021.

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

2.5.1 Life insurers

Business trends

Business trends in the life insurance area are shown in Table 13.

Investments

The trend in investments by life insurers is shown in Table 14 on page 51.

Once again, the reason for the continued high net return on investment in 2021 is likely to be the expenditure on building up the additional interest provision (*Zinszusatzreserve*) and the associated realisation of valuation reserves.

Table 12: Breakdown of inspections by risk class

Inspections performed		Quality of the undertaking: A	B	C	D	Total	Undertakings in %
Market impact	Very high	0	5	2	0	**7**	**11.3**
	High	0	1	6	0	**7**	**11.3**
	Medium	2	15	3	1	**21**	**33.9**
	Low	2	18	7	0	**27**	**43.5**
	Total	**4**	**39**	**18**	**1**	**62***	**100.0**
	Undertakings in %	**6.5**	**62.9**	**29.0**	**1.6**	**100.0**	

* A total of 3 inspections were also conducted at unclassified undertakings, bringing the total to 65.

Table 13: Business trends in life insurance

	2021	2020
Number of new direct life insurance contracts	5.1 million	4.6 million
Of which: Term life insurance policies	32.7%	30.0%
Pension and other insurance policies	60.0%	61.7%
Endowment life insurance policies	7.3%	8.3%
Total sum insured under new business (€)	301.2 billion	282.8 billion
Number of early terminated policies	2.1 million	2.1 million
Total sum insured under policies terminated early (€)	105.1 billion	106.5 billion
Total number of direct life insurance contracts	81.6 million	81.1 million
Total sum insured (€)	3,456 billion	3,319 billion
Gross premiums written (€)	95.2 billion	98.1 billion

Table 14: Investments by life insurers

As at 31 December 2021

	2021	2020
Aggregate investment portfolios (€)	1,049.8 billion	1,024.2 billion
Net hidden reserves (€)	155.5 billion	215.0 billion
Average net return on investment	3.5%	3.7%

Projection exercise and impact of the low interest rate environment

As in previous years, BaFin conducted a projection exercise for life insurers in 2021. The projection, performed as at the 30 September reference date, focussed on the medium- to long-term impact of the persistently low interest rates on life insurers. To assess this, BaFin collected data on their forecast financial performance in accordance with the German Commercial Code (*Handelsgesetzbuch*) for the 2021 financial year and the following 14 financial years. A conservative investment portfolio was used. Building on this, life insurers simulated new investments and reinvestments in line with their individual corporate planning. In addition, BaFin again surveyed the forecast changes in the Solvency II figures for three selected financial years.

The analysis of the projections confirmed BaFin's assessment that the life insurers will be able to satisfy their contractual obligations. However, the economic position of the undertakings can be expected to remain tight if low market interest rate levels continue.

BaFin will therefore continue to monitor the insurers very closely to ensure that they analyse their expected financial performance under such interest rate conditions in a forward-looking and critical manner. It is essential that life insurers introduce suitable measures in good time and take appropriate precautions.[5]

Solvency II

Table 15 provides an overview of how the Solvency Capital Requirement (SCR) is calculated and of the transitional measures provided for in the rules that are being used by the undertakings.

5 See chapter I 2.1.2 on the impact of the low interest rate environment on insurers and *Pensionskassen*.

Table 15: Overview of life insurers subject to Solvency II

Number of life insurers subject to Solvency II		79
SCR calculated using		
	Standard formula	69
	(Partial) internal model	10
Use of		
	Undertaking-specific parameters	–
	Volatility adjustment (section 82 of the VAG) and transitional measure for technical provisions (section 352 of the VAG)	52
	Transitional measure for technical provisions	3
	Volatility adjustment	11
	Volatility adjustment and transitional measure on the risk-free interest rates (section 351 of the VAG)	2
Submission of a remediation plan (section 353 (2) of the VAG)		23

SCR coverage

All life insurers in Germany reported adequate SCR coverage as at 31 December 2021. Figure 5 on page 52 shows the trend in SCR coverage ratios for the life insurance undertakings subject to interim reporting obligations.

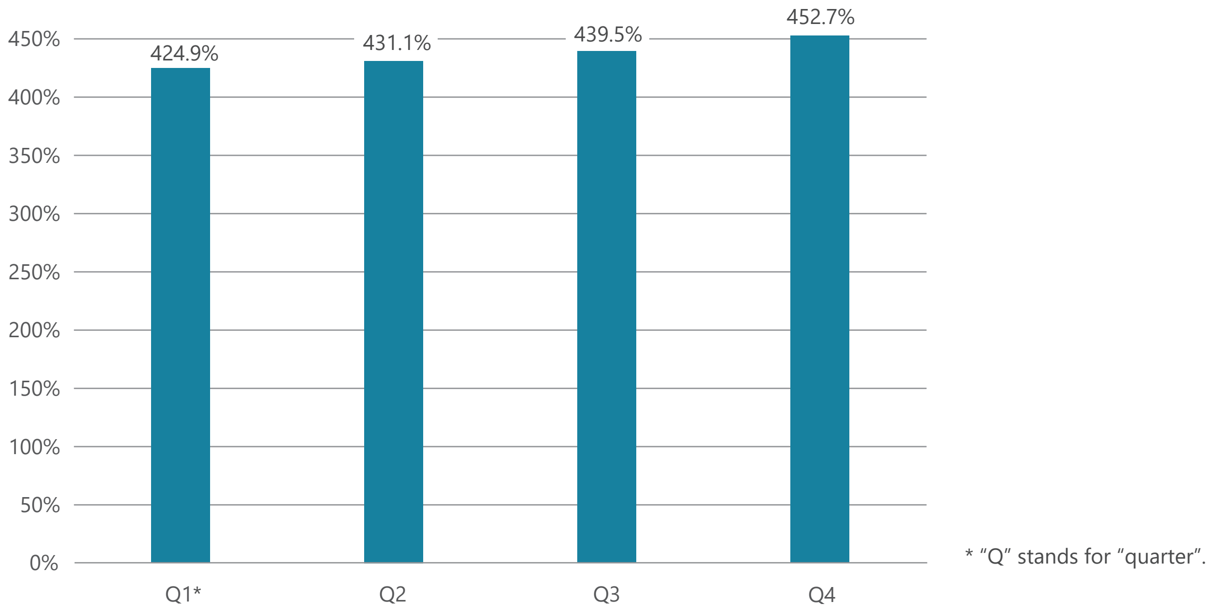
Trend in discretionary bonuses

Most life insurers made a moderate reduction in the level of their discretionary bonuses for 2022 given the low interest rate environment. 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 amounted to an average of 2.0% for the sector as a whole in 2021, down from 2.2% in the previous year. The figure in 2019 was 2.3%.

Trend in the *Zinszusatzreserve*

Since 2011, all life insurance undertakings have been required to build up an additional interest provisions (*Zinszusatzreserve*). This reflects lower investment income in the future on the one hand and continuing high guarantee obligations on the other. More than €8.9 billion was used for this in 2021. The cumulative *Zinszusatzreserve* at the end of 2021 amounted to €95.3 billion. The reference interest rate used to calculate the *Zinszusatzreserve* at the end of 2021 was 1.57%.

Figure 5: SCR coverage ratios



2.5.2 Private health insurers

Business trends
Table 16 provides an overview of private health insurers' business performance and investments.

Solvency
Only six health insurers have still been governed by Solvency I since Solvency II came into effect on 1 January 2016. These are small insurance undertakings within the meaning of section 211 of the VAG. According to the preliminary information available as at the editorial deadline, all six of these complied with the solvency requirements applicable to them as at 31 December 2021.

The remaining 40 health insurers were subject to the Solvency II reporting obligations at the end of 2021. Table 17 on page 53 provides an overview of how solvency capital requirements are calculated, and of the use of transitional measures.

Table 16: Private health insurers' business performance and investments

	2021	2020
Gross premiums written (€)	45.2 billion	42.7 billion
Of which: Comprehensive health insurance	30.1 billion	28.4 billion
Persons insured	44.7 million	43.6 million
Of which: Comprehensive health insurance	8.7 million	8.7 million
Aggregate investment portfolios (€)	323.3 billion	316.1 billion
Net hidden reserves (€)	51.6 billion	62.7 billion
Average net return on investment	3.0%	2.8%

Table 17: Overview of private health insurers subject to Solvency II

Number of private health insurers subject to Solvency II		40
SCR calculated using		
	Standard formula	36
	(Partial) internal model	4
Use of		
	Undertaking-specific parameters	–
	Volatility adjustment (section 82 of the VAG) and transitional measure for technical provisions (section 352 of the VAG)	2
	Transitional measure for technical provisions	1
	Volatility adjustment	3
	Transitional measure on the risk-free interest rates (section 351 of the VAG)	–

Figure 6 shows the trend in SCR coverage ratios for health insurers subject to interim reporting obligations.

Projection exercise
BaFin also conducted a projection exercise for health insurers in 2021. It simulated the impact of different capital market scenarios on undertakings' performance and financial stability, especially over the medium term.

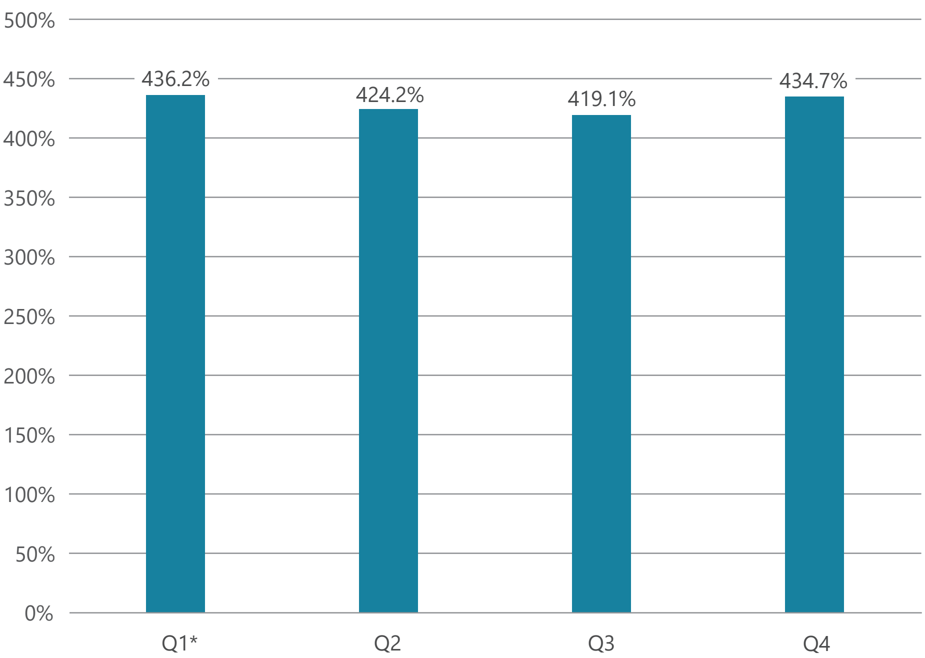
A total of 39 insurers participated in the projection exercise. BaFin had exempted seven undertakings offering non-SLT ("similar to life techniques") health insurance from having to take part. These undertakings do not have to establish a provision for increasing age or generate a specific technical interest rate.

Overall, BaFin found that even a persistently low interest rate environment would be tolerable for the health insurers from an economic point of view. As expected, the data captured show that the risk associated with new investments and reinvestments in a low interest rate scenario is continuing to materialise, and that investment returns are declining. It follows that the technical interest rate must be gradually reduced by making premium adjustments.

ACIR and technical interest rate
The business model for SLT health insurance is based on premium rates that have to be reviewed annually for appropriateness. This involves examining all the assumptions used by the undertaking to calculate the premium – and especially assumptions relating to changes in the net return on investments. Insurers estimate this trend and the safety margin that must also be factored into these assumptions on the basis of the actuarial corporate interest rate (ACIR). This is calculated by the German Association of Actuaries (*Deutsche Aktuarvereinigung*).

Insurance undertakings must report their individual ACIRs to BaFin each year. The ACIR determines whether they are also required to lower the technical interest rate

Figure 6: SCR coverage ratios



* "Q" stands for "quarter".

for existing tariffs if they adjust their premiums. Health insurers also use the ACIR as the basis for determining their technical interest rate. The ACIR figures calculated in the 2021 financial year are below the maximum technical interest rate of 3.5% throughout the sector, with the figures declining again year-on-year as a result of the low interest rate environment. Therefore, most insurers will have to cut the technical interest rates used for their premium rates even further.

Roughly 41% of insureds with comprehensive health insurance were affected by a premium adjustment in 2022 in at least one policy module. The average premium increase for the sector was approximately 5.7%. Health insurers used a total of €1.6 billion of the provisions for bonuses to limit the increases in premiums in 2021.

2.5.3 Property and casualty insurers

Business trends

Tables 18 to 23 below and on page 55 provide an overview of business trends in the property and casualty insurance area overall and in selected insurance classes.

Table 18: Property and casualty insurance business

	2021	2020
Gross premiums written (€)	88.7 billion	86.5 billion
Gross payments for claims relating to the financial year (€)	28.2 billion	24.7 billion
Gross payments for claims relating to previous years (€)	20.3 billion	22.3 billion
Provisions for individual claims relating to the financial year (€)	28.2 billion	23.2 billion
Provisions for individual claims relating to previous years (€)	73.6 billion	71.1 billion

Table 19: Motor vehicle insurance business

	2021	2020
Gross premiums written (€)	29.6 billion	29.7 billion
Gross payments for claims relating to the financial year (€)	14.4 billion	13.1 billion
Gross payments for claims relating to previous years (€)	5.4 billion	6.7 billion
Provisions for individual claims relating to the financial year (€)	7.1 billion	6.6 billion
Provisions for individual claims relating to previous years (€)	29.1 billion	29.3 billion

Table 20: General liability insurance business

	2021	2020
Gross premiums written (€)	12.5 billion	11.6 billion
Gross payments for claims relating to the financial year (€)	1.0 billion	1.0 billion
Gross payments for claims relating to previous years (€)	3.5 billion	4.1 billion
Gross provisions for individual claims outstanding relating to the financial year (€)	3.3 billion	3.4 billion
Gross provisions for individual claims outstanding relating to previous years (€)	23.0 billion	22.8 billion

III

Table 21: Fire insurance business

	2021	2020
Gross premiums written (€)	3.3 billion	3.1 billion
Gross payments for claims relating to the financial year (€)	0.6 billion	0.6 billion

Table 22: Residential buildings and contents insurance business

	2021	2020
Gross premiums written (€)	12.4 billion	11.9 billion
Gross payments for claims relating to the financial year (€)	5.3 billion	3.4 billion
Gross payments for claims relating to previous years (€)	2.2 billion	2.4 billion
Gross provisions for individual claims relating to the financial year (€)	5.5 billion	2.4 billion
Gross provisions for individual claims relating to previous years (€)	1.5 billion	1.4 billion

Table 23: Accident insurance business

	2021	2020
Gross premiums written (€)	6.8 billion	6.8 billion
Gross payments for claims relating to the financial year (€)	0.4 billion	0.4 billion
Gross provisions for individual claims outstanding relating to the financial year (€)	2.3 billion	2.3 billion

Solvency I

As mentioned earlier, Europe's Solvency II supervisory system came into force on 1 January 2016. A total of 23 German property and casualty insurers are still covered by the provisions of Solvency I; these are largely small insurance undertakings as defined by section 211 of the VAG. The average coverage ratio for the property and casualty insurers subject to Solvency I amounted to 532% at the end of 2020[6].

6 The information relates to the financial year for which data for property and casualty insurers subject to Solvency I is currently available.

Solvency II

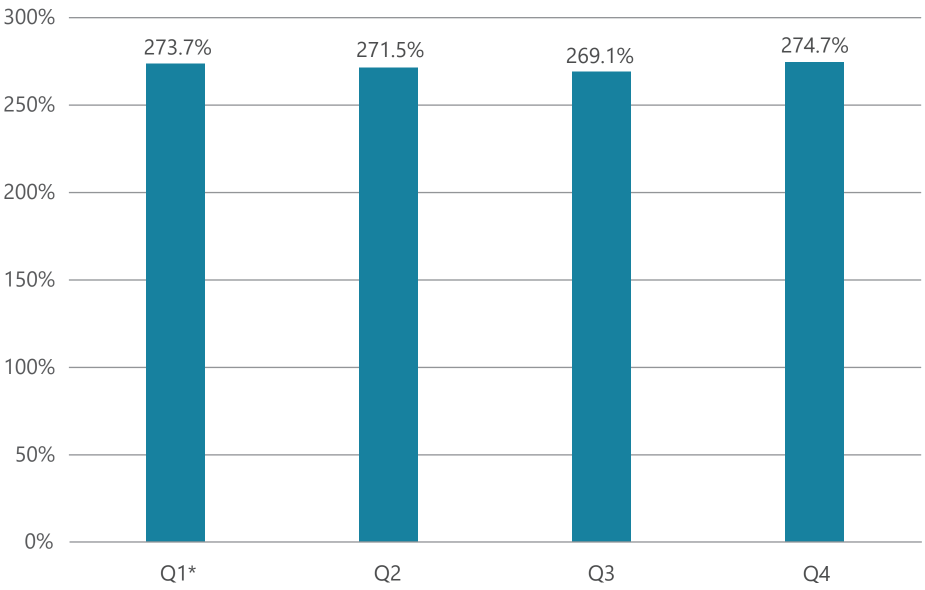
As at 31 December 2021, 183 property and casualty insurers were subject to supervision in accordance with the Solvency II regime.

All property and casualty insurers reported adequate SCR coverage as at 31 December 2021. Figure 7 on page 56 shows the trend in SCR coverage ratios for the property and casualty insurers subject to interim reporting obligations.

The relatively unchanged coverage ratio – compared to the life insurance sector, for example – mainly reflects the facts that property and casualty insurers do not issue long-term guarantees and that the average term of their investments is shorter. These undertakings are therefore considerably less sensitive, and react with much less volatility, to capital market movements.

Table 24 on page 56 gives an overview of property and casualty insurers subject to Solvency II.

Figure 7: SCR coverage ratios



* "Q" stands for "quarter".

Table 24: Overview of property and casualty insurers subject to Solvency II

Number of property and casualty insurers subject to Solvency II*	183
SCR calculated using	
Standard formula	167
(Partial) internal model	16
Use of undertaking-specific parameters	12

* The total of 183 Solvency II undertakings and 23 Solvency I undertakings exceeds the number of 202 property and casualty insurers given in Table 11 in section 2.4, since this figure includes four property and casualty insurers that are supervised at state level.

2.5.4 Reinsurers

Table 25 shows the business trends in reinsurance.

Table 25: Reinsurance business

Gross premiums written (€m)	2021	2020
Non-life reinsurance	60,388.5	56,127.2
Of which proportional	48,667.6	45,445.2
Of which non-proportional	11,720.9	10,682.0
Life reinsurance	12,560.1	11,084.2
Health reinsurance	6,721.9	6,760.7
Total	**79,670.5**	**73,972.1**

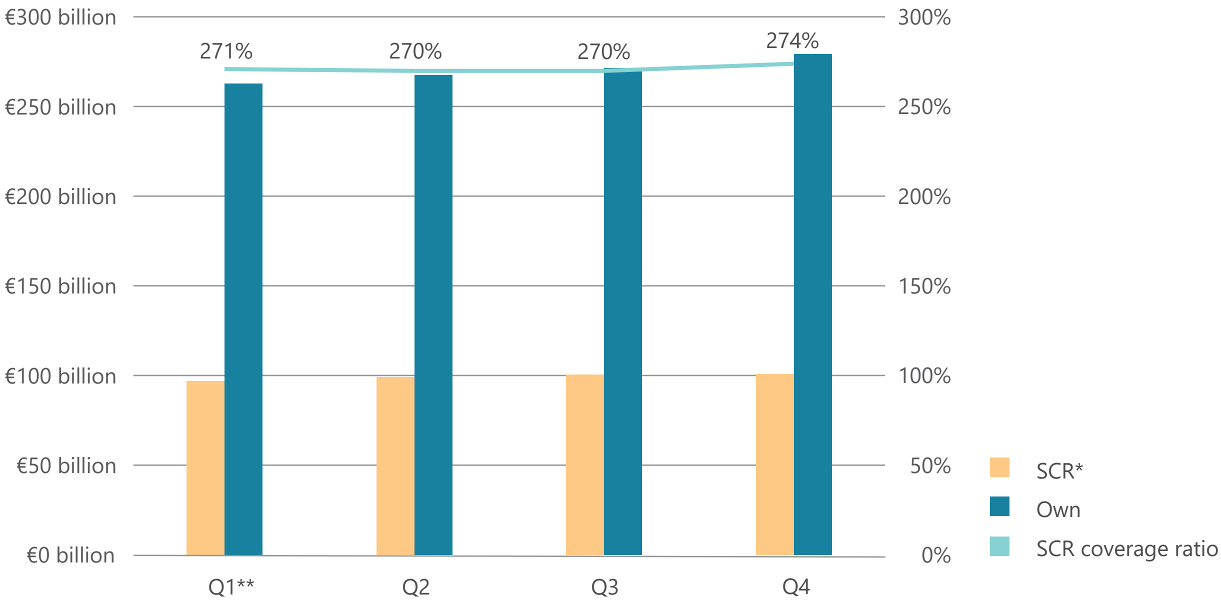
It is estimated that 2021 was the second-costliest year to date for insurers in terms of natural disasters. Total worldwide economic losses are thought to have totalled US$280 billion, with US$120 billion of this figure being insured.[7] A large proportion of this figure is attributable to the USA; in particular, Hurricane "Ida" caused total damage of US$65 billion, of which US$36 billion was insured. In Europe, flash floods caused by low-pressure system "Bernd" resulted in losses of €46 billion. A survey by BaFin of German insurers revealed that primary insurers' worst-case assumptions were for gross insured losses of €8.2 billion. Of this amount, €6.3 billion is reinsured, with €3.3 billion being attributable to reinsurers domiciled in Germany. Please also see the expert article entitled "Flood claims: Still no threat to companies' continued existence" on the BaFin website.

The 2022 round of renewals for reinsurance policies saw what were in some cases significant price increases throughout the market, especially in those insurance classes and regions impacted by losses. Global prices for natural disaster reinsurance rose by 10.8%[8]. German insurers hit by natural disasters in 2021 saw reinsurance prices rise by as much as 15–50%[9].

The comparatively high level of interest rates and the fact that underwriting risks are independent of other financial market risks continue to offer a strong incentive to invest

7 Munich Re: Press release, 10 January 2022.
8 Guy Carpenter: Global Property Catastrophe Rate-on-Line Index.
9 Gallagher Re: 1st View, 1 January 2022.

Figure 8: SCR*, own funds and SCR coverage ratios in the course of the year



* "SCR" stands for "solvency capital requirement".

** "Q" stands for "quarter".

in the reinsurance market. The market for catastrophe bonds saw another buoyant year in 2021: US$14 billion worth of catastrophe bonds were issued in the period up to the end of the year, a rise of almost US$2 billion compared to the prior-year issuing volume.[10]

Solvency II
Of the 30 German reinsurance undertakings subject to supervision by BaFin in 2021, 29 were subject to Solvency II.

Figure 8 shows the solvency capital requirements (SCR), own funds and SCR coverage ratios for the reinsurance undertakings subject to interim reporting obligations.

The SCR coverage ratios reported by reinsurers as at the end of the fourth quarter ranged from 122% to 520%. This spread is due to the heterogeneous nature of the sector, which covers both reinsurers with regional and international operations and a number of undertakings that also perform the function of a holding company for an insurance group or a financial conglomerate.

2.5.5 *Pensionskassen*

Business trends
Table 26 on page 58 provides an overview of business and investment trends at *Pensionskassen*.

Projections and impact of the low interest rate environment
In its projection exercise as at the 30 September 2021 reference date, BaFin requested the *Pensionskassen* to estimate their results for the financial year under four equities and interest rate scenarios. As in previous years, the projection exercise also included the following four financial years in view of the ongoing low interest rate environment. In the case of certain *Pensionskassen* BaFin expanded the projection exercise even further, to the next 14 financial years. *Pensionskassen* affected included those with premium rates to which the German Premium Reserve Regulation (*Deckungsrückstellungsverordnung*) applies and which are required to build up a *Zinszusatz-reserve*, plus those *Pensionskassen* subject to intensified supervision.

10 Artemis: Catastrophe Bond & ILS Market Reports and Q4 2021 Catastrophe Bond & ILS Market Report.

Table 26: Business and investment trends at *Pensionskassen*

	2021[11]	2020[12]
Gross premiums earned (€)		
Total:	6.6 billion	6.9 billion
By legal form:		
Stock corporations	2.2 billion	2.2 billion
Insurance associations	4.4 billion	4.6 billion
Aggregate investment portfolios (€)	194.7 billion	184.5 billion
Net hidden reserves (€)	29.6 billion	32.8 billion
Net return on investment	3.6%	3.4%

An analysis of the projections showed that the SCR coverage ratio for the 2021 financial year was roughly three percentage points higher than in the previous year. As a general rule, undertakings were therefore able to meet the solvency requirements based on the specific provisions of the IORP II Directive. In BaFin's opinion, therefore, the sector's short-term risk-bearing capacity continues to be assured.

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. Should individual *Pensionskassen* have to strengthen their biometric actuarial assumptions or reduce the technical interest rate, they will find it increasingly difficult to finance the necessary increases in reserves from surpluses.

The *Pensionskassen* have reacted promptly and taken measures to maintain their risk-bearing capacity. In almost all cases, they have recognised additional reserves so as to strengthen the actuarial assumptions used to calculate their premium reserves.

Intensified supervision

BaFin is continuing to monitor and support the *Pensionskassen* closely, to ensure that they maintain and strengthen their risk-bearing capacity as far as possible even given persistently low interest rates. *Pensionskassen* that have been particularly badly affected by the low interest rate environment are subject to intensified supervision. The *Pensionskassen* concerned – around 40 at the end of 2021 – must comply with additional reporting obligations, among other things. In some cases, the intensified supervision has already led to more active involvement by the employers and/or shareholders concerned.

However, it is becoming clear that certain *Pensionskassen* are likely to require additional funds if interest rates remain low. For *Pensionskassen* in the form of mutual insurance associations, it would make sense for their sponsoring undertakings to make these funds available. Conversely, *Pensionskassen* in the form of stock corporations would turn to their shareholders. However, if the necessary support is not received, *Pensionskassen* may no longer be able to meet their obligations to beneficiaries in full.

If an employer grants occupational retirement benefits to its employees and appoints a *Pensionskasse* for this purpose, it is required, under the German Occupational Pensions Act (*Betriebsrentengesetz*), to pay the benefits itself in the event that the Pensionskasse cannot meet its payment obligations. Since 2022, employer pension commitments offered via a *Pensionskasse* have generally been included in the insolvency protection scheme of the *Pensions-Sicherungs-Verein* (PSV). This does not apply, among other things, to pension commitments where the *Pensionskasse* concerned belongs to the guarantee scheme for life insurers (Protektor). This primarily relates to deregulated *Pensionskassen* taking the legal form of German stock corporations. There is a claim against the PSV if a statutory insured event occurs at the employer and the *Pensionskasse* can no longer fully provide the benefit that the employer has committed itself to.

Solvency

The projection exercise revealed that the solvency margin ratio set out in the German Capital Resources Regulation (*Kapitalausstattungs-Verordnung*) applicable to the *Pensionskassen* was an average of 142% as at the 2021 reporting date. The figure as at the 2020 reporting date had been 139%. According to the estimates, three *Pensionskassen* were unable to meet the solvency requirements as at 31 December 2021.

11 The information for 2021 represents forecast data and preliminary information taken from intra-year reporting.

12 The information for 2020 represents the final figures. This means that there may be discrepancies to the prior-year report.

2.5.6 *Pensionsfonds*

Business trends

Table 27 shows the business and investment trends at *Pensionsfonds*.

Table 27: Business and investments at *Pensionsfonds*

	2021	2020
Gross premiums written (€)	5.6 billion	7.4 billion
Number of beneficiaries	1,233,848	1,185,407
Of whom: Vested employees who are members of defined contribution pension plans	734,656	707,571
Vested employees who are members of defined benefit pension plans	106,961	96,125
Benefit expenses paid (€)	2.7 billion	2.9 billion
Beneficiaries	394,516	386,904
Investments for *Pensionsfonds'* account and risk (€)	3.7 billion	3.5 billion
Net hidden reserves (€)	260.1 million	381.5 million
Investments for employees' and employers' account and risk (€)	54.0 billion	51.1 billion

Projections and low interest rate environment

In its projection exercise as at the 30 September 2021 reference date, BaFin requested the *Pensionsfonds* to estimate their results for the financial year under four equities and interest rate scenarios. It focused in particular on the expected profit for the year and the expected valuation reserves at the end of the current financial year, and the expected solvency for the current and the four following financial years. In addition, as part of the projection exercise the *Pensionsfonds* had to estimate changes in the *Zinszusatzreserve* for the current and the following four financial years.

The result of the projection exercise indicated that the 33 *Pensionsfonds* included in it would have still have adequate risk-bearing capacity in the four defined scenarios. Assuming no change in the capital market situation, supplementary contributions would have become necessary in accordance with section 236 (2) of the VAG for eight *Pensionsfonds* as at 31 December 2021.

Solvency

According to the preliminary information available, all *Pensionsfonds* had adequate own funds available in 2021 for the current and the following four financial years. They therefore complied with BaFin's solvency requirements. In the case of around two-thirds of the *Pensionsfonds*, the level of own funds required by supervisory law corresponded to the minimum capital requirement of €3 million for stock corporations and €2.25 million for mutual *Pensionsfonds*. The individual solvency capital requirement for these *Pensionsfonds* is below the minimum capital requirement. This is due either to the relatively low volume of business or to the type of business conducted.

3 Supervision of securities trading and the investment business

3.1 Monitoring of market transparency and integrity

3.1.1 Bases of supervisory practice

The bases of supervisory practice for monitoring market transparency and integrity changed in 2021.

Regulation on third-country benchmarks and implementing acts for replacing benchmarks
Regulation (EU) 2021/168, which was negotiated during Germany's presidency of the Council of the European Union, amends the Benchmark Regulation (EU) 2016/1011 (BMR). On 12 February 2021, European lawmakers prolonged the transitional period for the use of third-country benchmarks that this Regulation had granted initially until 31 December 2023, while simultaneously introducing the possibility to replace benchmarks. On 14 October 2021 and 21 October 2021, the European Union (EU) issued two implementing acts on the statutory replacement of certain benchmarks. The objective is to prevent potential negative consequences for the functioning of EU financial markets should key benchmarks be discontinued. BaFin addressed this topic several times in BaFinJournal and made recommendations (see the August, September and November 2021 issues).

Amendments to the European Markets in Financial Instruments Directive
On 28 November 2021, the European Union requirements regarding the implementation of the Second European Markets in Financial Instruments Directive (MiFID II) took effect (MiFID II Quick Fix). The new rules are intended to provide relief for investment firms. Among other things, they introduce amendments to position limits for commodities derivatives.

ESMA Q&As on EU Climate Transition Benchmarks and sustainability-related disclosures
On 28 May 2021, the European Securities and Markets Authority (ESMA) published extensive Q&As on the EU Climate Transition Benchmarks introduced by Amending Regulation (EU) 2019/2089 and EU Paris-aligned Benchmarks, and to sustainability-related disclosures. These explain the new requirements set out in the BMR and Commission Delegated Regulations (EU) 2020/1818

and (EU) 2020/1817. Basic information on the relevant requirements and deadlines is being added to the information about the BMR available on the BaFin website.

BaFin amends Module C of the Issuer Guidelines
On 10 June 2021, BaFin amended Module C of its Issuer Guidelines to include special Guidelines for credit and financial institutions.

ESMA revises Q&As On the Market Abuse Regulation
On 6 August 2021, ESMA clarified in sections 5.8 to 5.10 of its "Questions and Answers On the Market Abuse Regulation" (ESMA70-145-111) that credit ratings should always be treated as inside information. BaFin will take this into account in its supervisory practice.

III

3.1.2 Market abuse analysis

In 2021, BaFin produced a slightly higher number of market abuse analyses than in the previous year (see Table 28). The number of suspicious transaction and order reports rose slightly in 2021 compared to 2020.

Table 28: Market abuse analyses

	New suspicious transaction and order reports	Analyses completed	Analyses yielding sufficient evidence
2021			
Total	**2,851**	**1,965**	**37**
Market manipulation	1,733	1,150	17
Insider trading	1,083	769	20
Mixed cases	35	46	0
Reference year 2020			
Total	**2,625**	**1,857**	**21**
Market manipulation	1,547	1,143	8
Insider trading	1,069	689	13
Mixed cases	9	25	0

Figure 9: Breakdown of evidence for market manipulation

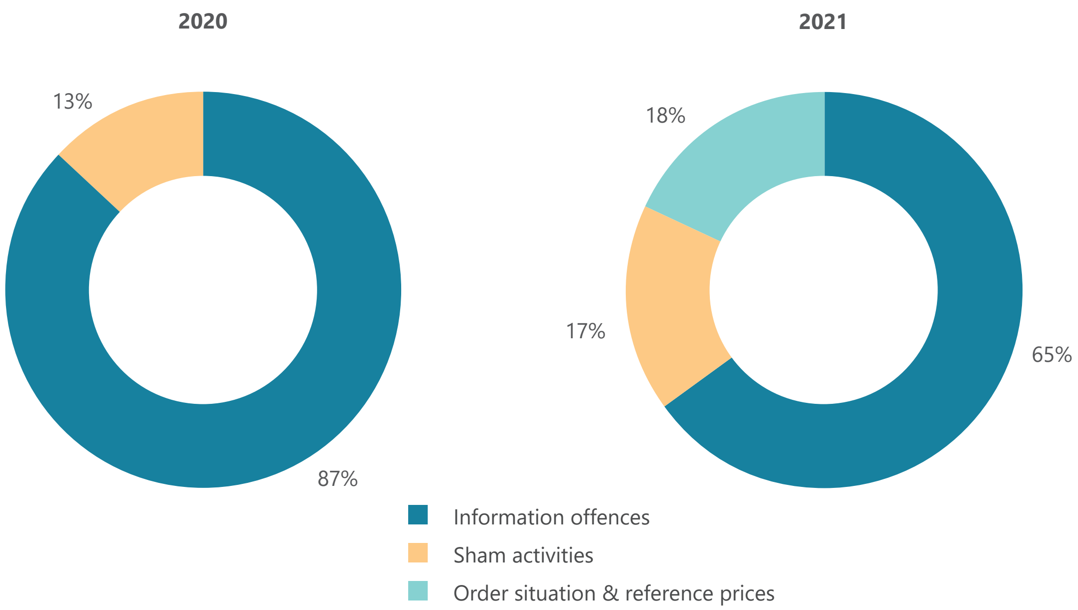
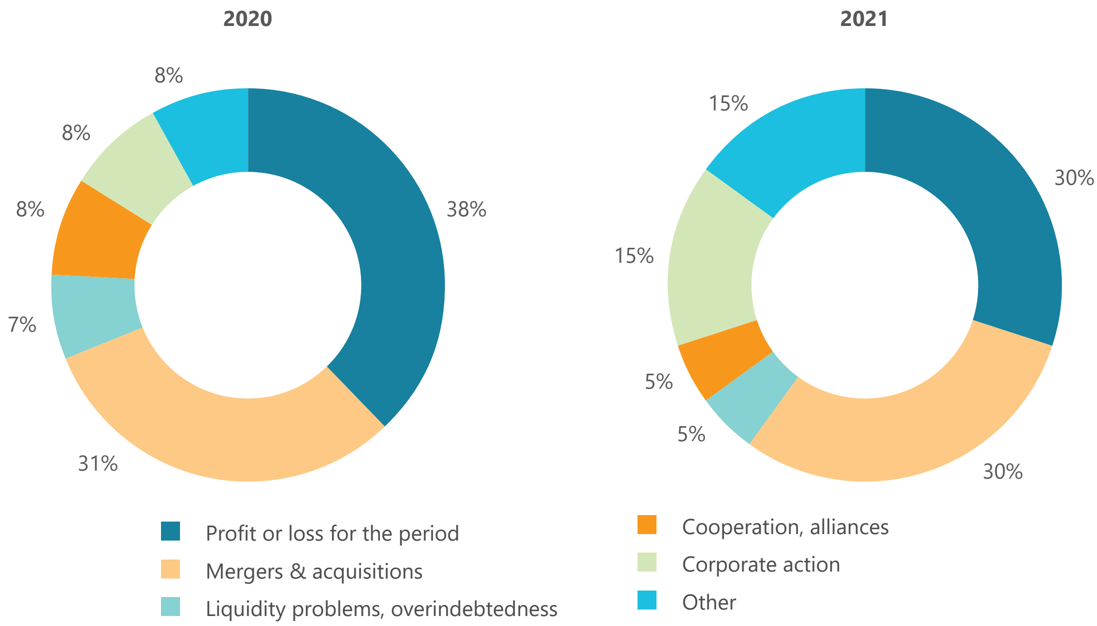


Figure 10: Breakdown of evidence for insider trading



3.1.2.1 Market manipulation

A total of 17 analyses conducted by BaFin in 2021 found sufficient evidence of market manipulation. Figure 9 (on page 61) shows the categories to which the individual cases were allocated in the year under review and the previous year.

3.1.2.2 Insider trading

Twenty analyses conducted in 2021 found sufficient evidence of prohibited insider trading. Figure 10 provides a percentage breakdown of these analyses across the various categories of inside information in the year under review and the previous year.

3.1.3 Market abuse investigations

3.1.3.1 Market manipulation

BaFin follows a risk-based approach not only for market manipulation analyses but also for the resulting investigations. As BaFin focused on more significant breaches in the year under review, it launched fewer new investigations in 2021 than in the previous year (see Table 29). An overview of completed market manipulation proceedings is given in Table 30 on page 63.

International administrative assistance
BaFin primarily exchanged information with institutions from other EU member states. With respect to non-EU

Table 29: Market manipulation investigations

Period	New investigations	Investigation results							Ongoing investigations
		Investigations discontinued	Referred abroad	Investigations referred to public prosecutor's offices or BaFin's Administrative Fines Division					
				Public prosecutor's offices		Administrative Fines Division*		Total (cases)	
				Cases	Individuals	Cases	Individuals		
2019	96	130	3	27	45	0	0	**27**	**213**
2020	56	49	0	21	32	0	0	**21**	**199**
2021	45	110	5	25	57	1	1	**26**	**103**

* The number of referrals to BaFin's Administrative Fines Division and the number of administrative fine proceedings initiated by BaFin (see 3.7) differ because the processes used are different.

Table 30: Completed market manipulation proceedings

Period	Total	Decisions by the public prosecutor's 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
		in accordance with sections 152 (2) and 170 (2) of the German Code of Criminal Procedure (*Strafprozessordnung*)	in accordance with section 153 of the Code of Criminal Procedure	in accordance with sections 154 and 154a of the Code of Criminal Procedure	in accordance with section 154f of the Code of Criminal Procedure		
2019	**177**	109	12	11	2	22	0
2020	**206**	126	14	8	6	17	0
2021	**157**	106	13	3	2	13	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
2019	3	5	4	0	4	5
2020	17	2	10	1	4	1
2021	6	3	6	4	0	1

* The figures also include rulings from previous years of which BaFin only became aware in the years specified in the left-hand column.

countries, BaFin supported supervisory authorities in Canada, Switzerland and the United Kingdom in particular. An overview is provided in Table 31.

Table 31: Requests for international administrative assistance regarding market manipulation

Period	Requests made	Requests received	Total
2019	36 (to 18 countries)	29 (from 7 countries)	**65**
2020	34 (to 18 countries)	30 (from 12 countries)	**64**
2021	13 (to 6 countries)	30 (from 8 countries)	**43**

3.1.3.2 Insider trading

In 2021, BaFin focused its activities in pursuit of insider trading on more significant breaches and launched more new investigations than in the previous year (see Table 33 on page 64). It also filed more criminal complaints than in 2020. The courts and public prosecutor's offices imposed what were in some cases hefty out-of-court settlements in insider trading proceedings for which BaFin had filed complaints. The largest settlement was €2 million. An overview of completed insider trading proceedings is given in Table 34 on page 64.

International administrative assistance

International administrative assistance is also an indispensable tool in insider trading surveillance. In 2021, BaFin requested support with its investigations from foreign supervisory authorities in 12 cases (previous year: 13 cases); see Table 32. Conversely, BaFin was asked to provide administrative assistance in 21 cases.

Table 32: Requests for international administrative assistance in insider trading investigations

Period	Requests made	Requests received	Total
2018	38	18	**56**
2019	15	22	**37**
2020	13	11	**24**
2021	12	21	**33**

Table 33: Insider trading investigations

Period	New investigations	Investigation results: Investigations discontinued	Investigations referred to public prosecutor's offices or BaFin's Administrative Fines Division: Public prosecutor's offices		Administrative Fines Division		Total (cases)	Ongoing investigations
			Cases	Individuals	Cases	Individuals		
2019	31	38	10	26	0	0	10	58
2020	19	13	15	36	1	1	16	48
2021	26	22	17	21	0	0	17	34

Table 34: Completed insider trading proceedings

Period	Total	Investigations discontinued	Investigations discontinued as part of out-of-court settlements	Final court judgements				Administrative fine proceedings discontinued
				Court rulings	Convictions following summary proceedings	Convictions following full trial	Acquittals	
2019	58	29	17	6	0	1	5	0
2020	19	13	3	0	0	0	0	3
2021	39	23	10	1	4	1	0	0

3.1.3.3 Ad hoc disclosures and managers' transactions

Ad hoc disclosures

In 2021, issuers published a total of 2,336 ad hoc disclosures (previous year: 2,397 disclosures; see Figure 11 on page 65). In addition, BaFin received 499 delay decisions (previous year: 496). The number of ad hoc disclosures remained roughly stable year-on-year. The effects of the COVID-19 pandemic had a major impact on 2021.

As was the case in 2020, many ad hoc disclosures related to financial results, forecasts and dividends. In line with this, BaFin focused mainly on the full and timely disclosure of inside information relating to financial results.

Managers' transactions

Managers – such as members of management boards or supervisory boards – of issuers that have been admitted to a regulated market, multilateral trading facility (MTF) or organised trading facility (OTF) must notify BaFin of any transactions in that issuer's shares or debt instruments, or in associated derivatives or other associated financial instruments ("managers' transactions"). The same also applies to persons closely associated with these managers. In 2021, BaFin received a total of 3,731 managers' transactions notifications (see Figure 12 on page 65).

3.1.4 Monitoring of short selling

3.1.4.1 Prohibitions

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

In 2021, BaFin launched 71 new investigations, as shown in Table 35 on page 66. The main triggers were suspicious transaction and order reports from investment services enterprises and credit institutions, or evidence available to BaFin itself.

Figure 11: Ad hoc disclosures and delay notifications

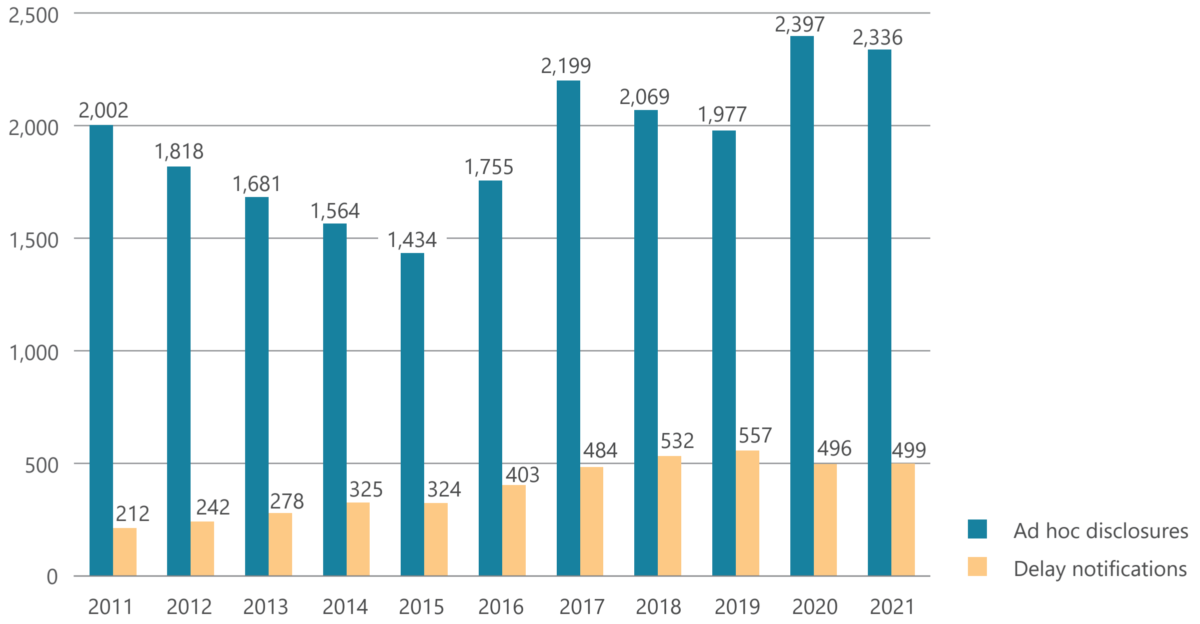
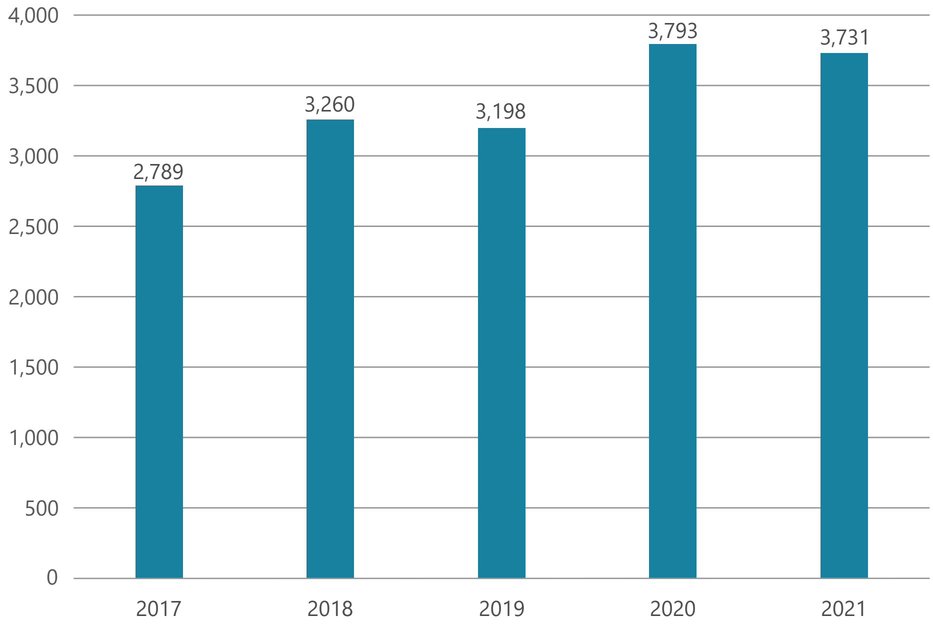


Figure 12: Managers' transactions notifications



3.1.4.2 Transparency requirements and notifications by market makers

Holders of net short positions or third parties engaged by them notify BaFin of these positions using the MVP Portal, BaFin's reporting and publishing platform (see Table 36 on page 66). At the end of 2021, 1,280 undertakings and no private individuals had registered for this reporting procedure. As in the past, the majority of the parties subject to the notification requirement came from the United States and the United Kingdom.

On 16 March 2020, ESMA decided to require net short position holders for all shares admitted to trading on a regulated market to report positions that reached or exceeded 0.1% of the issued share capital. This rule expired on 19 March 2021.

Table 35: 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		
2019	72	47	7	0	97	43
2020	106	81	14	0	135	54
2021	71	63	8	0***	118	49

* Referred to the competent authority in accordance with Article 35 of the EU Short Selling Regulation.
** As at 31 December.
*** The number of referrals to BaFin's Administrative Fines Division and the number of administrative fine proceedings initiated by BaFin (see 3.7) differ because the processes used are different.

Table 36: 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	
				issued by the federal government	issued by the federal states
2019	14,976	4,656	371	93	2
2020	24,981	4,604	558	70	0
2021	17,958	3,091	864	57	0

Notifications broken down by indices in 2021*			
DAX	MDAX	SDAX	TecDAX
2,007	5,486	4,341	3,156

* Since individual issuers are represented in two indices, notifications are counted more than once.

Table 37: Investigations of transparency requirements

Period	New investigations	Investigation results		Investigations	Ongoing investigations*
		Investigations discontinued	Referred to Administrative Fines Division		
2019	4	3	0	11	8
2020	5	1	1	13	11
2021	5	1	0	15	12

* As at 31 December.

Table 37 provides a summary of the investigations launched into breaches of the transparency requirements. BaFin focuses on cases of greater relevance, both when monitoring the notifications and in the resulting investigations.

Table 38 on page 67 provides 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 2021.

Table 38: Notifications by market makers and primary dealers in 2021

	Market makers	Primary dealers
Total number of companies	60	32
of which based in Germany	49	9
of which based abroad	11*	23**
Total number of notifications in 2021	2,452	1
Total number of notifications since September 2012	14,293	45

* Non-EU third country.

** Domiciled outside Germany.

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

In August 2021, BaFin authorised Clearstream Banking AG to perform banking-type ancillary services in accordance with Article 54 of the Central Securities Depository Regulation (CSDR). These are set out in section C of the CSDR and relate among other things to the provision of cash accounts to participants in its securities settlement system. This makes Clearstream Banking AG one of five central securities depositories in the EU permitted to perform banking-type ancillary services in addition to their core services and non-banking-type ancillary services.

ESMA recognised the British central counterparties (CCPs) ICE Clear Europe Limited, LCH Ltd. and LME Clear Ltd. as third-country CCPs in accordance with the provisions of the European Market Infrastructure Regulation (EMIR) with effect from 1 January 2021. By doing so, it ensured access by European market participants to clearing services performed by British CCPs at the end of the transition period as of 31 December 2020. In December 2021, ESMA recommended to the European Commission that the British CCPs should still be permitted to offer clearing services in the EU despite their considerable systemic importance. EU CCPs in the United Kingdom benefit from the Bank of England's Temporary Recognition Regime.

3.1.6 Supervision of OTC derivative transactions and commodities derivatives

The European Market Infrastructure Regulation (EMIR) requires counterparties with volumes of OTC derivatives in excess of certain thresholds to clear standardised OTC derivatives through a CCP and to provide collateral. However, the companies concerned can submit a request for, or notification leading to, an exemption in the case of transactions within a single group (see Table 39).

Table 39: Requests for exemption from collateralisation and clearing

	Notifications/ requests 2020	Notifications/ requests 2021
Total number of notifications/requests relating to collateralisation	58	34
relating to clearing	11	17

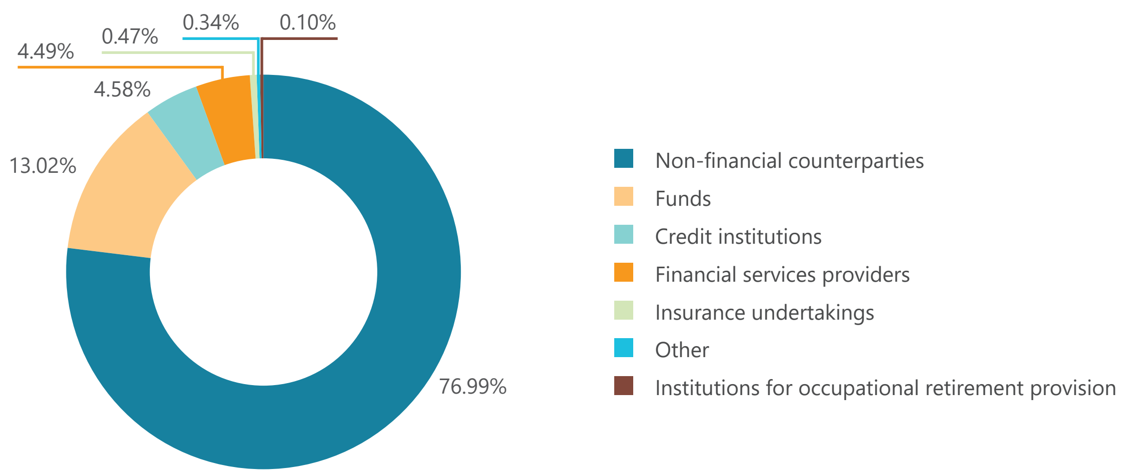
In Germany, it is the auditors' duty to monitor the risk mitigation techniques for derivatives when auditing the annual financial statements. Any deficiencies identified are then noted in the audit reports. BaFin uses a risk-based approach to assess the deficiencies in the case of financial counterparties as defined by Article 2 no. 8 of EMIR. If, in the case of non-financial counterparties, the volume of derivatives entered into exceeds certain thresholds, these counterparties must demonstrate in accordance with section 32 of the German Securities Trading Act (*Wertpapierhandelsgesetz*) that they comply with the material EMIR requirements. If BaFin establishes deficiencies it pursues them further. This was necessary in two cases in 2021. In addition, random checks are performed.

Figure 13 on page 68 provides a percentage overview of the counterparties, broken down into different categories.

Supervision of commodities derivatives

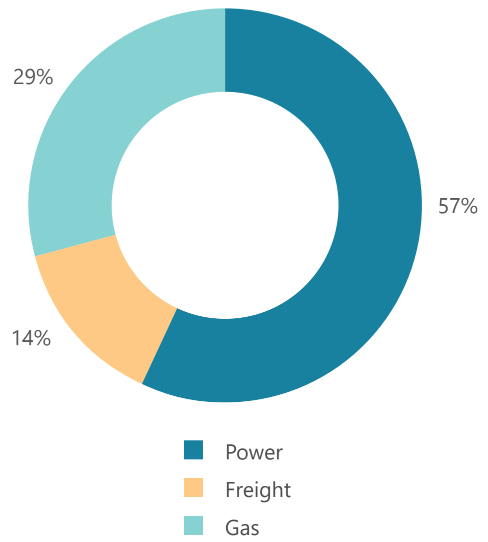
BaFin has issued a total of 21 individually defined position limits for the power, gas and freight underlyings for commodities derivatives listed on German trading venues (see Figure 14 on page 68). Until 28 November 2021, all other commodities derivatives in Germany were subject to blanket position limits of 2,500 units of trading. Since then, position limits have only applied to agricultural contracts and other commodities derivatives that are particularly liquid.

Figure 13: Counterparties by category as of 22 December 2021*



* The reporting date of 22 December 2021 was chosen to avoid potential distortions resulting from the fact that derivatives frequently expire at the year-end.

Figure 14: Individually defined position limits in 2021



Non-financial undertakings can apply to BaFin to have their hedging transactions exempted from position limits ("hedging exemptions"). In 2021, BaFin granted 61 such requests (see Table 40).

Table 40: Hedging exemptions approved by BaFin

	2020	2021
Total	58	61

3.1.7 Voting rights and duties to provide information to securities holders

Figure 15 on page 69 provides an overview of the number of issuers admitted to an organised market in 2021 and previous years, and of the publications in accordance with section 41 of the Securities Trading Act. Figures 16 and 17 on page 69 f. compare the number of voting rights notifications in 2021 to those in previous years (both overall and broken down by individual notification criteria).

3.1.8 Supervision of market structure and transparency requirements

BaFin supervises the requirements set out in Title II and Title III of the Markets in Financial Instruments Regulation. Reports submitted to ESMA's Financial Instruments Transparency System play a particularly important role here. The system consolidates reports on transactions in financial instruments submitted by trading venues and investment services enterprises at European level. ESMA then uses these as the basis for calculating thresholds, which are essential for determining the scope of pre- and post-trade transparency requirements.

In 2021, BaFin helped ESMA formulate of a large number of opinions on applications for waivers of pre-trade transparency requirements.

Waivers aim to strike a balance between the interests of ensuring maximum trading transparency so as to permit a high degree of price efficiency and the legitimate

Figure 15: Number of issuers admitted to an organised market and notifications published in accordance with section 41 of the Securities Trading Act

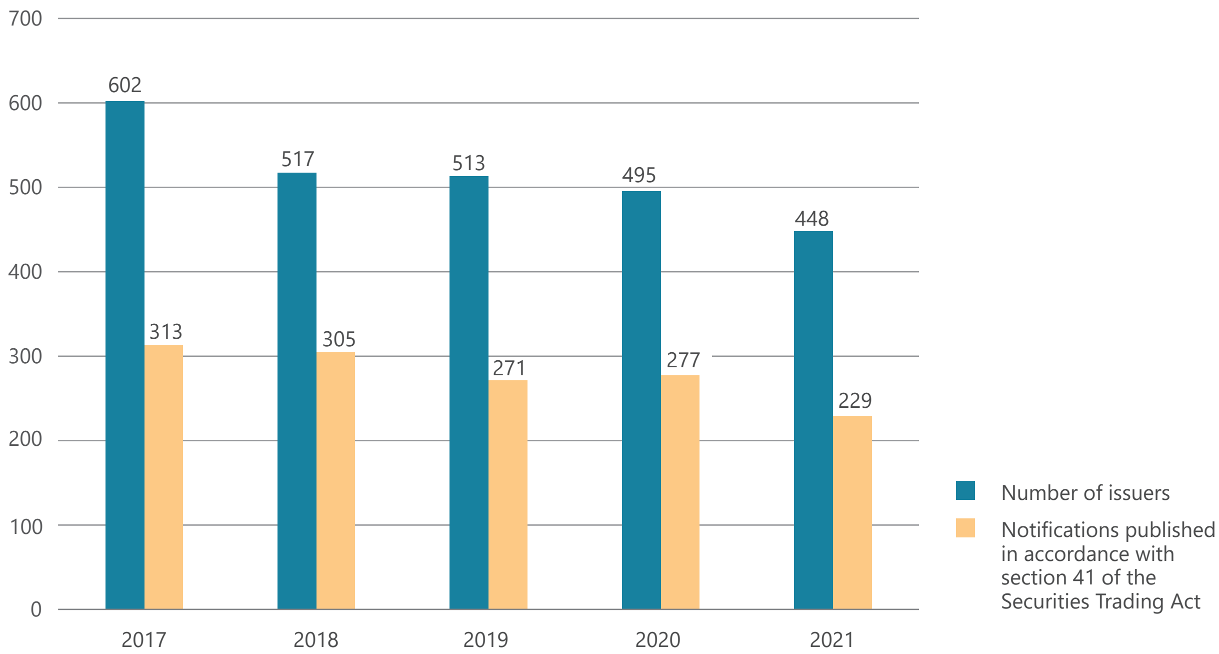


Figure 16: Total number of voting rights notifications

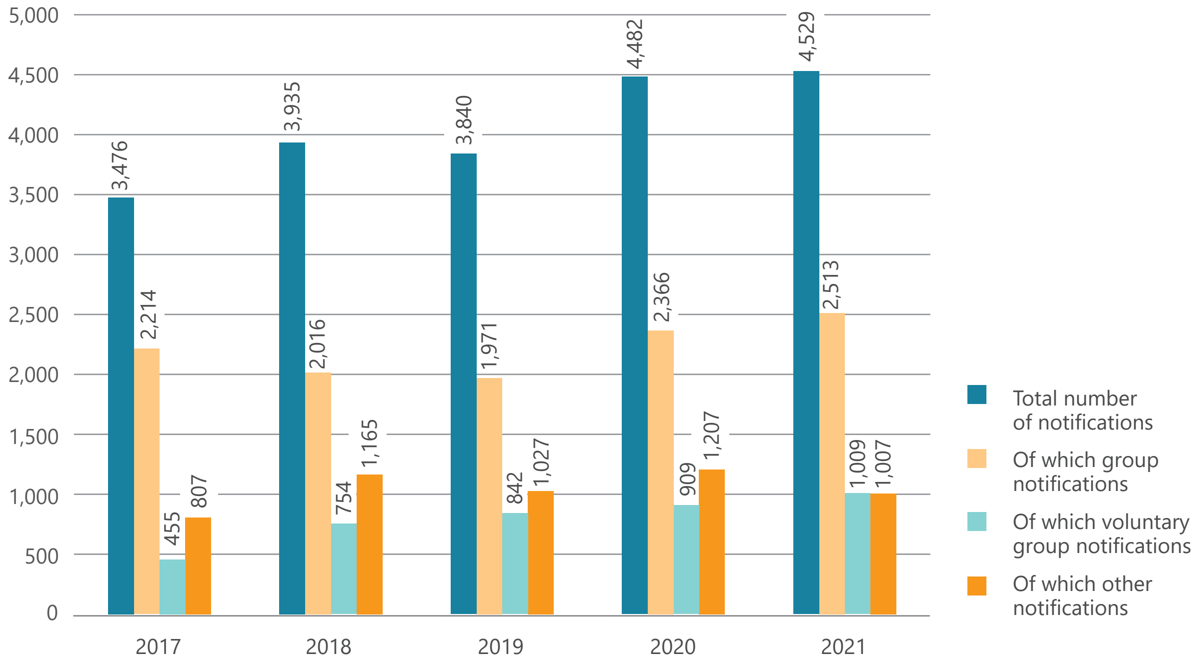
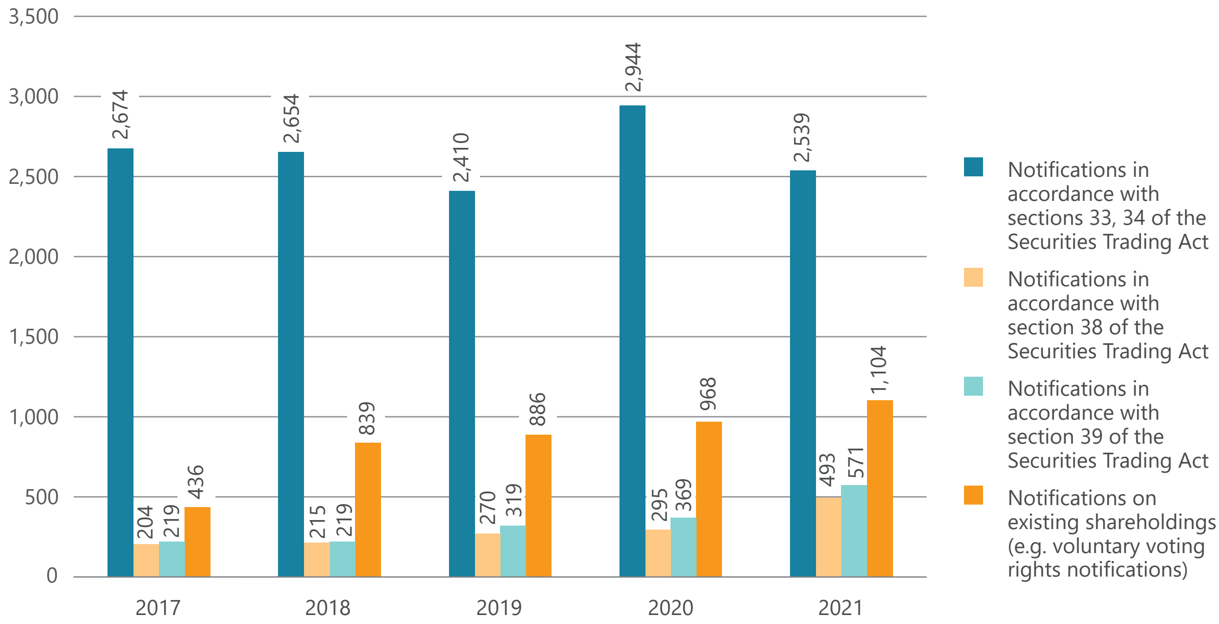


Figure 17: Voting rights notifications by notification criterion



interests of parties to transactions in being protected from adverse market movements.

3.1.9 Supervision of administrators, contributors and users as defined by the EU Benchmark Regulation

In February 2021, BaFin approved an application by an administrator in accordance with Article 34 of the EU Benchmark Regulation, which provides a harmonised framework for the requirements to be met with respect to the provision and use of benchmarks. Taken together with the administrators registered in 2019 and 2020, this brought the number of domestic administrators supervised by BaFin to 14 in the year under review.

In addition, BaFin addressed the question of how the supplementary requirements for administrators set out in the Benchmark Regulation are to be implemented. These are the requirements for climate benchmarks and other sustainability-related benchmarks that were introduced in 2019.

As at the end of 2021, BaFin transferred supervision of all third-country administrators whose benchmark country is Germany to ESMA in preparation for the latter assuming responsibility as from 1 January 2022 in accordance with Regulation (EU) 2019/2175.

During its supervision of contributors – i.e. undertakings that provide input data for critical benchmarks under the Benchmark Regulation – BaFin evaluated both the reports in accordance with Annex I of the Regulation and the annual financial statements submitted in accordance with the German Banking Act (*Kreditwesengesetz*). Where the reports contained objections, it requested the contributors to remedy them.

BaFin made users aware of the consequences that can result from the cessation of critical benchmarks by publishing articles in BaFinJournal (see “Bases of supervisory practice” under 3.1.1).

3.2 Prospectuses

3.2.1 Bases of supervisory practice

European Regulation Amending the Prospectus Regulation
On 18 March 2021, Regulation (EU) 2021/337 amending the Prospectus Regulation and to support the recovery from the COVID-19 crisis entered into force. Issuers that have already been admitted to trading on a regulated market or an EU growth market can now raise capital more easily using a significantly reduced prospectus – the EU Recovery prospectus.

German Electronic Securities Act now in force
The German Electronic Securities Act (*Gesetz zur Einführung elektronischer Wertpapiere*) entered into force on 10 June 2021. Since then, bearer bonds can be issued in digital form as (purely) electronic securities.

German Act to Further Strengthen Investor Protection

The German Act to Further Strengthen Investor Protection of 9 July 2021 (*Gesetz zur weiteren Stärkung des Anlegerschutzes*) entered into force on 17 August 2021. This entails a number of amendments to the German Capital Investment Act (*Vermögensanlagengesetz*). These include a prohibition on blind pools if a target investment has not been determined in concrete terms at the time the prospectus is prepared or, if section 2a of the Capital Investment Act applies, at the time the capital investment information sheet is prepared. Section 8 (4) of the Capital Investment Act took effect at the same time. This requires a prospectus procedure to be suspended as soon as BaFin has indications of investor protection issues. In such cases the procedure is stopped until BaFin has finally concluded whether or not it has to take product intervention measures. If BaFin prohibits an investment, approval of the prospectus is blocked. Section 5c of the Capital Investment Act also introduced the concept of a "controller of funds" (*Mittelverwendungskontrolleur*).

3.2.2 Securities prospectuses

The number of share prospectuses for the regulated market rose to 35 in 2021 – an increase of roughly 130%. In addition to IPO prospectuses, this includes prospectuses for shares whose initial listing on the regulated market was not connected with a public offering, such as in the case of spin-offs or the (exclusive) admission of shares following a private placement.

Securities information sheets

Raising capital using securities information sheets increased in 2021. The maximum offer volume for securities information sheets increased by around 50% to a total of roughly €439 million. 22 securities information sheet procedures related to non-German issuers; in roughly half of these procedures authorisation was not granted because the applications were either withdrawn or rejected.

Table 41 gives an overview of the number of approvals in 2021 and 2020.

Table 41: Overview of approvals

Product	2021	2020
Prospectuses (of which IPOs*)	250 (10)	301 (5)
Registration documents (of which URDs**)	29 (1)	32 (1)
Securities information sheet authorisations	164	95
STO*** prospectuses (securities information sheets)	0 (73)	3 (23)
Withdrawn (of which IPOs) (of which securities information sheets)	78 (3) (33)	53 (6) (26)
Approval refused (of which securities information sheets)	5 (4)	3 (1)

* Initial Public Offering.
** Universal Registration Document.
*** Security Token Offering.

3.2.3 Non-securities investment prospectuses

BaFin received considerably fewer prospectuses for approval in 2021 than in 2020 (see Table 42).

Table 42: Overview of prospectuses

Prospectuses	Received	Approved	Withdrawn	Rejected
Total in 2021	32	31	7	0
Total in 2020	51	44	8	0

Figure 18 on page 72 shows the distribution for 2021.

Figure 19, which follows it, gives a breakdown of prospectuses received in 2021 by type of participation.

The target investments for the prospectuses in 2021 are shown in Figure 20 on page 72.

Supplements to non-securities investment prospectuses

In 2021, BaFin received a total of 13 applications for the approval of supplements under the Capital Investment Act (previous year: 10 applications received). Nine supplements were approved (previous year: 10 applications).

Capital investment information sheets without a prospectus

In 2021, BaFin received somewhat more capital investment information sheets without a prospectus than in the previous year (see Table 43 on page 73).

Figure 18: Prospectuses received, approved, withdrawn

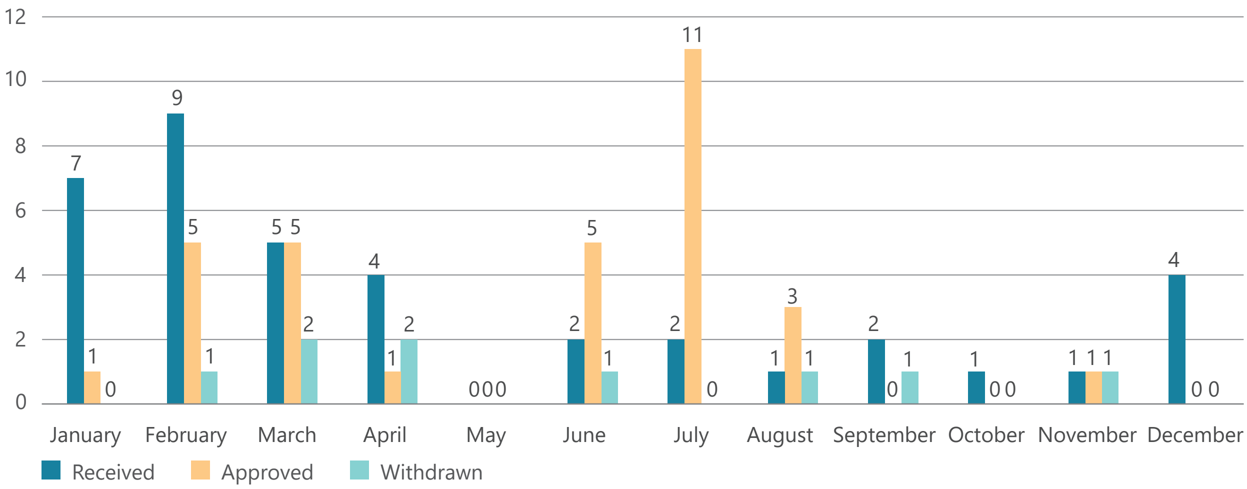


Figure 19: Prospectuses received by type of participation

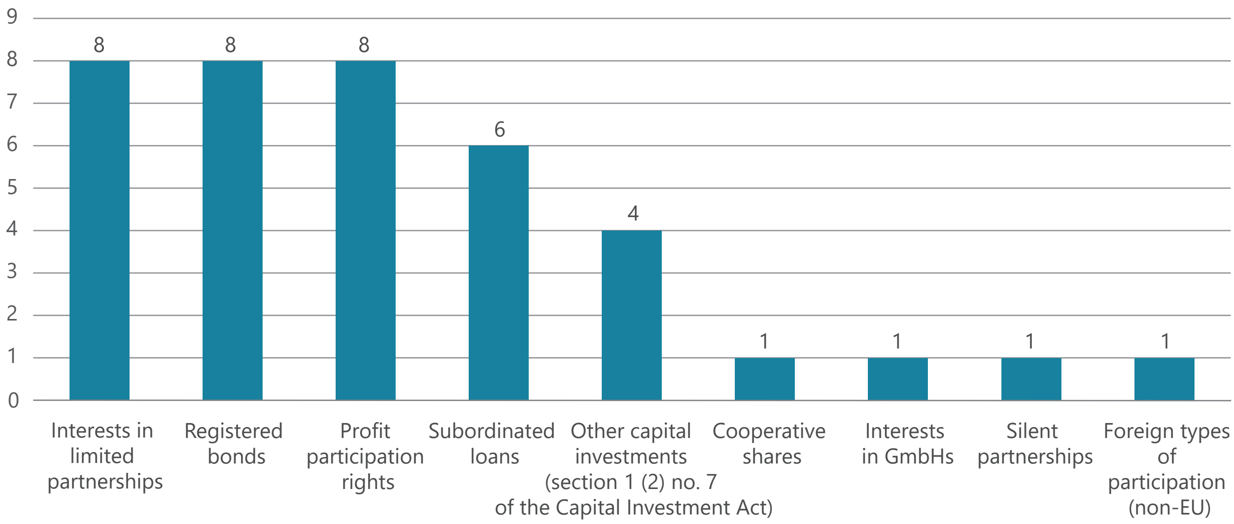


Figure 20: Prospectuses by target investment (in order of number of prospectuses received)

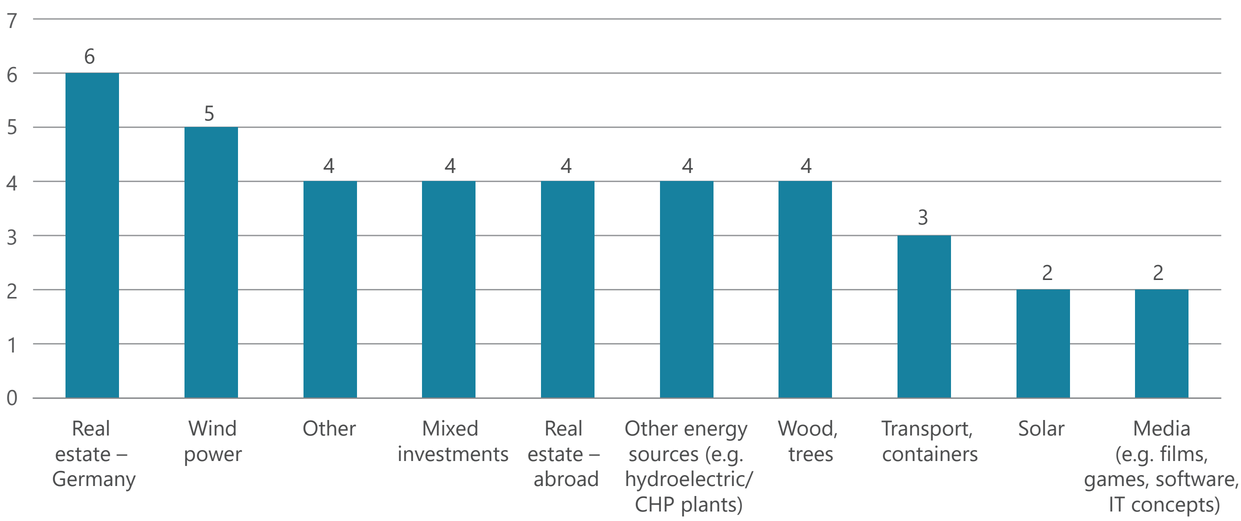


Table 43: Overview of capital investment information sheets without a prospectus

Capital investment information sheets	Received	Approved	Withdrawn	Approval refused
Total in 2021	719	499	62	0
Total in 2020	678	520	41	0

Figure 21 shows the breakdown of capital investment information sheets for 2021 by the categories “received”, “approved” and “withdrawn”.

A total of 228 capital investment information sheets have been submitted since the new rules set out in the Act to Further Strengthen Investor Protection entered into force on 17 August 2021. The amendments to this act introduced a ban on blind pools (section 5b (2) of the Capital Investment Act) and a controller of funds (*Mittelverwendungskontrolleur*) (section 5c of the Capital Investment Act).

III

Figure 21: Capital investment information sheets received, approved and withdrawn

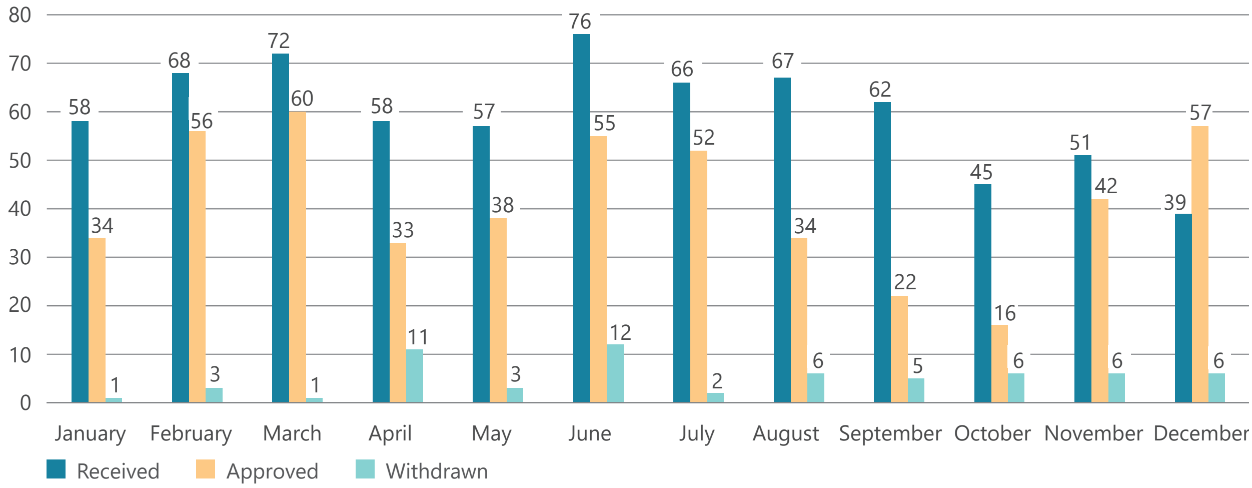


Figure 22: Capital investment information sheets without prospectus received by target investment

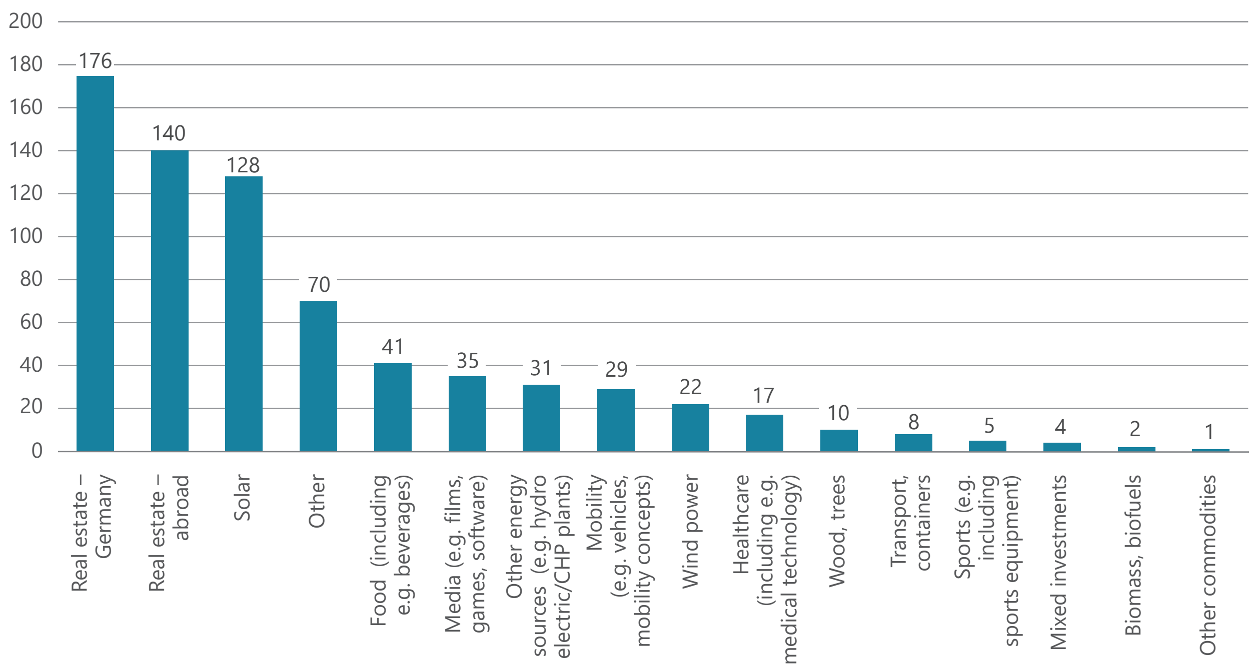
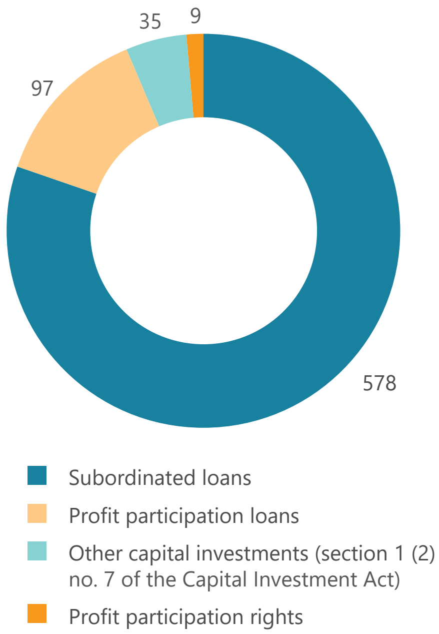


Figure 22 on page 73 shows the number of capital investment information sheets without a prospectus for the different target investments in 2021.

In terms of the type of participation involved, the majority of capital investment information sheets without prospectus relate to subordinated loans; this is shown in Figure 23.

Figure 23: Capital investment information sheets without prospectus received in 2021 by type of participation



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

BaFin launched 183 proceedings for possible violations of the Capital Investment Act, the German Securities Prospectus Act (*Wertpapierprospektgesetz*) and the EU Prospectus Regulation in the reporting period. The renewed increase in this number is due among other things to a greater number of tip-offs from the public.

Prohibitions
BaFin's Division for Supervision of Non-Securities Investment Products and Offers of Securities prohibited 4 offers of capital investments and 9 offers of securities in 2021 for breaching the requirement to draw up a prospectus, a securities information sheet, or a capital investment information sheet without a prospectus. All prohibitions were confirmed by the courts.

Information published on BaFin's website
In 50 cases, BaFin published information and the measures it took in relation to unauthorised offerings on its website. It publishes such items as soon as it has evidence to this effect and sufficient grounds for suspicion.

3.3 Takeovers

3.3.1 Bases of supervisory practice

German Crowdfunding Accompanying Act
The German Crowdfunding Accompanying Act (*Schwarmfinanzierung-Begleitgesetz*) introduced changes to takeover law taking effect on 11 June 2021. The lawmakers' aim is to reduce bureaucracy and streamline administrative processes. The Advisory Council (*Beirat*) and the Objections Committee (*Widerspruchsausschuss*) originally provided for in sections 5 and 6 of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) respectively were abolished. In addition, since then BaFin has published its administrative acts solely on its website, and no longer in the Federal Gazette (*Bundesanzeiger*).

Takeovers: new rules for fees legislation
A change in the fees legislation applicable to takeover-related proceedings came into force on 1 October 2021. Since that date, the fees for takeover-related proceeedings, among other things, have been levied on the basis of the time involved.

3.3.2 Monitoring of takeovers

BaFin's Securities Supervision Sector monitors offers to the public to acquire securities admitted to trading on a regulated market. It examines the offer documents for completeness and evident contraventions of the Securities Acquisition and Takeover Act. Section 14 (2) sentence 1 of that Act requires bidders to publish their offer documents if BaFin has expressly permitted this or if ten working days have passed since they were received by the Supervisory Authority but the latter has not prohibited the bid. BaFin is only entitled to prohibit bids in the case of one or more of the reasons set out in section 15 (1) or (2) of the Securities Acquisition and Takeover Act. Otherwise, BaFin cannot prevent publication of the offer document. Figure 24 on page 75 provides an overview of the number of offer documents for the different offer types that were published in 2017 to 2021, plus the prohibitions made.

Exemption procedures
In certain circumstances, BaFin can exempt a legal entity from the duty to make an offer that it would otherwise have to comply with in accordance with the Securities Acquisition and Takeover Act. Lawmakers have provided two options to do this: an 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 that act. Figure 25 shows the numbers of exemption applications made in 2021 and the previous year.

III

Figure 24: Offer types and prohibitions

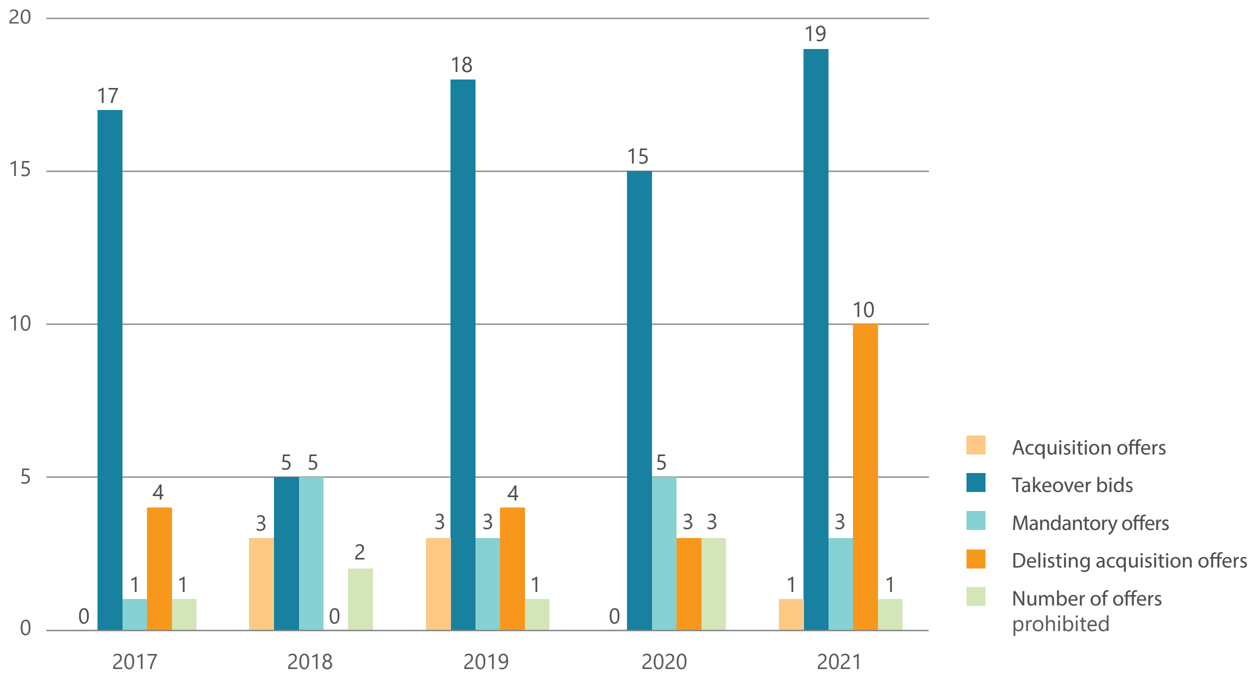
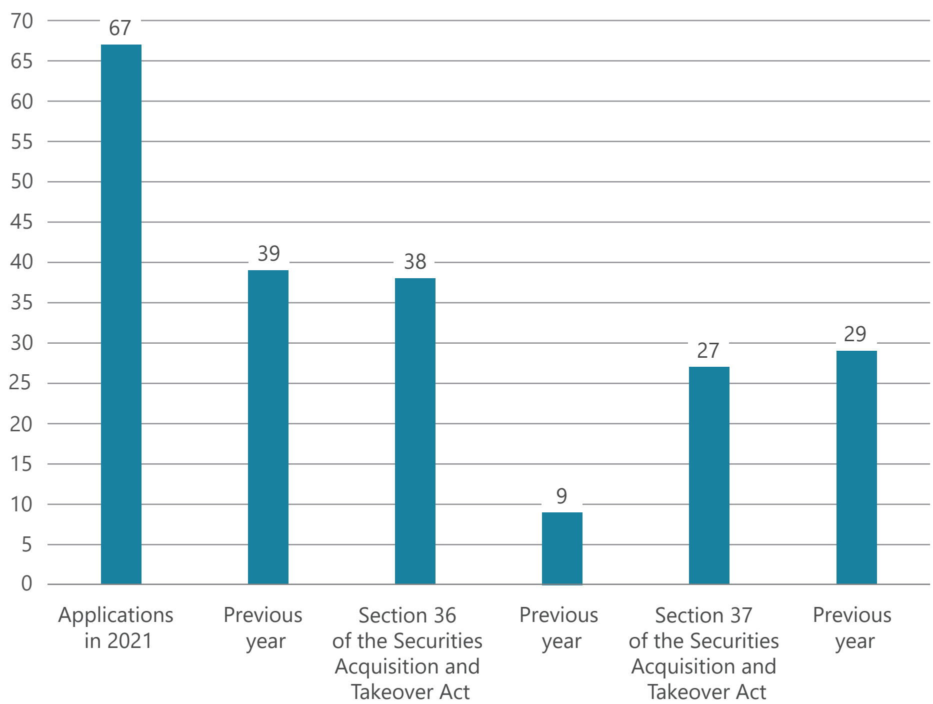


Figure 25: Exemption applications



3.4 Financial reporting enforcement

3.4.1 Bases of financial reporting enforcement

The financial reporting enforcement procedure changed fundamentally in 2021.

German Act to Strengthen Financial Market Integrity
Large parts of the German Act to Strengthen Financial Market Integrity (*Gesetz zur Stärkung der Finanzmarktintegrität*) entered into force on 1 July 2021, and the Act took effect in full at the beginning of January 2022. The previous two-tier enforcement procedure (see info box) was replaced by a new procedure for which BaFin alone is responsible. Additional information is provided in the expert article on the BaFin website entitled "State-of-the-art supervision: The new financial reporting enforcement mechanism" dated 27 January 2022 and in the "Spotlights" section of this Annual Report.

BaFin publishes areas of emphasis for financial reporting enforcement
BaFin published the areas of emphasis for financial reporting enforcement in 2022 on 29 November 2021. Among other things, it announced that it would focus on reviewing reverse factoring in companies' 2021 consolidated financial statements, as this type of corporate finance is being used more and more frequently. In addition, BaFin is planning to examine, in justified individual cases, whether reported cash and cash equivalents and other assets actually exist.

3.4.2 Monitoring of financial reporting and publication of financial reports

Monitoring of financial reporting
As at 1 July 2021, 531 companies from 10 countries were subject to the two-tier enforcement procedure by BaFin and the German Financial Reporting Enforcement Panel (*Deutsche Prüfstelle für Rechnungslegung* – FREP). Table 44 on page 77 provides an overview of the enforcement procedures that were completed by BaFin in 2020.

Publication of financial reports
In 2021, BaFin performed a total of 881 examinations (previous year: 888 examinations) to establish whether issuers had published their annual and half-yearly financial reports online on time. In 8 cases (previous year: 14 cases) it found indications of violations, which it pursued further in administrative fine proceedings. BaFin also continued in 2021 to monitor the publication of notifications intended to provide information on when and where issuers make their financial reports available online.

In addition, it verified whether the published half-yearly financial reports contained all the minimum

At a glance

Two-tier financial reporting enforcement

The former two-tier financial reporting enforcement procedure was applicable until 31 December 2021:

Tier 1: German Financial Reporting Enforcement Panel (FREP): companies cooperate voluntarily
- a. random sampling examinations
- b. ad hoc examinations (independently or at BaFin's request)

Tier 2: BaFin examination (sovereign process): companies are obliged to cooperate
- a. the company refuses to cooperate in the FREP's examination or
- b. the company does not agree with the result of the FREP's examination or
- c. BaFin has material doubts regarding the findings or the way the FREP's examination was conducted
- d. BaFin can assume responsibility for the examination at any time if it is itself performing or has performed an inspection in accordance with section 44 (1) sentence 2 of the Banking Act, section 14 sentence 2 of the German Capital Code (*Kapitalanlagegesetzbuch*) or section 306 (1) number 1 of the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) and the examinations relate to the same subject matter.

Table 44: Completed enforcement procedures

	Errors found: yes	Errors found: no	Errors published: yes	Errors published: no
Company accepts the FREP's* findings	11	n/a**	11	0
Company does not accept the FREP's findings	2	0	2	0
Company refuses to cooperate with the FREP	2	1	2	0
BaFin has material doubts as to the accuracy of the FREP's findings/procedure	0	0	0	0
BaFin has assumed responsibility for the examination (banks, insurance undertakings)	1	0	1	0
Total	**16**	**1**	**16**	**0**

* "FREP" stands for the "Financial Reporting Enforcement Panel".
** n/a: not applicable.

Table 45: Examination of the publication of financial reports

		2020	2021
I	**Examinations**		
	Examinations as to whether issuers published their annual financial reports/annual financial information* and half-yearly financial reports online by the required deadline	888	881
II	**Administrative proceedings**		
	Administrative proceedings launched	5	4
	Administrative proceedings completed	7	14
	Total proceedings pending	14	4
	Threats of coercive fines	3	2
	Imposition of coercive fines	1	2
III	**Publication of measures in accordance with section 124 of the Securities Trading Act (including notes)**		
	Number of companies affected	8	3
IV	**Administrative offence proceedings** **		
	No financial report published online	14	8
	No notification on the publication of annual reports (generally the case where the financial report is also missing)	17	16
	Financial report does not contain the minimum components required by law	1	1

* The German Federal Office of Justice (*Bundesamt für Justiz*) monitors publication of annual financial information by issuers domiciled in Germany. BaFin examines whether these companies have published the associated notifications (i.e. Information on when and where the annual financial information has been made available online).
** The number of referrals to BaFin's Administrative Fines Division and the number of administrative fine proceedings initiated by BaFin (see 3.7) differ because the processes used are different.

components required by law. BaFin launched a number of administrative proceedings to enforce the financial reporting requirements in 2021; Table 45 provides an overview of its examinations and administrative proceedings.

3.5 Supervision of investment institutions

3.5.1 Bases of supervisory practice

The bases of supervisory practice for investment institutions were modified in 2021.

European Crowdfunding Service Provider Regulation
The European Crowdfunding Service Provider Regulation[13] entered into force on 10 November 2021. It regulates crowdfunding service providers throughout the EU, provided that these fall within its remit.

German Investment Firm Act now in force
The German Investment Firm Act (*Wertpapierinstitutsgesetz*) entered into force on 26 June 2021. It transposes the European Investment Firm Directive (IFD) into national law. The new rules establish an appropriate supervisory regime for investment firms. The Investment Firm Act covers all undertakings previously known as "financial services institutions" as defined by the Banking Act that provide investment services. Please also see the expert article entitled "*Passgenaue Regeln für Wertpapierinstitute*" ("Customised rules for investment firms") starting on page 6 of the June 2021 issue of BaFinJournal.

Additionally, more specific details of these rules for investment firms (previously "financial services institutions") are to be given in regulations, regulatory technical standards (RTSs) and guidelines. Until these are available, certain BaFin Circulars and Guidance Notices must continue to be used, with the necessary modifications.

3.5.2 Investment firms

Since 26 June 2021, the above-mentioned provisions of the Investment Firm Act have applied to investment firms. BaFin defined areas of emphasis for the examination of seven of these firms in 2021. These areas of emphasis focused in particular on organisational issues such as the inclusion of tied agents in internal control procedures, the appropriateness and effectiveness of IT systems and IT processes (BAIT), the appropriateness of outsourcing management (MaRisk) and the appropriateness of risk management. Another area of emphasis was the suitability report in the context of investment advice in accordance with section 64 (4) of the Securities Trading Act.

Brexit transitional period ends
The Brexit transitional period ended as of 31 December 2020. During this period, branches of investment firms from the United Kingdom were still permitted to offer their services in Germany.

13 Regulation (EU) 2020/1503 on European crowdfunding service providers for business.

Some of the branches active in Germany limited their operations to business not requiring authorisation in time for the deadline. Others transferred their activities to newly formed companies under German law or to branches of group companies from another EU member state and closed the branch concerned. Only a few companies completely discontinued operations.

BaFin obtained confirmations from the branches still in existence at the start of 2021 that these had discontinued operations requiring authorisation.

Table 46 on page 79 provides an overview of the number of investment firms, their performance year-on-year and BaFin's supervisory activities.

3.6 Supervision of the investment business

3.6.1 Bases of supervisory practice

The bases of supervisory practice for the investment business were partially modified in 2021.

German Fund Location Act
Large parts of the German Fund Location Act (*Fondsstandortgesetz*) entered into force on 2 August 2021. The Act contains rules designed to modernise and digitalise fund supervision and to enhance the competitiveness of Germany as a business location for funds.

3.6.2 Asset management companies

In 2021, 6 (previous year: 20) German asset management companies (*Kapitalverwaltungsgesellschaften*) were granted authorisations to manage investment funds or had their existing authorisations extended by BaFin. A total of 9 companies surrendered their authorisation. This brought to 139 the number of companies domiciled in Germany that were authorised in accordance with the German Investment Code (*Kapitalanlagegesetzbuch*) at the end of 2021 (previous year: 143 companies). In addition, 70 asset management companies registered in accordance with section 44 of the Investment Code; 48 companies had obtained registration in 2020. A total of 25 asset management companies surrendered their registration. Consequently, the total number of asset management companies registered at the end of 2021 was 476 (previous year: 431 asset management companies).

Asset management companies established a branch in another EU member state or offered cross-border services in 19 cases (previous year: 12 cases). Conversely, 39 companies from other EU countries notified BaFin

Table 46: Investment firms

Investment firms	2021	2020
Number of institutions under supervision		
Investment firms under supervision	745	710 (securities trading firms)
Of which: Large investment firms	1	
Medium-sized investment firms	94	
Small investment firms	650	
Domestic branches of foreign investment firms	45	43
Domestic investment firms that have issued notifications of cross-border activity within the EU	383	383
Tied agents	20,074	20,344
Liable undertakings	160	174
Changes in number of institutions under supervision		
Authorisations issued	23	24
Expanded authorisations issued	16	10
Authorisations returned	33	27
Ongoing supervision		
Special inspections	4	0
Areas of emphasis for inspections	7	7
Shadowed inspections of institutions	0	4
Supervisory interviews	46	19

Table 47: Open-ended investment funds

	2021		2020	
	Number	Assets	Number	Assets
Total	7,572	€2,835.2 billion	7,214	€2,550.9 billion
Retail funds	3,106	€681.5 billion	2,926	€571.9 billion
Special AIFs*	4,466	€2,153.7 billion	4,288	€1,979.0 billion

* Alternative investment funds.

that they had established a branch or started providing cross-border services in Germany (previous year: 37 companies).

Risk-based supervision

During the year under review, BaFin performed a total of 142 supervisory visits and annual interviews, compared with 118 such events in 2020. In addition, it accompanied 11 financial statement audits and special audits at asset management companies, depositaries and trustees (previous year: 5 audits accompanied).

As in the previous year, BaFin's focus in the supervisory and annual interviews in 2021 was on sustainable investment and digitalisation, and on the impact of the COVID-19 pandemic.

3.6.3 Investment funds

The German investment market continued to grow in 2021 (see Table 47). Both special and retail funds recorded cash inflows (see Table 48 on page 80).

Table 48: Cash flows

	2021	2020
Aggregate net cash inflows	€131.9 billion	€116.7 billion
Aggregate gross cash inflows	€407.0 billion	€438.3 billion
Gross cash inflows into retail investment funds	€131.1 billion	€128.8 billion
Gross cash inflows into special AIFs	€275.9 billion	€309.5 billion
Aggregate cash outflows	€275.1 billion	€321.6 billion

All in all, BaFin approved 130 new retail investment funds in accordance with the Investment Code in 2021, including 104 undertakings for collective investment in transferable securities (UCITS)[14], four open-ended retail AIFs and 22 closed-ended retail AIFs. The abbreviation "AIF" stands for "alternative investment fund". In 2020, BaFin had authorised a total of 164 retail investment funds in accordance with the Investment Code, including 125 UCITS, 7 open-ended retail AIFs and 32 closed-ended retail AIFs.

3.6.3.1 Open-ended real estate funds and hedge funds

At the end of 2021, 66 asset management companies were authorised to manage open-ended real estate funds (previous year: 66). BaFin granted approvals to 2 companies in 2021, while 2 companies surrendered their authorisation.

A total of 19 asset management companies managed open-ended real estate funds for retail investors as at the end of the year. 42 companies limited their activities to the management of open-ended real estate special funds in 2021. 5 companies did not use their authorisations and have not yet established open-ended real estate funds. 2 open-ended real estate funds for retail investors were issued in the course of 2021, while 1 was liquidated. This increased the total number of such funds to 59 (previous year: 58 funds). The aggregate fund volume for this market segment was €126.14 billion as at the end of the year (previous year: €118.27 billion).

Gross cash inflows into open-ended real estate funds for retail investors amounted to €10.3 billion in the year under review. Gross cash inflows into open-ended real estate special funds amounted to €19.3 billion (previous year: €16.5 billion). Fund assets held by open-ended real estate special funds amounted to €156.5 billion at the end of 2021, compared with €133.6 billion in the previous year.

The number of funds in liquidation fell to 20, after one fund was wound up as of the end of the first quarter of 2021. The aggregate fund volume amounted to €1.22 billion (previous year: €1.65 billion). The management rights for all of these funds have already been transferred to the depositaries.

There were 12 hedge funds in Germany at the end of 2021, as in the previous year. Their total volume under management was €5.84 billion (previous year: €4.5 billion). As in 2020, no German funds of hedge funds were active on the German market.

3.6.3.2 Foreign investment funds

In 2021, 10,638 EU UCITS were authorised for marketing in Germany (previous year: 10,409 funds). BaFin received a total of 845 new notifications from companies wanting to market EU UCITS, compared with 849 new notifications in 2020.

In addition, 3,594 EU AIFs and 580 third-country AIFs were authorised to market units or shares in Germany (previous year: 3,075 EU AIFs and 527 third-country AIFs). A total of 964 (previous year: 900) AIFs started marketing in Germany in 2021. Conversely, 392 EU AIFs and foreign AIFs ceased marketing.

3.7 Administrative fine proceedings

Total administrative fines imposed by BaFin's Securities Supervision Sector in 2021 amounted to roughly €17.393 million. BaFin initiated 125 new administrative fine proceedings[15] due to infringements of capital

14 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.

15 See chapter III.8.

Table 49: Administrative fine proceedings – Securities Supervision

	Proceedings pending at the beginning of 2021	New proceedings initiated in 2021	Proceedings completed by imposing an administrative fine	Highest individual administrative fine imposed (€)[17]	Proceedings discontinued for factual or legal reasons	Proceedings discontinued for discretionary reasons	Proceedings pending at the end of 2021
Reporting requirements	0	0	0	–	0	0	0
Ad hoc disclosures	64	15	6	240,000	2	11	60
Managers' transactions	8	3	0	–	1	2	8
Market manipulation	3	1	0	–	0	1	3
Notification and publication requirements	105	53	16	1,830,000	4	28	110
Duties to provide information to securities holders	0	0	0	–	0	0	0
Short selling	0	1	0	–	0	0	1
Financial reporting requirements	104	27	12	580,000	10	31	78
Prospectuses	11	2	1	22,000	0	2	10
Company takeovers	20	13	1	36,000	1	6	25
Conduct of business rules and organisational and transparency requirements	3	7	0	-	1	0	9
Other	14	3	0	8,663,200	2	3	12

markets law[16]; 332 proceedings were pending as at the start of 2021. BaFin concluded 141 proceedings, 36 of them by imposing administrative fines. This translates into a prosecution ratio of approximately 25.5%. BaFin discontinued another 105 proceedings, 84 for discretionary reasons (see Table 49).

16 This includes violations of the Securities Trading Act, the Securities Acquisition and Takeover Act, the Capital Investment Act, the Securities Prospectus Act, Regulation (EU) No 1286/2014 (PRIIPs Regulation), Regulation (EU) No 236/2012 (EU Short Selling Regulation), Regulation (EU) No 600/2014 (MiFIR), Regulation (EU) No 2016/1011 (Benchmark Regulation) and Regulation (EU) No 596/2014 (MAR).

17 The figures relate to proceedings that were completed and became final in 2021 by way of an administrative fine being imposed.

4 Consumer protection

4.1 Legal bases of supervisory practice

There have been several changes to the legal bases underlying BaFin's supervisory practice for consumer protection in 2021.

European Disclosure Regulation
A number of the provisions of the European Disclosure Regulation (EU) 2019/2088 have been applied since 10 March 2021. These contain the material sustainability-related information and disclosure obligations for financial market participants and financial advisors.

German Act to Strengthen Financial Market Integrity
Large parts of the German Act to Strengthen Financial Market Integrity (*Gesetz zur Stärkung der Finanzmarktintegrität*) entered into force on 1 July 2021. This provides BaFin with new, efficient powers of investigation. For example, BaFin is now permitted to engage in mystery shopping, something that has already been successfully tested in a pilot project. Further details can be found in the expert article entitled "State-of-the-art supervision: mystery shopping" published in February 2022 on BaFin's website.

Act to Strengthen Investor Protection
The German Act to Strengthen Investor Protection of 9 July 2021 (*Gesetz zur weiteren Stärkung des Anlegerschutzes*) entered into force on 17 August 2021. This entails a number of amendments to the German Capital Investment Act (*Vermögensanlagengesetz*).

Ruling by the Federal Court of Justice on clauses in general terms and conditions of business
In a judgement of 27 April 2021 (case ref. XI ZR 26/20), Civil Panel XI of the Federal Court of Justice (*Bundesgerichtshof*) ruled that clauses in a bank's general terms and conditions of business feigning customer consent to amendments to these general terms and conditions without any restriction on content are invalid. In its supervisory statement dated 26 October 2021, BaFin outlined its expectations of credit institutions in relation to this ruling.

Ruling by the Federal Court of Justice on interest rate adjustment clauses in long-term savings plans
On 6 October 2021, in a model declaratory action (*Musterfeststellungsklage*) filed by the Saxony Consumer Centre (*Verbraucherzentrale Sachsen*), the Federal Court of Justice (*Bundesgerichtshof*) ruled on the validity of interest rate adjustment clauses in premium-aided savings plans (case ref. XI ZR 234/20). It has maintained its previous position, which was used by BaFin to formulate interest rate adjustment clauses in long-term savings plans. However, the court referred the question of which reference rate is appropriate back to the Dresden Higher Regional Court (*Oberlandesgericht Dresden*). This means that one decisive aspect of the Court's ruling cannot yet be implemented.

General administrative act on interest rate adjustment clauses in premium-aided savings plans
After making a number of attempts to find a mutually acceptable solution to the problem of invalid interest rate adjustment clauses in long-term savings plans, BaFin issued a general administrative act on 21 June 2021. This requires the plan providers concerned to inform customers that the clauses originally agreed are invalid, and to offer potential solutions. More than 1,100 credit institutions have filed objections to the general administrative act, which are to be ruled on using a test case.

4.2 Product interventions

BaFin can restrict or prohibit the marketing, distribution or sale of financial instruments if this raises material investor protection concerns. In 2021, BaFin investigated 54 new offerings – including equities, certificates, subordinated loans, and other investments – in relation to such concerns. BaFin prohibited one equities offering because of material consumer protection concerns. Eight providers discontinued their offerings in the course of an ongoing product intervention procedure.

4.3 Consumer complaints and enquiries

Customers of supervised institutions and undertakings can complain about these to BaFin.

4.3.1 Credit institutions and financial services providers

The number of submissions relating to credit and financial services institutions processed by BaFin in 2021 saw another clear rise year-on-year: a total of

Figure 26: Submissions relating to credit and financial services institutions

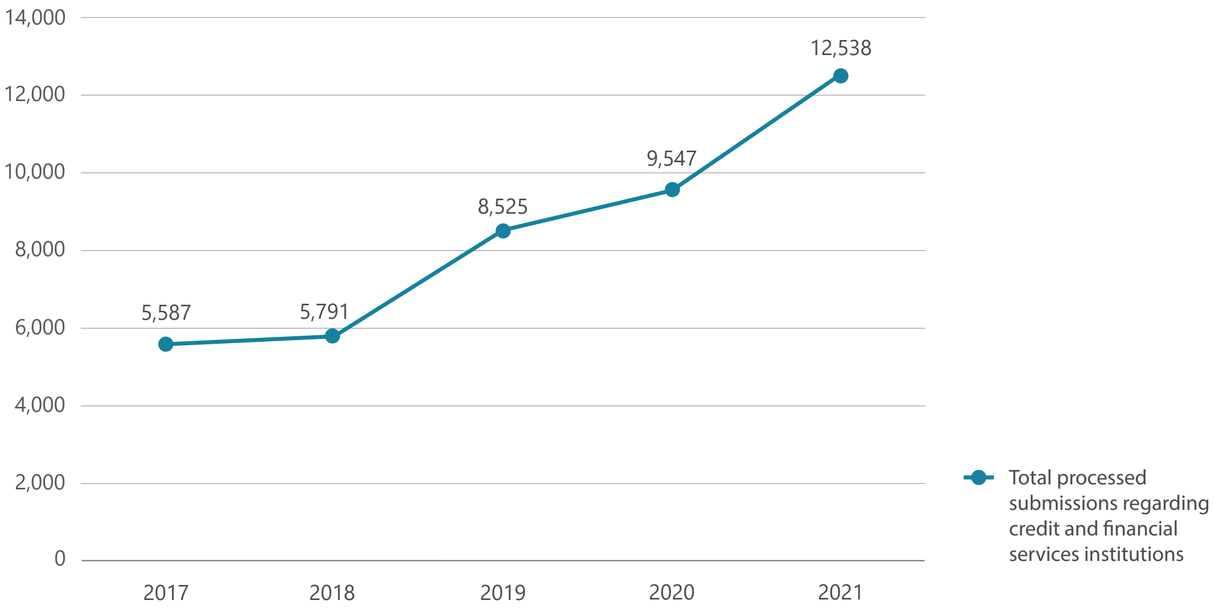


Table 50: Complaints by group of institutions since 2017

Year	Private banks	Savings banks	Public sector banks	Cooperative banks	Mortgage banks	*Bauspar-kassen*	Financial services providers*	Foreign banks	Total complaints
2021	6,702	2,370	175	1,710	3	248	226	949	12,383
2020	5,617	997	618	944	7	265	224	737	9,409
2019	5,545	885	168	698	6	248	253	605	8,408
2018	2,998	721	135	677	5	413	175	415	5,539
2017	2,640	660	104	696	8	351	586	380	5,425

* E.g. leasing and factoring undertakings.

12,538 submissions were received in the reporting period – 12,383 complaints and 155 general enquiries (see Figure 26 and Table 50 on page 83). This compares with a total of 9,547 submissions in 2020. The complaints were upheld in 1,232 cases.

In particular, the submissions complained about how institutions were dealing with the Federal Court of Justice's (*Bundesgerichtshof*) decision dated 27 April 2021 (case ref. XI ZR 26/20) mentioned above in 4.1. The Court ruled that the change mechanism contained in banks' and savings banks' general terms and conditions of business was invalid. Many complaints related to the way in which institutions had reacted to requests for refunds made by customers who wanted fees charged in error to be refunded. Many customers objected to the way in which institutions had attempted to arrive at a new agreement with a valid basis for the existing contractual relationship. The announcement by some banks and savings banks that they would terminate the business relationship if customers did not consent to the new terms and conditions was also criticised as being an inappropriate threat by many of those affected.

In addition, BaFin received a large number of complaints about variable-rate premium-aided savings plans in 2021, as in the previous year. The objections revolved around the institutions' interest rate adjustment mechanisms: these often ignored the case law requirements.

4.3.2 Insurance undertakings

In 2021, BaFin completed processing of a total of 7,512 submissions relating to insurance undertakings (previous year: 8,216 submissions) (see Figure 27). The submissions were successful in 2,734 cases.

A total of 7,274 submissions (previous year: 7,969 submissions) were attributable to the insurance classes mentioned in Table 52 on page 85. This included 6,925 complaints, 299 general enquiries and 50 petitions, which reached BaFin via the German Bundestag or the Federal Ministry of Finance (*Bundesfinanzministerium*).

The size of the insurance benefits granted and the claims adjustment process also led to a large number of complaints in 2021, as can be seen from Table 51. In the case of submissions relating to life insurance, many customers wanted to have their maturity benefits checked. In the private health insurance area, BaFin received a large number of complaints relating to premium adjustments, as was repeatedly the case in the past.

Table 51: Most frequent reasons for complaints in 2021

Reason	Number
Claims handling/delays	1,369
Changes and adjustments to premiums	750
Sum insured/expired insurance benefit	703

Figure 27: Submissions relating to insurance undertakings

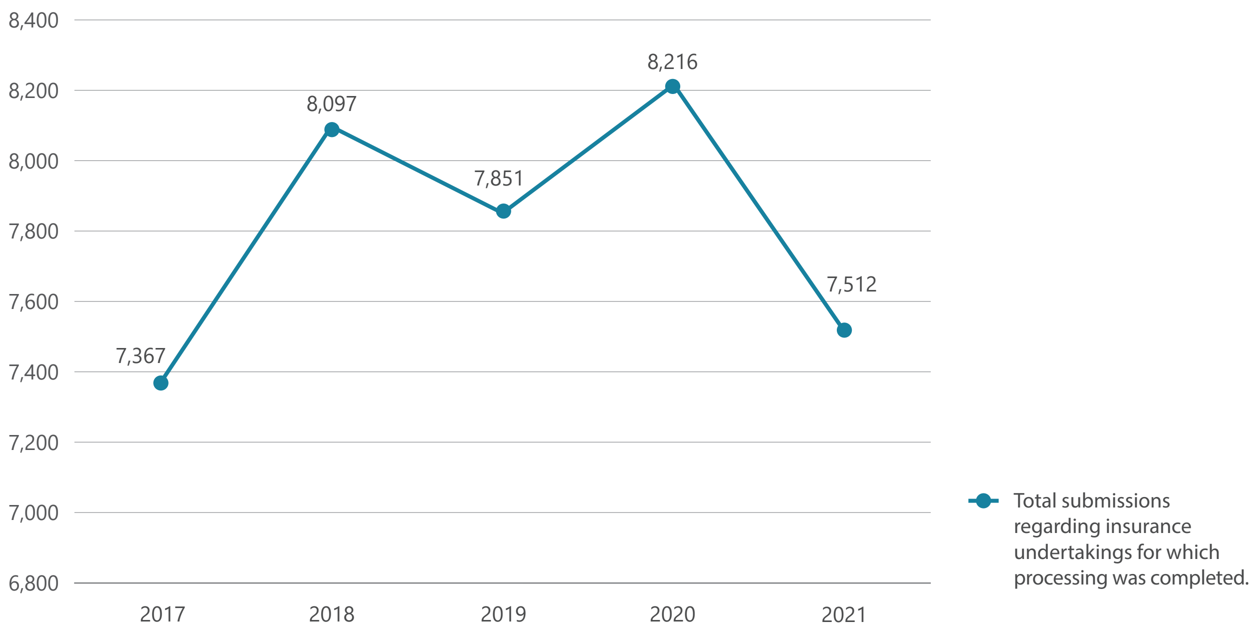


Table 52: Submissions received by insurance class since 2017

Year	Life	Motor	Health	Accident	Liability	Legal expenses	Building/ contents	Other classes	Miscellaneous*	Total
2021	1,602	1,790	1,725	173	348	444	601	591	238	**7,512**
2020	1,723	2,021	1,607	209	389	567	617	836	247	**8,216**
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**

III

4.3.3 Securities business

In 2021, BaFin received a total of 6,059 complaints from investors relating to securities transactions (previous year: 2,325 complaints) and 391 written enquiries (previous year: 376 enquiries).

An unusually large number of complaints related to trading disruptions at online brokers. This was due on the one hand to increased trading by investors but on the other also to organisational problems at the institutions caused by growing client numbers.

In addition, clients frequently complained about unusually long processing times that arose at some institutions when instructions to transfer securities accounts were issued.

4.3.4 Investment and asset management companies

In 2021, BaFin received a total of 186 complaints and queries from consumers in relation to investment supervision (previous year: 142 submissions). Among other things, these related to asset management companies' publication requirements, their management decisions and investment fund distribution.

4.3.5 Consumer helpline

BaFin processed 20,886 helpline calls in 2021 (previous year: 17,779)[18] on topics relating to the financial market, specific consumer protection issues and problems with banks, insurance undertakings and financial services providers. Of these calls, 17.07% related to the insurance sector and 55.86% to the banking sector. Another 14% of calls concerned securities supervision.

You may also find the following interesting

BaFin participates in fifth World Investor Week

BaFin took part in the World Investor Week for the fifth time in a row in 2021. For example, BaFin posted explanatory videos on its website detailing when it makes sense to check one's insurance status and why such a check can be worth it. In addition, BaFin experts participated in two Digital Stammtische (get-togethers) hosted by Digital-Kompass, which use videos aimed at older consumers in particular to explain financial topics.

The annual global World Investor Week (WIW) is promoted by the International Organization of Securities Commissions (IOSCO). The fifth Word Investor Week took place from 4–8 October 2021.

4.4 Supervision of Compliance with Rules of Conduct and Organisational Requirements under the Securities Trading Act

BaFin monitors whether investment services institutions comply with the rules of conduct and organisational requirements imposed on them. It can use a wide range of different supervisory instruments for this and access a number of different sources of information. These include supervisory discussions and on-site inspections, the annual audits performed by auditors under the German Securities Trading Act (*Wertpapierhandelsgesetz*), the customer complaints mentioned above and submissions made to BaFin's contact point for whistleblowers.[19]

18 In contrast to previous years, the data relates to the number of calls made and not to the number of queries.

19 See III.7.

If necessary, BaFin can also make use of another tool: special audits. Three such special audits were held in 2021 in the Consumer Protection Directorate, two of which had been completed by the end of the reporting period. In all three cases the main objective is or was to establish whether the service providers had met their regulatory obligations in their compliance function.

4.5 Market surveys

4.5.1 Market survey on age discrimination by motor vehicle insurers

In 2021, BaFin reviewed whether motor insurers in Germany discriminate against their older customers in respect of insurance contributions. It transpired that the way companies have designed their rates complies with the law: the distinction made as to ages is based on recognised principles of risk-adequate calculation and therefore complies with section 20 (2) sentence 2 of the German General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz*). Additional information can be found in the expert article entitled “Age can play a role” published in February 2021 on BaFin’s website.

4.5.2 BaFin study on corporate bonds

In 2021, a BaFin study examined the decline in trading in corporate bonds by retail investors since 2018. One reason is that many issuers do not produce a key information document following the entry into force of the Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs). However, this is a prerequisite for retail investors to be allowed to purchase corporate bonds. BaFin is therefore campaigning for simple corporate bonds to be exempted from the scope of the PRIIPs Regulation. Additional information on this is available on BaFin’s website.

4.5.3 Market survey on IPIDs for legal expenses insurance and contents insurance

As a general rule, insurance companies are required to provide future customers with an insurance product information document (IPID) before an insurance policy is taken out. This document contains a clear summary of the most important features of the insurance protection on offer. A market study conducted by BaFin examined whether the IPIDs for contents insurance and legal expenses insurance comply with the legal requirements.

The results were positive: providers comply with the formal and content-related requirements for product information documents in most cases. However, there is a need for improvement in a few areas, which BaFin is monitoring. Additional information about the market can be found in an expert article published in February 2022 on BaFin’s website.

4.5.4 Surfdays focus on notices about alternative dispute resolution

In its judgement dated 22 September 2020, the German Federal Court of Justice (*Bundesgerichtshof*) made it clear that business owners must publish information under section 36 of the German Act on Alternative Dispute Resolution in Consumer Matters (*Verbraucherstreitbeilegungsgesetz*), both on their websites and in their general terms and conditions of business. BaFin used two surf days to check online whether the credit institutions and insurance undertakings had implemented the Court’s ruling in practice and drawn attention to the opportunity for alternative dispute resolution. While it had to request changes in some cases, the majority of credit institutions and insurance undertakings had met the requirements, as an expert article published in March 2022 on BaFin’s website revealed.

4.5.5 Market survey on selected obligations under the Disclosure Regulation

In a market survey on selected duties under the Disclosure Regulation (EU) 2019/2088 that was already mentioned in 4.1, BaFin investigated in 2021 whether financial product providers make precontractual information available when providing investment advice. One finding was that the entities surveyed make information available in a very wide range of ways; there was no standard practice discernible in terms of the formats and timing chosen and the customer target groups.

This is probably due in large part to the fact that the more detailed European legal texts under the Disclosure Regulation, and uniform instructions on its legal interpretation and application, are not yet available in finalised form. Conspicuous findings revealed by the survey above and beyond these issues were addressed by BaFin.

5 Money laundering prevention

5.1 Bases of supervisory practice

Some of the legal bases for preventing money laundering and terrorist financing were modified in 2021.

Revised version of section 261 of the German Criminal Code

The revised version of section 261 of the German Criminal Code (*Strafgesetzbuch*) that entered into force on 18 March 2021 introduced the "all-crime approach" to combating money laundering and terrorist financing. Whereas previously only specific crimes that were included in a catalogue could be construed as predicate offences to money laundering, this catalogue has now been abolished.

Act to Strengthen the Integrity of the Financial Markets

The new German Act to Strengthen Financial Market Integrity (*Finanzmarktintegritätsstärkungsgesetz*), large parts of which entered into force on 1 July 2021 and which took effect in full at the beginning of January 2022, considerably expanded BaFin's supervisory powers in 2021. The expanded notification requirement for outsourcing is particularly important for preventing money laundering. This provision allows BaFin to identify concentrations and resulting risks at an earlier stage. The ability to directly investigate companies providing outsourced services is also important for money laundering supervisors.

Transparency Register and Financial Information Act

The German Transparency Register and Financial Information Act (*Transparenzregister- und Finanzinformationsgesetz*), which took effect on 1 August 2021, expanded the previous transparency register from a "back-up register" to a fully-fledged register. Where obliged entities enter into a new business relationship they must now consult the transparency register to determine whether the information provided to them on the beneficial owners of those associations of persons that are required to register is actually correct. This primarily relates to legal entities under private law, registered partnerships and associations.

New Crypto Assets Transfer Regulation

The new German Crypto Assets Transfer Regulation (*Kryptowertetransferverordnung*), which entered into force on 1 October 2021, implements the Travel Rule established by the Financial Action Task Force (FATF) into national law. This rule requires information on the payer and recipient to be provided for all transfers of crypto assets, in the same way as for money transfers.

Interpretation and Application Guidelines for the German Money Laundering Act (*Geldwäschegesetz*)
In June 2021, for the first time, BaFin published Interpretation and Application Guidelines in relation to the German Money Laundering Act – Special Section for Credit Institutions (AuA BT KI). These guidelines provide greater detail on administrative practice regarding the special anti-money laundering obligations to be met by credit institutions.

An initial update to the Interpretation and Application Guidelines – General Section (AuA AT), which was primarily editorial in nature, followed in October of the reporting period. The revision removed inconsistencies between the document and the AuA BT, and implemented the changes in the law resulting from the Transparency Register and Financial Information Act.

5.2 Inspection statistics and inspection priority areas for the Prevention of Money Laundering Directorate

The COVID-19 pandemic again meant that the Prevention of Money Laundering Directorate did not conduct on-site inspections at companies in 2021. Instead, the inspection documents were forwarded to BaFin electronically. BaFin conducted the necessary interviews with institution representatives as conference calls or videoconferences, and used screen sharing to inspect IT systems. These digital options meant that the investigations conducted in 2021 were equally productive and informative as the on-site inspections performed in the years before the pandemic. An overview of the number of money laundering inspections performed is given in Table 53.

Table 53: Money laundering inspections in 2021

Type	Banking sector	Non-banking financial sector
Own inspections	28	2
Shadowing of audits of annual financial statements	16	15
Special audits by auditors	16	7

The focus of the inspections performed in 2021, as in the previous year, was on the money-remittance business, suspicious transaction and order reports, and crypto transactions. The results had not been finally evaluated by the editorial deadline.

5.3 Supervisory measures

BaFin has a number of instruments that it can use to remedy any deficiencies it has found at obliged entities – i.e. those undertakings that are required to comply with the obligations set out in the German Money Laundering Act (*Geldwäschegesetz*). If it discovers particularly serious defects or if an obliged entity does not remedy these defects adequately, BaFin takes formal measures, which are published on its website. BaFin makes flexible use of the instruments at its disposal. For example, it can appoint a special commissioner who reports continuously to it on the measures being taken to remedy the defects.

In 2021, BaFin published three cases in which it had appointed a special commissioner under section 45c of the German Banking Act (*Kreditwesengesetz*) in order to improve the prevention of money laundering.

> You may also find the following interesting
>
> **BaFinJournal**
>
> Read the expert article entitled "Fighting money laundering together" in the December issue of BaFinJournal.

5.4 Work by the Anti Financial Crime Alliance

The Anti Financial Crime Alliance (AFCA), a relatively young public-private partnership of which BaFin is also a member, continued its successful work in 2021. The various working groups have pooled their experience and findings and published white papers on them. Obliged entities can access these in a secure area that is accessible from the Financial Intelligence Unit (FIU) website. The AFCA white papers give obliged entities additional tools for preventing money laundering and terrorist financing.

5.5 FATF evaluation

In its fourth round of evaluations, the FATF – the international standard-setter for combating money laundering and the financing of terrorism and proliferation – is focusing on how effectively member states are combating money laundering and terrorist financing. In addition, the FATF is assessing how its standards are implemented into national law in the member states (technical compliance).

Germany is one of the states being examined in the fourth round of evaluations. The on-site visit by the FATF evaluation team in Germany finally took place in November 2021, after having to be postponed several times due to the COVID-19 pandemic. The country report for Germany is scheduled to be approved at the plenary meeting of the FATF in June 2022.

5.6 Statistics on account information access procedures

Under section 24c (1) of the German Banking Act (*Kreditwesengesetz*), 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, the names of the account holders and the persons authorised to draw on the account. This information must be accurate down to the day. On request, BaFin provides information contained in this account information access file to the authorities listed in section 24c (3) of the Banking Act. It did so on 352,138 occasions in 2021 (as at 31 December 2021, see Table 54).

Table 54: Account information access procedures in accordance with section 24c of the Banking Act

Recipient	2021		2020	
	absolute	in %	absolute	in %
BaFin	509	0.14	235	0.08
Tax authorities	16,896	4.80	15,667	5.41
Police authorities	279,106	79.26	219,754	75.81
Public prosecutors	42,181	11.99	39,375	13.58
Customs authorities	12,712	3.61	14,057	4.85
Other	734	0.20	773	0.27
Total	**352,138**		**289,861**	

6 Unauthorised business activities

6.1 Authorisation requirement

Anyone wishing to conduct banking, investment, insurance or e-money business in Germany may do so only with written authorisation from BaFin. Once a licence has been granted, the entity concerned is then automatically subject to ongoing supervision by BaFin. The same also applies to financial services and payment services.

In 2021, the majority of authorisation requests related to offering and trading crypto assets, crypto custody transactions and payment services (see Table 55).

Table 55: New authorisation requests

	2019	2020	2021
New authorisation requests	1,055	1,113	1,280

Exemption from the authorisation requirement and ongoing supervision

Under section 2 (4) of the German Banking Act (*Kreditwesengesetz*), BaFin can exempt an undertaking from the obligation to obtain authorisation in the case of business that is limited in scope. By doing so, it also exempts the entity concerned from having to comply with a statutory catalogue of provisions that it would have to meet as part of ongoing supervision. Any exemption is subject to strict conditions. In addition, it is only possible for as long as the undertaking does not require supervision due to the nature of its business. BaFin only exempts institutions on application (see Table 56).

Third-country undertakings may only be granted such an exemption if qualified supervision is ensured by the competent authority in the home country. This avoids the need for dual supervision by BaFin of business conducted in Germany (section 2 (5) of the Banking Act).

Table 56: Exemptions granted to institutions

	2019	2020	2021
Exempted institutions	361	358	357
Newly exempted institutions	3	3	1

6.2 Investigation of unauthorised business activities

Any violation of the authorisation requirement impacts the integrity of the financial system as a whole. Anyone who conducts business activities subject to the authorisation requirement without having obtained the required authorisation commits a criminal offence. In keeping with its mandate as the competent authority responsible for risk prevention, BaFin is obliged to systematically investigate such violations. It enforces the authorisation requirement so as to prevent damage to the integrity of the financial market, and ensures that the entity concerned ceases and winds up the unauthorised business without delay.

Lawmakers have equipped BaFin with wide-ranging powers to conduct its investigations. In particular, it is entitled to search business and residential premises on the basis of a court order – and, if there is a danger that delay may frustrate the investigation, even without such an order. This also includes the right to search individuals.

Nevertheless, even these powers are limited where perpetrators operate from abroad. However, BaFin can access German telecommunications networks, website providers and banks, for example in order to freeze accounts. In addition, BaFin is constantly expanding its cross-border collaboration with foreign supervisory and prosecuting authorities.

BaFin announces the measures taken on its website, hence informing the public of the cases where it had to take action against entities conducting unauthorised business activities.

A key focus of BaFin's work in 2021 was on digital business models. Moreover, BaFin recorded an increasing number of cases of identity theft and attempts to recruit payment agents.

Suspected violations hit new record level in 2021
The number of suspected violations leading to investigations of unauthorised business activities hit a new record high in 2021, as can be seen in Table 57.

Table 57: Investigations of unauthorised business activities

	2019	2020	2021
New suspected violations	1,318	1,436	1,332
Searches	17	6	3

The number of notices issued (i.e. formal measures) was also higher than ever before in 2021, at 315. However, this is partly due to the power to issue warnings that BaFin has had since 29 December 2020 above and beyond the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz*; section 308 (7)) and the German Payment Services Act (*Zahlungsdiensteaufsichtsgesetz*; section 8 (7)). Under section 37 (4) of the Banking Act (*Kreditwesengesetz*), BaFin can inform the public of suspicions or findings and disclose the name of the company involved. A precondition for this is that there are facts which justify such an assumption or that it has already been established in concrete terms that an undertaking is conducting banking business, or providing financial services, without authorisation. A corresponding power to issue warnings is now also set out in section 16 (8) of the German Investment Code (*Kapitalanlagegesetzbuch*). Table 58 shows the figures for 2019 to 2021.

Table 58: Investigations of unauthorised business activities

	2019	2020	2021
Formal measures	150	179	315

The statistics only include formal measures, i.e. orders to cease activities and resolution orders, warnings and formal measures taken against the undertakings involved in unauthorised business, such as Internet providers and banks. It does not include administrative enforcement measures such as the threat or imposition of coercive fines aimed at enforcing formal measures. BaFin does not publish the measures it takes against undertakings involved in unauthorised business as a matter of principle.

Objection proceedings and court cases
Affected parties can file objections to formal measures and administrative enforcement measures imposed by BaFin (see Table 59).

Table 59: Objection proceedings

	2019	2020	2021
New objection proceedings	34	45	69
Objection notices	22	15	29
Withdrawn/otherwise discontinued	16	4	18

The measures imposed by BaFin against entities involved in unauthorised business activities are immediately enforceable by law. The parties affected by formal measures can only bring summary application before an administrative court (*Verwaltungsgericht*) for an order that the legal remedy should have a suspensory effect (see Table 60).

Table 60: Summary proceedings – first instance

	2019	2020	2021
New summary proceedings	8	16	11
Application dismissed	11	7	19
Order for suspensory effect	0	1	0

If BaFin rejects an objection to a formal measure, the affected party can bring legal proceedings before the administrative court. Table 61 gives an overview of this.

Table 61: Legal proceedings – first and second instances

	2019	2020	2021
New legal proceedings	10	19	23
Judgement in favour of BaFin	7	9	6
Action allowed	0	0	1
Action withdrawn/ otherwise discontinued	5	3	4

6.3 Platforms and warnings of suspicious activity

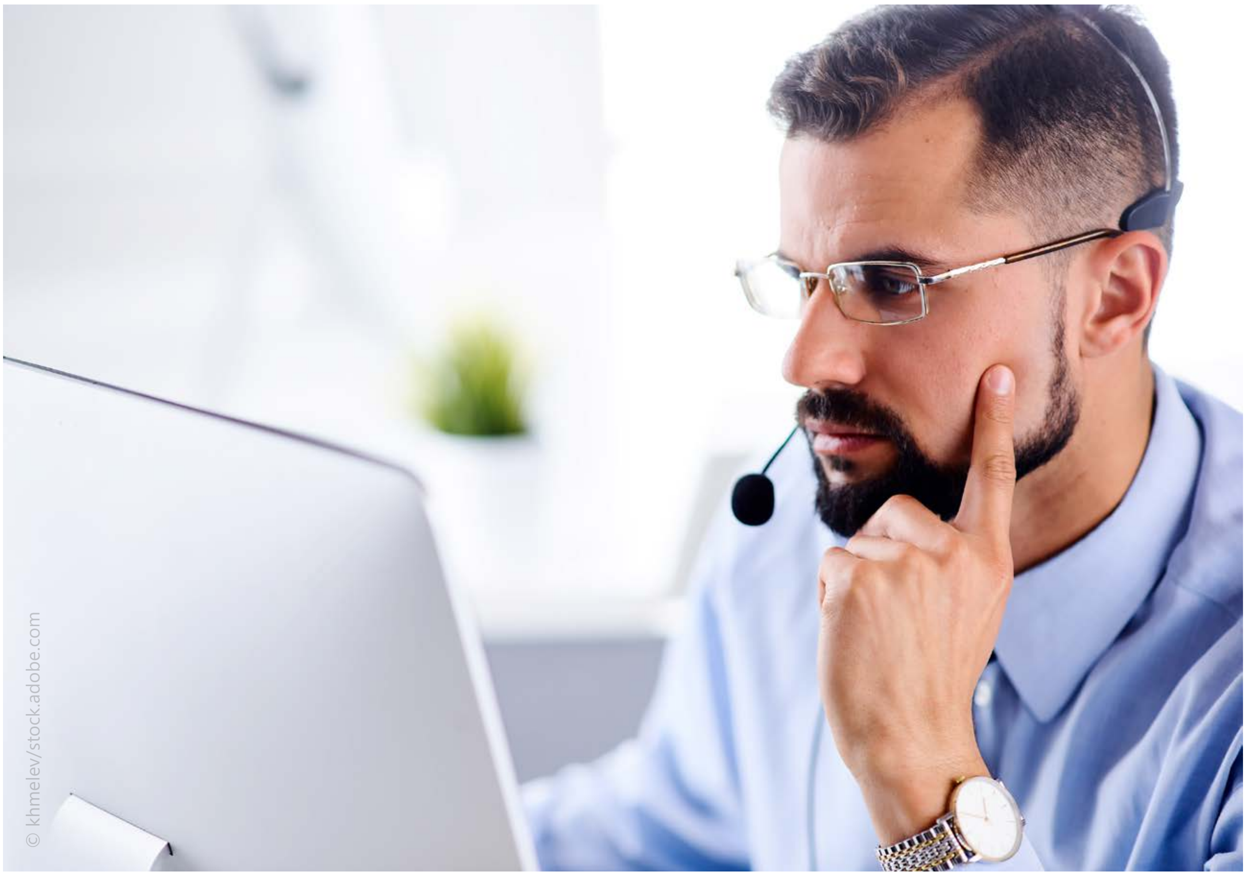
Since 29 December 2020, BaFin has been authorised under section 37 (4) of the German Banking Act (*Kreditwesengesetz*) to issue public warnings relating to suspicious financial services providers. The lawmakers' intent in introducing this rule was to ensure that the general public is informed early on about potential unauthorised activity.

BaFin made extensive use of this power in 2021, especially in cases involving Internet platforms.

This is because BaFin is becoming aware of more and more cases in which reputable-looking online platforms engage investors – retail investors in particular – on the phone and induce them to invest large sums of money. The investments involved are generally contracts for difference on raw materials, equities, indices, forex or crypto currencies.

The victims then try in vain to get the money they have invested back. These providers – many of whom are domiciled outside the European Union (EU) – often make use of false identities: for example, their websites may state they have been granted authorisations by actual or made-up supervisory authorities. Others claim to be linked to companies with well-known brand names, or even pretend to be working with public bodies such as ministries or the police.

If BaFin discovers any unauthorised business activities, it ensures that these are stopped immediately in Germany. However, its abilities are limited in practice where providers are operating from abroad and offer cross-border services in Germany while concealing their true identity, or changing their identities, without having a network of intermediaries or other presence here. Nevertheless, in individual cases BaFin is able to recover at least part of investors' money. If this has already been moved abroad, however, it is generally lost for good.



7 Contact Point for Whistleblowers and Market Contact Group

BaFin restructured its Contact Point for Whistleblowers as part of its modernisation activities and created a separate division for this in the summer of 2021. Within this division, it established the Market Contact Group (MCG) as an additional communications channel. Market participants such as analysts, short sellers or journalists can contact this new unit if they have information that is relevant for BaFin. Market participants generally do not need the same degree of protection as classic whistleblowers. The latter can continue to contact BaFin anonymously in order to provide it with information that can help throw light on abuse.

The Whistleblower Directive entered into force in the European Union (EU) in December 2019. It protects people who report breaches of Union law. This is because whistleblowers frequently risk their jobs by passing on information and therefore have a particular need to preserve their anonymity in contacts with public authorities such as BaFin. Material parts of the European Directive were included in the BaFin Whistleblower Regulation (*BaFin-Hinweisgeberverordnung*), which was published in July 2021.

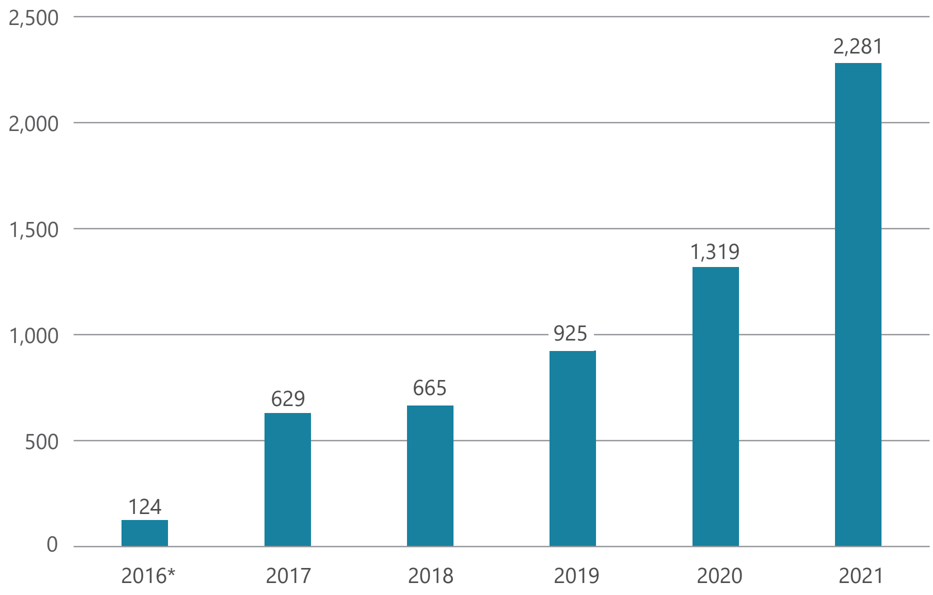
Whistleblowers provide important information

Public perceptions of whistleblowers have changed: whereas they were previously more likely to be seen as informers, the general public now recognises how important they are for throwing light on abuse. This can also be seen from the fact that public interest in the work of BaFin's Contact Point for Whistleblowers and the number of reports submitted are both continuously increasing.

The number of reports received rose substantially again in the reporting period to total 2,281 in 2021, up from 1,319 in the previous year (see Figure 28 on page 94). Around 50 tip-offs were submitted to the Market Contact Group, which was established in August 2021.

A total of 47% of the tip-offs from whistleblowers concerned alleged violations by supervised institutions and entities. Another 37% related to potentially unauthorised business activities. A further 6% related to alleged money laundering activities and yet another 6%

Figure 28: Number of whistleblowing tip-offs received



* The Contact Point for Whistleblowers was launched in July 2016.

of complaints related to consumer protection issues. The remaining tip-offs related to matters for which BaFin is not the competent authority or that did not contain any identifiable facts.

BaFin follows up on the reports and takes measures where necessary to stop the breaches. You can read more about this topic in the expert article entitled "State-of-the-art supervision: BaFin strengthens its Contact Point for Whistleblowers" published on BaFin's website.

8 Sanctions

In 2021, BaFin initiated a total of 252 administrative fine proceedings (see info box). These proceedings, under the German Act on Breaches of Administrative Regulations (*Ordnungswidrigkeitengesetz*), were brought against issuers, credit institutions, insurance undertakings, payment institutions, institutions engaged in finance leasing and/or factoring[20], and other legal persons covered by the specialist supervisory legislation. BaFin also instituted proceedings against the persons responsible for these entities, and other natural persons, where necessary. The proceedings were triggered by

20 Section 1 (1a) sentence 2 nos. 9 and 10 of the German Banking Act (*Kreditwesengesetz).*

Definition

Measures or sanctions?

BaFin can take a large number of different measures to protect the integrity of the financial market and collective consumer interests; these 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 using classic supervisory law measures, BaFin can also pursue breaches of the law by imposing administrative fines. It does this by instituting proceedings under the Act on Breaches of Administrative Regulations (*Ordnungswidrigkeitengesetz*).

The two options for taking action differ in terms of their objectives. Supervisory measures are intended to avoid risks materialising. In other words, 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 acts. The term "repressive" is used because the law on breaches of administrative regulations aims to sanction breaches that have been established by imposing fines. Another goal of sanctions is to persuade the persons committing the breach to comply with the legal provisions in future.

Additional information on this topic can be found in an expert article by Chief Executive Director Béatrice Freiwald starting on page 55 of the 2016 Annual Report.

violations of provisions of the following German acts, among others, that are punishable by administrative fines:

- German Investor Compensation Act (*Anlegerentschädigungsgesetz*)
- German Money Laundering Act (*Geldwäschegesetz*)
- German Investment Code (*Kapitalanlagegesetzbuch*)
- German Banking Act (*Kreditwesengesetz*)
- Benchmarks Regulation (Regulation (EU) 2016/1011)
- Market Abuse Regulation (Regulation (EU) No 596/2014)
- German Insurance Supervision Act (*Versicherungsaufsichtsgesetz*)
- German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*)
- German Securities Trading Act (*Wertpapierhandelsgesetz*)
- German Payment Services Act (*Zahlungsdiensteaufsichtsgesetz*)
- German Payment Accounts Act (*Zahlungskontengesetz*)

Total volume of administrative fines
BaFin imposed administrative fines totalling €22,301,000 across all of its sectors in 2021.

At a glance

Administrative fines imposed by BaFin

In 2021, BaFin imposed administrative fines totalling **€22,301,000**.

- Aggregate administrative fines of **€4,908,000** were attributable to the Banking Supervision and Prevention of Money Laundering sectors.
- The Securities Supervision/Asset Management Directorate imposed a total of **€17,393,000** in administrative fines.

New administrative fine proceedings initiated by BaFin

BaFin launched 252 new administrative fine proceedings in 2021.

- Of this figure, 127 were attributable to Banking Supervision, Prevention of Money Laundering and Insurance Supervision.
- A total of 125[21] were attributable to the Securities Supervision/Asset Management Sector.

21 These figures also include the figures stated in chapter III.3.3.7.

Administrative fine proceedings initiated by Securities Supervision
BaFin's Securities Supervision/Asset Management Sector imposed administrative fines totalling €17,393,000 in the reporting period for violations of capital markets law[22]. BaFin launched 125 new administrative fine proceedings. A total of 332 proceedings were still pending from the previous year. All in all, the Sector concluded 141 proceedings, 36 of them by imposing administrative fines. This translates into a prosecution ratio of approximately 25.5%.

Administrative fine proceedings relating to the supervision of undertakings
BaFin imposed a total of 96 individual administrative fines in 2021 with respect to its supervision of undertakings, or to be more precise its Banking Supervision and Prevention of Money Laundering operations. These fines related to breaches of the provisions of the Money Laundering Act, the German Commercial Code (*Handelsgesetzbuch*), the Banking Act and the Payments Supervision Act. The individual fines amounted in the aggregate to €4,908,000. They were imposed on credit institutions, payment institutions, institutions engaged in finance leasing and/or factoring, and auditing firms and – depending on the specific facts of the case – also on the persons responsible for these entities or on third parties commissioned to perform certain tasks.

In one major case, BaFin imposed final fines totalling €4,250,000 on a credit institution due to numerous delayed suspicious transaction and order reports in the area of money laundering.

In 2021, BaFin launched 127 new investigations relating to the supervision of undertakings under the Act on Breaches of Administrative Regulations. Most cases involved initial grounds for suspecting a breach of provisions of the Money Laundering Act and the Banking Act that are punishable by administrative fines. However, in individual cases BaFin also launched proceedings for suspected breaches of the provisions of the Investor Compensation Act, the Investment Code, the Insurance Supervision Act, the Payments Services Act and the Payment Accounts Act. The proceedings

22 This includes violations of the Securities Trading Act, the Securities Acquisition and Takeover Act, the Capital Investment Act, the Securities Prospectus Act, the European PRIIPs Regulation (Regulation (EU) No 1286/2014), the European Short Selling Regulation (Regulation (EU) No 236/2012), MiFIR (Regulation (EU) No 600/2014), the Benchmarks Regulation (Regulation (EU) No 2016/1011) and the MAR (Regulation (EU) No 596/2014).

were largely aimed at legal persons and in some cases had not been completed by the editorial deadline. However, administrative fine proceedings can also be brought against their management, i.e. against managing board members, managing directors, or money laundering officers, for example. BaFin issued a total of 25 administrative orders imposing fines in these proceedings and in others still pending from previous years.

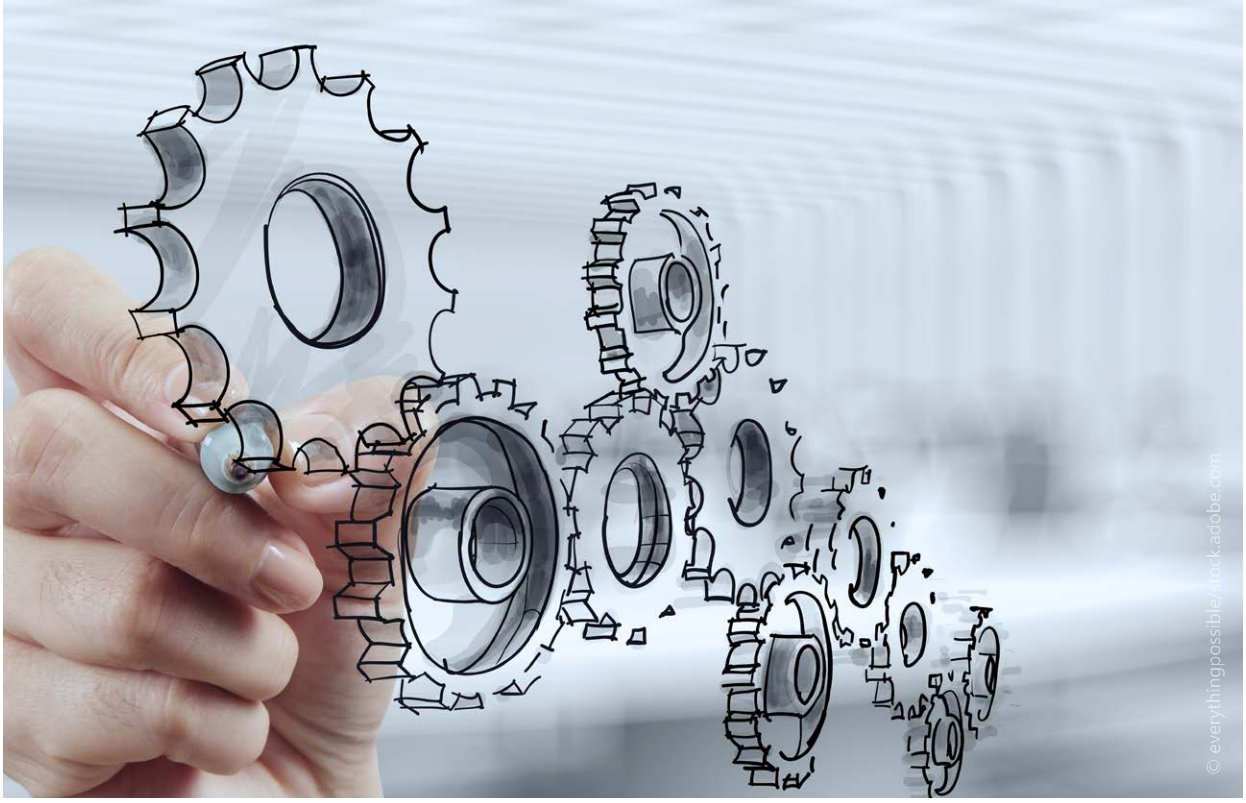
All in all, 20 of these administrative orders imposing fines became final in 2020, in 17 cases because no appeal was lodged. Three administrative orders imposing fines became final in a preliminary hearing following an ordinary appeal. In a first-instance ruling on an appeal brought by the manager of a credit institution, the Frankfurt am Main Local Court (*Amtsgericht Frankfurt am Main*) confirmed BaFin's administrative order imposing a fine in full on the merits of the case. Eight additional administrative fine proceedings against a credit institution, an external service provider, two auditing firms and their managers were being appealed out of court at the time of the editorial deadline after one of the parties to the proceedings lodged an appeal.

In the case of three administrative orders imposing fines that had been issued by BaFin in 2018 and confirmed in the first instance by the Frankfurt am Main Local Court in 2020, the party concerned and two interested parties appealed on a point of law. In two of these proceedings, the Frankfurt am Main Higher Regional Court (*Oberlandesgericht Frankfurt am Main*) confirmed in full the decision of the court of first instance, and hence the fines imposed by BaFin, in 2021. A decision in the third case was still pending at the time of the editorial deadline.

A total of 71 proceedings, some of which were pending from previous years, were discontinued in 2021, 36 of them for discretionary reasons (section 47 (1) of the Act on Breaches of Administrative Regulations). Thirty-five proceedings were terminated in other ways, for example by discontinuing them in accordance with section 46 (1) of the Act on Breaches of Administrative Regulations, usually in conjunction with section 170 (2) of the German Code of Criminal Procedure (*Strafprozessordnung*). In one case the proceedings were transferred to the public prosecutor's office in accordance with section 41 of the Act on Breaches of Administrative Regulations, since there were indications that a criminal offence had been committed.

IV

Resolution



1 Fundamental aspects

In 2021 BaFin published or amended a number of Circulars and Guidance Notices in its capacity as the national resolution authority (NRA) (see info box on page 100).

1.1 Circulars

MaValuation

On 23 February 2021, BaFin published its MaValuation (02/2021) – the "Minimum requirements for information systems to provide information for valuations in the context of resolution" (*Mindestanforderungen an Informationssysteme zur Bereitstellung von Informationen für Bewertungen im Rahmen einer Abwicklung*). The MaValuation specifies the minimum requirements for data and information that must be made available by the institutions to the resolution authority in a data room if they get into difficulties, so as to ensure an effective, efficient resolution valuation process. This must be done at short notice – within 24 hours of the request being made.

Amendments to the MaBail-in

2021 saw two amendments to the MaBail-in – the Minimum requirements for implementing a bail-in (*Mindestanforderungen zur Umsetzbarkeit eines Bail-in*). At a technical level, the bail-in is the instrument used to permit the write-down and conversion of relevant capital instruments and the bail-in of creditors. The MaBail-in, the first version of which (05/2019(A)) was published on 4 July 2019, sets out minimum requirements for data and information that must be met by the institutions to enable the two resolution tools – the write-down and conversion of relevant capital instruments and the bail-in of creditors – to be calculated and implemented.

- **First amendment**
  On 13 April 2021, BaFin published the first amendment to its MaBail-in (04/2021 (A)). This is an extended version of the original Circular from 2019. The amendment focused on almost all liabilities eligible for bail-in, while applying the principle of proportionality. It also added a catalogue of frequently asked questions and the answers to these.

- **Second amendment**
  The second amendment to the MaBail-in (14/2021 (A)), which was published on 5 October 2021, also includes institutions that are not themselves a resolution entity but are part of a resolution group. BaFin made this change so as to ensure that losses within a resolution group can be transferred to the resolution entity or, within the third-country group

At a glance

Who is responsible?

1 Resolution in the banking union

European lawmakers created the Single Resolution Mechanism (SRM) for the eurozone as of 1 January 2016 as Pillar Two of the banking union. Pillar One is the Single Supervisory Mechanism (SSM), which is headed by the European Central Bank (ECB).

The SRM comprises the Single Resolution Board (SRB) and the national resolution authorities in the eurozone. BaFin has been the national resolution authority for Germany since 2018. Before that, the Federal Agency for Financial Market Stabilisation (*Bundesanstalt für Finanzmarktstabilisierung*) performed this task. Responsibilities within the SRM are divided between the SRB and the national resolution authorities.

BaFin's role as the national resolution authority
In its capacity as the national resolution authority, BaFin is responsible for those German institutions that the ECB classifies as less significant institutions (LSIs). This category also includes financial market infrastructures (FMIs) with banking licences and central counterparties (CCPs) with and without banking licences.

Single Resolution Board
The Single Resolution Board (SRB) is responsible for

- those institutions that the ECB has classified as significant institutions (SIs);
- cross-border LSIs; and
- LSIs for which responsibility has been transferred to the SRB.

The SRB has established Internal Resolution Teams (IRTs) for each institution or group of institutions for which it is responsible, and works jointly together with the relevant competent national resolution authorities within these. The core task of the IRTs is to enhance institutions' resolvability. They do this by developing and updating resolution plans. For example, they also assess the impediments to a potential resolution and appropriate measures to overcome these. BaFin took part in 34 IRTs in 2021.

2 Resolution in the European Union and cooperation with third-country authorities

The SRB and the national resolution authorities establish resolution colleges to coordinate collaboration between different resolution authorities within the banking union, in Europe and in third countries. The main purposes of these colleges are

- to exchange information;
- to develop group resolution plans;
- to assess specific institutions' resolvability;
- to remove impediments to resolution;
- to decide on group resolution schemes; and
- to coordinate public communications.

In 2021, BaFin took part in 12 resolution colleges.

Crisis Management Groups (CMGs) are set up for all institutions classified by the Financial Stability Board (FSB) as global systemically important banks (G-SIBs). A total of 19 of the 30 institutions worldwide that were classified as G-SIBs in 2021 and a further eight CCPs have operations in Germany. All in all, BaFin collaborated in a total of 27 CMGs in 2021.

to the legal entity concerned in the third country. Additional information can be found in the expert article entitled "Zweite Novelle der MaBail-in: Interne Verlusttragung" ("Second amendment to MaBail-in: Internal loss absorption") on BaFin's website.

MREL Circular
On 26 July 2021, BaFin published its new MREL Circular (08/2021 (A)), "Determination of the minimum requirement for own funds and eligible liabilities (MREL) for institutions and group companies for which the resolution plan provides for liquidation as part of insolvency proceedings" (*"Festlegung der Mindestanforderung an Eigenmittel und berücksichtigungsfähige Verbindlichkeiten (MREL) für Institute und gruppenangehörige Unternehmen, für die der Abwicklungsplan eine Liquidation im Rahmen eines Insolvenzverfahrens vorsieht"*). "MREL" stands for

"minimum requirement for own funds and eligible liabilities". The new Circular amends and replaces MREL 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".

1.2 Guidance Notices

Amendment to the Guidance Notice on external bail-in execution

On 13 April 2021, BaFin published a revised version of its Guidance Notice on the external implementation of a bail-in (*Merkblatt zur externen Bail-in-Implementierung*) dated 1 October 2019. The amended version extends the focus at both the procedural and the technical level to cover all legal forms and all classes of shares, as well as taking foreign-currency bonds into account. In addition, it covers the discontinuation or suspension of trading on regulated and non-regulated markets of regional exchanges. Amendments were also made in relation to the admission of new shares.

Suspension of trading on non-exchanges in the context of resolutions

The Guidance Notice on the suspension of trading on non-exchanges in the context of resolutions (*Merkblatt zur Handelsaussetzung an Nicht-Börsen im Rahmen der Abwicklung*) dated 20 September 2021 addresses the suspension or discontinuation of trading by systematic internalisers and multilateral and organised trading facilities not operated by an exchange as defined by section 2 of the German Stock Exchange Act (*Börsengesetz*).

2 Resolution planning

2.1 2021 resolution planning cycle for institutions for which the SRB is directly responsible

BaFin is closely involved in resolution planning for institutions and groups of institutions for which the Single Resolution Board (SRB) is responsible through its work on the Internal Resolution Teams (see info box on page 100). In 2021, BaFin took part in resolution planning for 16 institutions and groups of institutions in Germany and 18 institutions and groups of institutions domiciled abroad.

The Internal Resolution Teams are expected to perform more on-site inspections for resolution planning as from 2023 onwards. They organised the first preliminary-stage inspections for this in selected institutions in 2021. In the process, they found that the institutions had made progress in operationalising resolution strategies. Among other things, this could be seen from the playbooks developed by many institutions. These consist of descriptions of procedures, such as those to be used for bail-ins and sales of undertakings. The playbooks help ensure that the SRB's resolvability requirements are met.

Digitalisation

The question of how the outsourcing of IT infrastructure to a cloud impacts institutions' resolvability is becoming more and more important for resolution planning. Since resolution is normally performed under considerable time pressure, it is essential that the institutions are able to provide reliable, decision-relevant data at short notice. This is why, when examining resolvability, the main focus was on how to improve data quality and availability and the associated crisis processes. Additional information on this subject can be found in the expert article on the BaFin website entitled "Digital, connected – and resolvable?".

Methodology expanded

BaFin continued to be involved in 2021 in the work by SRB bodies to develop and enhance the methods and processes for the Single Resolution Mechanism (SRM). Contagion effects following systemic events were taken into account for the first time when assessing the question of the public interest – one of the three preconditions for resolution (see info box).

At a glance

When are institutions resolved?

The Bank Recovery and Resolution Directive (BRRD) and the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*) form the material statutory framework for resolution measures.
Under this framework, resolution measures can be ordered if three criteria are met (section 62 (1) of the Recovery and Resolution Act):

1. The institution is failing or likely to fail
2. No alternative supervisory or private sector measures can be ascertained that could avert this, and
3. Resolution is in the public interest (principle of proportionality).

2.2 2021 resolution planning cycle for institutions for which BaFin is directly responsible

In 2021 BaFin, as the national resolution authority, was directly responsible for planning and implementing resolution measures at 1,334 of the institutions and groups of institutions domiciled in Germany. These included LSIs, financial market infrastructures, subsidiary institutions of EU and third-country entities – provided that these were non-SRB institutions – and investment firms. BaFin progressed with resolution planning for these institutions and groups of institutions in 2021 and ensured that these are resolvable. In addition, BaFin was responsible for directing two resolution colleges as the group resolution authority. It also stepped up resolution planning for institutions whose importance in Germany had grown considerably as a result of Brexit-related shifts in business.

BaFin revises MREL Circular

The Minimum Requirement for Own Funds and Eligible Liabilities (MREL) is a key resolution planning tool. Institutions for which resolution is envisaged if they are failing or likely to fail need to maintain adequate capital to enable them to absorb losses and potentially be recapitalised.

In 2021, the SRB updated the MREL policy for the institutions for which it is directly responsible. BaFin followed suit for the institutions for which it is responsible with the above-mentioned MREL Circular.

Challenges facing institutions

The institutions faced major challenges in 2021 and are continuing to do so, due among other things to the ongoing process of digitalisation and the consequences of Brexit. One of BaFin’s key tasks is therefore to support institutions in designing business models and structures that are resolvable and forward-looking. This is a precondition for ensuring that measures to protect the financial system can be taken quickly and effectively.

IV

Inside BaFin

1 Human resources

A total of 2,786 employees worked for BaFin as at 31 December 2021 (previous year: 2,772) (see Table 62). In most cases they were graduates in economics, law and administrative studies, natural sciences and information technology. A total of 50 employees were on long-term assignment to international institutions and supervisory authorities as at 31 December, of whom 25 had been seconded temporarily to the European Central Bank (ECB). An overview of new appointments is given in Table 63.

Expertise through CPD
In 2021, BaFin employees took part in 717 (previous year: 502) CPD events. The total number of attendances at such events was 5,074 (previous year: 2,738). This means that, on average, each BaFin employee attended 2.4 days of CPD (previous year: 1.9 days).

BaFin offers its employees – both recent graduates and experienced specialists – a wide range of CPD sessions to enhance their skills. Joint training initiatives – particularly with the Deutsche Bundesbank, the ECB and the European Supervisory Authorities (ESAs) – also

V

Table 62: Employees

As at 31 December 2021

Career level	Employees			Of whom civil servants	Of whom public service employees
	Total	Female	Male		
Higher civil service	1,405	593	812	1,263	142*
Higher intermediate civil service	844	385	459	688	156*
Intermediate/basic civil service	537	363	174	184	353
Total	**2,786**	**1,341**	**1,445**	**2,135**	**651***
Of whom in Bonn	1,920	922	998	1,493	427*
Of whom in Frankfurt	866	419	447	642	224*
Of whom candidates for the higher intermediate civil service/ vocational trainees	35	17	18	14	21

* Including employees not covered by collective wage agreements.

Table 63: Recruitment

As at 31 December 2021

Career level				Qualifications			
	Total	Female	Male	Fully qualified lawyers	Economists	Mathematicians/ statisticians/IT	Other
Higher civil service	86	36	50	32	39	11	4
				Business lawyers	Economists	Career training	Other
Higher intermediate civil service	29	15	14	1	26	0	2
Intermediate/basic civil service	9	5	4				
Candidates for the higher intermediate civil service/ vocational trainees	11	7	4				
Total	**124***	**56***	**68***				

* Excluding candidates for the higher intermediate civil service/vocational trainees.

promote closer collaboration and international networking. BaFin is aiming to makes its CPD formats even more flexible and digital going forward.

In addition, the Supervisory Authority offers human resources development measures designed to systematically foster the career and professional development of its employees. These include dedicated induction programmes that allow staff to move to a higher career bracket, gain promotion or work internationally, e.g. at the European Supervisory Authorities.

2 Budget

BaFin's budget for 2021 (including a supplementary budget) provided for income and expenditure of €501.8 million. Total planned expenditures were thus around €65 million higher than in the previous year (€436.5 million). This rise of approximately 15% was largely due to higher personnel expenses and increased IT expenditure.

Planned expenditure in the 2021 budget was broken down as follows: personnel expenses of €333.4 million (66.5%; previous year: 64.3%) and non-staff administrative expenses of €134.1 million (26.7%; previous year: 28.2%). Capital expenditure totalled 4.7% of the 2021 budget (previous year: 5%). Cost reimbursements and grants accounted for 2.1% of the budget (previous year: 2.5%).

Financing through cost allocations and fees
BaFin is independent of the federal budget and finances itself in full from its own income. At a projected €476.4 million (previous year: €414.5 million), this income was largely composed of cost allocations levied on supervised undertakings. The other income of €25 million (previous year: €22 million), such as fees, comprised administrative income.

The final cost allocation is always made in the following year. Banks and other financial services providers accounted for 45.1% of total income from cost allocations in 2020. The insurance sector contributed 27.3% and the securities trading sector 21.5%. The share attributable to BaFin's activities as the national resolution authority amounted to 6.1%.

Actual expenditure and income
BaFin's actual expenditure in 2021 was approximately €427.8 million (previous year: €389.3 million). This was set against income of around €485.6 million (previous year: €458.8 million). BaFin's Administrative Council had not approved the 2021 annual financial statements by the editorial deadline.

Last separate enforcement budget
BaFin assigned an amount of €14.6 million for the separate enforcement budget in 2021, including a supplementary budget (previous year: €8.7 million). This included a planned cost reimbursement of €6.9 million to the German Financial Reporting Enforcement Panel (*Deutsche Prüfstelle für Rechnungslegung*). Actual expenditure on enforcement therefore amounted to roughly €10.3 million in 2021 (previous year: €9.1 million). Income totalled approximately €12.8 million (previous year: €20 million). BaFin did not receive any advance cost allocation payments for 2022 in the separate enforcement budget in 2021, since this was prepared for the last time in 2021. The background to this is the abolition of the previous two-tier financial reporting enforcement procedure[1]; BaFin has been solely responsible for financial reporting enforcement since the beginning of 2022.

3 Communications

3.1 Press enquiries

In 2021, BaFin again received several thousand enquiries from journalists relating to the Supervisory Authority's various areas of responsibility.

The most important press topics were as follows:

- the moratorium imposed by BaFin on Greensill Bank AG and the determination that compensation is payable;
- the events surrounding Wirecard;
- BaFin's general administrative act on premium-aided savings plans;
- BaFin's supervisory statement on the Federal Court of Justice's judgement on changes to general terms and conditions of business;
- BaFin's planned Guidelines on sustainability-oriented investment funds;

1 See info box on page 76.

- BaFin's orders to certain institutions to improve their anti-money laundering controls and the appointment of special commissioners to check and monitor this on behalf of BaFin;
- the duty of banks to obtain plausible proof of origin for all cash deposits in excess of €10,000 made by customers;
- warnings issued by BaFin in relation to unauthorised business operations (this mainly related to unlicensed, often fraudulent trading platforms and in a very large number of cases to crypto currencies);
- Payment Services Directive 2 (PSD 2), and in particular the successive introduction of strong customer authentication for electronic payments and details on opening the account interfaces for third-party service providers;
- the crypto custodian business, which was included in the German Banking Act (*Kreditwesengesetz*) for the first time; and
- the situation of life insurers and *Pensionskassen* in view of the persistently low interest rate phase.

3.2 Events

BaFin switched over to organising digital events for the first time in 2021 due to the COVID-19 pandemic and the associated restrictions. The first of these was the annual Insurance Supervision Sector Conference on 21 April. The first part of the event focused on questions relating to prudential supervision, while the second discussed the practical implementation of the supervisory priorities for 2021.

The BaFin symposium on IT supervision in the banking sector, which was held on 27 September, focused on current topics in IT supervision, cyber security and payment transactions. A total of 1,100 people participated virtually.

At the 17th Forum on White-collar Crime and the Capital Market on 2 December 2021, BaFin informed the invitation-only participants about current cases drawn from practice in the areas of market manipulation, unauthorised business activities and money laundering.

The last event of the year was the Combating Money Laundering and Terrorist Financing Symposium on 15 December. Just under 1,000 participants used the event to keep up to date on current supervisory issues relating to money laundering and terrorist financing.

3.3 Publications

As in previous years, BaFin made a number of new publications available on its website, www.bafin.de, in 2021. One example is BaFinJournal, which provided regular information every month on current supervisory topics, as in previous years. BaFinJournal is published on www.bafin.de.

Others were the Annual Report, which appears in German and English, the supervisory priorities for 2021 and the 2020 activity report for BaFin's Arbitration Board.

The 2020 primary insurance statistics were published in table form only on BaFin's website. The tables contain statistics on the status of and developments at German primary insurers and pension funds, and branches of insurance undertakings domiciled outside the EEA Member States that require an authorisation from BaFin to operate in Germany.

Appendix

1 Complaints statistics for individual undertakings

For many years, BaFin published complaints statistics, broken down by insurance undertaking and class, in its annual reports. However, this information has not been published in the Annual Report since 2019, but is available instead on the BaFin website. The background to the publication is that the Berlin Higher Administrative Court (*Oberverwaltungsgericht*) issued a ruling on 25 July 1995 (case ref.: OVG 8 B 16/94) ordering the former Federal Insurance Supervisory Office (*Bundesaufsichtsamt für das Versicherungswesen* – BAV), one of BaFin's predecessors, to do this.

The complaints statistics list how many complaints BaFin processed in full in 2021 for its Insurance Supervision Sector.

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.

An indicator of the volume of insurance business is provided by comparing the number of complaints that BaFin processed in full in 2021 with the number of policies in the respective insurance class as at 31 December 2020. The individual undertakings report their existing business data. The provision of 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. The data for the existing health insurance business shows the number of natural persons with health insurance contracts, rather than the number of insured persons under the various premium scales, which is usually higher. As in the past, this figure is not yet entirely reliable.

The information on property and casualty insurance relates to the insured risks. Where undertakings agree group policies with large numbers of insured persons, this leads to a higher figure for existing business. 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 figures for existing business at insurers with gross premiums earned in 2020 of more than €10 million in the insurance classes or types concerned can be included. The tables do not provide any information on existing business for undertakings falling below this limit in the individual insurance classes ("n.a.").

Insurance undertakings that do business in a listed class but for which no complaints were received in the year under review are not included in the relevant statistics.

Undertakings domiciled in other countries in the European Economic Area (EEA) were not required to submit reports to BaFin and therefore no data is given for their existing business. However, the number of complaints is included in order to present a more complete picture.

2 Memoranda of Understanding (MoUs) in 2021

Banking Supervision	
Albania	2012
Argentina	2001
Armenia	2011
Australia	2005
Austria	2000
Belgium	1993
Bosnia and Herzegovina	2016
Brazil	2006
Canada	2004
China	2004
Croatia	2008
Czech Republic	2003
Denmark	1993
Dubai	2006
El Salvador	2011
Estonia	2002
Finland	1995
France	1992
Georgia	2011
Great Britain (BoE/FSA)	1995
Great Britain (SIB/SROs)	1995
Great Britain (BSC)	1995
Great Britain (PRA/FCA)	2019
Greece	1993
Guernsey	2011
Hong Kong	2004
Hungary	2000
India	2013
Ireland	1993
Italy (BI)	1993
Japan	2019
Jersey	2012
Korea	2006
Kosovo	2011
Latvia	2000
Lebanon	2016
Lithuania	2001

Banking Supervision	
Luxembourg	1993
Macedonia	2011
Malta	2004
Mexico	2010
Moldova	2014
Netherlands	1993
Nicaragua	2011
Norway	1995
Philippines	2007
Poland	2004
Portugal	1996
Qatar	2008
Romania	2003
Russia	2006
Serbia	2011
Singapore	2009
Slovakia	2002
Slovenia	2001
South Africa	2004
Spain	1993
Sweden	1995
Turkey	2011
United Kingdom	2019
USA (OCC)	2000
USA (NYSBD)	2002
USA (Fed Board/OCC)	2003
USA (OTS)	2005
USA (FDIC)	2006
USA (SEC)	2007
Vatican	2014
Vietnam	2010

Securities Supervision	
Argentina	1998
Australia	1998
Brazil	1999
Canada	2003
China	2019
Croatia	2008
Cyprus	2003
Czech Republic	1998
Dubai	2006
Estonia	2002
France	1996
Guernsey	2011
Hong Kong	2018
Hungary	1998
Iran	2016
Israel	2017
Italy	1997
Japan	2019
Jersey	2012
Korea	2010
Lebanon	2016
Monaco	2009
Ontario (Canada)	2018
Poland	1999
Portugal	1998
Qatar	2008
Russia	2001
Russia	2009
Singapore	2000
Slovakia	2004
South Africa	2001
Spain	1997
Switzerland	1998
Taiwan	1997
Turkey	2000
United Arab Emirates	2008
USA (CFTC)	1997
USA (SEC)	1997
USA (SEC)	2007
USA (SEC)	2020
Vatican	2014

Insurance Supervision	
Australia	2005
California (USA)	2007
Canada	2004
China	2001
Connecticut (USA)	2011
Croatia	2008
Czech Republic	2002
Dubai	2006
Egypt	2010
Estonia	2002
Florida (USA)	2009
Georgia (USA)	2012
Guernsey	2011
Hong Kong	2008
Hungary	2002
Japan	2019
Jersey	2012
Korea	2006
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
USA (OTS)	2005
Vatican	2014

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