

Directive OPCVM IV :

Enjeux et défis pour l'industrie financière

En partenariat avec



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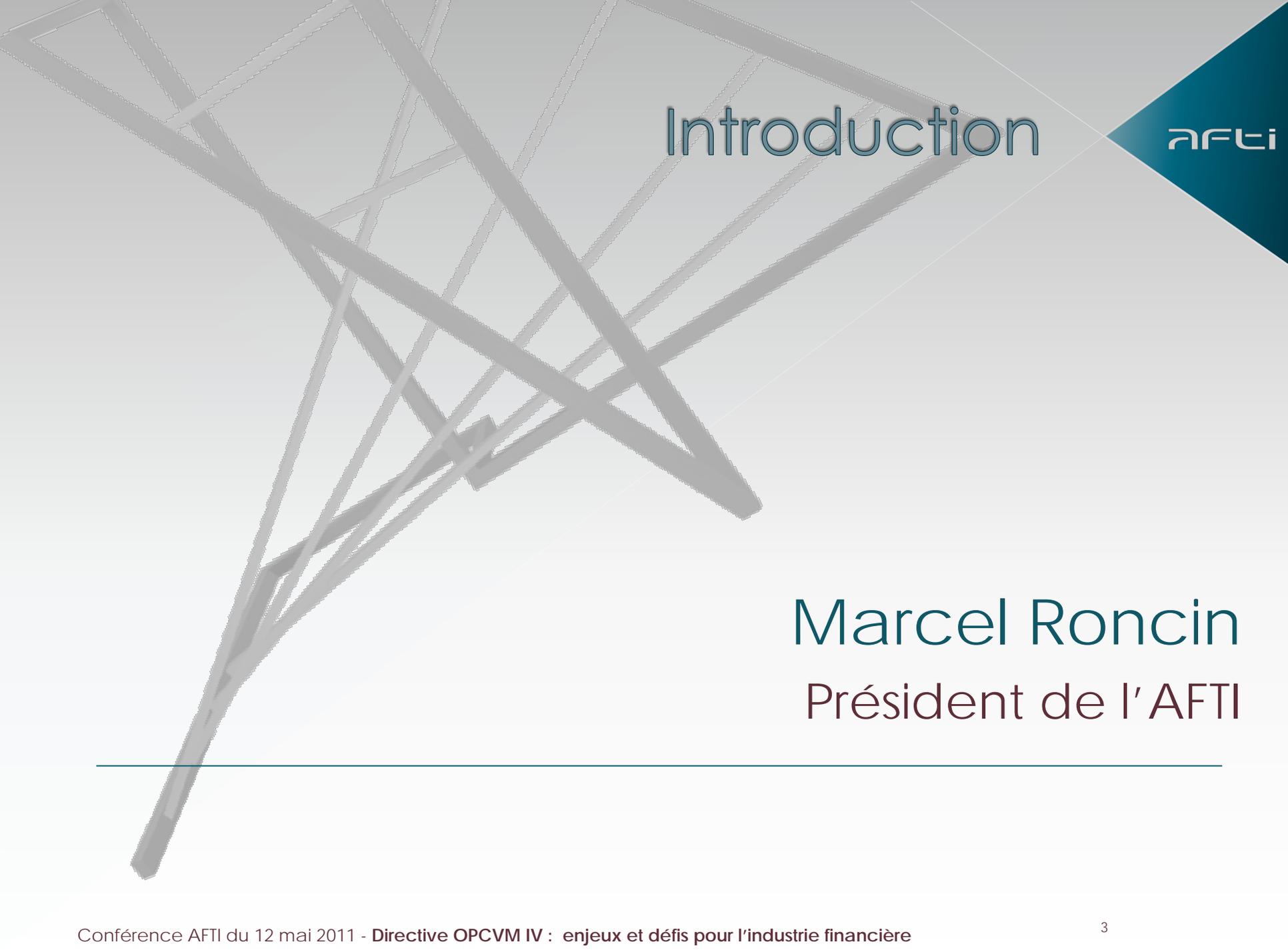
Gide Loyrette Nouel

Les Conférences de l'**AFTI**

Jeudi 12 mai 2011

Programme

- 14 h 30 **Introduction**
Marcel Roncin, Président de l'AFTI
- 14 h 35 **La nouvelle réglementation OPCVM IV, état des lieux et décryptage**
Guillaume Eliet, *Chef du service des Prestataires et des Produits d'Epargne*, Autorité des Marchés Financiers
- 15 h 15 **Environnement et impacts de UCITS IV**
Joseph Florentin, *Associé*, Eurogroup
- 15 h 45 **Les évolutions en cours sur les fonds non coordonnés**
Stéphane Puel, *Avocat Associé*, cabinet Gide Loyrette Nouel
- 16 h 15 **Pause**
- 16 h 30 **Table Ronde : Comment la Place de Paris se prépare t-elle à la concurrence ouverte entre Places par la Directive OPCVM IV : les enjeux et défis**
Animée par Stéphane Puel, *Avocat Associé*, Cabinet Gide Loyrette Nouel
- ✓ **Patrice Bergé-Vincent**, *Responsable du département régulation de la gestion d'actifs*, Direction de la Régulation et des Affaires Internationales, Autorité des Marchés Financiers
 - ✓ **Pierre Bollon**, *Délégué général*, AFG
 - ✓ **Eric Dérobert**, *Directeur des Affaires Publiques*, CACEIS
 - ✓ **Nicolas Gonzalez**, *Responsable Développement des nouveaux produits*, Société Générale Securities Services
 - ✓ **Brice Masselot**, *Adjoint au chef du bureau Epargne et marché financier*, direction générale du Trésor
 - ✓ **Eric Wohleber**, *Directeur Général*, Blackrock Investment Management
- 17 h 45 **Conclusion**
Vivien Levy-Garboua,
Président du Comité de pilotage de Paris Europlace, Senior Advisor, Direction Générale de BNP Paribas
- 18 h 00 **Cocktail**



Introduction

AFTI

Marcel Roncin
Président de l'AFTI

La nouvelle réglementation OPCVM IV, état des lieux et décryptage

Guillaume Eliet

Chef du service des Prestataires et des Produits
d'Epargne,
Autorité des Marchés Financiers

Les objectifs de la directive

Simplification de la procédure de **notification transfrontière**

Autorisation des **fusions** transfrontalières d'OPCVM et des structures **maître-nourricier**

Remplacement du prospectus simplifié par un document contenant des «informations clés pour l'investisseur» (**DICI**)

Amélioration des mécanismes de **coopération** entre les autorités de surveillance nationales

Mise en place du **passport société de gestion**

- ◉ Une **compétition** totalement ouverte
 - › Offre harmonisée
 - › Commercialisation transfrontière facilitée
 - › Passeport société

- ◉ Une **protection des investisseurs** par les règles de commercialisation

- ◉ Un positionnement à trouver pour les **fonds non coordonnés**

Les principes de transposition

- ◉ Transposer **littéralement** la directive (suppression des dispositions constitutives d'une sur transposition, reprise de la terminologie de la directive...)
- ◉ Renforcer la **lisibilité** du cadre juridique français (reprise de la partie du code monétaire et financier relative aux OPCVM en distinguant les OPCVM coordonnés des OPCVM non coordonnés)
- ◉ Assurer une **meilleure protection des investisseurs** et des épargnants (renforcer le contrôle de la commercialisation)
- ◉ Renforcer la **compétitivité** des produits et des sociétés de gestion de portefeuille.

- ◉ Méthode **rédactionnelle**

- Respecter les termes de la directive
- Distinguer OPCVM coordonnés et OPCVM non coordonnés, adapter leur dénomination pour une meilleure commercialisation à l'étranger

- ◉ Méthode **de travail**

- Les textes sont préparés par l'AMF
- Un échange ritualisé avec les associations professionnelles
- Une consultation publique
- Les arbitrages

Une transposition au plus tard le 1^{er} juillet 2011

- ◉ Le code monétaire et financier
 - › Pour les OPCVM conformes à la directive : consultation achevée le 11 février 2011
 - › Pour les autres OPCVM : consultation achevée le 23 mars 2011

- ◉ Le règlement général de l'AMF
 - › Livre III : consultation jusqu'au 13 mai 2011
 - › Livre IV : lancement le 11 mai jusqu'au 6 juin.

Impact pour les coordonnés

- Maintien de nos délais d'agrément (1 mois au lieu de 2 mois) et de la procédure par analogie
- Possibilité de Sicav sous forme de **SAS**
- **Capital minimum** SICAV et FCP : 300.000 euros
- Le **ratio poubelle** est transposé tel quel
 - > Valeurs mobilières et IMM
 - > Exclusion des OPC et des effets de commerce
- Interdiction des **ventes à découvert**
- **L'influence notable** est appréciée au niveau de la SGP et non plus fonds par fonds
- Intégration de deux mécanismes de **fusion**
- Application des guidelines ESMA aux **fonds à formule** (calcul du risque global etc)

Impact pour les non coordonnés à vocation générale

- ◉ Principe d'alignement sur les coordonnés
- ◉ Intégration dans le périmètre d'évaluation de **l'influence notable**
- ◉ Alignement du régime des **maitre-nourricier**
- ◉ Gel de la création de nouveaux **FCIMT** et **ARIA SEL**
- ◉ Maintien des dérogations de ratios
- ◉ Alignement du **ratio poubelle** sur celui des non coordonnés toujours en discussion
- ◉ Interdiction des **ventes à découvert (sauf ARIA EL)**
- ◉ Application des guidelines ESMA aux **fonds à formule**
- ◉ Maintien d'un régime de **fusion « national »** - Fusion possible entre FCP et SICAV

Impact pour les SGP

- ◉ Mise en place du passeport société de gestion pour la gestion d'OPCVM
- ◉ Des modalités d'agrément et une réglementation plus adaptée (simplification des programmes d'activité)
- ◉ Une doctrine recentrée sur les risques et externalisée
 - › Sur la **délégation de la gestion financière** : passage d'une approche dans laquelle la société qui délègue doit « savoir faire » à une approche dans laquelle elle doit apporter une valeur ajoutée
 - › Sur les **règles d'organisation** : par exemple prise en compte des spécificités des groupes

Impact pour les dépositaires

- ◉ **Alignement complet** sur UCITS 4
 - > Le dépositaire est choisi par la SGP
 - > Le dépositaire est responsable individuellement envers la SG ou les porteurs
 - > Liste exhaustive de missions de contrôle

- ◉ Maintien de la notion de « **conservation** »

Environnement et impacts de UCITS IV

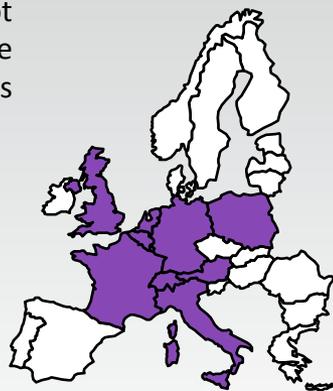
AFTI

Joseph Florentin,
Associé, Eurogroup Consulting

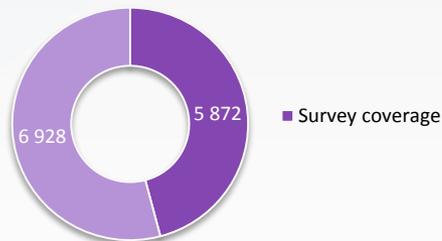
Survey coverage

10 countries covered

Participants were asked to answer not only for the country in which they were interviewed, but also for all the countries their company covers Europe-wide



Survey coverage – in bln euros



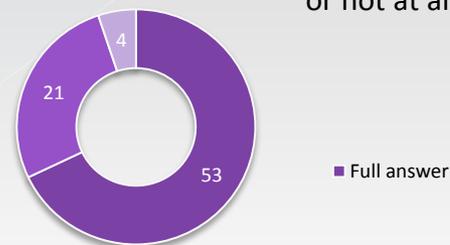
46% of the industry

Asset managers giving a full answer to the questionnaire represent 46% of the total European industry assets under management

78 respondents

65 asset managers, 13 service providers
25 respondents among the asset managers considered that they were not concerned or not at all prepared for UCITS IV

Type of answers collected



Type of respondents – Asset managers



Diversity

All kinds of respondents were interviewed, to ensure a valid representation of the industry: from the bigger ones to the niche actors, with either a local or international footprint

Will the European Directive finally meet its initial goal?

- **Back in 2006, the European Commission was looking at “introducing greater efficiency*” in the fund industry**

 - According to the Commission white paper, UCITS III did “not allow fund managers with funds or activities in different Member States sufficient flexibility to organize or restructure businesses. These inefficiencies and constraints are reflected in higher costs and lower returns that are borne by the fund investors. Independent research estimates that a reduction in European fund operating costs to US levels costs would boost nominal investment returns by 3%”.

- **Clearly, professionals are showing a large degree of skepticism with regards to the possibility to reach the initial target set by the European Commission**

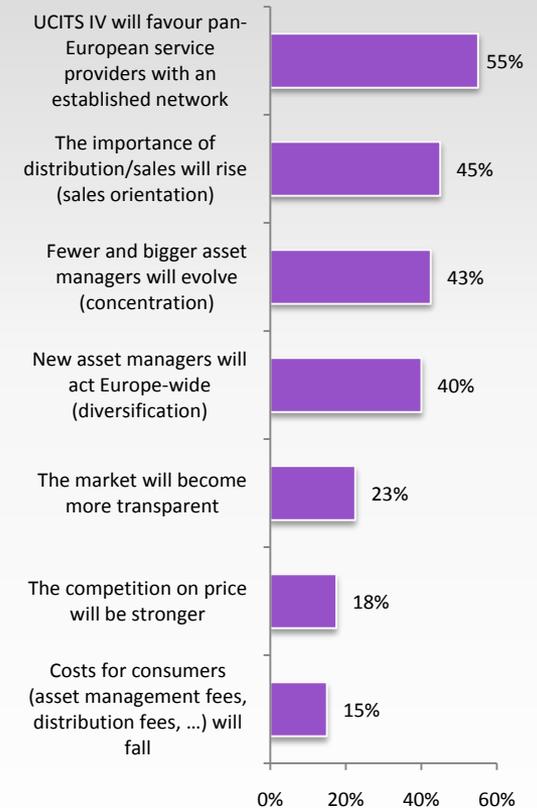
 - If 43% believe that a concentration process will take place, only 15% believe that at the end this will benefit final investors.
 - In addition, only a low minority believe the Directive will have positive effects on either transparency or price competition.

- **Eventually, according to asset managers themselves, the great beneficiary from the new Directive will be... service providers and distributors. Not quite the initial goal.**

- **This skepticism regarding the benefits for final investors mainly reflects concerns within an industry shaken by the recent financial crisis and a harsh competition level**

 - Asset managers are primarily interested in finding new money, therefore looking to cross-border marketing opportunities. However they know that finding new markets will have a cost and do not really plan to compete on pricing.
 - Despite strong pressure on profits, rationalization opportunities rank lower on the agenda. The key explanation is that the level of identified overlap between functions within Europe, even for leading asset managers, is significantly lower than assumed by the European commission

What are the expected consequences of UCITS IV for the European fund industry as a whole?

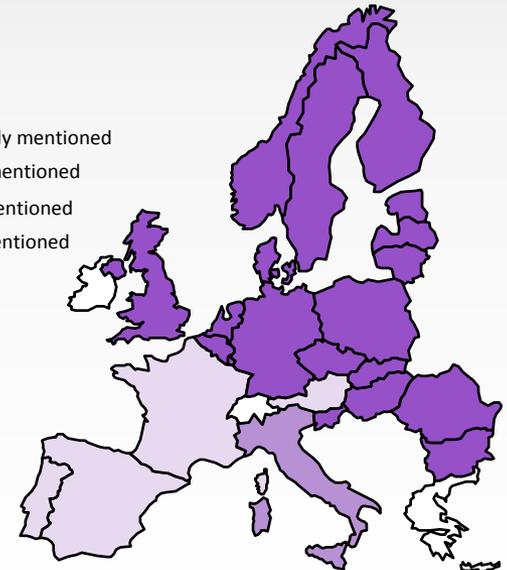
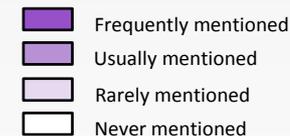


* European commission white paper – November, 15th, 2006

For asset managers, UCITS IV is not about expanding abroad

- **A limited number of asset managers plan to use UCITS IV as a platform for extending their presence abroad**
 - Only 9 asset managers mentioned this as a possibility they will exploit, 4 of which are French, the others being German, Belgian or Austrian
 - Unsurprisingly, asset managers who already have a wide international presence did not wait for UCITS IV to develop a presence in the markets they target. Those who consider UCITS IV as a tool to develop abroad are those with only a local presence, be they big or small.
 - More surprisingly, given the difficulties of cross-border business in the fund industry, expansion abroad is expected to be made without the help of local partners.
- **The geography of the target markets shows a preference for Eastern and Northern European countries**
 - Among the most frequently mentioned markets are Central European countries, which rank among the asset managers' priorities, as wealth in these countries is now reaching more significant levels.
 - Scandinavia and UK were mentioned as frequently, although the opportunities for expansion in the fund business in these countries remain quite low.
 - Southern European countries, including France are rarely mentioned. France and Italy, although among the biggest markets in Europe, still appear difficult to enter.

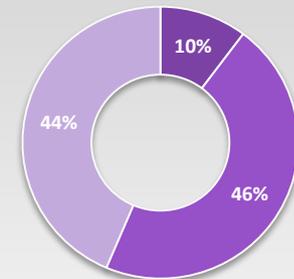
Which countries are those where you intend to set-up new sales activities or significantly develop existing activities?



To consolidate fund ranges, asset managers prefer master-feeders

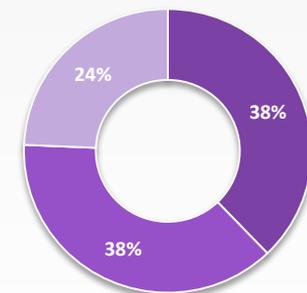
- **Only a very small percentage of asset managers have already made the decision to use the newly opened fund merger framework, which could be explained by several different reasons:**
 - First, a lack of visibility over tax constraints and the implication of cross-border funds merger processes
 - Second, many asset managers do not feel that they have a significant number of funds overlapping each other and thus eligible for a fund merger process. As a consequence, a fund merger could be a more relevant instrument in the case of an acquisition rather than for optimizing existing business
 - Third, many asset managers who already experienced in-border fund merger processes find it a heavy burden and are reluctant to use it
- **“Master-feeders” arrangements are the favourite among all the opportunities offered by the Directive, with three out of four asset managers declaring that they are either sure to implement it or at least studying the possibility**
 - Cross-border master-feeder structures are exempt from tax complexity as this arrangement leaves different vehicles in each country
 - For asset managers, master-feeder structures are compatible with different strategies:
 - They can be used to gather the management of several similar funds in one single point while minimizing distribution and tax impacts (no rebranding of the funds, no strong communication process etc.)
 - They can also be used as a tool for entering new markets: either by creating a local fund backed by an existing fund at home with a proven track record, or by offering smaller players in some countries outsourced management without exiting the market or impacting the current branding.

Do you plan to reshape your product portfolio using cross-border mergers?



- Yes we will definitely merge funds on a cross-border level
- We are studying the possibility of cross-border mergers

Do you plan to implement master-feeder fund structures on a European level?

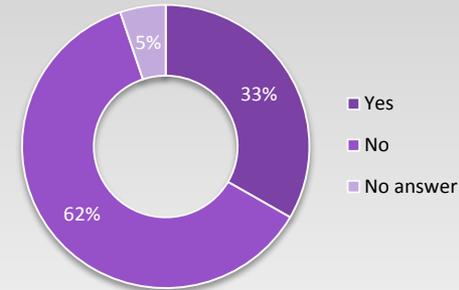


- Yes we will definitely implement master-feeder fund structures
- We are studying the possibility of master-feeder structures
- No, we won't implement master-feeder structures

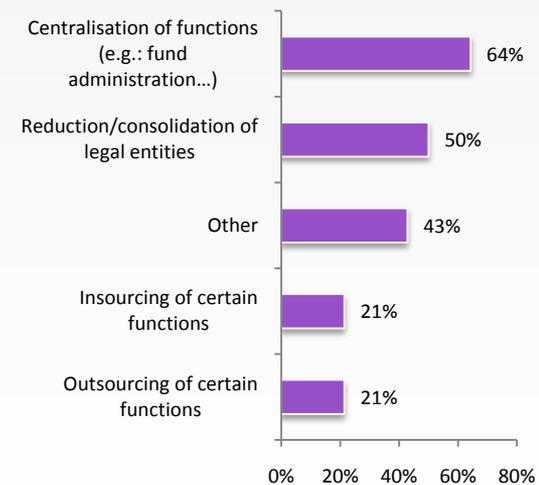
For a majority of asset managers, the passport is no real issue

- **Most asset managers do not plan to use UCITS IV to significantly change their current operational/business models. Actually, only one third do expect organizational changes due to UCITS IV, among which only half are thinking of a reduction in the number of legal entities across Europe.**
- **Centralization and relocation of functions are being considered, but no real trend is coming up**
 - The favourite target for centralization is fund administration. This remains rather surprising as the fund administration business is not actually addressed by UCITS IV and is bound to be a hot topic for “UCITS V”
 - Centralizing the management is quoted as a second possibility by 38% of those who expect a centralization move. This is, however, quite a poor result, given that back at the origin of the Directive in 2005, giving asset managers the opportunity to manage cross-border funds from home was one of the key reason to amend UCITS III...
 - In terms of target operating countries, those considering a reorganization are clearly more focused on a home base strengthening than on a move to create/strengthen a platform in Luxemburg or Ireland.

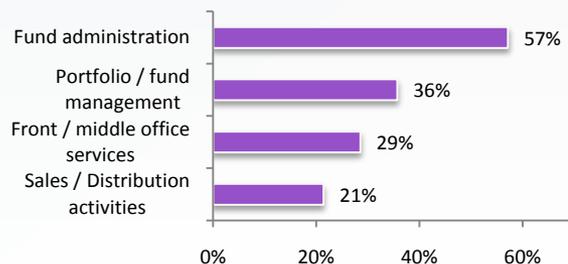
Do you plan organisational changes due to UCITS IV?



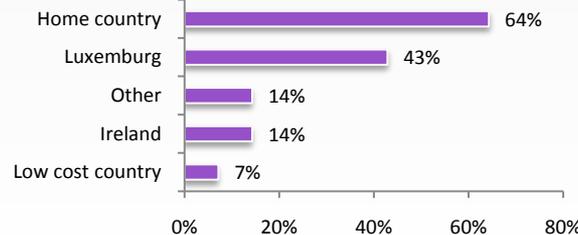
What kind of organisational changes do you have in mind?



When you think about centralisation of functions, which functions may be centralised?



When you think about centralisation of functions. Where do you want to centralise these functions?

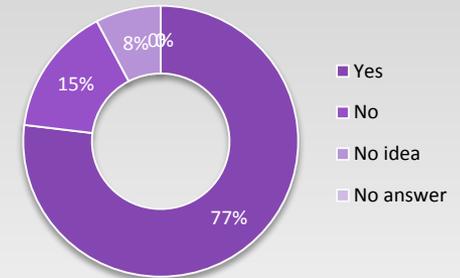


Service providers consider UCITS IV as a real opportunity

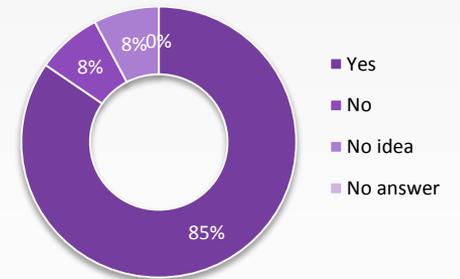
- **Service providers consider their clients will need their help to take advantage of the opportunities offered by UCITS IV**
 - A vast majority of the service providers (77%) consider that UCITS IV will impact the business needs of their clients, and an even bigger share (85%) consider that this will represent an opportunity for them, far more than a threat.
 - Only one service provider considers that UCITS IV is a threat to its current business.
 - This matches the answer given by asset managers when asked whether UCITS IV will impact the requirements they formulate for selecting service providers.

- **A comparison between asset managers' needs and the services proposed by their providers as regards UCITS IV shows a certain match**

Do you think your clients' strategy regarding UCITS IV will impact their business needs?



Do you think UCITS IV represents a business development opportunity for your company?



Main business needs mentioned by asset managers		Services proposed by service providers	
		Type of service	Frequency of the service
Geographic presence / Management company passport	<ul style="list-style-type: none"> • Wider local depositary network • Ability to value funds from various origins 	<ul style="list-style-type: none"> • Access to pan-European network • Help in local legal / regulatory issues • Consistent service ranges and fee schedules at European level 	+
Legal material	<ul style="list-style-type: none"> • Assistance in the design of the KID 	<ul style="list-style-type: none"> • Support on the preparation of the KID 	+++
Product range	<ul style="list-style-type: none"> • Implementation of cross-border master-feeder structures • Mergers: waiting for clarifications on tax aspects 	<ul style="list-style-type: none"> • Master-feeder packages on the whole service range • Help in the governance between master and feeder 	+
Organization	<ul style="list-style-type: none"> • Reduction in the number of legal entities • Centralisation of certain functions 	Depends on the level of service as regards the management company passport	?

Profile of European markets

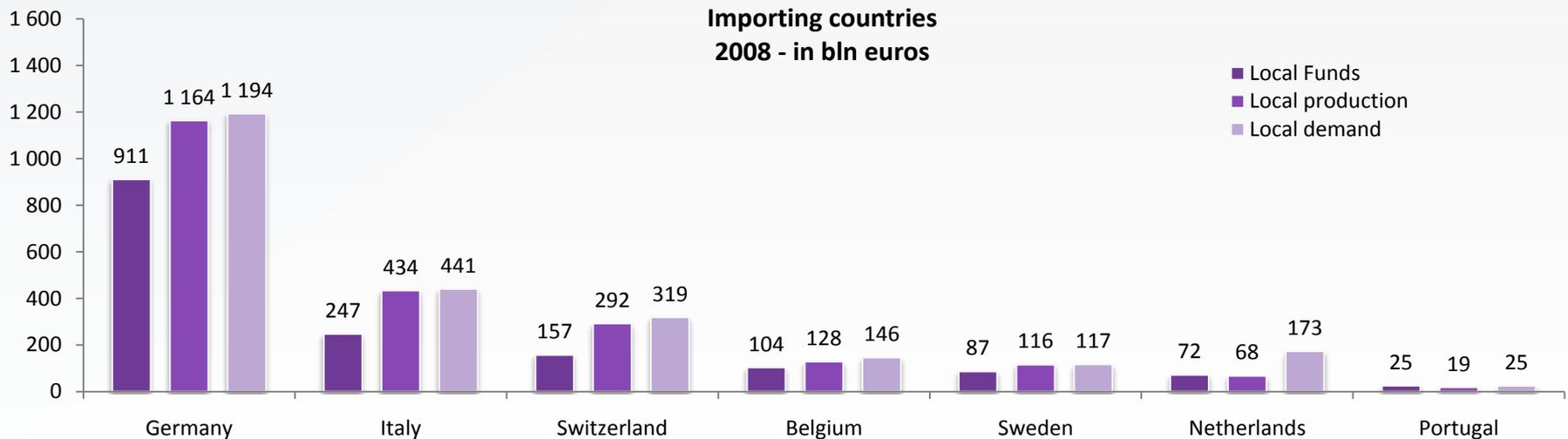
A number of importers – but for diverse reasons

This category covers various realities:

- **Germany, Italy and Switzerland have strong local management, but also produce Luxembourg funds to be imported back into their local markets, which gives them a familiarity with foreign funds**
 - Belgium and Sweden show a similar pattern, but in a limited market and with limited capabilities.
 - Switzerland remains in a special situation due to the size of its offshore market far surpassing the size of its onshore market. Those clients are often equipped with Luxembourg funds, of which Switzerland is a strong promoter.

- **Netherlands has strong management capabilities but focused on pension funds and discretionary management for life insurance companies, and only to a limited extent on funds**

- **Portugal has a small local industry**



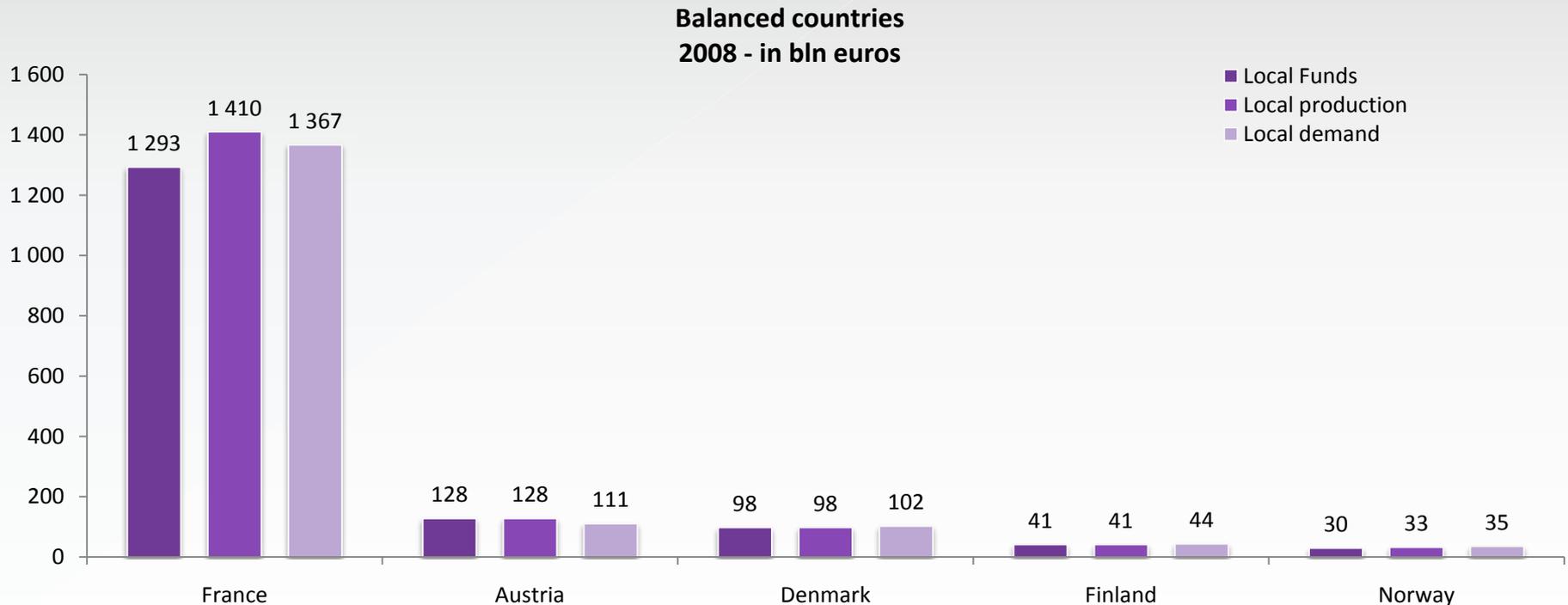
Source : Eurogroup Consulting study based on Efama and national statistics

Profile of European markets

A number of other countries are balanced

- **A significant part of Europe shows this fund industry profile**
 - Some big Southern European countries belong to this category: France and Spain
 - France appears by far as the bigger market in this situation, as top 2 investment fund domiciles in terms of assets after Luxembourg

- **In practice, those countries usually appear as the most difficult markets to enter for foreign asset managers:**
 - Protectionist local regulations and tax incentives targeting local products
 - National preferences of investors

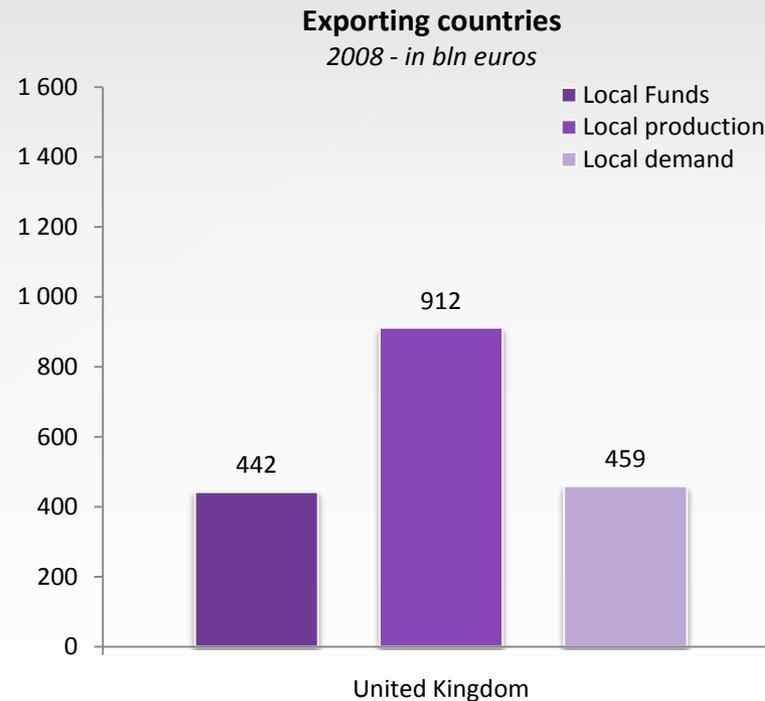


Source : Eurogroup Consulting study based on Efama and national statistics

Profile of European markets

UK – the only real exporter

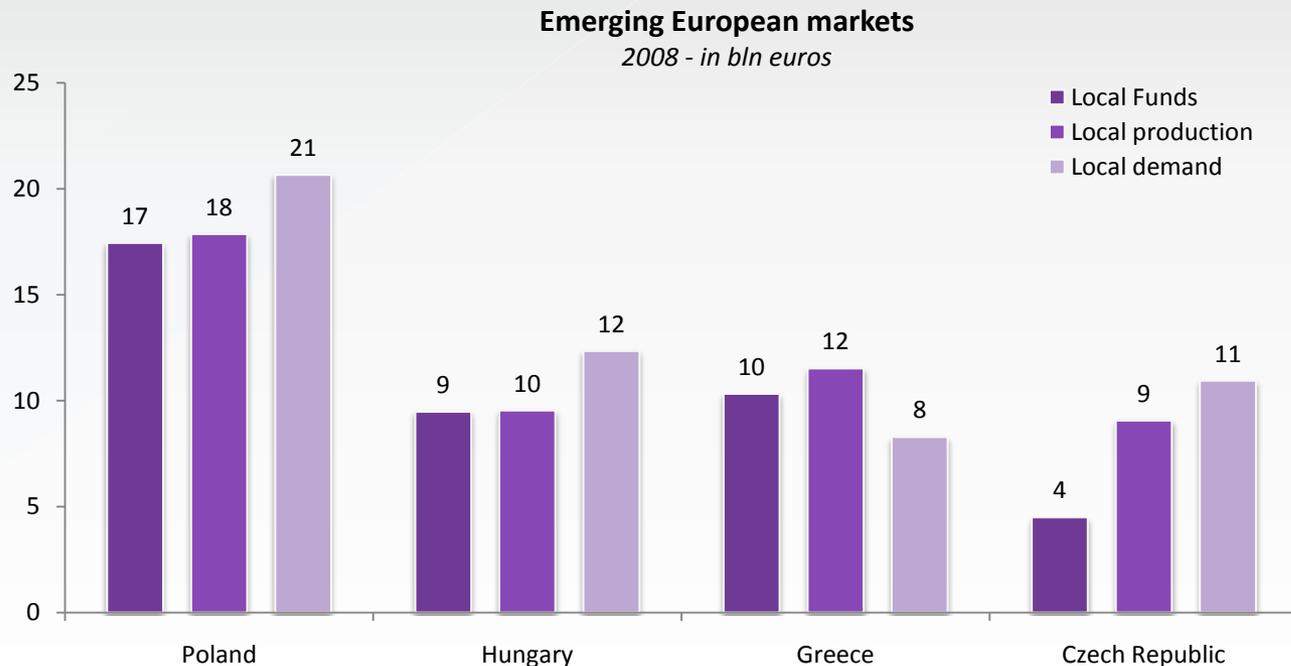
- **Only the United Kingdom shows such a profile in a significant proportion, and consistently over time.**
 - Small local market for sole mutual fund investments, UK being far more developed on discretionary management
 - UK is the bigger promoter of Irish funds that are mainly managed by the UK. UK is also one of the bigger promoters of Luxembourg funds
 - London as a major financial centre is also used by international players as their European Asset Management platform
 - Yet, UK does not only export in continental Europe but also overseas



Profile of European markets

« To-be » markets

- **This category particularly addresses Central and Eastern European markets**
 - All other European countries not previously mentioned, with a smaller fund industry, fall into this category (eg. Slovakia, Bulgaria...)
 - Greece appears to be a special case, with an ability to export its funds abroad (to be held by institutional investors)
- **Main characteristics of these markets:**
 - Small local demand, yet developing over time
 - Local demand increasing faster than the local management capabilities
 - Limited use of national vehicles, the imported vehicles being mainly Western European

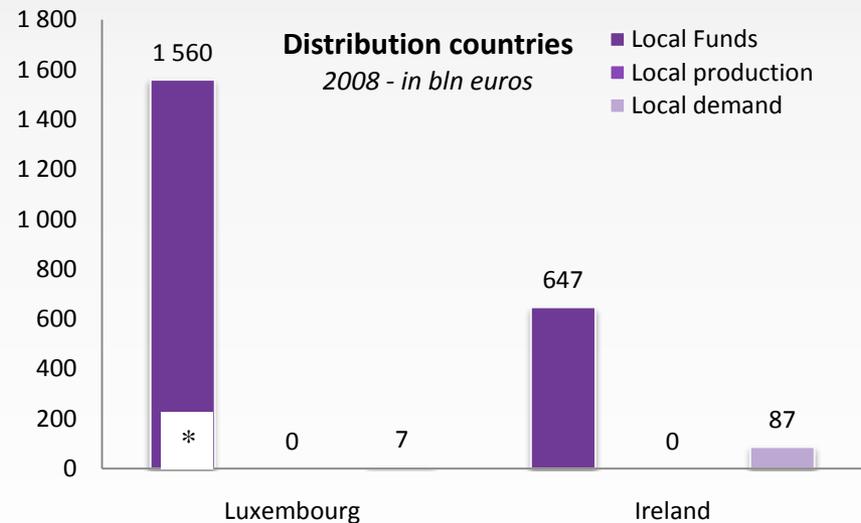


Profile of European markets

Two distribution « brands » without local managers

- **These countries have very small local markets, but historically decided to position themselves as fund industry specialists.**
- **Luxembourg**
 - Few local management but huge distribution and fund administration platform.
- **Ireland**
 - A fund administration platform for the Anglo-Saxon world with a strong focus on alternative investments.

*

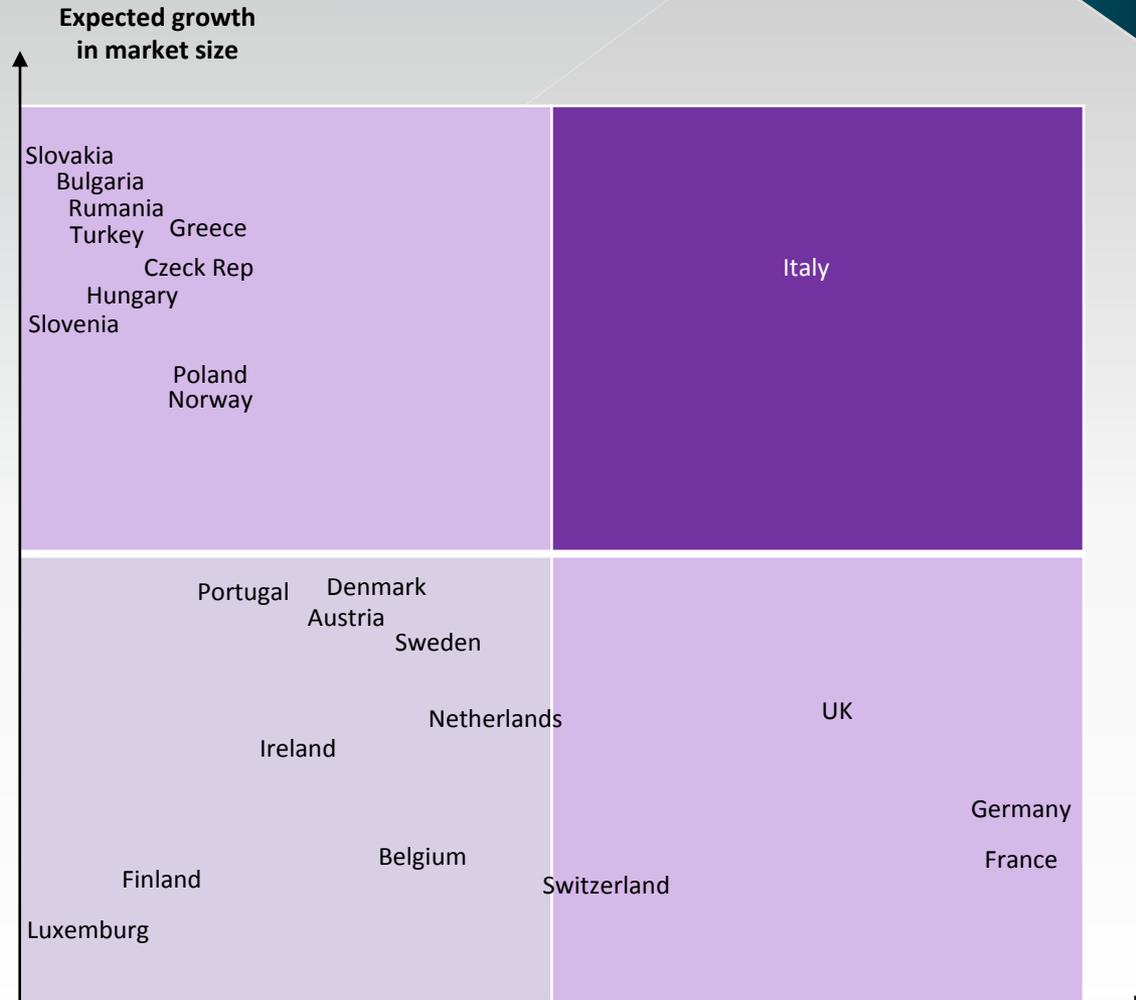


Competition should remain strong as opportunities appear to be limited

The biggest European markets are usually difficult to enter (distribution networks reserved for group manager, national preference...). Yet, other variables impact market developments: savings trends, market openness, savings re-allocation.

Considering these:

- The biggest potential for growth is in Central and Eastern Europe. However savings at stake remain low
- Traditional markets show smaller opportunities. Only Italy is identified as having a strong potential for market growth
 - This potential in the Italian market should, however, be considered with caution. If the discrepancy between the “savings market” size and fund investments looks striking, with a recently modified tax regime, complex distribution processes actually lead to a recent decrease in investment in funds over the last few years.



Our beliefs on the impact of UCITS V

- **Let us not miss the biggest trend: the wealth boom in the emerging world, notably in the BRIC countries. In this respect, UCITS is a bigger asset than expected, but further legislation should give a more global vision, and take it as it is: a competitive advantage**

- UCITS is a globally recognised brand, the security of which is felt by both investors and regulators
- The success of the UCITS brand does not only depend on how to do more business in Europe, since approximately 40% of UCITS funds are sold outside the EU – mainly in: Asia (China, India), the Middle East and South America - making them Europe's most successful financial services export.

- **For this purpose, UCITS V may well be more interesting than UCITS IV**

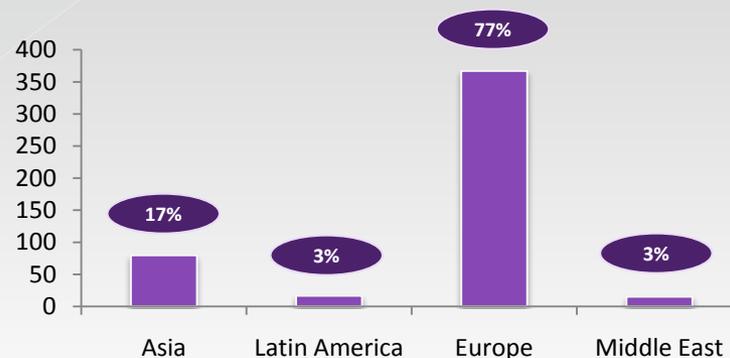
- Since the role of the custodian may be clarified...
- ... but also for a clear solution to tax issues

- **The value of UCITS is more than solely the value of the brand: the custodian bank has a real responsibility, the clarity of which will give higher value to UCITS as a brand**

- More reputation for the UCITS brand
- Better position for sales out of Europe

➔ **The importance of UCITS should not be underestimated since if investors have doubts about UCITS funds being secure investments, demand for them may fall away as they are no longer willing to pay the higher price**

Assets under management of cross-border UCITS
2008 - in bln euros



Source : EFAMA

Les évolutions en cours sur les fonds non coordonnés

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Stéphane Puel,
Avocat Associé,
cabinet Gide Loyrette Nouel

- Un « Big Bang » réglementaire dans le domaine des fonds non coordonnés :
 - Une modification (profonde ?) de la demande : Solvency II, Bâle III
 - Une révolution de l'offre : AIFM

- Un enjeu politique :
 - AIFM
 - Dodd – Frank Act
 - G20

Les évolutions réglementaires et fiscales : les fonds non coordonnés

- 2 échéances
- Immédiate : effets collatéraux de transposition de la Directive Ucits IV et volonté de promotion de la Place de Paris
- A terme :
 - AIFM
 - Impacts des réglementations hors Europe : ex. Dodd Frank Act
 - Réglementations de demain :
 - ✓ G 20
 - ✓ Après ?

Les modifications apportées à l'occasion de la transposition de la Directive Ucits IV (1)

- Les améliorations générales :
 - ✦ La lisibilité : la refonte de la Partie II du COMOFI
 - ✦ La gouvernance et la flexibilité : la création de Sicav sous forme de SAS
 - ✦ La fiscalité : le « couponnage » des Sicav

Les modifications apportées à l'occasion de la transposition de la Directive Ucits IV (2)

- Les FCIMT
- Les questions en suspens : l'extension aux OPCVM non coordonnés des mesures applicables aux OPCVM coordonnés
 - ✦ Exemple : le ratio poubelle
 - ✦ Exemple : le « short selling »

Les modifications apportées à l'occasion de la transposition de la Directive Ucits IV (3)

- Les améliorations apportées aux gestions particulières : le cas de l'OPCI
 - ✦ SPPICAV sous forme de SAS
 - ✦ « lock up » à 10 ans
 - ✦ Les comptes courants et les investissements à l'étranger

Les évolutions issues de la mondialisation réglementaire dans le domaine des fonds non coordonnés :

- AIFM :
 - ✦ Calendrier
 - ✦ La fin de la « forteresse Europe » ?
- Dodd – Frank Act :
 - ✦ Une obligation d'enregistrement plus étendue : la notion de « foreignprivateadviser »

Les évolutions de demain

- En Europe :
 - ✦ MIFID 2
 - ✦ PRIPS
- Les conséquences du G 20 :
 - ✦ La régulation des matières premières
 - ✦ Le « shadowbanking »

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Table Ronde

Comment la Place de Paris se prépare t-elle à la concurrence ouverte entre Places par la Directive OPCVM IV : les enjeux et défis

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Animée par **Stéphane Puel**,
Avocat Associé, Cabinet Gide Loyrette Nouel

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Conclusion

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Fin de la Conférence

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