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CROSS-BORDER DISTRIBUTION OF INVESTMENT FUNDS

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Purpose: The aim of this article is to present the evolution of the European investment fund market in the context of its cross-border distribution and the challenges it faces.
Design/methodology/approach: Legal acts, reports and data published by international institutions involved in investment fund market research, such as the European Fund and Asset Management Association and PriceWaterhouseCoopers, have been analysed.
Findings: There were differences in the regulation of cross-border distribution of investment funds between Member States and between UCITS funds and alternative funds. The harmonisation of rules and the strengthening of cooperation between regulators in different EU countries have contributed significantly to the development of cross-border distribution of investment funds. These regulations also develop similar cross-border distribution rules for the two types of funds mentioned. The share of domestic funds in the structure of the total assets of European investment funds, although dominant, is gradually decreasing in favour of an increase in the share of assets held by cross-border funds distributing their shares or units in other EU countries and outside the EU. The level of development of cross-border distribution has increased, as measured by the ratio of the average number of registrations per cross-border fund. This demonstrates the significant impact of the investment fund market on EU competitiveness and development. It also confirms the positioning of investment funds established under EU law as a global brand, no longer limited to UCITS funds but also to alternative funds (AIFs), which are increasingly used for cross-border distribution. The still dominant position of Luxembourg as the country of choice for cross-border offered investment funds is no longer as strong as before, the position of other Member States (Ireland, France) is slowly increasing.
Practical implications: The development of EU legislation on cross-border investment funds may pose a significant challenge to smaller, local investment fund markets. Institutions setting up and promoting investment funds should consider the growing interest of non-EU investors.
Social implications: Cross-border distribution of investment funds can increase retail investors' access to a category of funds that is sometimes poorly served in domestic markets, particularly in the growing market for ESG-based sustainable funds.
Originality/value: The article presents the evolution of cross-border distribution of investment funds, highlighting regulatory changes, market developments and structural changes in the countries chosen to host cross-border investment funds.
Keywords: investment funds, cross-border distribution, finance, UCITS, AIF.
Category of the paper: Research paper.

1. Introduction

Strengthening the development of capital markets and cross-border financial integration are important elements of European integration and have a direct impact on increasing the EU's competitiveness in global markets. The long history of building the EU capital market goes back to the free movement of capital, which was already implemented by the Treaty of Rome in 1957 (Véron, Wolff, 2016). The 2015 Green Paper (European Commission, 2015) underlined the need for a Capital Markets Union, which should aim to create a single capital market for all Member States by removing barriers to cross-border investment in the EU and strengthening links with global capital markets. This should be complemented by the harmonisation of the regulatory framework for financial services and effective investor protection.

One of the important and significant participants of the capital markets, directly affected by the free movement of capital, are the well-known and widely operating investment funds. Their role in the process of accumulation of social savings is becoming increasingly important, which increases the influence of funds on the processes taking place on the financial market and, consequently, in the sphere of the real economy (Mroczkowski, 2011). The level of development of the investment fund industry varies in different countries and regions of the world and depends on the level of development of their capital markets.

The assets of the global investment fund market were estimated at EUR 60.8 trillion at the end of 2022 (EFAMA, 2023). The largest assets were accumulated by investment funds in the United States, accounting for almost half of the global investment fund assets market (ICI, 2023). The rapid growth of the US fund market has largely been driven by its popularity in US pension plans and the popularity of ETFs. The next largest market in terms of net asset value is the European market, which is primarily driven by the popularity of funds known as UCITS, which have EUR 18.5 trillion in assets and account for more than 30% of the global investment fund market (EFAMA, 2023).

The specificity of the European investment fund market is not only related to the successive stages of market integration, the development of funds at national level or the popularity of funds among institutional investors. The increase in the supply side of available investment vehicles is influenced by the cross-border offering of investment funds. Of particular importance for the development of the European investment fund market is cross-border distribution outside the country in which the fund is domiciled and providing investors with access to funds that are regulated transparently and diversified, e.g., geographically, or politically.

The aim of this article is to present the evolution of the European investment fund market in the context of its cross-border distribution and the challenges it faces.

2. Materials and methods

The article focuses on investment funds established under European Union law. For the purposes of the article, legal acts, recent materials, and reports published by international institutions involved in investment fund market research are analysed. These include the European Fund and Asset Management Association (EFAMA) and PriceWaterhouseCoopers (PwC). The time range is dependent on the data available and covers the years 2000-2023 (Q2). The ratio of the number of registrations per cross-border fund was chosen as a measure of the level of development of cross-border distribution of investment funds calculated according to formula (1):

$$Ratio\ CBFR = \frac{CBR}{CBF} \tag{1}$$

where:
CBR – Number of cross-border registrations,
CBF – Number of cross-border funds.

The paper presents the main aspects related to the specificity of investment funds established under EU law by presenting the basic types of funds. For the purposes of the article, cross-border distribution of investment funds is defined in order to present the evolution of cross-border distribution in the next step. It then examines the market for investment funds, with a particular focus on the market for cross-border investment funds. It identifies the European countries where these funds are most often domiciled and the regions to which they are most often distributed. The final part presents conclusions, limitations, and possible directions for further analysis.

3. Results and Discussion

3.1. Investment funds established in the EU

In general, investment funds can be defined as specialised institutions that pool the funds of various categories of investors by offering them in exchange securities or units for investment in various asset classes (Krupa, 2008). While independent participation in financial market operations requires overcoming barriers related to insufficient resources of capital, knowledge or time, investment through investment funds is supposed to reduce the disproportion between unused capital and the possibilities of its placement on the financial market (Dziawgo, D., Dziawgo, L., 1994; Dyl, 2001). Investment funds, if they existed at all, developed independently in individual European countries. The origins of the single market for investment funds can be traced back to the UCITS Directive adopted in the 1980s (Directive 85/611/EEC, 1985). Since then, the EU investment fund market has undergone a number of changes in terms of regulatory evolution in order to protect investors, create and strengthen the single financial market and safeguard its integrity and stability (Perez, Borowski, 2018). These changes have led to the development of a number of directives, which have been transposed into the national legislation of the Member States and EU regulations.

The main types of investment funds operating in the EU are named after EU directives. These include open-ended investment funds, which are referred to as UCITS (Undertakings for Collective Investment in Transferable Securities) funds, as harmonised by the successive UCITS Directives I to V (Directive 85/611/EEC, 1985; Directive 2001/107/EC, 2022; Directive 2001/108/EC, 2002; Directive 2009/65/EC, 2009; Directive 2014/91/EU, 2014). These funds were primarily aimed at retail investors. Initially, other types of funds that were not harmonised with the UCITS Directive (e.g., closed-end investment funds, real estate funds, hedge funds, private equity funds) were referred to as non-UCITS (Krupa, 2008). This group included funds with a wide variety of organisational forms and investment strategies, often regulated individually by each Member State. The diversity of non-UCITS funds made it difficult to regulate them at EU level. Eventually, the AIFM Directive (Directive 2011/61/EU, 2011) brought the management companies of these funds under the regulatory umbrella and the funds previously referred to as non-UCITS were collectively referred to as Alternative Investment Funds (AIFs). These funds were mainly targeted at professional investors.

Figure 1. shows the net asset value (NAV) of investment funds in the European market from 2000 to mid-2023 by fund group according to the applicable regulatory designation.

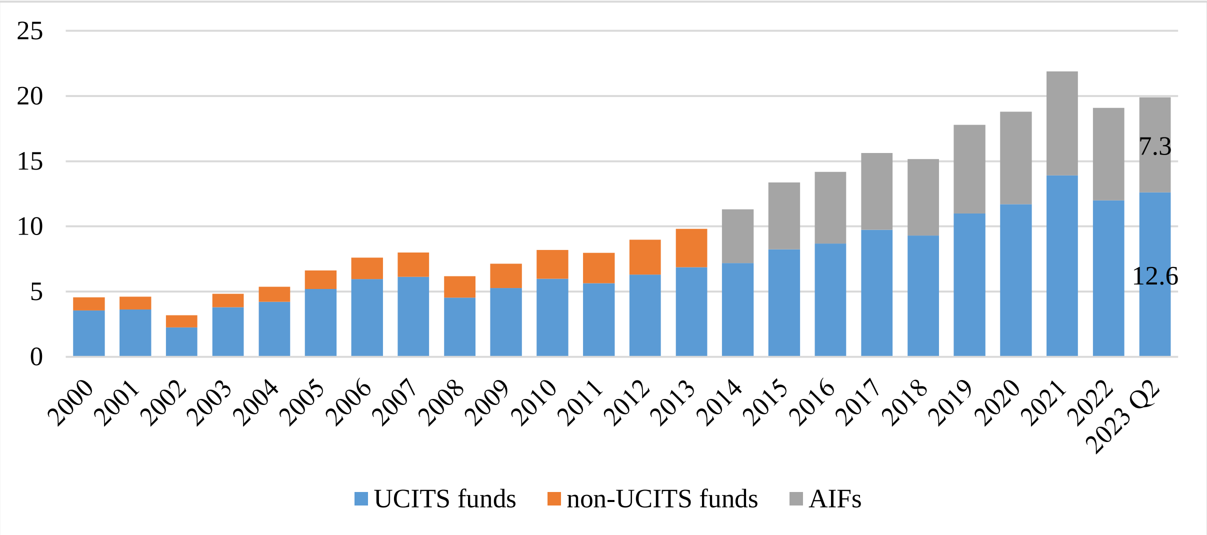

Figure 1. Net Assets Value of investment funds industry in Europe in the period 2000-2023, EUR trillions.

Source: own calculation based on (Worldwide…, 2009; EFAMA, 2019; EFAMA, 2023).

The intense development of the European investment fund market after the financial crisis of 2007-2008 is particularly evident in the increase in net assets of funds, firstly of the non-UCITS group and then of alternative funds. The market for UCITS funds also developed harmoniously. For both groups of funds, the intensity of the development of this market was influenced by the market activities of the distributors of the shares or units and by the rules governing their cross-border distribution.

3.2. Definition and development of cross-border distribution of investment funds in the EU

A key element in strengthening the single market for investment funds in the EU has been to improve their cross-border distribution. For the purposes of this article, cross-border distribution of an investment fund is defined as the sale of units or shares of UCITS or AIFs outside the home country, i.e., the country where the fund is domiciled, to other countries, referred to as host countries.

Cross-border distribution of investment funds mainly concerned UCITS funds (Krupa, 2010), which were mainly distributed by banks with capital links to the fund management company in the countries where they were established (Perez, Borowski, 2018). UCITS funds were subject to the single passport principle, under which open-ended fund units or shares could be distributed throughout the Community without the need to obtain separate authorisations in host countries. Subsequent UCITS regulation did not address the problem of excessive cross-border distribution costs, due to high compliance monitoring costs in individual host countries. It was not until UCITS Directive IV (Directive 2009/65/EC, 2009) that this process was simplified. Solutions for the cross-border distribution of UCITS investment funds included the introduction of the European Management Company Passport (MCP). This allowed a company authorised in one EU country to launch and manage UCITS funds domiciled in a country other than that of the management company. Cross-border pooling of funds also became possible. Under UCITS Directive V (Directive 2014/91/EU, 2014), a single licence was granted to UCITS fund depositaries.

For the second group of funds, initially known as non-UCITS, it was possible to distribute their shares or units within the EU and in third countries. However, this process was time-consuming, costly, and often complicated, as each country's legislation required such a fund to meet local legal requirements for distribution. For example, many jurisdictions had different rules on minimum subscriptions, fees and commissions, investment limits, disclosure requirements or tax issues. It was not until the AIFM Directive (Directive 2011/61/EU, 2011) that a single licensing regime for AIF fund managers and their depositaries was introduced.

There are two types of passports for both groups of funds. The management passport allows either a UCITS management company or an AIF manager (AIFM) authorised in one Member State to operate in other Member States. The second type is the marketing passport, which allows a UCITS or AIF authorised by a national competent authority in one Member State to market funds on a cross-border basis in other Member States without having to obtain a separate authorisation.

Considering the UCITS and AIFM Regulations, the European Commission conducted a consultation on the main barriers to cross-border marketing of investment funds in the EU (European Commission, 2016). The results of this consultation were used to develop a further framework to increase the cross-border movement of European capital. Despite the changes introduced, in most Member States funds are mainly distributed domestically. In the structure of total European investment fund assets, the share of domestic funds decreased from 58% in 2011 to 46% in 2022. The share of assets held by funds distributing their units or shares in other EU countries increased from 22% to 28% over the period, and the share of assets held by funds distributing their units or shares outside the EU increased from 21% to 26% (Figure 2).

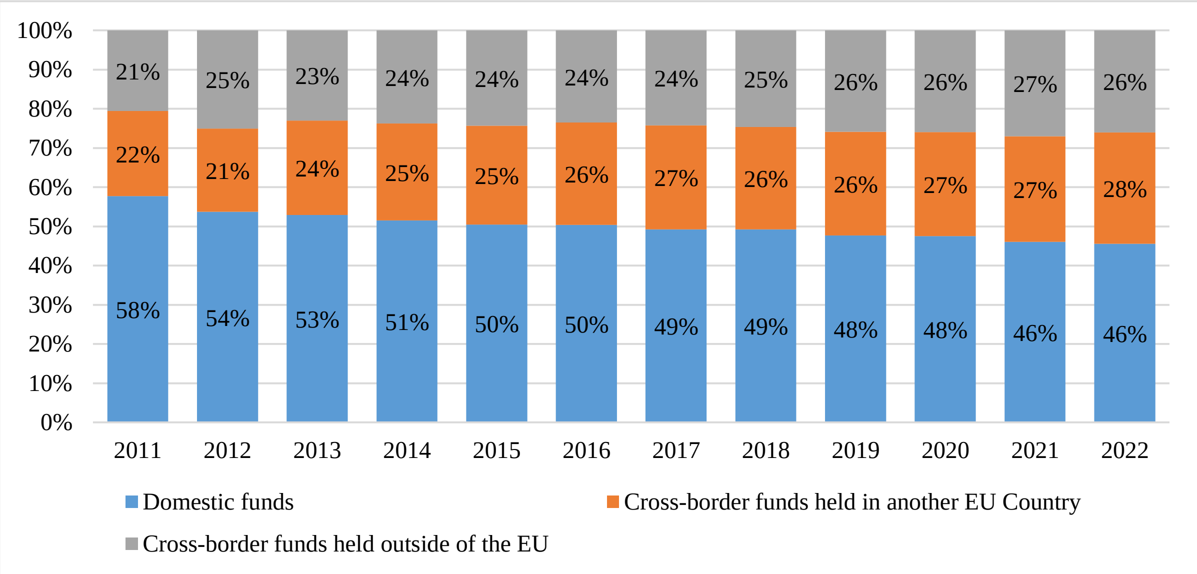

Figure 2. Structure of the distribution of assets of European investment funds from 2011 to 2022 (percentage of total net assets).

Source: own calculation based on (EFAMA, 2019; EFAMA, 2023).

Subsequent legislative proposals and proposed solutions were widely discussed (Gargantini, Noia, Dimitropoulos, 2018). These concerned both the directive regulating UCITS funds and the directive regulating alternative investment fund managers (European Commission, 2018). In the further developments and consultations, a kind of common, cross-sectoral standard for investor protection began to emerge, which could form the basis for future development and integration of EU legislation (Annunziata, 2019).

The result of the work on cross-border fund distribution is a Directive, complemented by a Regulation. The Directive (Directive (EU) 2019/1160, 2019) amends Directives 2009/65/EC and 2011/61/EU in relation to cross-border distribution by undertakings for collective investment. It aims to ensure a level playing field for investment funds by removing restrictions on the free movement of fund units or shares within the EU. At the same time, it seeks to enhance the harmonisation of investor protection through solutions aimed at removing the barriers identified in this area resulting from divergent regulatory and supervisory practices in Member States. The Regulation of the European Parliament and of the Council on facilitating the cross-border distribution of collective investment undertakings (Regulation (EU) 2019/1156, 2019), which applies to separately regulated alternative funds (EuVECA, EuSEF, ELTIF) in addition to UCITS funds, sets out additional rules and procedures. Together, the Regulation and the Directive aim to coordinate the conditions for fund managers operating in the Internal Market and to facilitate the cross-border distribution of the funds they manage. The Regulation also complements the advertising information provisions of the UCITS Directive and extends their application to AIF managers. It should be noted that the European Securities and Markets Authority (ESMA, 2022; ESMA, 2023) has developed a supplement to the advertising information rules. Advertising information should, inter alia:

- be recognisable as information or advertising content and describe the risks and rewards associated with the purchase of units,
- be presented in a fair, transparent, and non-misleading manner,
- indicate where and how existing or potential investors can obtain a summary of investors' rights,
- does not contradict or detract from the information contained in the fund's prospectus or key investor information document (KIID).

3.3. The market for cross-border distribution of investment funds established in the EU

Between 2002 and 2022, the number of cross-border investment funds increased from 3750 to 14607 and the number of cross-border registrations in 2022 was more than five times higher than in 2002 (Figure 3).

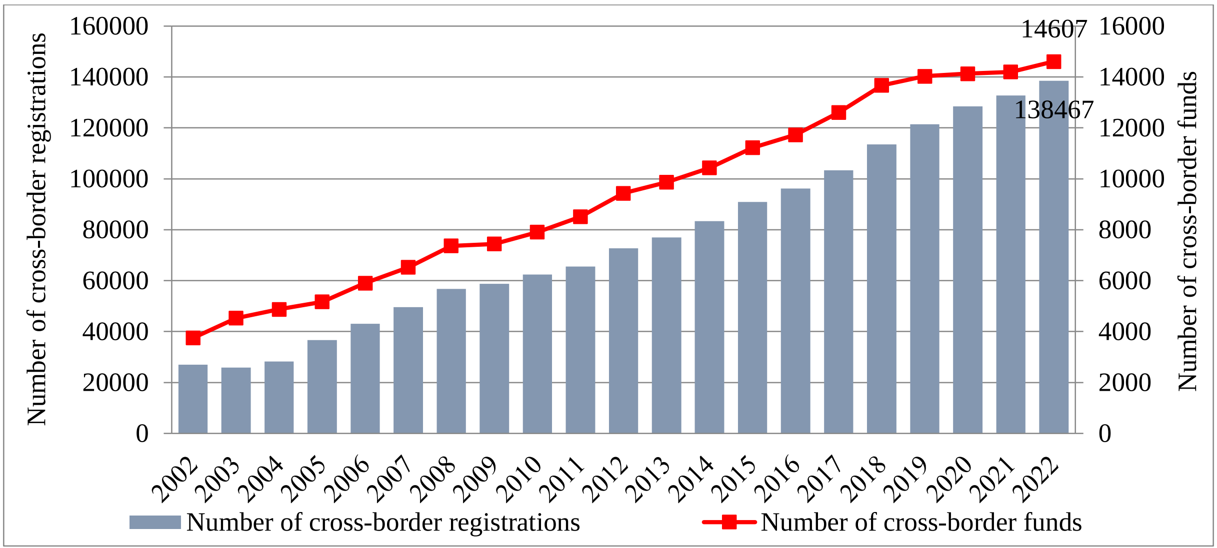

Figure 3. Number of cross-border registrations and number of cross-border funds in 2002-2022.
Source: own calculation based on (PWC 2009), (PWC 2019), (Saint-Mard, Glover, Yazdani, 2023).

The Commission considers cross-border funds to be those where a fund is distributed in one or more Member States (host countries) outside the domestic market of its manager and domicile (EUROPEAN COURT OF AUDITORS, 2022). It therefore excludes so-called round-trip funds (artificially traded funds) sold by domestic rather than foreign asset managers.

A measure of the level of development of cross-border distribution can be the ratio of the number of registrations per cross-border fund (Ratio CBFR), calculated according to formula (1). The following figure shows the ratio of the Ratio CBFR from 2002 to 2022 (Figure 4).

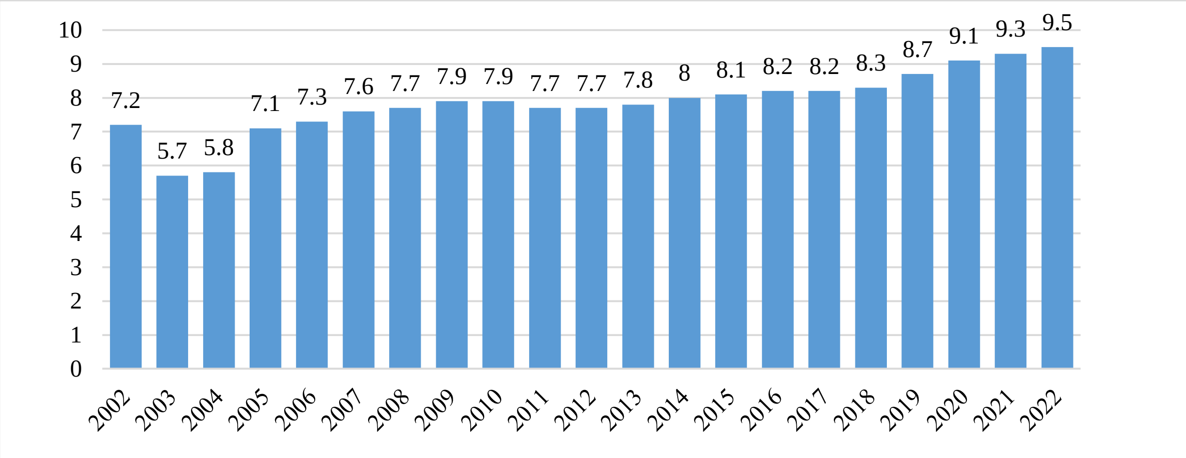

Figure 4. Ratio CBFR from 2002 to 2022.

Source: own calculation based on (PwC, 2009; PwC, 2019; Saint-Mard, Glover, Yazdani, 2023).

At the end of 2022, a cross-border fund was registered in more than nine countries on average. The increase in this indicator over the period shows that the number of cross-border registrations (Figure 3) grew faster than the number of cross-border investment funds.

Another snapshot of the development of the market for the cross-border marketing of investment funds is provided by the countries in which cross-border funds are domiciled. Financial institutions, which are the promoters and originators of investment funds, select specific countries as the place of registration of investment funds (home countries) and the countries to which the units or securities of these funds are distributed (host countries). Since the beginning of cross-border distribution of investment fund units or shares, Luxembourg and then Ireland have led the way in terms of domicile (Krupa, 2010). Initially, cross-border distribution only applied to UCITS funds; following regulatory changes, distribution of AIFs became possible. According to PwC (2023), cross-border UCITS funds still dominate, with AIFs accounting for 8.4% of the total number of funds distributed cross-border. The spatial structure of the European investment fund industry, with a focus on Luxembourg and Ireland, is analysed by Wojcik, Urban and Dörry (2022). Using financial and economic geography, the authors show how these countries have become leading destinations for investment funds. They emphasise that while Luxembourg and Ireland have become more important because of European financial integration, this has been driven by US banks and asset managers rather than European firms. In 2022, 24 of the 64 largest companies promoting and creating funds in Europe were from the US, 13 from the UK and six from Switzerland (PwC, 2023). Strengthening the development of the cross-border distribution market is also linked to the fact that investment funds are part of broad cross-border linkages classified as non-bank financial institutions. Cross-border linkages between non-bank financial institutions and banks have also increased significantly in recent years (Aldasoro, Huang, Kemp, 2020), supporting the development of both. The choice of domicile for investment funds by foreign investment firms is primarily related to legal, tax and organisational advantages. When choosing a home Member State, it is important to have a modern and flexible regulatory regime, tax advantages related to capital turnover and allocation, a highly qualified workforce and efficient supervision of the financial sector. Luxembourg, with the above characteristics, was able to attract other investors with its offer. Table 1 shows the number and share of cross-border distributed investment funds registered in Luxembourg, Ireland, France, and the rest of the Member State (including the United Kingdom) in 2008, 2018 and 2022, and the regions of the world to which these funds are distributed.

Table 1.
Worldwide distribution regions and countries of registration of cross-border funds in 2008, 2018 and 2022

Region	**Year**	**Countries of registration of cross-border funds**								**Sum in given year**
		Luxembourg		Ireland		France		Other		
		Number of funds	Share (%)	Number of funds	Share (%)	Number of funds	Share (%)	Number of funds	Share (%)	
Europe	2008	36714	76%	6277	13%	1030	2%	4208	9%	48229
	2018	61632	60%	29933	29%	3646	4%	7966	8%	103177
	2022	68842	55%	45804	37%	3898	3%	6885	5%	125429
Asia Pacific	2008	4111	71%	934	16%	13	0%	716	12%	5774
	2018	5067	74%	1246	18%	28	0%	519	8%	6860
	2022	5723	70%	2007	25%	59	1%	357	4%	8146
Middle East	2008	801	86%	85	9%	0	0%	43	5%	929
	2018	704	83%	83	10%	2	0%	63	7%	852
	2022	778	53%	640	43%	2	0%	56	4%	1476
Americas	2008	1414	70%	219	11%	15	1%	385	19%	2033
	2018	1180	51%	345	15%	95	4%	686	30%	2306
	2022	1505	63%	709	29%	99	4%	91	4%	2404
Africa	2008	74	58%	23	18%	0	0%	31	24%	128
	2018	190	66%	81	28%	0	0%	17	6%	288
	2022	195	53%	140	38%	0	0%	35	9%	370

Source: own calculation based on (PWC, 2009, 2019; Saint-Mard, Glover, Yazdani, 2023).

As can be seen from the data in Table 1, the dominant position of Luxembourg as a cross-border fund domicile is still evident, followed by Ireland in second place, then a group of other countries including the United Kingdom and, separately, France. However, subsequent legislation harmonising cross-border distribution requirements has significantly strengthened the positions of Ireland and France. Looking at cross-border distribution in 2022 compared to 2008, Luxembourg's share has declined in various parts of the world. This is most evident in Europe, where the share falls from 76% in 2008 to 55% in 2022. A significant increase in share is achieved by Ireland. The largest changes are in the Middle East region, where the share was 9% in 2002 and 43% in 2022, Europe (13% in 2002 and 37% in 2022) and Africa (18% in 2002 and 38% in 2022). France was chosen as the domicile of funds distributed in Europe for 3% of cross-border funds in 2022. As the data in the table show, there is a significant increase in interest in the distribution of investment funds registered in Europe outside Europe itself, which significantly strengthens their position as a global brand.

4. Summary

The purpose of this article was to present the development of the European investment fund market in the context of cross-border distribution and the challenges it poses. Differences in the regulation of cross-border distribution of investment funds existed both between Member States and between UCITS and alternative investment funds (AIFs). The ongoing and deepening harmonisation of regulations over the years and the strengthening of cooperation between regulators in different EU countries have contributed significantly to the development of cross-border distribution of investment funds. These regulations are also developing similar cross-border distribution rules for the two types of funds mentioned. The share of domestic funds in the structure of total assets of European investment funds, although dominant, is gradually decreasing in favour of an increase in the share of assets held by cross-border funds distributing their securities in other EU countries and outside the EU. The growing number of cross-border investment funds has been accompanied by a faster increase in the number of cross-border fund registrations. An increase in the level of development of cross-border distribution, as measured by the ratio of the number of registrations per cross-border fund, is also evident. At the end of 2022, a cross-border fund was registered in more than nine countries on average. This not only demonstrates the significant impact of the investment fund market on EU competitiveness and development. It also confirms the positioning of investment funds established under EU law as a global brand, no longer limited to UCITS funds but also to alternative funds (AIFs), which are increasingly used for cross-border distribution.

Luxembourg's continued dominant position is no longer as strong as in previous decades. The development of legislation on the distribution of investment funds has contributed to improving transparency and accessibility of information on investment funds for investors and to strengthening the position of other Member States (Ireland, France), which are increasingly, albeit slowly, being chosen as domiciles for investment funds.

The development of cross-border investment fund legislation can be very challenging for smaller, local investment fund markets. The expansion of the range of investment-policy-diverse, cross-border investment funds on offer will pose serious competition to domestic offerings. It could also have a significant impact on demand from individual investors, in particular by increasing access to a variety of investment opportunities and diversifying savings, especially for retirement purposes.

One limitation of this study is undoubtedly the limited access to complete long-term data on the cross-border distribution of investment funds, including assets and numbers by country and fund type for UCITS and AIF. An important element in the future development of this market may be the implementation of educational and promotional campaigns aimed at potential investors to raise awareness of the benefits of investing in cross-border funds. Cross-border distribution of investment funds can increase retail investor access to fund categories that are that are not offered in domestic markets, particularly in the growing market for ESG-based sustainable funds. Another challenge is the increasing digitalisation of the processes involved in the cross-border distribution of investment funds, which could remove barriers to distribution, increase efficiency, reduce costs, and facilitate access to funds for a wider range of investors. These developments could radically alter the balance of power in the global investment fund market. The challenges identified could become potential directions for further research into aspects of cross-border fund distribution.

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