FSMA
AUTORITEIT VOOR FINANCIËLE DIENSTEN EN MARKTEN

CONGRESS COLUMNS 2025

Market trends and supervision of banking products

Dear reader,

We are pleased to announce the second edition of the “Congress Columns” concerning banking products!

As last year, the Congress Columns address topics that are relevant to professionals who design or distribute banking products.

In the Congress Columns, you will find, for banking products, an overview of products distributed in Belgium, an overview of the FSMA's views and expectations, as well as its feedback following supervisory actions and analyses.

The FSMA wishes hereby to inform the sector of its actions within the scope of its mandates. As a supervisory authority, the FSMA strives to ensure the honest and equitable treatment of financial consumers. It is committed to ensuring that the financial system is sustainable and merits the trust of savers and investors, even when times are more challenging.

We all realise that European competitiveness is stagnating and that there is a need to build a Savings and Investments Union. This should serve as a catalyst for Europe to step up its efforts to enhance its capital markets and its financial independence. Europe has a number of key strengths to meet this challenge: abundant savings and a developed financial intermediation network. The financial sector is expected to play a crucial role in the further development of a true Savings and Investments Union.

Moreover, the savings and investment landscape is changing fast. The success of ETFs and crypto-assets, the competition of neobanks, the increasingly important role of social media and influencers, new marketing methods, and the more widespread use of apps for communication and for concluding transactions are all trends that are gathering momentum.

We hope you enjoy reading this publication.

Annemie ROMBOUTS, Deputy Chairman

Jean-Paul SERVAIS, Chairman

OVERVIEW CHAPTERS

Market trends

Savings products

Bank debt instruments

SFDR disclosure for financial market participants and financial advisers

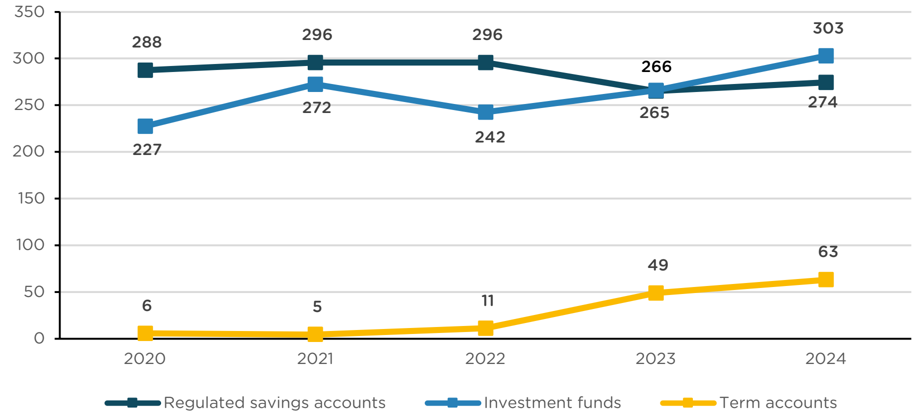
I. MARKET TRENDS[1]

1 The statistics presented in this part may change in the future if an entity is deregistered on a specific date, effective on an earlier date, if an entity provides the FSMA with a correction to certain data reported to the FSMA at a later date, or due to statistical reclassifications or because of a correction of erroneous data. The FSMA continues to work with reporting entities to identify and correct filing errors. Further, the FSMA has employed certain assumptions in aggregating the data. Future adjustments to the methodology and amended filings that change the underlying data could also lead to changes in previously reported statistics. Figures are always presented as at 31 December of a given year. If a company or entity is deregistered as at 31 December of that year, it will still be included in these figures. This approach may also lead to differences with certain other figures.

A. New trend in the savings and investment pattern of the Belgian households?

At the end of 2024, Belgian households had more than 274 billion euros in regulated savings accounts in Belgium[2]. In 2024, the amounts on deposit in regulated savings accounts were for the first time considerably lower than the value of units of Belgian and foreign investment funds owned by Belgian households. At the same time, the amounts held in term accounts by Belgian households increased sharply, rising from less than 5 billion euros at the end of 2021 to more than 60 billion euros in 2024.

Chart 1: Amounts held by Belgian households in regulated savings accounts, term accounts and investment funds (as of 31 December, in billion EUR)



2 Source for all figures presented in this part: National Bank of Belgium, Online Statistics – Financial account of Belgium, NBB Statistics.

B. Regulated savings accounts

As at 31 December 2024, 28 banks[3] were distributing regulated savings accounts.

By way of reminder, in November 2023 the federal government and Febelfin signed an agreement regarding the transparency of the offer of regulated savings accounts (hereafter "the Agreement") in order to facilitate comparison of the available options on the market. The Agreement limits the offer by each bank to 4 accounts/formulas for calculating returns and requires that the accounts be spread across 3 categories in the following way:

- Category A: a maximum of two "traditional" savings accounts per bank, for which a base interest rate and a loyalty premium apply, without any other conditions;
- Category B: a maximum of two savings accounts per bank for which amount conditions apply, i.e. the requirement to maintain a minimum/maximum amount of savings or to deposit a minimum/maximum amount per month;
- Category C: a maximum of two savings accounts per bank linked to an age category, such as a youth account.

Credit institutions may also offer, in addition to these 3 categories, formulas for a rental guarantee deposit or for an account stipulated as being for a third party[4]. Such accounts are not taken into consideration when calculating the limit of 4 accounts/return formulas per institution, provided that its return formula is identical to that of another regulated savings account offered by that credit institution and that its name does not differ from another account in category A, B or C other than by the addition of a clear reference to its characteristics/specificities (e.g. addition of the label 'rental guarantee deposit' or 'for a third party').

At the end of 2024, 79 regulated savings accounts with different return formulas were available at banks that have signed on to the Agreement. For these 79 regulated savings accounts, banks offered a total of 84 return formulas[5], that is, a combination of a base interest rate and a loyalty premium.

3 In this context a bank is counted twice if it also distributes under another brand.
4 These accounts are classified as 'Exception' in chart 2b.

5 5 banks/brands offered an account comprising 2 different formulas (i.e. the base rate and the loyalty premium differ according to the amount on the account).

When considering the offer of the banks that adhere to the Agreement, the FSMA observed that almost 40% of credit institutions offered 4 accounts/return formulas and a little fewer than half of the return formulas fell within category A.

Chart 2a: Number of return formulas per bank

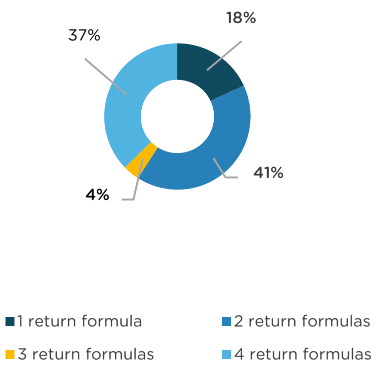
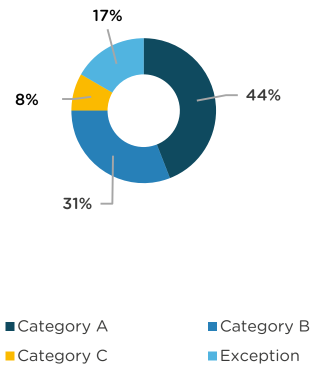


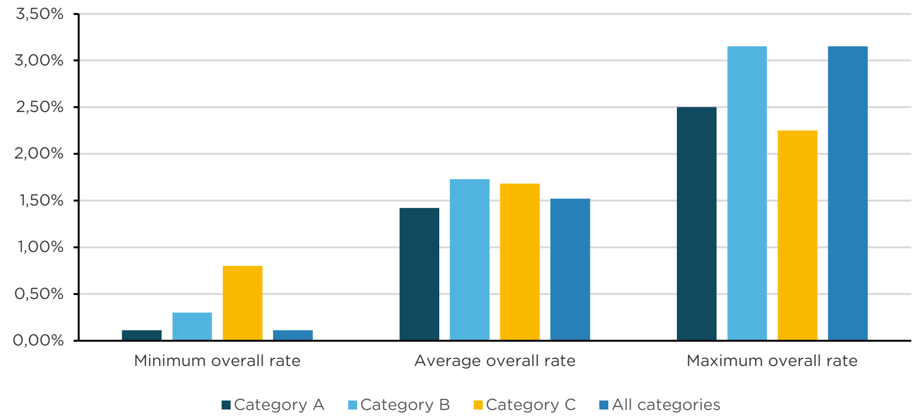
Chart 2b: Breakdown by category (A, B or C)



When adding up the base interest rate and the loyalty premium applicable as at 31 December 2024 in order to calculate an overall gross rate, there was great variation among the offered regulated savings accounts in the overall rate, ranging from 0.11% to 3.15%. The overall gross rate corresponds to the return that the saver will receive after 12 months if the interest rates remain unchanged during that period.

The return formulas in category B offered a higher overall rate, on average, than the return formulas in the other categories. The return formulas in category B are accompanied by a minimum or maximum amount. They also showed the largest gap between the minimum and the maximum overall rate.

Chart 3: Overall gross rates per category of regulated savings account



The loyalty premium is higher on average than the base interest rate, except for the return formulas in category C.

The FSMA has not identified any strong correlation between the base interest rate and the loyalty premium applied to different return formulas. A high base interest rate is not associated with a high or low loyalty premium, nor is a low base interest rate.

Of the 79 regulated savings accounts that were held by savers at the end of 2024, only 4 savings accounts were no longer being distributed. The FSMA noted that the average overall rate on these last regulated savings accounts was lower than the average overall rate offered on regulated savings accounts that were still being distributed.

C. Other savings products

At the beginning of September 2024, the one-year government bond that had attracted almost 22 billion euros the year before reached maturity. The banks sought to recapture part of those funds, and a heightened competition among banks ensued. This competition focused chiefly on two types of very similar products: savings certificates and term accounts.

In this regard, the FSMA noted that the most attractive rate offered by certain banks on term accounts was reserved for “fresh” money coming, for example, from the repayment of the government bonds or from an account with another bank. In order to ensure that clients were duly informed of the conditions associated with these products, the FSMA launched a specific supervisory action (see further under “Supervision of advertisements for term accounts disseminated when the government bond issued in 2023 was repaid.”).

D. Overview of bank debt securities and structured products offered on the Belgian market in 2024

a. Investors showed more appetite for investments in bank debt securities than in structured products

The FSMA analysed unstructured bank debt securities and structured products distributed in Belgium in 2024.

The analysis revealed that the volume of unstructured bank debt securities distributed to retail clients had increased significantly. This is unlike the amounts invested by Belgian investors in structured products in 2024, which had fallen considerably as compared to 2023.

Belgian investors placed more than 13 billion euros in unstructured debt securities issued by banks via a public offering, representing a 145% increase over 2023 (+7.7 billion euros)[6], whereas a little less than 2.5 billion euros were collected in 2024 in the form of structured products (all legal forms combined).

The sharp increase in unstructured bank debt securities has been observed since the second half of 2022. This coincides with the movement of the European Central Bank interest rates, which during the period under consideration enabled banks to offer more attractive conditions for these products.

The repayment of 21.9 billion euros from the government bond that reached maturity in September 2024 served as a catalyst. Investors invested more than 5 billion euros during that month in savings certificates and placed no less than 18.2 billion euros in term accounts[7].

An analysis of the amounts issued per month also reveals that the maturity of the one-year government bond coincided with the issue by the banks of unstructured debt securities other than savings certificates for a little over 3.4 billion euros in September 2024 and October 2024.

Structured products also benefited from the government bond reaching maturity. Almost half of the amount invested in structured products was invested during the months of September and October 2024.

6 In 2023, Belgian investors had invested €5.3 billion in unstructured bank debt securities through public offerings.
7 See also: https://www.nbb.be/en/blog/where-did-eu22-billion-released-2023-state-note-go | National Bank of Belgium

b. The issue amount and the number of structured products decreased but, generally, less risky structured products were offered to the public in 2024

The voluntary Moratorium on the distribution of particularly complex structured products (hereafter "the Moratorium")[8] applies to the distribution to retail investors of structured products that are considered particularly complex.

In line with the Moratorium's objective, the tendency to offer less risky products, which had already been observed in 2023, continued in 2024.

Indeed,

- structured products had shorter maturities;
- the vast majority of structured products were issued in euros;
- nearly all structured products conferred a right to repayment of the nominal value at maturity;
- the most widely used underlyings to determine the payoff formula were interest rates.

Charts 4a and 4b show the number of structured products issued and the overall issue amount for each legal form over the past 5 years.

In 2024, the amounts invested by individual Belgian investors decreased considerably compared to 2023, falling from 3.76 billion euros in 2023 to 2.44 billion euros in 2024. This decrease of nearly 43% led to a return to a level close to that observed in 2022.[9]

The number of structured products issued, for their part, remained constant from 2023 for all legal forms. Debt securities (Notes) were the most preponderant legal form (54 products). Only 5 structured Undertakings for Collective Investment (hereafter "UCIs") and 5 structured Class 23 products were distributed in 2024.

Chart 4a: Structured products in terms of the issue amount (in EUR millions)

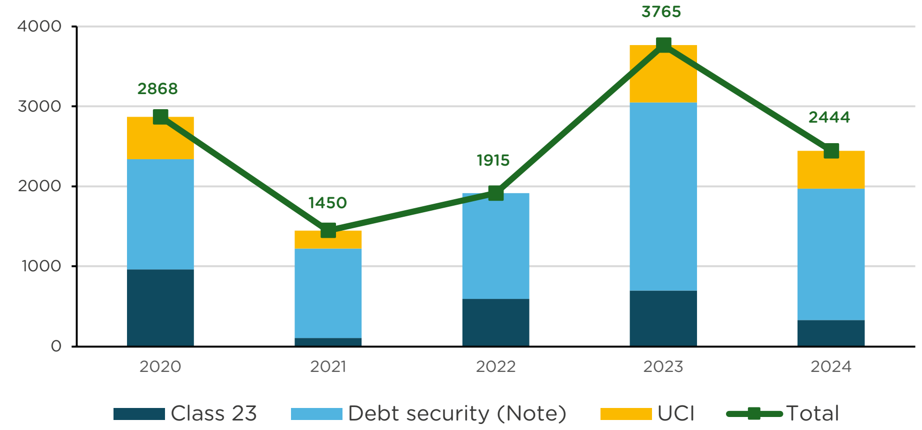
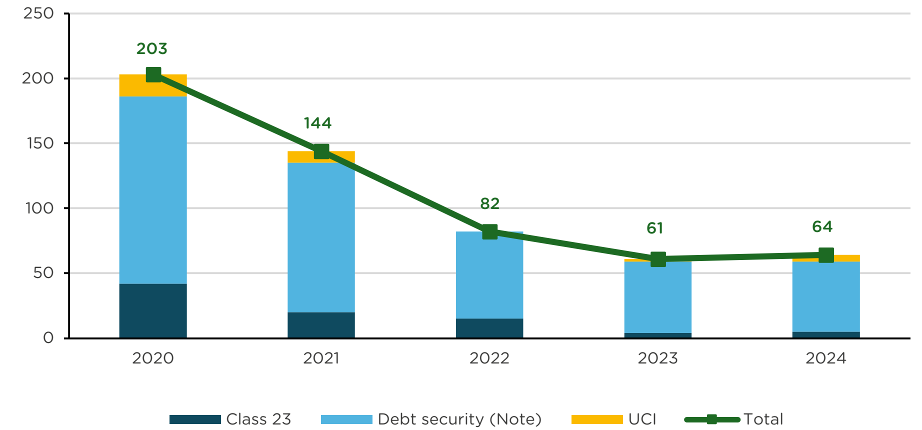


Chart 4b: Structured products in terms of the number of products issued



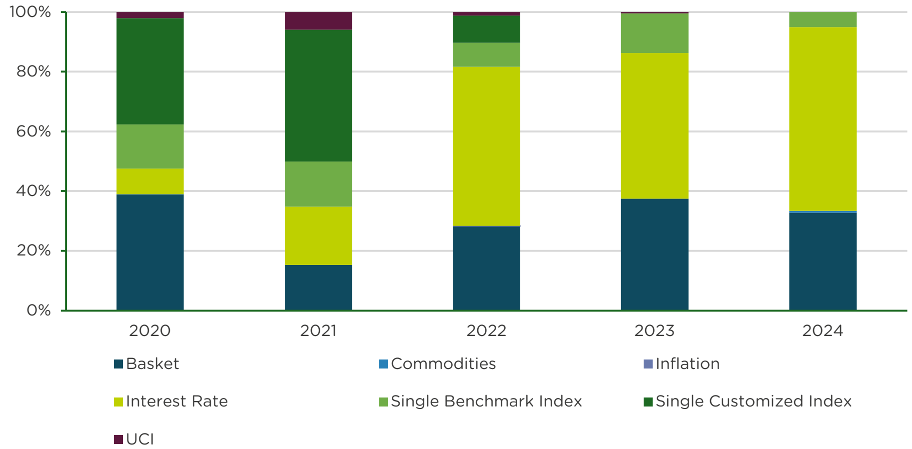
8 https://www.fsma.be/en/structured-products-moratorium | FSMA.

9 It should be noted that the FSMA does not consider 'Callable Fixed Rate" debt securities to be structured products as there is no underlying. (See: Communication FSMA 2011_02 of 20/06/2011 on the Moratorium on the distribution of particularly complex structured products.) In 2024, these Callable Fixed Rate products were issued for a total amount of 2.5 billion euros.

c. Interest rates were used as the underlying of the payoff formula of most structured products issued in 2024

Since 2022, interest rates were used more widely as underlyings to determine the payoff formula. During the year 2024, structured products with payoffs determined by interest rates represented more than 60% of structured products in terms of issue amount. The overrepresentation of interest rates as the underlying is even higher for structured notes, accounting for more than 90% of the volume of structured notes. Baskets of shares are still being used as the underlying for structured UCIs and structured Class 23 products, as was already the case in 2023.

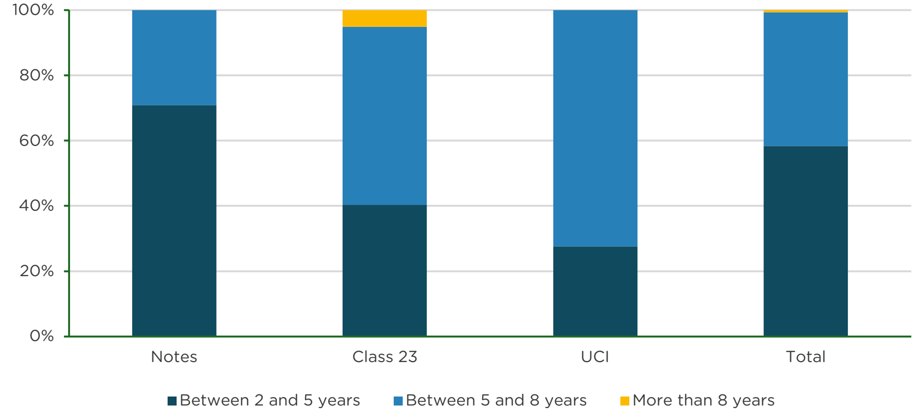
Chart 5: Underlyings expressed as percentage of the total amount issued



d. Structured products issued had shorter maturities in 2024

In 2022 and 2023, with the increase in interest rates, the FSMA noted that the structured products distributed had shorter maturities. This trend continued in 2024. Almost 60 per cent of all products had a maturity shorter than 5 years (in terms of issue amount).

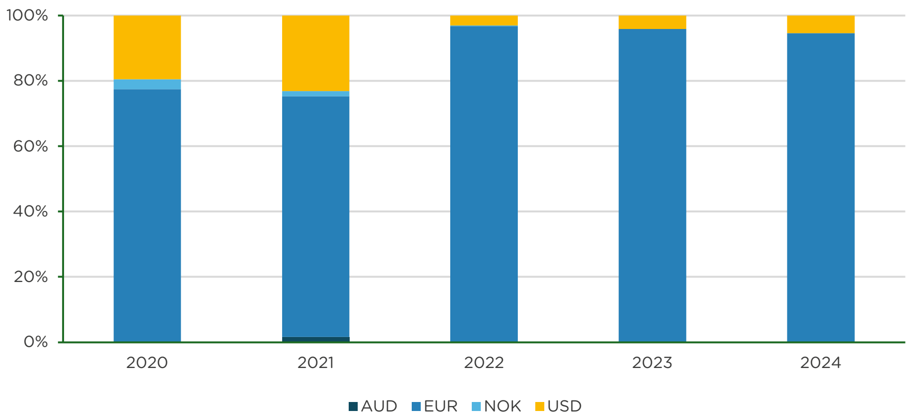
Chart 6: Duration expressed as percentage of the total amount issued



e. The majority of structured products issued were denominated in euros in 2024

Since 2022, fewer products have been issued in US dollars. In 2024, more than 94% of structured products were issued in euros (in terms of issue amount and number of products).

Chart 7: Currencies expressed as percentage of the total amount issued

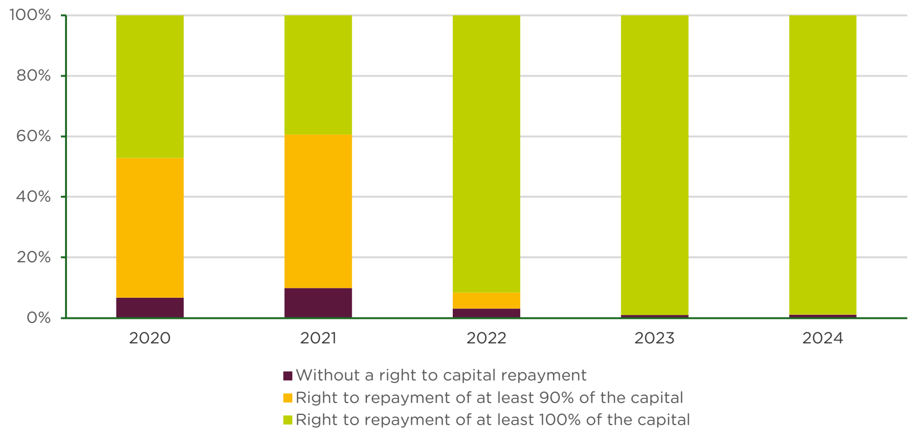


f. Almost all structured products issued in 2024 offered a right to the repayment of the nominal value at maturity

The right to repayment of the capital at maturity remains an important factor for Belgian investors in their investment decisions. In the past few years, distributors have begun to distribute more structured products that offer a right to repayment of at least 90% of the capital.

The increase in interest rates since 2022 has made it possible for distributors to once again sell almost exclusively structured products that offer a right to repayment of at least 100% of the capital at maturity (both in terms of the number of products and of issue amount). These products represented more than 98% of the amount issued in 2024.

Chart 8: Right to repayment of the capital at maturity expressed as percentage of the total amount issued



II. SAVINGS PRODUCTS

A. Significant increase in the number of advertisements for savings products

The FSMA has noted a significant increase in the number of advertisements for savings products (this notion includes both regulated and unregulated savings accounts as well as term accounts). Thus, between 2022 and 2024, the number of advertisements examined by the FSMA increased by 161% (191 advertisements in 2022 vs 499 in 2024).

This increase in the number of advertisements disseminated gave rise to a greater number of potential infringements of the applicable legislation governing advertising. The potential infringements observed had to do both with non-compliance with the general obligations laid down by the Royal Decree of 25 April 2014 imposing certain information obligations when marketing financial products to retail clients ("Royal Decree on Advertisements"), failure to comply with the minimum contents imposed by that Royal Decree, or the dissemination of advertisements without prior approval by the FSMA when such prior approval was required.

B. Points to bear in mind when preparing advertisements for savings products

a. Advantages offered to a customer opening a new savings account or depositing fresh money into an existing regulated savings account

In light of the highly competitive market that marked the year 2024, credit institutions that offer regulated savings accounts sometimes offered advantages to customers opening a new account or depositing fresh money into an existing account. For example, such customers could receive cinema tickets or books or could participate in a competition, the bank donated a percentage of the deposits to a charity, etc.

When offering such advantages, legal requirements apply.

First, offering the above-mentioned advantages to those opening a new account must not constitute a combined offer within the meaning of the Code of Economic Law[10] or, where applicable, must fall under one of the exceptions provided for by the Code. The following, are thus allowed:

- financial services that constitute a whole;
- financial services and minor goods and services accepted in commercial practice;
- financial services and an opportunity to participate in legally authorized lotteries;
- financial services and objects bearing clearly marked and indelible advertising descriptions that are not found as such on the market;
- financial services and colour prints, stickers and other images of minimal commercial value;
- financial services and titles consisting of documents that confer a right, after the acquisition of a number of services, to a free offer or a discounted price when acquiring a similar service.

The FSMA thus recalls that combined offers that fall within the scope of the exceptions listed above are permissible only in so far as the other legal provisions are complied with and, in particular, the provisions of Book VI of the Code of Economic Law, which prohibit commercial practices that are unfair, misleading or aggressive towards consumers. In fact, a combined offer, although within scope of one of the exceptions, may nevertheless prove to constitute an unfair commercial practice within the meaning of Articles VI. 93 and following of the Code of Economic Law and, therefore, to be unlawful.

Secondly, the obligations under the Royal Decree on Advertisements must be complied with, and in particular, Article 11, 2° of the said Royal Decree. According to this rule, advertisements must not emphasize the potential benefits of the financial product without also giving a fair, prominent and balanced indication of the risks, limitations or conditions associated with the product. That is, advertisements may not divert clients' attention from the fundamental characteristics of the product and disproportionately promote its benefits. The FSMA therefore takes the view that it is good practice to mention these (additional) advantages after the minimum information required under Articles 12 through 14 of the Royal Decree on Advertisements.

10 See Article VI.81, § 1 of the Code of Economic Law.

b. Savings product simulators

Several credit institutions that offer savings products (whether regulated or not) make available to consumers a savings product simulator on their website.

In this regard, the FSMA recalls the following elements:

- A website that has a savings product simulator is considered to be an advertisement. It must therefore contain the minimum information required by the Royal Decree on Advertisements. A button that allows users to open a savings product should optimally be included after all the minimum information has been reviewed by the consumer.
- The FSMA has devoted particular attention to the fact that adding a simulator to an advertisement should not be of such a nature as to affect the balanced nature of that advertisement by placing disproportionate emphasis on certain characteristics of the products, and especially on the rates of return offered. The minimum information can be included before or after such a simulator, provided that the information as a whole is presented in a balanced way.
- For regulated savings accounts, given the requirement to keep the funds on account for 12 months in order to receive the loyalty premium, it is good practice to enable the client to carry out simulations for periods longer than and shorter than one year.
- For term accounts with a maturity of less than one year, it is recommended that the results provided by simulators show the real returns (pro-rated) in addition to the annual returns. It is also important that all the narratives used apply to every possible term.

Finally, the FSMA expects all the hypotheses used to calculate the results of these simulators to be set out in a comprehensible and exhaustive manner.

c. Supervision of advertisements for term accounts disseminated when the government bond issued in 2023 was repaid.

At the end of August and the beginning of September 2024, the repayment of the one-year government bond that had raised some 22 billion euros gave rise to an unprecedented degree of competition on the Belgian bank market.

To attract some of that money, several financial market participants focused their strategy on marketing products such as term accounts, sometimes with maturities of less than one year. The FSMA noted that many advertisements for these products were disseminated at the end of August and the beginning of September 2024. However, some of these advertisements did not appear to comply with the applicable legal requirements.

By way of reminder, advertisements for these term accounts do not require ex ante approval by the FSMA, that is, before their dissemination to the Belgian public. Although there is no need for prior approval, companies that disseminate such advertisements must comply with the general transparency requirements and the minimum contents required by the Royal Decree on Advertisements. The FSMA conducts ex post supervision of compliance with the obligations under that Royal Decree, and can sanction the companies in question[11].

It was in this context that the FSMA launched a supervisory action targeting advertisements for term accounts that were disseminated during the summer of 2024 until the beginning of September 2024.

11 See Article 36 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

In all, 19 credit institutions were identified as being involved. After checking the advertising documents of these 19 institutions, 12 supervisory dossiers were opened concerning some 40 advertising documents (webpages, product information sheets, press releases, banners, etc.) and 6 requests were made for online advertising documents to be withdrawn. All the institutions concerned were responsive and either adjusted or withdrew (in light of the number of changes required) advertisements that were found not to be compliant.

The main concerns raised had to do with failure to respect the principle of balance, the absence of any mention of net returns whilst gross returns were indicated, and the failure to provide the minimum information required by the Royal Decree on Advertisements.

The supervisory action also made it possible to detect a new area of concern relating to the presentation of the returns on term accounts with a maturity of less than a year. Many banks in fact presented returns on these types of products exclusively on an annualized basis. Such a presentation could be considered misleading if it is not accompanied by a statement explaining that the real return on the product must be pro-rated to the actual term of the product. This recommendation was included in the points requiring attention published in the Congress Columns 2024[12].

12 See the FSMA website: https://www.fsma.be/en/news/congress-columns-about-asset-management-and-banking-products

C. Responsibility for compliance with the obligations of the Royal Decree implementing the 1992 Income Tax Code

The Royal Decree inplementing the 1992 Income Tax Code[13] defines the criteria that must be fulfilled by savings accounts in order to qualify as regulated savings accounts and therefore to be exempted from withholding tax up to a by law defined threshold of interest per taxpayer[14]. Above that amount, the saver is subject to a withholding tax of 15% on the interest earned.

Article 28ter, § 2 of the Law of 2 August 2002 specifies in this regard that where a credit institution presents a savings account as being a regulated savings account, it must fulfil the criteria set out in the Royal Decree implementing the 1992 Income Tax Code.

In the course of a supervisory action, the FSMA noted that one credit institution's formulation of the general terms and conditions was such as to shift the responsibility for compliance with certain requirements under the Royal Decree implementing the 1992 Income Tax Code to savers. Since this situation is incompatible with the principle enunciated in Article 28ter, § 2 of the Law of 2 August 2002, the FSMA asked the institution in question to amend its general terms and conditions. The institution cooperated fully with the FSMA.

13 Article 2 of the Royal Decree of 27 August 1993 implementing the 1992 Income Tax Code.
14 The exempt amount is doubled if the account is in the name of a married or legally cohabiting couple.

D. Agreed settlement concluded after the observation of irregularities in the calculation and payment of interest owing on regulated savings accounts

In 2024, a credit institution informed the FSMA of irregularities in the calculation and payment of the base interest and the loyalty premium on some of its regulated savings accounts, citing problems involving the IT tool for calculating the remuneration on its regulated savings accounts. The credit institution implemented a recovery plan.

According to the FSMA, by not paying out in full the base interest and/or the acquired loyalty premiums, the credit institution breached certain criteria imposed by law in order to be able to describe a savings account as regulated. The FSMA considered that the credit institution had breached rules of conduct that are essential to preserve the trust of savers in these products, which are widespread in Belgium and used by a large portion of the population. The FSMA therefore required the credit institution to cover the entirety of the detrimental consequences resulting from the actions described above which had not already been compensated for by the reimbursements made.

The FSMA's investigation resulted in an agreed settlement. The agreed settlement entailed a fine of EUR 700,000 and a publication, with names, on the FSMA's website. The full text of the agreed settlement is available on the FSMA's website[15].

15 https://www.fsma.be/fr/reglements-transactionnels (available in French only

III. BANK DEBT INSTRUMENTS

A. FSMA's point of view on options and warrants offered to employees/employers

a. Prospectus obligations when options or warrants linked to the salary framework for employees are publicly offered

Companies frequently offer options or warrants to their employees as part of the salary package. The Prospectus Regulation[16] exempts from the obligation to publish a prospectus, companies that offer securities to their own employees or directors, or to the employees or directors of affiliated companies, provided a document containing specific kinds of information is made available[17]. The Belgian Prospectus Law[18] provides for a comparable exception by way of reference[19].

In practice, however, companies – mostly credit institutions - sometimes offer options or warrants to employees or directors of other companies. Sometimes hedging options are also offered to these other companies, in order to allow them to cover open positions resulting from the options or warrants that have been offered to their own employees. These offers are in principle subject to the prospectus obligation[20].

It is important to correctly qualify these instruments either as a security or as another type of investment instrument, since this qualification determines whether the offer comes under the Prospectus Regulation or under the Prospectus Law. In fact, the legal qualification of instruments as a security or an investment instrument offered to the public is not a purely theoretical matter but can also have real impact on a dossier.

If the offer concerns securities and comes under the Prospectus Regulation, the legal basis for approval of the prospectus is Article 20 of that Regulation. The prospectus, any supplements and the final terms to a base prospectus are then sent to ESMA[21]. The prospectus can also be used for an offer in other Member States of the European Union, after the notification procedure as set out in Article 25 of the Prospectus Regulation has been completed.

If, on the contrary, there is no offering of securities or if the offer of securities does not come under the Prospectus Regulation, the Prospectus Law will apply except where it provides for an exception. The legal basis for approval in that case is Article 8 of the Prospectus Law, read together with Article 20 of the Prospectus Regulation. In that case, no notification to ESMA is required, nor will a notification of the prospectus to other Member States of the European Union take place.

b. Do the options and warrants qualify as securities or as investment instruments?

For the definition of securities, the Prospectus Regulation[22] refers to the definition of transferable securities in the MiFID II Directive[23], on the understanding that these do not include money market instruments with a maturity of less than 12 months. The MiFID II Directive defines "transferable securities" as all classes of

16 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Regulation 2003/71/EC (hereafter the "Prospectus Regulation").

17 Article 1 (4) (i) of the Prospectus Regulation.

18 Law of 11 July 2018 on public offers of investment instruments and the admission of investment instruments to trading on a regulated market (hereafter the "Prospectus Law").

19 Article 8 of the Prospectus Law.

20 See also: Part II. B. a. of the Congress Columns 2025: Sector overview and supervision of asset management

21 Article 20(2) and Article 21(6) of the Prospectus Regulation.

22 Article 2(a) of the Prospectus Regulation.

23 Article 4(1)(44) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (hereafter "MiFID II Directive").

securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

- shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
- bonds or other forms of securitized debt, including depositary receipts in respect of such securities;
- any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to securities, currencies, interest rates or yields, commodities or other indices or measures.

On the other hand, the definition of investment instruments is a purely domestic one for the purposes of the Prospectus Law[24]. The definition includes an illustrative list of instruments, including securities as well as instruments that are not securities, including derivative contracts such as options.

An important element of this assessment is the question whether purely bilateral contracts are being offered or whether rights are offered that are incorporated into a negotiable title. Options are bilateral contracts that are not incorporated into a negotiable title. Warrants, by contrast, are incorporated into a negotiable title and are transferable securities within the meaning of Article 4(1)(44) of the MiFID II Directive.

Securities are characterized by their abstract nature. This means that the instruments are independent of any other legal relationship between the issuer and the holder of the securities in question.

Securities are in principle negotiable by means of a transfer of the title, without having to meet the requirements for a transfer of debts and debt claims. The possibility of trading without restrictions on the capital market does not constitute an essential characteristic of securities, but the possibility of trading such securities between the offerors of securities and potential investors does. The negotiability of the securities may nevertheless not be so restricted as to be impossible or extremely difficult[25].

c. Assessment is a case-by-case exercise based on the intrinsic characteristics of the options and warrants that are publicly offered

In the event of an offering to the public of options and warrants, it is therefore important to assess correctly the nature of the instruments offered. The names given to the instruments are not relevant in this regard. The assessment must be made on the basis of the intrinsic characteristics of the instrument and are thus made on a case-by-case basis.

If other legal relations between the issuer and the instrument holder may have an impact on the rights and obligations under the instrument, this is an indication that these are not securities but investment instruments. In that case, only the Prospectus Law applies, and thus no notification of the prospectus to ESMA or to another Member State of the European Union will take place.

24 Article 3 of the Prospectus Law.

25 Court of Justice, Judgment of 9 January 2025, Commune de Schaerbeek and Commune de Linkebeek against Gemeentelijke Holding NV, C-627/23, EU:C:2025:9, point 36.

B. Withdrawal right

a. The Listing Act amends the withdrawal right

The Listing Act[26] is an important step in the implementation of the European Commission's strategy for the Capital Markets Union, which is aimed at creating a single capital market in order to increase the financing options for companies and provide new opportunities to savers and investors.

The Listing Act contains various amendments to the Prospectus Regulation that enter(ed) into force at various points in time. One amendment that has been in force since 4 December 2024, introduces a modification of Article 23 of the Prospectus Regulation on the right of withdrawal for retail investors who have accepted an offer made to the public before the publication of a supplement to the prospectus. The Listing Act increases the period of the withdrawal right to 3 working days after the publication of the supplement and changes the modalities of the communication by financial intermediaries regarding the withdrawal right[27].

b. New rules on communication to clients regarding the withdrawal right

One of the new elements is that the financial intermediary must inform investors of the cases in which they will be contacted by electronic means to receive a notification that a supplement has been published, subject to their agreement to be contacted in this way. Investors who did not agree to be contacted by electronic means must nevertheless be offered an opt-in for electronic contact, but solely for the purpose of receiving the notification of the publication of a supplement. Investors who refuse the opt-in as well must be advised to monitor the issuer's or the financial intermediary's website to check whether a supplement has been published.

The FSMA reminds financial intermediaries that communication about the withdrawal right is a legal obligation incumbent on financial intermediaries at the time of the purchase or subscription of securities[28]. This means that intermediaries must provide this information to each individual investor who accepts the offer. This may be done by including the communications in the purchase or subscription form.

This also means that intermediaries who, in such individual communications, limit themselves to what is required under Article 23(3) of the Prospectus Regulation are carrying out a legal obligation and therefore are not disseminating advertisements or any other document or announcement as referred to in the Prospectus Law. The inclusion of these communications in advertisements ensures that investors are duly informed. This is not sufficient, however, to fulfil the information obligation, which is pro-active in nature and must be made to each individual investor at the time when he or she accepts the offer.

ESMA believes that a financial institution that distributes its own securities combines the capacity of issuer with that of financial intermediary and therefore must comply with the obligations of financial intermediaries[29].

The competence to check that financial intermediaries comply with the obligations of Article 23(3) of the Prospectus Regulation lies with the competent authority of the home Member State, without prejudice, of course, to the general competence of the courts.

26 Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (SMEs) (hereafter the "Listing Act").

27 Article 1 (20) of the Listing Act.

28 ESMA_QA_1003: (https://www.esma.europa.eu/publications-data/questions-answers/1003).

29 ESMA_QA_1002 (https://www.esma.europa.eu/publications-data/questions-answers/1002).

C. KID notification

The FSMA observed that several manufacturers of packaged retail and insurance-based investment products ('PRIIPs') did not notify their key information documents ('KIDs') via the FinPro application. By way of reminder, the Royal Decree of 25 December 2017, implementing Article 37sexies of the Law of 2 August 2002, specifies the obligation of prior notification of the KID to the FSMA, in particular as regards the notification to the FSMA made by electronic means, in accordance with the procedures laid down by the FSMA. The FinPro application, whose functioning is described in Communication FSMA_2017_24[30], facilitates the notification of KIDs to the FSMA. The FSMA reminds manufacturers that it is preferable to use the FinPro application and to use the email address kidnotification@fsma.be only in the case of technical problems or if the FinPro application is unavailable.

30 Communication FSMA_2017_24 of 29/12/2017 on the notification of Key Information Documents for PRIIPs to the FSMA via the "FinPro" application.

IV. SFDR DISCLOSURE FOR FINANCIAL MARKET PARTICIPANTS AND FINANCIAL ADVISERS

SFDR disclosure for financial market participants and financial advisers

Pursuant to the SFDR Regulation[31], financial market participants[32] and financial advisers[33] are subject to obligations to publish sustainability information on their website.

Financial market participants include:

- AIF managers and management companies of UCITS;
- investment firms and credit institutions that provide portfolio management services[34].

UCITS and AIFs and the service of portfolio management are considered financial products within the meaning of the SFDR.

Moreover, these same entities meet the definition of financial adviser when they provide the service of investment advice. The service of investment advice is not a financial product within the meaning of the SFDR.

The financial market participants and financial advisers referred to above are required to publish on their websites information about:

- their policies on the integration of sustainability risks into their investment decision-making processes and/or into their investment advice[35];
- whether or not they take into account adverse impacts of investment decisions on sustainability factors (hereafter “PAI statements”)[36];
- the way in which their remuneration policies are consistent with the integration of sustainability risks[37].

The FSMA has already carried out some checks of the publication of the above-mentioned information by the aforesaid financial market participants, notably in the course of ESG inspections[38] as well as when analysing PAI statements[39] and will continue to carry out checks of this matter.

The FSMA also intends to check the websites of financial advisers in order to ensure that the above-mentioned information appears on their websites. It should be noted that financial market participants are also subject to “product” disclosure rules. That is, they are required to:

- describe their products’ ESG characteristics in pre-contractual disclosures and in periodic reports on those products[40] and
- publish on their website sustainability-related information with respect to those financial products.[41]

Such obligations do not apply to financial advisers, as the service of investment advice is not a financial product within the meaning of the SFDR Regulation.

31 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.
32 As defined in Article 2,1) of the SFDR Regulation.
33 As defined in Article 2, 11) of the SFDR Regulation.
34 Portfolio management service as defined in Article 4(1)(8) of Directive 2014/65/EU.
35 Pursuant to Article 3 of the SFDR Regulation.
36 Pursuant to Article 4 of the SFDR Regulation.
37 Pursuant to Article 5 of the SFDR Regulation.
38 See also: Part III. A. of the Congress Columns 2025: Sector overview and supervision of asset management
39 See also: Part IV. A. c. of the Congress Columns 2025: Sector overview and supervision of asset management
40 Pursuant to Articles 6,7, 8, 9 and 11 of the SFDR Regulation.
41 Pursuant to Article 10 of the SFDR Regulation.