

Cross-border distribution of funds
in Europe: identify the real barriers
and enhance investors' confidence

September 19th, 2016

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Summary

The European Commission's report on the Capital Markets Union initiative suggests that barriers to cross-border investment may have their origins in national legislation or administrative practice, observing that some barriers "relate to national 'gold-plating' of EU minimum rules, while others may arise from divergent application of EU rules". To assess these barriers, the European Commission published a consultation in June on the cross-border distribution of investment funds. Aimed chiefly at European fund managers, distributors and investors, the consultation seeks to gather feedback on the barriers to distribution that still exist in Europe in such areas as distribution costs, fees, taxation and administrative arrangements.

Yet we do not see evidence of administrative barriers, given the success of the passporting system used to market European funds within the European Union (EU), and particularly in France. It would be more appropriate to look at the marketing stage, which involves the presentation of products to consumers by distribution networks and the tailoring of products to reflect investor preferences.

Building on work done on the Green Paper on Retail Financial Services, this memo seeks to shed more comprehensive light on the situation in France as compared with other countries in terms of the existence of barriers to entry for European funds. This study comes with a position paper that will be sent to the European Commission in addition to the feedback provided by the AMF to the abovementioned public consultation.

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Introduction

To pursue efforts towards integration of the European financial system¹, the European Commission launched its Capital Markets Union (CMU) action plan² in September 2015 to grow and consolidate EU financial markets.

The aim is to ensure that capital resources are more effectively allocated by moving away from a uniquely national rationale to take an approach based on sector efficiency or pools of consumers. The European Commission claims that an integrated European financial system would improve the economy's diversification and reduce volatility. It would thus help to stabilise the monetary union and make the zone more resilient to outside shocks. Moreover, the Commission argues that convergence in European financial regulation and supervision would lead to more effective regulation and to harmonised practices among market participants. Accordingly, CMU proposes to develop European capital markets in order to "reduce our very high dependence on bank funding" (Juncker, 2014)³. Several economists have recently highlighted the adverse effects for long-term economic growth of Europe's funding structure, which relies more on a large-scale banking sector than on market financing⁴.

One of the key goals of CMU is to grow and expand investment opportunities for institutions and individuals. The initiative particularly targets the asset management sector and its role in financing the European economy in the short, medium and above all long term: "Removing the barriers to retail investors saving via the capital markets requires competitive financial markets that can offer choice to allow customers to compare products and find the most suitable savings vehicles at competitive prices"⁵. Particular attention is paid in this regard to the opportunities for European investment funds to establish themselves in other European countries, in order to strengthen cross-border competition, notably through improvements to the European passporting system. To this end, the European Commission has published a consultation on the cross-border distribution of investment funds. Aimed chiefly at European fund managers, distributors and investors, the consultation seeks to gather feedback on the barriers to distribution that still exist in Europe in such areas as distribution costs, fees, taxation and administrative arrangements.

The passporting system for investment funds is already familiar to the industry and widely used. Most funds have been able to market their products in other EU countries since 1985 in the case of UCITS and since 2013 in the case of other AIFs⁶. However, some barriers connected with administrative arrangements or consumer preferences may still persist and interfere with the cross-border distribution of these funds.

A "barrier" can be defined as any domestic rule, practice or procedure that impedes data comparability (price discovery), fairness of procedures (execution) and legal certainty⁷. The potential gains from lifting the existing barriers fall into three categories: (i) European funds can improve returns by extending their marketing reach; (ii) consumers enjoy wider choice; (iii) the overall market benefits from reduced costs linked to potential economies of scale driven by a decline in the number of European funds.

This memo begins by assessing how well the European passporting system has worked by looking at penetration levels in France for non-French European funds and comparing the situation in France against that of other European countries. We find that the system is actively and extensively used by European funds.

The memo goes on to shed light on the types of potential and persistent barriers to the entry of funds from other countries connected with the supply of products through distribution networks. Demand-side barriers are also considered. The memo concludes by examining possible ways to improve European cross-border competition while ensuring investor protection.

¹ European Commission (2015), "Completing Europe's Economic and Monetary Union", Report by Jean-Claude Juncker in close cooperation with D. Tusk, J. Dijsselbloem, M. Draghi and M. Schulz, Brussels, June.

² European Commission (2015), "Action Plan on Building a Capital Markets Union", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2015) 468/2 Brussels, 30 September.

³ J.-C. Juncker, (2014), "A new start for Europe: My agenda for jobs, growth, fairness and democratic change", opening statement in the European Parliament plenary session.

⁴ Langfield, S., and M. Pagano (2016), "Bank bias in Europe: Effects on systemic risk and growth", *Economic Policy*, 31(85): 51-106.

⁵ European Commission (2015), "Action Plan on Building a Capital Markets Union", COM(2015) 468 final.

⁶ The Alternative Investment Fund Managers Directive applies to alternative investment funds, including retail investment funds (formerly non-UCITS), private equity funds, real estate funds and some hedge funds

⁷ Vallante D. (2016), "Europe's Untapped Capital Market", Centre for European Policy Studies/Rowman and Littlefield edition.

1. The European passporting system is widely used and works well

Scope of the study and characteristics of European passports

The study looks at funds sold in other European countries under the freedom to provide services (FPS). We consider undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs). Please note however that AIFs entitled to obtain a European passport are exclusively for professional clients (Table 1).

By obtaining a European passport, a management company that has received authorisation from its home country authority may carry on business and market its products under the FPS throughout the EU or in States party to the European Economic Area (EEA) Agreement. Passports may be obtained by asset management companies authorised under Directive 2009/65/EC (UCITS IV Directive), or Directive 2011/61/EU (AIFM Directive). It is also possible to obtain a passport to set up a branch using the same procedure under the freedom of establishment. However, this process does not appear to raise specific issues and is not addressed here. We therefore concentrate solely on the passports used to market products in other European countries.

The AIFM Directive also provides for the possibility of extending AIFM passports to other non-EEA countries. Introducing this option will depend on the opinion and advice issued by the European Securities and Markets Authority (ESMA) on the current functioning of the passport and potential expansion of the mechanism. In its initial advice published in July 2015⁸, ESMA said that additional time was needed to continue building the reputation of the AIFM passport and to examine the marketing regimes of third countries to which it is proposed to extend the passport. It recommended initially restricting the expansion to six jurisdictions with which EU Member States have trade dealings in the area of asset management. Similarly, the AIFM Directive proposes considering phasing out the national private placement regimes in force in individual Member States in 2018 and replacing these with the passporting arrangements provided for in the directive.

⁸ ESMA (2015), "ESMA's advice to the European Parliament, the Council and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs".

Table 1: key differences between passported UCITS and AIFs

	UCITS	AIFs
Authorised	Yes, by the supervisory authority in the home country of the UCITS	The manager is authorised. Some do not need an authorisation because they manage a small amount of assets. In this case, they cannot apply for a passport for their AIF ⁹
Cientele	Retail and professional	Professional only
Product type	Standardised by UCITS Directive (risk spreading ratios, eligible assets, etc.)	Wide variety both in form, ranging from simplified joint stock companies to collective investment undertakings, and in assets managed, which can include, for example, real estate, unlisted companies or forestry assets
Liquidity	High (NAV calculated frequently)	Extremely variable. Products may be locked in for up to ten years or may require several months' notice for redemption.

1.1. Passports are widely used within Europe

Overview of Europe's active passporting market

The industry is thoroughly familiar with the European passporting system, which has been around since 1985 for UCITS. The success of the UCITS passport can be traced back to the product's simple and standardised characteristics, and to the way that the system was built up over time, giving producers, distributors and consumers time to adapt. The extension of the system to AIFs and its popularity appear to point to intensified competition between European asset management centres and growth in cross-border flows.

According to estimates by PwC¹⁰, there were 74,000 European passports at end-2014 (UCITS and AIFs combined), including 49,000 from Luxembourg and 15,000 from Ireland. The preferred destinations of these cross-border funds are Germany, Switzerland and Austria. All in all, according to PwC, 10,430 European funds have passports to provide services in at least three European countries (including their domicile). These statistics underline the success of the European passporting system, especially in countries such as Luxembourg, Ireland and France, which top the cross-border market (see Figure 1 and Table 5 in the annex).

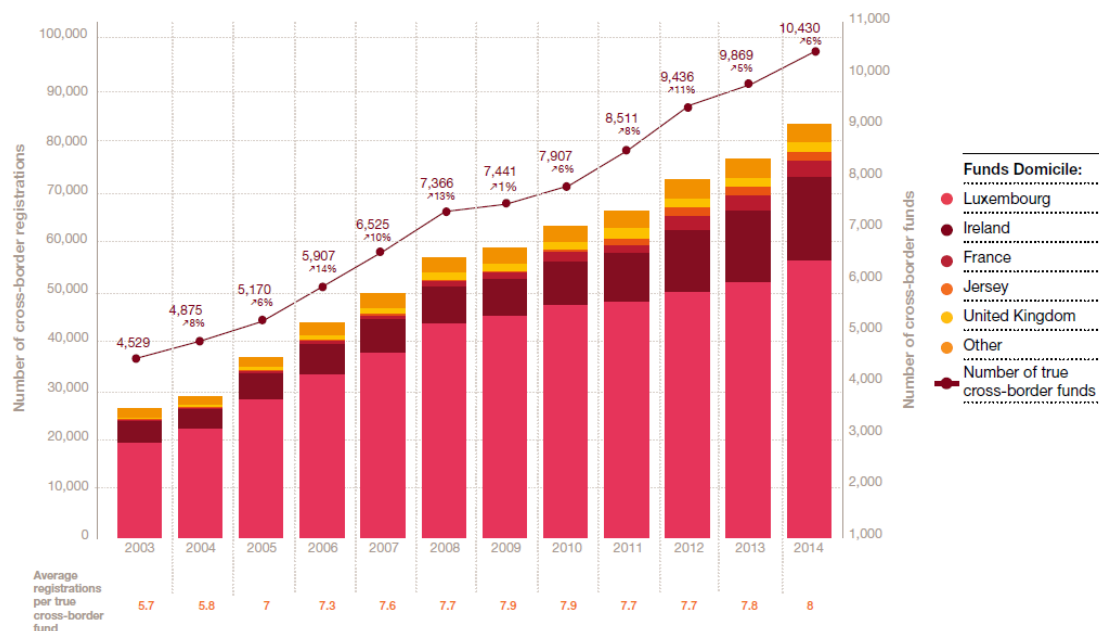
However, having a passport does not necessarily mean that these funds actually do business in the countries where they want to establish themselves. Accordingly, the number of passports needs to be set

⁹ In principle, any legal entity managing AIFs must be authorised as an asset management company under the AIFM Directive. Under an exemption to this principle, legal entities managing exclusively AIFs whose cumulative assets fall below a threshold of (i) EUR 100 million where at least one of the funds managed by the management company is leveraged or (ii) EUR 500 million for other management companies that do not use leverage, are merely required to register with regulators. However, they may apply for authorisation as an asset management company if they wish to take advantage of the opportunities offered by the AIFM Directive.

¹⁰ PricewaterhouseCoopers (2015), "Benchmark your global fund distribution".

against the number of European funds with assets under management, estimated at approximately 55,000 by EFAMA¹¹. This tells us that some funds that applied for European passports were not actually launched in the target country. The gap indicates that while European funds are keen to set up in other countries in the zone, they may be prevented from doing so by subsequent difficulties.

Figure 1: Number of funds domiciled in at least three European countries, and number of passport registrations per country



Source: PwC, Benchmark your global fund distribution 2015.

Table 2: Top five destinations for funds domiciled in Luxembourg and Ireland

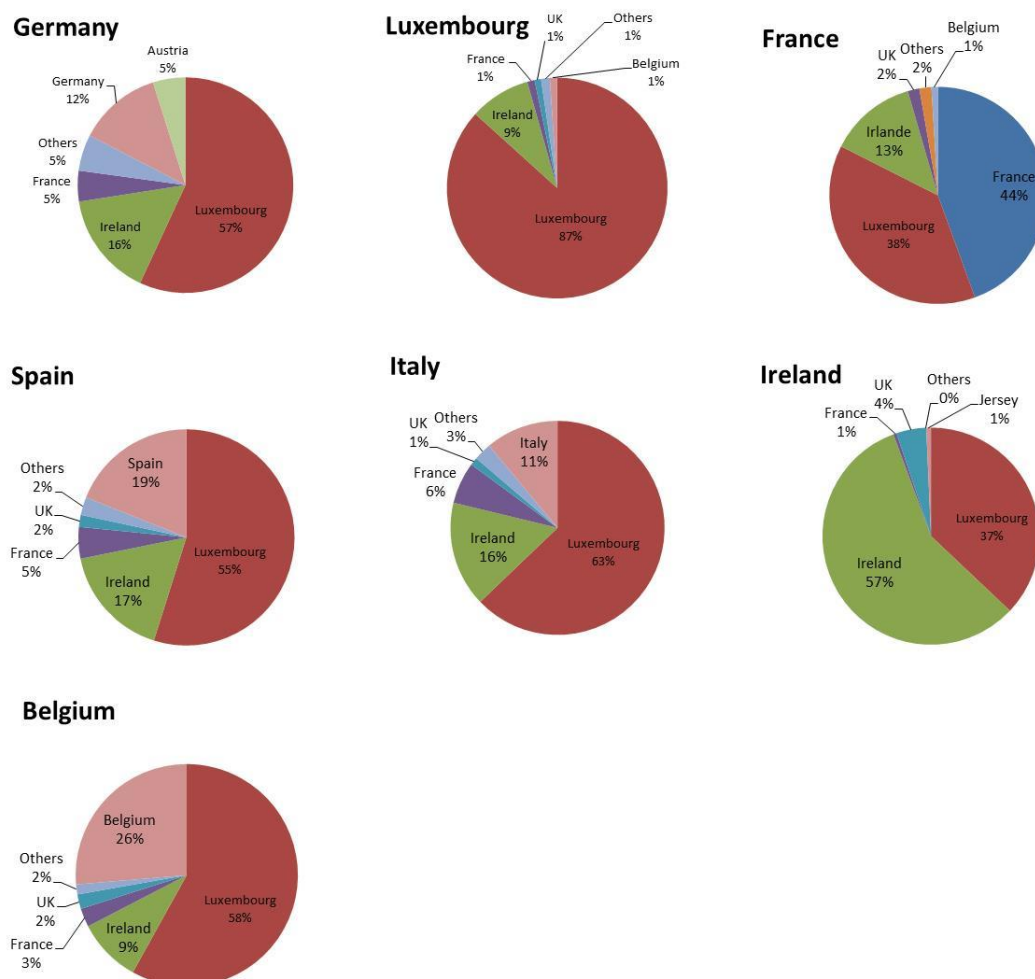
	Luxembourg	Number of funds		Ireland	Number of funds
1	Germany	4,704	1	UK	1,880
2	Switzerland	4,098	2	Germany	1,708
3	Austria	4,067	3	Switzerland	1,371
4	France	3,470	4	France	1,343
5	UK	3,258	5	Netherlands	1,275

Source: PwC, *Ibid.*

Within Europe, the penetration of foreign funds varies considerably from one country to the next, but often accounts for more than half of the funds marketed in a given country. In particular Luxembourg funds are well established in most European countries, including Ireland, which itself exports many funds to other European countries.

¹¹ European Fund and Asset Management Association (2015), Quarterly Statistical Report Q3 2015.

**Figure 2: Shares of funds marketed in different European countries by country of origin
(% of total number of funds).**



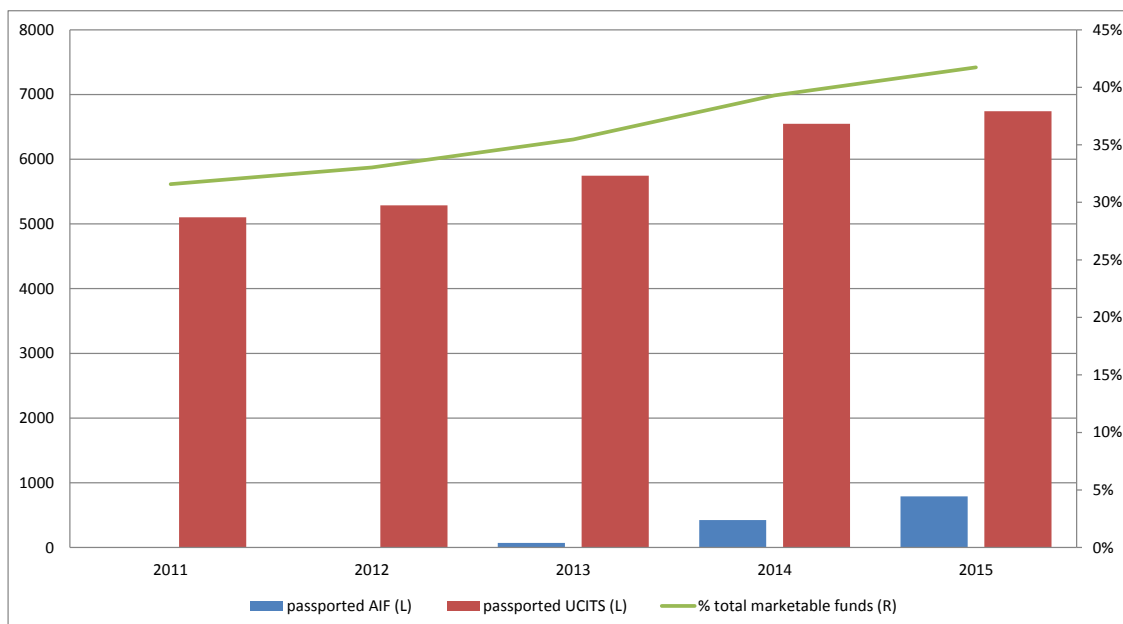
Source: taken from Lipper April 2016, based on active primary funds per country, UCITS and AIFs.

France is extremely open to European products

The French market features high penetration by products from other European countries. In January 2016, over 7,500 European funds were authorised to be marketed in France. European funds now account for 42% of funds marketed in France, with more than 6,700 UCITS and approximately 800 AIFs. This means, for example, that in the case of funds targeting retail investors, the number of European funds marketed in France and potentially proposed for sale (6,700 UCITS) exceeds the number of French funds (3,500 UCITS and 3,000 retail investment funds).

Furthermore, the number of funds obtaining passports has risen steadily since the various European passport categories were established (Figure 3). It is worth noting that these European funds do not include collective investment undertakings distributed exclusively through life insurance, meaning that the total number of European collective investment undertakings marketed in France is probably far higher.

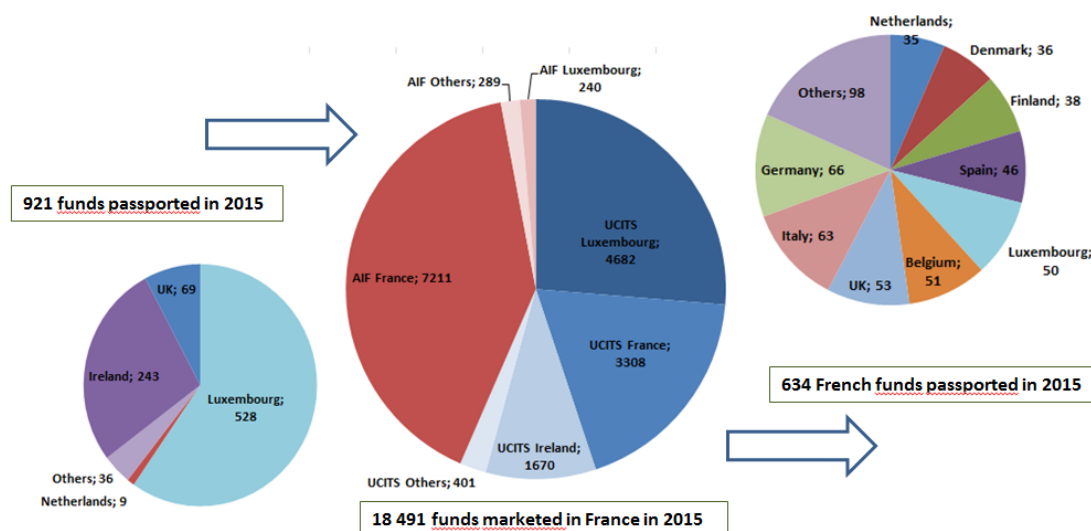
Figure 3: Number of European funds having obtained authorisation to be marketed in France, and as a percentage of marketable funds



Source: AMF data.

While French management companies also export their products across Europe, with a total of 634 passports to market UCITS and AIF products in 2015, there were more funds passported into France in the same year, as Figure 4 shows. What is more, they send their funds to a wide range of countries, while firms passporting into France show considerably less diversity, coming mainly from Luxembourg (57%) and Ireland (26%).

Figure 4: Investment funds sold in France by country of origin, total number, and inward and outward flows (by number of passports)



Note: the middle pie chart shows the total number of funds marketed in France by country of origin. The two pie charts on the sides show, respectively, the change in the number of funds passported in France by country of origin (L), and French funds that obtained passports, by destination country (R); these two sets of flows cover UCITS and AIFs, owing to the small differences between the two types of funds.

Source: AMF data.

The appeal of European funds relative to French funds is not apparent through a comparison of their expenses, which do not seem to differ materially by country of origin. When examined through an analysis of the expense ratio, which is a basic measure that adds up all the costs associated with managing and administering funds and compares them to total assets under management, they do not seem greatly different across countries. However, the largest funds have lower expenses.

Table 3: Comparison of average expense ratios of funds sold in France by origin, and focus on the largest funds (top 10% of assets under management)

	All funds marketed in France			Top 10% of funds by assets under management		
	Number of funds by country of origin	Average assets under management (€ million)	Average expense ratio	Number of funds by country of origin	Average assets under management (€ million)	Average expense ratio
France	4,470	135.2	1.53	291	1,300.6	0.98
Luxembourg	3,825	191.2	1.53	475	1,084.8	1.38
Ireland	1,326	378.4	1.05	221	1,890.4	0.68
UK	183	595.7	1.43	63	1,541.5	1.46
Belgium	97	78.6	1.72	2	769.14	1.59
Germany	59	984.5	0.86	21	2,547.2	0.74
Jersey	59	9.3	0.83	-	-	-
Denmark	25	110.6	1.35	2	730.0	0.39
Total	10,081	201.0	1.46	1,081	1,362.9	1.12

Source: Lipper data, AMF analysis based on active primary funds per country, UCITS and AIFs.

1.2. Passport-related costs are not a barrier to entry

Passporting costs vary but are relatively low

Host countries are free to set passporting costs. Depending on the jurisdiction, these costs take the form of a tax levy set by parliament (as in France) or fees determined by the market authority of the host country.

These fees may in turn be broken down into several different categories, including the cost of applying to enter the country, the cost of the passport itself, publication and public offering fees, plus potential annual or monthly supervision fees. Some countries draw a distinction based on the number of sub-funds, while others do not. These fees may be further increased in some countries, such as Luxembourg, whose authority charges a fee to respond to information requests about fund eligibility for marketing. In France, the cost for an inward passport is the same whether it is for an AIF or UCITS, and irrespective of whether a foreign or French management company manages the funds. It comprises a €2,000 levy paid when the application is filed plus an annual charge of the same amount to be paid for as long as the fund is marketed in France.

We were able to gather data on passporting costs for AIFs and UCITS (Table 3). These data, which were obtained from CMS and Caceis, will however be further refined based on work by the European Commission aimed at assessing disparities in these fees¹².

The initial finding is that these fees are low relative to assets under management (AUM): **fees of between €0 and €4,000 represent between 0% and 0.0016% of average AUM at European funds**¹³. Accordingly, these fees do not look particularly high and need to be put into perspective by comparing them against the legal costs of creating new prospectuses or new products tailored to the needs of a new clientele. **In other words, it does not seem as though these fees are a real entry barrier to funds looking to set up on a new European market.**

In addition, entry and supervisory costs vary dramatically, with France coming in around the median for European countries. The wide spread in the levied amounts reflects a disconnect between the level of these fees and the costs for the host country authority. Moreover, when it submitted its advice on the functioning of the European passport for AIFs, ESMA highlighted the non-uniformity of passporting costs

¹² Questionnaire on marketing under the UCITS Directive, AIFMD and ELTIF/EuVECA/EuSEF Regulations sent to European national authorities by the European Commission in 2015.

¹³ Average portfolio of European funds based on EFAMA estimates. See EFAMA (2015), "International Statistical Report Q3 2015".

and levy arrangements (sometimes annually, sometimes on entry) as well as the lack of transparency in this area in some jurisdictions¹⁴.

However, standardisation would be challenging, on two counts. First, these fees are determined under national taxation arrangements or at the discretion of national authorities. Second, in some countries these fees go towards the real costs of monitoring financial stability and fair dealing by investment funds. In France, for example, they help to pay for a 60-strong fund inspection team as well as for the use and upgrade of supervisory systems, such as the NAV warning and supervisory mechanism.

Table 4: Comparison of costs for AIFs and UCITS to establish themselves in another EU country, by host country

Country	AIF		AIF AUM in 2015 by country (M€)	UCITS		UCITS AUM in 2015 by country (M€)
	Entry	Annual		Entry	Annual	
Germany	2 520 €	204 €	1 419 383	115 €	494 €	309 852
Austria	1 100 €	600 €	89 033	1 110 €	600 €	79 206
Denmark	0 €	668 €	150 498	n.a.	n.a.	107 871
Spain	2 500 €	3 000 €	68 948	1 000 €	2 500 €	18 542
France	2 000 €	2 000 €	919 879	2 000 €	2 000 €	762 929
Greece	0 €	0 €	2 625	n.a.	n.a.	4 422
Ireland	0 €	0 €	451 952	n.a.	n.a.	1 446 873
Italy	0 €	varying	55 520	0 €	4 000 €	226 043
Luxembourg	2 650 €	2 650 €	559 341	2 650 €	2 650 €	2 946 860
Malta	1 250 €	4 000 €	7 412	n.a.	n.a.	2 737
Netherlands	0 €	0 €	n.a.	1 500 €	0 €	n.a.
Portugal	0 €	0 €	14 982	0 €	0 €	7 577
UK	0 €	varying	396 214	773 €	766 €	1 083 481

Sources: CMS Guide to passporting, 2016, ESMA, EFAMA, Caceis

Most importantly, it appears that there is no link between the expenses charged and the presence of European funds within the national territory. For example, Germany and Italy, whose expenses for AIFs are, respectively, among the highest and the lowest in Europe, host virtually the same number of European funds (approximately 88% of all AIFs marketed within their territory).

An effective and swift passporting procedure

To obtain a passport, a manager authorised in the EU must send complete documentation to its home authority, which has 20 business days to forward it to the competent authorities of the Member States where the fund is to be marketed¹⁵. ESMA stressed however in its advice that national authorities did go over the 20-day period in some instances and called for improved compliance with the deadline, which was standardised by the AIFM Directive¹⁶.

Each national authority then has five days to acknowledge receipt of the package¹⁷ and may use this time to decide whether to request marketing materials, depending on whether it has identified a mismarketing risk. However, the asset manager may commence marketing upon receipt of notification from its competent authority that the necessary documents have been provided to the host authority. Control by the host country regulator is thus not a genuine constraint. A fund wishing to establish itself and already having authorisation in its country of origin has already been the subject of a review by its own authority.

¹⁴ Ibid.

¹⁵ Article 32.3 of the AIFM Directive. That period is reduced to 10 days in the case of UCITS funds (article 93.3 of the UCITS Directive).

¹⁶ ESMA (2015), "ESMA's opinion to the European Parliament, Council and Commission and responses to the call for evidence on the functioning of the AIFMD EU passport and of the National Private Placement Regimes".

¹⁷ This time limit applies to UCITS funds (article 5 du Regulation 584/2010) only. There is no equivalent provision within AIFM texts.

1.3. Other administrative formalities do not create new barriers

In addition to the obligation to hold one passport per country, any fund wishing to establish itself in another European country may also face another obligation, namely the need to translate its key investor information document into the language of the host country if it wishes to be marketed to retail clients¹⁸. France also requires any information provided about products targeting retail customers to be translated¹⁹. This obligation is vital to ensure that consumers properly understand the product. It enables the host authority to make sure that the legal foundations of the proposed documents are correctly interpreted. Meanwhile, for the fund itself, having translated documents will help in product advertising.

Ultimately, given the success of the European passport and the low associated costs, the passporting system can be said to work well.

The report by the European Commission on CMU sets out the possibility that obstacles to cross-border investment may have their origins in national legislation or administrative practice, observing that some barriers “relate to national ‘gold-plating’ of EU minimum rules, while others may arise from divergent application of EU rules”²⁰.

Yet we do not see evidence of these administrative barriers, given their weak impact and, more importantly, the successful marketing of European funds within the EU. It would be more appropriate to look at the stage that takes place once the right to market has been secured, when products are presented to consumers through fund distribution networks. Marketing costs, which are not subject to regulatory constraints, could be a factor limiting exports. In the following section, we consider French characteristics that could be viewed as barriers to entry at this level.

2. There are limits to the distribution of passported products

2.1. The presence of distribution networks in supply

Domestic bank networks dominate fund distribution

Management companies can use three types of channels to market their professional and retail funds: (i) advisory services provided by internal sales and marketing teams, (ii) traditional channels, such as banking or insurance networks, (iii) other external channels such as financial investment advisers and online platforms.

But in Europe, bank networks remain the preferred channel for distribution: Mackay Williams²¹, a consulting firm, estimated in 2014 that 45% of funds in the European fund market were distributed by full-service banks to individuals, 18% by private banks and 11% by insurers. Advisers account for just 11% of sales. Bank-based distribution is particularly prevalent in some countries, such as the Netherlands, where it accounts for 95% of funds distributed to retail investors, Italy, where it accounts for 90%, and Spain, where it accounts for 87%. In most other countries, bank distribution still has the lion's share, such as in Germany, where it accounts for 73% of outstanding amounts²². Care must also be taken to ensure that recent European financial regulations and the implementation costs that they entail are not a factor leading favouring closed architectures or the existing distribution networks.

This channel commands a large share in France as well, notably in the case of retail investors: a study by Deloitte²³, a financial services firm, estimated in 2012 that more than 80% of outstanding UCITS had been distributed to retail investors through traditional channels, including bank networks (44%), insurance companies (25%) and private banks (12%). Bank networks also account for a substantial share of distribution to institutional clients (Figure 5).

¹⁸ Article 94 of the UCITS Directive.

¹⁹ Article 411-129 III of the AMF General Regulation.

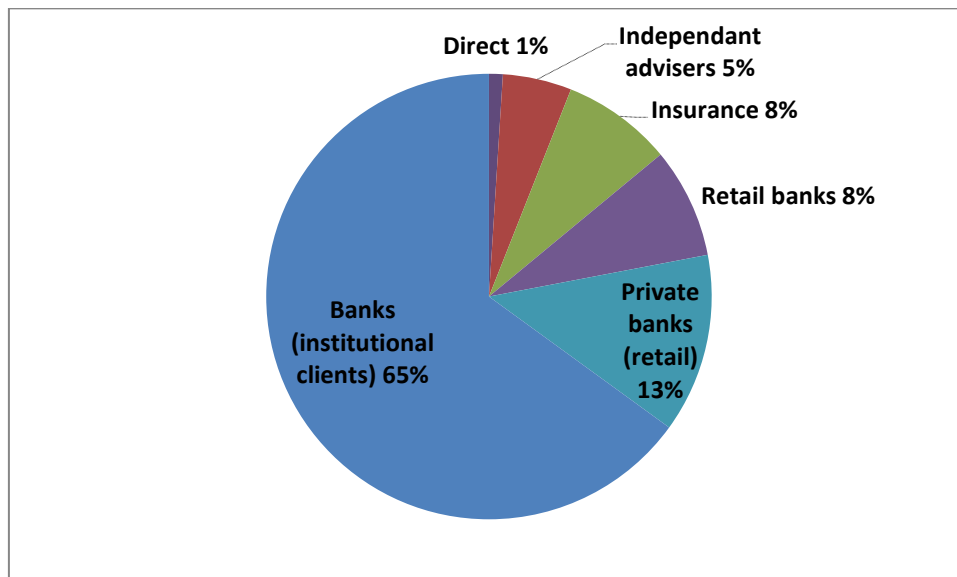
²⁰ Ibid.

²¹ Fundscape, Alfi (2014), “Navigating the post-RDR landscape in the UK / Assessing the potential impact of an RDR regime on the European fund industry”.

²² Ibid.

²³ Deloitte Financial Services (2012), “MIFID 2 'Inducements': Quelles évolutions pour le modèle de distribution français?”.

Figure 5: Breakdown of retail and institutional distribution channels, France



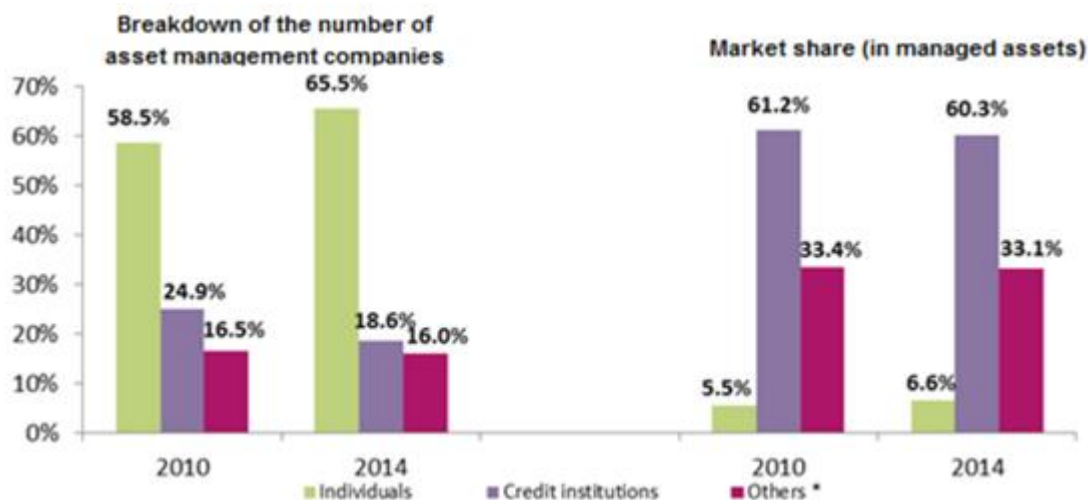
Source: Fundscape 2014.

Another noteworthy feature of the French market is the major presence of asset management companies owned by credit institutions. With EUR 1.990 trillion in assets under management in 2014, their market share exceeds 60%.

When management companies are owned by credit institutions, they appear to rely on their existing distribution network. According to a survey by the French asset management association (AFG), full-service management companies that are subsidiaries of banking groups primarily use the distribution channels of their parent banking groups (39%) or internal sales and marketing teams for their own clients (57%) when marketing in France. Just 4% of their distribution goes through third-party channels, such as other retail banks, independent advisers or online platforms²⁴.

²⁴ AFG study on UCITS distribution - April 2014.

Figure 6: Breakdown and market shares of French asset management companies by shareholder type between 2010 and 2014



*The "Others" category includes insurance companies and mutual insurance, investment services providers and public sector firms.
Source: AMF

The presence of bank distribution networks has several effects on the products marketed in Europe: first, European bank networks are 75% domestic²⁵, which may mean that domestic products are promoted more aggressively by these networks. The fact that European funds are undermarketed within distribution networks may therefore be partly due to the fact that European banks do not have a big presence in other European countries. **The importance of the domestic market therefore heavily restricts the marketing of funds that are not passed on through bank networks. Funds looking to be distributed elsewhere in Europe may consequently run into difficulties in marketing their products as new entrants in these distribution networks.**

Moreover **links between asset management companies and bank networks mean that the networks tend to prefer in-house products from their own management companies.** The tendency among bank networks to prefer their own products was clearly evident in France during the mystery shopping campaign of bank branches conducted by the AMF in 2014²⁶. Given the breadth of products offered within existing networks, this factor is not detrimental to consumers in terms of the depth of supply, but could be damaging from a cost perspective.

2.2. Costs to adapt to local consumer preferences appear to be necessary

Specific national features, such as investor profiles, have to be accommodated

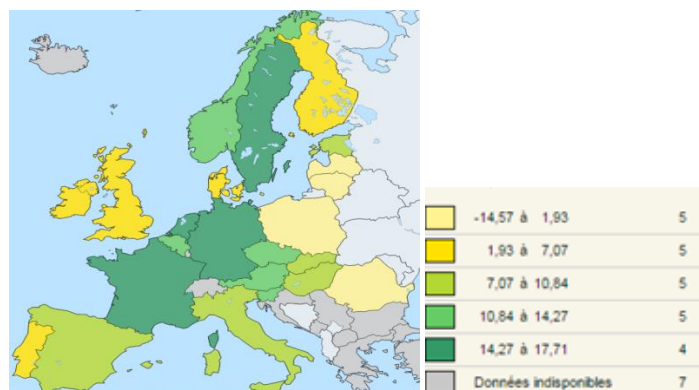
Household assets differ significantly across European countries, notably in terms of ownership of real estate assets, which materially affects appetite for financial investment. These differences form structural constraints that any new market entrant needs to take into account.

First, saving rates vary considerably across Europe, as Map 1 shows. Some countries, such as Germany and France, have a long history of saving, while this is less true among other nations, such as the United Kingdom and across Scandinavia. In countries such as Poland and Lithuania, meanwhile, economic difficulties are forcing people to put less money aside or even dissave. These aggregate statistics truly are shaped by differences in individual saving patterns.

²⁵ F. Allen et al. (2011), "Cross-Border Banking in Europe: Implications for Financial Stability and Macroeconomic Policies", Centre for Economic Policy Research.

²⁶ The mystery shopping campaign included visits to 220 branches from the 11 main banking groups within the Paris region and around the country. For more information, see the AMF's Household Savings Observatory Newsletter No. 12. The shopping campaign was based around two profile types – risk averse and risk hungry – and sought to assess how well suited proposed investments were to saver profiles. In the first case, 13% of marketing proposals involved products containing some risk, while in the second case this proportion increased to 25%.

Map 1: Gross saving rate in 2014, European households (%)

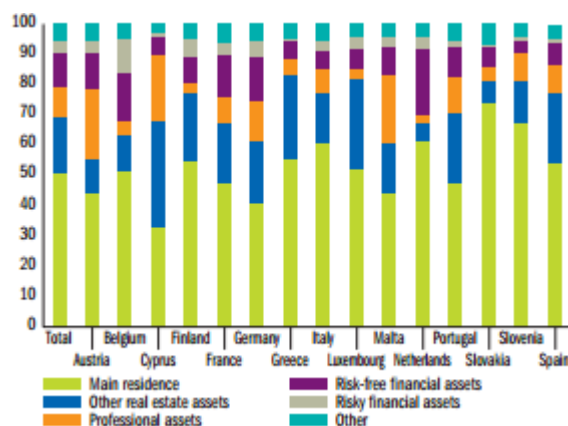


The gross saving rate is defined as gross saving divided by household gross disposable income²⁷.
Source: Eurostat data for 2014.

Real estate investing also impacts saver profiles and affects appetite for investment in other assets. These types of investments vary drastically from country to country: in Germany, the percentage of people who own their main residence is the lowest in the euro area, at 44%, compared with 60% on average elsewhere in the area. Conversely, more than three-quarters of households own their main residence in Slovakia, Slovenia, Spain, Malta and Cyprus. France is in the middle, with 55% of households owning their main residence²⁸.

Arrondel and Savignac (2016)²⁹ find that euro area households differ in their asset allocations, especially in terms of their holdings of risky products (Figure 8). Across all countries, real estate (main residence and other real estate) accounts for about 70% of the value of assets held by households, while financial assets make up approximately 15%, with barely 4% invested in risky financial assets, such as equities, common funds and bonds.

Figure 7: Structure of household assets in euro area countries (%)



Private asset holdings are divided into six broad categories: main residence, other real estate (holiday home or investment property), self-employed business assets, risky financial assets (equities, common funds, bonds) and safe financial assets (cheque accounts, sight passbooks and deposits, voluntary private pension plans). "Other" covers residual assets, including durable goods such as vehicles, jewellery and artworks.
Source: Arrondel and Savignac (2014)³⁰.

²⁷ Gross saving is the share of gross disposable income that is not used for final consumption expenditure. Gross disposable income is the income available to households to consume and save. It includes all work- and wealth-related income and benefits, less direct taxes and social security contributions.

²⁸ Arrondel and Savignac (2016), "Households' real estate and financial asset holdings: what differences in investment behaviour within the euro area?", Rue de la Banque No. 19, February 2016, Banque de France.

²⁹ Ibid.

³⁰ Arrondel et al. (2014), "How do households allocate their assets? Stylised facts from the Eurosystem household finance and consumption survey", Banque de France, Working Paper, No. 504 and European Central Bank, Working Paper, No. 1722.

There are many reasons for these differences. They may be due to differences in population structure and characteristics, such as age, income and family situation. They also stem from cultural aspects (passing down of real estate within families, multiple generations living together under one roof), historical factors (collectivisation of property in former socialist countries, post-war reconstruction policy), and institutional aspects (functioning of rental markets, construction sector, taxation, housing policy, social shock absorbers). Using an econometric model to examine the role of sociodemographic factors in household asset choices, Arrondel and Savignac (2016) explain the amounts invested in assets held by households in each country. The variables correlated with the purchase of risky financial assets are the value of total assets and especially of the main residence, income, the general level of education, composition of the household (single people are more likely to buy risky investments), and the average pension replacement rate³¹.

This demonstrates that products marketed in each Member State must be tailored to local saving practices: individuals with small amounts of savings need to be steered towards safe, liquid products. Larger amounts of savings may be partially invested in less liquid, riskier products. Likewise, since a substantial share of people's financial investments will go towards organising their future retirement, a thorough understanding of local pension management systems is needed to offer products that match consumer demand. Further, investor profile should determine the type of support that needs to be offered when the investment is actually made.

As in any industry, there are unavoidable costs involved in penetrating a foreign market

Just like players in other sectors, asset managers must make certain specific investments to penetrate a foreign market. Some sector-specific characteristics have to be taken into account. First, products offered by domestic funds generate a kind of rent in the shape of the extra confidence accorded by consumers, by virtue of the fact that they have been on the market for longer than other products. Second, the temporal aspect of an investment in an investment fund should be considered. It can be assumed that, as with banking products, which clients don't change often, the asset management sector remains a market where customers are dually captive: on the one hand, they do not often change bank or independent wealth adviser; on the other, they may opt not to go outside their investment strategies very often, to minimise entry and exit fees or to comply with fund liquidity requirements.

Accordingly, any competitor hoping to enter the market needs to invest in sales, marketing and advertising to let consumers know about the quality of its product, or engage in competitive pricing to attract new customers. In both cases, this will eat into profits, so limiting – and even removing in some cases – the appeal of market entry, at least in the short run. This also assumes that the fund has substantial investment capacity, which favours large funds or high-earning niche strategies.

The question of market entry for European funds is thus partly linked to their ability to make themselves known to consumers or to offer the same products at more affordable prices. Establishing a local presence also takes major investment. Obviously, the regulator should not be involved in the question of individual agents' comparative advantages on the market. It is vital in this regard that competition should be free.

2.3. Taxation continues to play a key role in shaping the supply of and demand for financial products

Tax incentives are instrumental in steering household savings

As Figure 8 shows, risky and safe financial assets account for just 5%-25% of the asset holdings of European households. Looking closer, European households have considerable incentives to steer their money towards domestic, tax-advantaged savings products. The financial crisis, moreover, exacerbated the shift towards financial investments viewed as low risk (retirement savings, life insurance), at the expense of securities investments.

Since consumers look at financial products from the perspective of net returns, this means that unless savings taxation is harmonised throughout the EU, financial managers need to have a thorough knowledge of local tax treatment for each of their products, as well as for competing products. It also means that account must be taken of differences in terms of the returns on administered savings products or government guarantees for certain products, which may draw individuals away from savings products that fund the economy or securities.

³¹ Ibid.

Taking the example of France, 85% of French households invest in tax-free passbooks, such as the Livret A and sustainable development passbooks³². Similarly, households are increasingly turning towards life insurance, which offers appealing tax treatment, both upon investment and also for inheritances. As a result, a mere 16.5% of French households own securities, and the percentage is shrinking. Households that own such investments tend to be older (8% of under 30s compared with 18% of people aged 40 to 49 or 60 to 69).

Keep in mind that in France, there are no distortions in terms of tax incentives when it comes to investing in the capital of companies: any direct or indirect investment in the capital of a company with its registered office in an EU Member State is eligible. Likewise, the tax breaks for income and capital gains from investments made through equity savings plans (PEAs) apply to securities issued by any company with its registered office in an EEA State³³. **In other words, savers wishing to invest in European funds or equities can do so while enjoying the same tax breaks as they would with a domestic product.**

Understanding tax treatment and the local legal environment represents an additional cost for European funds looking to be marketed outside their territory

Management companies looking to set up in Europe need to have a proper grasp of the niceties of national tax treatment in order to market products that are tailored to local incentives. This means that legal compliance costs may be sizeable. Furthermore, differences between national laws should also be taken into consideration before planning systematic EU-wide marketing.

Finally, in some countries other than France, tax compliance may engender additional expenses, relating for example to the appointment of a tax representative, the filing of specific financial reports, and even, in some cases, additional costs to obtain tax status. For example, in the United Kingdom, European funds wishing to obtain "reporting fund" status, which allows investors to receive tax breaks, must set up additional reporting arrangements and are subject to harsher tax treatment³⁴. The situation is similar in Germany and Austria, where foreign funds must obtain a specific tax status to be attractive to local investors (known as "fully transparent" status in Germany, and "white" or "extra-white" status in Austria)³⁵. To obtain preferential tax treatment in some countries, tax reporting data also need to be certified to guarantee that published data have been calculated in accordance with local tax requirements. The need to comply with these local rules may thus represent an additional cost and an administrative burden for funds distributed in these countries.

2.4. Consumers continue to exhibit a strong home bias when it comes to financial products

It is crucial to consider the multiple aspects that shape demand for foreign funds in order to understand all the factors that determine penetration. Disparities observed in the demand for risky assets may notably be attributed to cultural differences, which can result in sizeable differences in consumer appetite for investment products.

According to estimates by the European Commission, European citizens buy financial products chiefly in their country of origin: 94% of Europeans say that they have never bought a financial product outside their country of origin and 80% say that they would not do so. According to the survey, they do not buy these products because they lack clear information (21%), they are unsure of their rights (18%) or because of the language barrier (17%)³⁶. The survey does not consider deeper cultural differences that influence risk aversion and that may prevent some savers from investing in new or foreign products.

The economic literature has highlighted biases in demand from individual or institutional investors that could explain why, despite plentiful potential supply of foreign products, households prefer to invest in domestic products. The existence of a home bias (French and Poterba, 1991)³⁷ was initially demonstrated to explain low levels of ownership of foreign equities by households. Applied to other products, the bias encourages investors to lean towards financial products issued by national entities when it comes to investing in risky products.

³² Insee (2015), "Le patrimoine des ménages début 2015 - Repli des valeurs risquées au profit des produits sécurisés", Insee Première No. 1574 - November 2015.

³³ These incentives include reduced wealth tax for direct or indirect investments in the capital of small or medium-sized enterprises (SMEs), and the "Madelin" tax break on investments in SMEs, whether done directly or via retail venture capital funds or retail local investment funds. See Article 885-0 V bis, Article 199 terdecies-0 A and Article 157 of the General Tax Code on PEA plans.

³⁴ In particular, funds are subject to a flat tax on their income, even if they make no income over the year. See the Offshore Funds Manual issued by HM Revenue and Customs.

³⁵ Caceis (2009), "Distribution transfrontalière des fonds UCITS".

³⁶ European Commission presentation.

³⁷ French, K. R. and J. M. Poterba (1991) "Investor diversification and international equity markets", American Economic Review 81, 222–226.

A paper by Schoenmaker and Soeter (2014)³⁸ proposes an equity home bias metric that can be used to assess the gap between foreign assets owned by investors in a given country and the foreign assets that are actually available on the national market. If the index is close to 1, it means that ownership of foreign assets is low, while if it is close to 0, it means that ownership is high. The authors point to large differences within the EU, where the average result is 0.74. France scores 0.79, compared with 0.80 for Germany, 0.49 for the Netherlands, 0.76 for the United Kingdom, 0.94 for Spain and 0.98 for Greece.

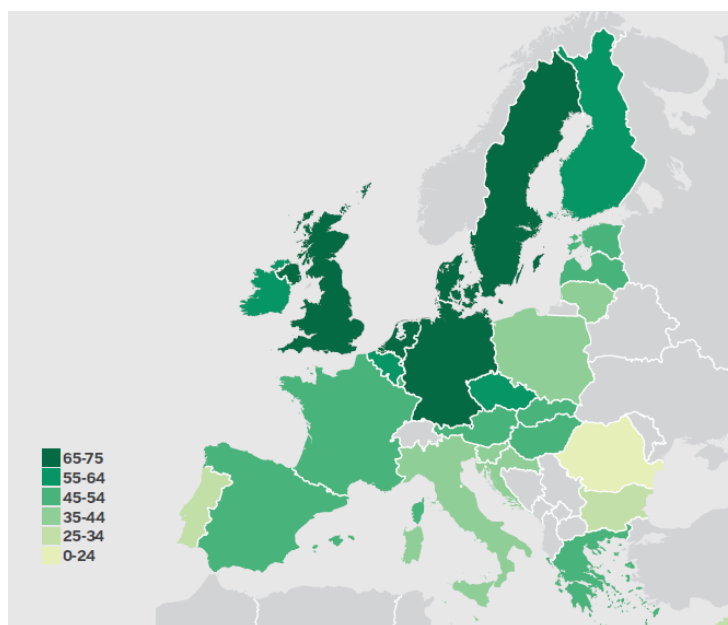
Transposed to asset management, these findings mean that, assuming equivalent characteristics, foreign funds will find it harder to be sold in a given country than funds provided by domestic management companies. A second type of behavioural bias influences the preferences of individual investors, namely familiarity bias, whose existence was demonstrated by Massa and Siminov (2006)³⁹. It implies that households will invest in financial products if they are familiar – even vaguely – with the product's features or if the product is similar to products they already know or associated with a recognised brand. This bias leads to a kind of inertia among investors, who tend to stick to the same types of products and steer clear of new or foreign products, despite their greater potential appeal. This may partly explain low appetite among households for foreign products and exacerbate the impact of home bias.

Preferential biases are compounded by a lack of financial literacy

The financial literacy of individual investors may go a long way to explaining differences in penetration rates for European funds across European countries. A recent study by Standard and Poor's⁴⁰ on financial literacy shows widely varying levels among individual investors across countries (Map 2). For example, while 71% of Swedes are sufficiently financially literate, the same is true for just 52% of French people and 22% of Romanians.

As Bose et al. (2014) and Kimball and Shumway (2009) show, a lack of financial literacy tends to strengthen home and familiarity bias. Investors with less financial knowledge tend to diversify their portfolios less and to invest less in products whose features they do not fully understand or in foreign products. Differences in financial literacy levels must therefore be considered in the development of a unified asset management market, giving particular attention to product complexity and available advice.

Map 2: Percentage of the population considered to be financially literate according to Standard & Poor's methodology, 2015



Source: Standard and Poor's.

³⁸ Schoenmaker, D. and Soeter, C. (2014), "New evidence on the home bias in European investment", DFS Policy Briefs No. 34, Duisenberg School of Finance, September.

³⁹ Massa, M. and Simonov, A. (2006), "[Hedging, Familiarity and Portfolio Choice](#)", Review of Financial Studies, 19, issue 2, p. 633-685.

⁴⁰ Standard and Poor's (2015), "Standard & Poor's Ratings Services Global Financial Literacy Survey".

Furthermore, risk aversion may be a factor limiting investment by agents in products that are perceived as risky. Gandelman and Hernandez (2015), for example, show that their risk aversion indicator varies considerably across European countries, ranging from 0.35 in Ireland to 1.55 in Belgium (on a scale of 0 to 3), with France at 1.43⁴¹.

These differences in financial literacy and risk aversion among individual investors may therefore explain some of the rigidities in terms of marketing European funds to retail investors.

3. Some proposals to take real action on improving European competition

We can sketch out a few avenues to improve the presence of European funds in other European countries, while ensuring that an adequate level of consumer protection is maintained. It should be borne in mind that the AMF and other European market authorities have no jurisdiction over taxation matters.

3.1. Support technological innovation and European convergence in distribution and marketing

In France, bank distribution networks have a clearly dominant position, affecting the ability of new entrants to establish themselves in the market.

Modernise marketing networks

European funds have already begun to benefit from the digitisation of distribution networks, which has reduced the advantages of a local presence or familiarity with customary retail distribution networks. **These technological developments support greater penetration by European funds on domestic markets and should enable the resources of retail investors to be allocated more efficiently.**

According to a Médiamétrie survey commissioned by the AMF in 2015⁴², although brick and mortar distribution networks continue to claim a major share, the internet is increasingly used as a source of information about financial investments: 26% of people holding investments (and 35% of recent holders) looked for information online. Online platforms are also being used to make direct purchases of investment funds: 20% of people who recently acquired shares in investment funds did so directly online. Retail savers cited various reasons for wanting to manage their wealth online, including the desire to be more independent (39%), to not be tied to branch opening hours (48%), and to pay lower fees (31%).

As a result, management companies are coming out with exclusively online product ranges. **These new distribution channels are helping to expand the available range of funds, particularly European funds, because they are less dependent on existing networks.** The growing use of the internet and social networks in spreading marketing information represents a new opportunity for funds to reach out to the captive customers of the bank networks.

Lobby for open architecture in European regulatory policies

Stiffer restrictions for distributors of savings products could lead these firms to fall back to closed distribution architectures, offering customers only products created by their own group or by selected partners. This would be an unwanted effect of European regulations, which, though intended to offer investors more protection, would end up prompting firms to drastically curtail their ranges.

The MiFID II product governance arrangements, which require the producer and distributor of a product to interact closely in terms of customer targeting, are a case in point. So are restrictions on inducements for financial advisers, and problems in interpreting the PRIIPs Regulation, which could lead insurers offering multi-vehicle policies to narrow the investment choices to avoid having to produce multiple PRIIPs KIDs covering all available investment options. For this reason, it is vital that the impact studies carried out by European institutions before new legislation is proposed should consider the potential impact on open architecture distribution models.

⁴¹ N. Gandelman, R. Hernández-Murillo, (2015), "Risk aversion at the country level", Federal Reserve Bank of St. Louis Working Paper.

⁴² Médiamétrie/NetRatings (2015), "Le rôle d'internet dans la recherche d'information, la souscription et la gestion des placements financiers", sample of 2,000 web users aged 18 and over (including holders and non-holders of savings products), adjusted using data taken from the framework study by Médiamétrie (Observatoire des Usages Internet) to be representative of French web users aged 18 and over, conducted by means of an online questionnaire between 24 June and 3 July 2015.

Give thought to harmonising marketing rules

Marketing and pre-marketing rules need to be more comparable within Europe. The current disparities mean that constraints differ across countries. Clarification is needed to ensure equivalent treatment across the entire area. In the first place, the non-uniformity of marketing rules at European level is one of the European passport's weak points, a point stressed by ESMA in its review of the AIF passporting system⁴³. Even the definition of what constitutes marketing is not the same across Europe: in some countries, a fund can be marketed and begin advertising and accepting contributions once after its documentation has been finalised and approved by its supervisory authority. In others, initial discussions between management companies and investors constitute a type of marketing that is restricted by some authorities. Some EU Member States have also introduced the concept of pre-marketing to their domestic legislation. ESMA has therefore called for greater convergence in these definitions and restrictions.

The opening-up of networks should be accompanied by reforms to FPS supervision in Europe

Regulation also needs to do a better job of capturing the new opportunities opened up by digital distribution methods and the growing importance of social media. This means **recognising advisory services**, at a time when technological progress is enabling customers to be offered information and investment opportunities in real time, **harmonising marketing rules for online services** and **improving cooperation on supervision, investigations and enforcement specifically for online providers**.

AMF would like to see a shared discussion at European level about these new consumer practices, giving consideration for example to new rules to redefine the notions of territoriality and advice in the digital era. Other initiatives could take the form of shared digital supervision rules or a common cooperation and enforcement framework for digital financial services. Having shared rules would also enable Europe to position itself as an international leader on these emerging issues.

Box: Forex scams demonstrate that it is vital to allow local supervision of investment services delivered under the freedom to provide services

Recent years have seen some retail savers drawn to risky or unorthodox products, for instance based around investing on the foreign exchange (forex) market or in binary options. But they have not always been aware of the true risk involved. In fact, investors in these products are exposed to a very high risk of principal loss. The leverage typically associated with such products increases investors' losses and could even cause them to lose more than they originally invested. Even retail investors using regulated platforms are exposed to considerable risk, as shown by an AMF study conducted in 2014⁴⁴.

What is more, some platforms are not authorised and pose a substantial risk of fraud. And when money is stolen, as it is in some cases, there are limited options for seeking remedies, including from European market authorities. Over the last six years, French judicial authorities estimate that French retail investors have lost €4.5 billion on trading websites specialising in trades in forex and complex derivatives. Where they are not merely scammers, these traders offer services through a European passport under the freedom to provide services. Most of them are registered in Cyprus.

These companies use aggressive and often misleading procedures to market their products to French retail investors, touting spectacular gains while concealing or playing down the risks associated with transactions that are completely unsuitable for the target clientele. In this way, speculative trading platforms manage to lure investors through misleading online advertising. Of all the new online adverts for investments in 2015, 44% involved highly speculative trading. These platforms also use other methods to draw in new investors, such as social media campaigns or sponsorship of soccer clubs, for example.

As a result, the number of complaints from retail investors about forex trading platforms and binary options received by the AMF's investor helpline has risen steadily over the last five years from just 64 in 2011 to 1,656 in 2015⁴⁵. Moreover, the number of cases involving forex and binary options received by the AMF's Ombudsman is also on the rise, with 228 cases in 2015 compared with 46 in 2011.

These activities breach European rules, notably those introduced by MiFID in 2007.

Yet supervision and punishment of these wrongdoers has been a failure because the distribution of responsibilities under the Directive means that the State where the service is marketed cannot take

⁴³ Ibid.

⁴⁴ Over a period of four years and based on a survey of intermediaries (14,799 active customers), around nine out of ten customers were found to lose money. See AMF (2014), "Study of investment performance of individuals trading in CFDs and forex in France", October.

⁴⁵ AMF (2015), Annual Report.

immediate action. According to the legislation, the home State of the service provider has sole authority to act, even though it cannot itself observe the unlawful activities, which take place abroad and which, in many cases, are not marketed within its own territory. This situation is compounded by technical issues and the difficulties in terms of the resources needed to supervise transactions carried out hundreds or even thousands of kilometres away and marketing using languages other than the home State's national language.

That is why the AMF made the decision in July 2016, to forbid a service provider, Rodeler Limited (regulated by the Cypriot authority) to supply services to new or existing customers on the French territory. This decision came into effect on August 1st, 2016. In this particular case, it was found that the service provider, Rodeler Limited, failed to comply, in France, with certain obligations relating to providing relevant information and acting in an honest and fair manner in the best interests of its clients, to the detriment of investors residing or based in France⁴⁶.

In this setting, although the determination to facilitate the cross-border marketing of savings products is laudable, care must be taken to ensure that opportunities for fraud or failures in investor protection are not created owing to the lack of a genuine supervisory mechanism.

3.2. Ensure equal protection for European investors, no matter where products come from or where they are marketed

Ensure that all documents proposed to retail investors are clear

Fundamental differences in financial literacy within the EU highlight the idiosyncratic nature of domestic markets and the need to adapt product offerings to the characteristics of target populations. Consumer education and information requirements therefore need to be stepped up in countries where people have the weakest grasp of basic financial mechanisms.

This means that cultural specificities need to be taken into account when providing information to retail investors. Setting aside the question of financial literacy, advertising and information documents need to be adapted to local populations so that they can properly play their threefold role, namely to inform, explain and caution.

This means first and foremost that the language used to provide marketing information must be known to the investor. For this reason, the AMF believes that fund advertising should be in the language and alphabet of the country where the fund is sold, i.e. in the language and alphabet known to the investor.

Furthermore, these documents also need to be drafted using language and a style that will ensure that retail investors assimilate the necessary information. Given this situation, the key investor information document (KIID – a simple document informing investors about key product details in clear and understandable terms) provided for by the European Packaged Retail Investment and Insurance Products (PRIIPs) Regulation is welcome.

Maintain local supervision by authorities that are familiar with the specific characteristics of retail investors

The UCITS Directive and its marketing passport do take into consideration the need to factor in the peculiarities of local retail investors. The directive includes the option for the host authority where the fund is marketed to take the necessary measures to protect local investors in terms, for example, of the information provided as part of fund marketing. Authorities may also take additional measures based on sampling or complaints.

⁴⁶ Although the AMF does not have the authority to ensure that foreign service providers carrying out an activity in France under the free provision of services comply with the conduct of business rules, Article 62 of MiFID provides for a mechanism through which the host Member State may take appropriate measures to protect investors within its territory in cases where a service provider acts in a manner which is clearly harmful to the interests of those investors. This provision was transposed into French law as Article L. 532-21 of the French Monetary and Financial Code, and it enables the AMF to take "all measures required to protect investors and ensure the orderly functioning of the markets, including, where applicable, prohibiting the service provider concerned from continuing to provide services in France...".

The AMF firmly believes that the host authority is best placed to assess the compliance of marketing and advertising materials within its territory. Accordingly, the AMF would like the central role of the national regulatory authorities to be enshrined, to ensure that supply is suited to the characteristics of demand, particularly as regards the marketing documentation of European funds.

These powers are crucial to establishing a regulatory framework that captures the characteristics of local retail investors, since only the national regulator is fully able to understand the challenges and needs of this group. **It is vital that any form of advertising or marketing document should be subject to the supervision of the host country authorities, which alone are familiar with local cultural codes, distribution networks and customary advertising procedures on their home market.** An in-depth understanding of financial literacy levels, risk profiles and preferences of individual investors is also needed to ensure that consumers are protected and so maintain confidence in products from other Member States.

Any change to this system aimed at depriving the host country authority of the ability to supervise the marketing materials of funds sold within its territory would hinder the authority in discharging its investor protection responsibilities. This would leave the home country authorities having to bear the additional costs needed to review marketing documents in up to 23 different languages. Incentive issues would also be raised, if European regulators were required to supervise products not intended for sale within their area of supervision or jurisdiction.

On this point, a comparison can be drawn with the approvals issued by the AMF for the marketing documentation of complex products. In the third quarter of 2015, the AMF reviewed 182 pieces of marketing documentation for debt securities (all types of materials, including brochures, websites, emails and so on), of which 121 were issued under a European passport not approved by the AMF (inward passport). In 41 cases (34%), the AMF was required to make more than five observations requiring a correction. Moreover, the AMF has made significant efforts to educate producers of complex products, who now factor in the AMF's requirements and are familiar with its policy on these products⁴⁷.

European regulations must not deprive the host country authority of the means to ensure that financial services provided on a cross-border basis are suited to the specific needs of retail investors within its territory. **It would be dangerous to stop supplying host authorities with information about European funds when these funds are marketed in their countries.** In such a situation, cross-border supply could threaten the effective protection of retail investors and damage the reputation of products from other Member States. It could also undermine the level playing field within a given Member State by subjecting firms operating within the same territory to different marketing requirements (since these are set by the home Member State).

Enhance financial literacy among European retail investors to give them a better understanding of their investment activities

To promote a culture of proportionate and measured risk taking by investors with regard to their wealth and income, steps must be taken to improve financial literacy. The AMF is participating in this effort through educational initiatives by its Retail Investor Relations Directorate and through its involvement in setting up professional certification schemes.

At European level, the AMF has called for the creation of a European financial literacy plan as part of CMU. Accordingly, to dovetail with a European policy promoting access to high-quality advice for all, the AMF wants to improve individuals' financial literacy so that they can increase the financial component of their assets, diversify their financial investments and begin making long-term investments that match their risk profile. This education drive is crucial, because aside from its benefits in terms of market depth and hence funding for the economy, it will also help savers to better diversify their portfolios, smooth their consumption and prepare more effectively for retirement.

Ensure that all European retail investors have access to mediation

It is vital for consumers to know where to turn if they run into problems with a financial investment. A consumer may be put off by the thought of buying a European product because of uncertainty about the options for redress in the event of a complaint. While as a rule customers can turn to the Ombudsman in their home State in the event of a dispute with a foreign financial institution, this rule does not apply if the firm in question has specified in the contract that disputes shall be brought before its own Ombudsman. Aside from the matter of language, this situation raises questions about the type of mediation provided in the State where the firm is located and about knowledge of local laws.

⁴⁷ Position 2010-05.

All professionals selling financial investments⁴⁸ are required to indicate in clear, understandable language the procedures for making complaints, and notably the contact details for complaints handling departments, as well as the procedures to ensure that complaints are handled effectively. Investors must be fully informed of their options for seeking redress in the event of a complaint. This obligation is also imposed by the PRIIPs Regulation: now all KIIDs, which should be issued in a clear and concise format, must include, in addition to the basic information needed to understand the product (whether it is a financial, banking or insurance product), a section on how to file a complaint.

In France, the AMF's independent Ombudsman provides, as required by law, a free and easy-to-access public service aimed at promoting out-of-court settlement of financial disputes involving savers and investors. The Ombudsman's office handled over 1,200 cases in 2015. Of these, more than 70 involved European products bought by individuals resident in France.

The initial response to this cross-border issue was the creation in 2001 of FIN-NET, a European network that provides a forum for discussion between ombudsmen that are responsible for handling disputes between consumers and financial services providers, i.e. banks, insurance companies, investment firms and other providers in EU member countries. The growing number of cross-border cases handled by members of the network (over 3,500 in 2014, or twice as many as in 2010⁴⁹) is clear evidence of the need to strengthen cooperation by European ombudsmen.

Improved dialogue between authorities is complemented by the European Directive⁵⁰ and Regulation on Consumer Disputes⁵¹, which seek to guarantee effective recourse to mediation for all European consumers (for all types of products). In early 2016, the regulation also introduced a new online platform that will help consumers and merchants to automatically transfer disputes involving online purchases. The multilingual platform, which is designed to be accessible to everyone, will provide a central point for complaints by European consumers involving domestic and cross-border purchases and facilitate the online procedures for alternative dispute resolution.

Furthermore, the effectiveness and use made of mediation schemes also depend on their domestic legal environment. Professionals will be more inclined to enter into mediation if it represents a less burdensome option, in terms of costs and time, but also in terms of their image and reputation, than the other available procedures.

Thus, mediation will be more effective if the customer has one or more options for appeal that are binding on the professional. The courts must continue to be an option in the event that the service provider refuses to enter into negotiations. This is especially true for judicial systems that offer settlement of class action suits. Customers may also lodge an administrative appeal, as authorised by the Directorate General for Competition, Consumer Affairs and the Punishment of Fraud Offences in France. To give an example, the Directorate General received more than 75,000 complaints in 2014, of which 4,600 involved the financial sector.

The potential for severe judicial and administrative sanctions may also encourage service providers to go down the mediation route. But more than anything, service providers are often inclined towards mediation to avoid the disclosure of judicial sanctions: given the risks to their image posed by the possible disclosure of court decisions, mediation, which is a process that protects the confidentiality of discussions and recommendations, may seem safer and therefore preferable.

3.3. Foster a European supervisory culture around ESMA

The priority must now be to ensure the effectiveness of financial market supervision with a view to achieving harmonised application of European rules. The body of shared rules now in place is meaningless unless it is effectively and uniformly applied to preserve financial stability, investor protection and market integrity, against the backdrop of a level playing field.

To begin with, given the threat of illegal websites or dangerous platforms offering online trading in forex, binary options or scams through fake credit transfers, **the AMF would like to be able to respond quickly in the event of inaction by the home States of companies that cause injury to its own retail investors, by, for example, provisionally withdrawing such firms' authorisations, in order to prevent a crisis of confidence.** Several European regulators have run into problems with these platforms, which are authorised by other European countries and operate under the FPS within the EU. Non-compliance with the regulations by these firms and the unsuitability of their marketing documents for target customers have been damaging to retail investors. But because of the lack of jurisdiction over FPS

⁴⁸ These include investment services providers, financial investment advisers, crowdfunding advisers, management companies of real estate investment companies and legal entities issuing registered securities for which they keep custody accounts. See AMF Instruction DOC-2012-07.

⁴⁹ FIN-NET Activity Reports 2013-2014.

⁵⁰ Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes.

⁵¹ European Regulation 2013/24 of 21 May 2013 on online dispute resolution for consumer disputes.

in host States, these authorities have been unable to take steps to protect their domestic investors. French consumers lost an estimated €4.5 billion between 2010 and 2016. **Ensuring continuous dialogue and mediation at the level of ESMA in the case of such difficulties would make it possible to enhance the protection of European investors.**

To facilitate dealings between home and host States, the AMF therefore proposes a form of delegation of powers between competent authorities, enabling host authorities to act on behalf of the home authority in order to respond quickly in the event of unfair practices or inappropriate marketing to a target population. This proposal makes sense especially since it is rare for home country authorities to supervise activities undertaken by firms from their country elsewhere in the EU. With the same goal in mind, and to avoid the threat of forum shopping by market participants, Member States could usefully harmonise the penalties and methodologies applied by enforcement schemes.

For this, steps are needed to encourage more interaction between national authorities through forums or feedback, which together will help to foster a shared supervisory culture. These discussions could promote mediation between authorities and prevent regulatory arbitrage through improved understanding of differences in the application of European legislation. A forum of this kind could be organised through ESMA, not only to further promote European convergence, but also to be able to take action on cross-border issues such as at-risk financial products.

The AMF also suggests, in order to encourage this convergence in market supervision, to continue the peer reviews for European authorities, so that each authority can better understand the differences in how they interpret and enforce European rules. These ESMA-led peer reviews can also provide an opportunity to improve the existing legislation, if need be.

Last but not least, the ESMA needs to play its role in terms of regulatory harmonisation to the full. For this, it needs the power to check that regulations are being properly harmonised and the power to sanction non-compliant authorities.

Conclusion

Without amending the current legislation and the distribution of roles between home and host Member States, the AMF believes that investor protection should be improved by maintaining a form of supervision by the host country, in particular as regards aspects of marketing and sales communication, where local authorities play a very legitimate role.

The question of entry barriers for cross-border funds in Europe, which is raised in the context of the CMU initiative, seems partly based on a flawed premise. The functioning of the European passporting system does not look to be problematic given the statistics, which point to its success. It could be improved by a few administrative improvements, notably in terms of clarification and convergence of fees and definitions used in the marketing process.

Even so, despite plenty of marketing options, actual sales may vary markedly across European countries. Structural differences in terms of financial literacy, investment behaviour and social shock absorbers account for some of the variations in appetite for financial products. These are compounded by cognitive biases, such as home bias and familiarity bias, that curb the appeal of foreign or riskier products. Finally, the compartmentalisation of distribution networks, which is particularly in evidence in France, may prompt providers to restrict their supply of investment products to in-house products.

Accordingly, if there are barriers, they are more at the level of demand and distribution networks than administrative. To remove some of these barriers, the AMF is suggesting several avenues aimed at opening up distribution networks, promoting the secure development of new digital solutions, and restoring confidence to retail investors by ensuring that they are familiar with their mediation options and rights, that advertising materials for financial products are clear to them and that they have a good understanding of a product's risk and rewards through appropriate communication. The AMF is also calling for harmonisation of marketing rules by enhancing the convergence of marketing and pre-marketing rules and by establishing improved dialogue and options for appeals among national authorities within ESMA.

Finally, although a shared supervisory culture needs to be fostered, the AMF does not want increased cross-border supply of financial products to take place at the expense of consumer protection. The AMF is therefore calling for the central role of the national regulatory authorities to be enshrined, as a necessary condition for retail investors to buy European products with confidence.

ANNEX 1

Table 5: number of European passports issued per European country, by fund domicile.

Distribution Markets		Fund Domiciles							Total number of registrations as at Dec. 2014	Number of new registrations during 2014	% growth 2013-2014	Trend over 5 years
		Luxembourg	Ireland	France	Jersey	United Kingdom	Belgium	Other				
EUROPE												
	Andorra	12	-	-	-	-	-	-	12	1	9.09%	↗
	Austria	4,067	1,124	237	2	113	87	269	5,899	517	9.61%	↗
	Belgium	2,045	312	153	12	57	-	10	2,589	112	4.52%	↗
	Bulgaria	112	-	-	-	-	-	10	122	-8	-6.15%	↗
	Cyprus	446	14	-	-	2	-	1	463	47	11.30%	↗
	Czech Republic	515	12	-	-	-	63	69	659	-2	-0.30%	↘
	Denmark	1,407	459	26	161	81	-	8	2,142	210	10.87%	↗
	Estonia	376	15	-	-	-	-	23	414	-19	-4.39%	↗
	Faroe Islands	3	-	-	-	-	-	-	3	2	200.00%	↗
	Finland	2,333	687	28	158	64	10	78	3,358	331	10.93%	↗
	France	3,470	1,343	-	315	168	103	118	5,517	256	4.87%	↗
	Germany	4,704	1,708	564	358	176	100	257	7,867	464	6.27%	↗
	Gibraltar	283	33	-	6	-	-	7	329	9	2.81%	↗
	Greece	884	60	1	-	2	-	1	948	10	1.07%	↗
	Greenland	9	-	-	-	-	-	-	9	-	0.00%	↗
	Guernsey	280	84	-	12	86	-	-	462	141	43.93%	↗
	Hungary	505	5	-	-	-	5	12	527	41	8.44%	↗
	Iceland	322	4	-	-	1	-	10	337	27	8.71%	↗
	Ireland	1,384	-	53	123	122	-	47	1,729	261	17.78%	↗
	Isle of Man	32	30	-	9	4	-	-	75	9	13.64%	↘
	Italy	3,026	933	371	248	79	29	67	4,753	521	12.31%	↗
	Jersey	568	79	-	-	85	-	11	743	218	41.52%	↗
	Latvia	327	1	-	-	-	-	18	346	-2	-0.57%	↗
	Liechtenstein	740	50	-	-	-	-	44	834	157	23.19%	↗
	Lithuania	272	1	-	-	-	-	27	300	2	0.67%	↗
	Luxembourg	-	1,181	192	0	101	113	125	1,712	104	6.47%	↗
	Malta	236	15	-	6	2	-	1	260	12	4.84%	↗
	Monaco	1	1	-	-	-	-	1	3	-1	-25.00%	↗
	Netherlands	3,252	1,275	318	56	108	38	145	5,192	206	4.13%	↗
	Norway	1,983	538	2	31	30	-	77	2,661	399	17.64%	↗
	Poland	433	8	-	-	-	-	20	461	20	4.54%	↗
	Portugal	1,083	299	2	71	50	-	7	1,512	15	1.00%	↗
	Romania	10	-	-	-	-	-	2	12	-	0.00%	↗
	Slovakia	425	16	-	-	1	55	53	550	-33	-5.66%	↗
	Slovenia	32	-	-	-	2	-	22	56	-3	-5.08%	↘
	Spain	3,183	956	307	112	91	32	56	4,737	440	10.24%	↗
	Sweden	2,807	1,043	73	114	57	15	98	4,207	579	15.96%	↗
Top Market	Switzerland	4,098	1,371	395	-	138	25	268	6,295	606	10.65%	↗
	United Kingdom	3,258	1,880	309	82	-	1	76	5,606	462	8.98%	↗
Total number of registrations - EUROPE		48,923	15,537	3,031	1,876	1,620	676	2,038	73,701	6,111	9.04%	↗

Source: PwC